



Comptroller General  
of the United States

Washington, D.C. 20548

91-1 CPD 109

## Decision

PR

**Matter of:** TCS Design & Management Services

**File:** B-241348

**Date:** February 4, 1991

John Sink for the protester.  
Michael Winchell, United States Marine Corps, for the agency.  
Jennifer Westfall-McGrail, Esq., and Christine S. Melody,  
Esq., Office of the General Counsel, GAO, participated in the  
preparation of the decision.

### DIGEST

1. Protester whose proposal was excluded from the competitive range is an interested party to protest evaluation of its proposal since it might be entitled to inclusion within the competitive range and consideration for award if its arguments are found to have merit.
2. Where agency reasonably determined that protester's proposal was deficient in several critical areas and that there was no reasonable expectation that it could be made acceptable through discussions, agency properly excluded the proposal from the competitive range.

### DECISION

TCS Design & Management Services protests its exclusion from the competitive range under request for proposals (RFP) No. M67004-90-R-0054, issued by the United States Marine Corps for flight data recorder analysis support. TCS contends that its proposal was not deficient in the areas identified by the agency and therefore should not have been excluded from the competitive range.

We deny the protest.

The RFP requested offers to provide flight data recorder analysis for use by the Army, Navy, and Air Force in investigating aircraft accidents and to develop an integrated flight data recorder analysis system for use by the three services. The solicitation asked offerors to furnish hourly

rates for seven labor categories, including three categories of engineer (senior, flight data, and general/system safety) and three categories of analyst (flight data, computer, and cost).<sup>1/</sup> The solicitation provided that technical factors would be approximately three times as important as price in determining the successful proposal. The RFP further indicated that seven factors would be considered in evaluating technical approach, including the following three critical elements: experience in accident investigation and analysis of flight data; experience in the development, acquisition, operation, and maintenance of a flight data analysis system; and understanding the problem. Noncritical elements included understanding the criteria; experience in developing/evaluating safety and health hazard analyses, associated system safety programs and risk assessments; approach to sample task order assignment; and completeness and thoroughness. The RFP advised offerors that critical elements were twice as important as noncritical ones and that the failure to address a critical element satisfactorily might cause the proposal to be judged unacceptable.

Three offerors submitted proposals by the August 3, 1990, closing date. TCS's technical proposal received a score of 35 of a possible 130, including unsatisfactory ratings on all critical elements, and its price proposal received a score of 34.8 of a possible 44. The other two proposals received technical scores approximately 200 to 300 percent higher than TCS's and price scores similar to TCS's. The contracting officer determined that TCS's proposal was unacceptable and that there was no reasonable expectation that it could be made acceptable through discussions. He therefore informed TCS that its proposal had been excluded from the competitive range and would not be considered for award. In notifying TCS of its exclusion from the competitive range, the contracting officer indicated that its proposal had demonstrated inadequate "hands on" experience in flight data recorder analysis and system safety engineering. The contracting officer also expressed doubt that TCS could provide the necessary level of expertise at the prices that it had proposed.

TCS takes issue with the agency's evaluation of its proposal. The protester contends that its proposal was not deficient in the areas identified by the agency and that it can provide the necessary level of expertise at the prices it quoted; thus, the protester argues that its proposal should not have been excluded from the competitive range.

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<sup>1/</sup> The seventh labor category was general secretary.

As a preliminary matter, the agency argues that TCS is not an interested party to protest under our Bid Protest Regulations, 4 C.F.R. § 21.0(a)(1990), since it would not be in line for award even if its protest were sustained. TCS is protesting the evaluation of its proposal; thus, if we were to find that its arguments have merit, it might be entitled to inclusion within the competitive range and consideration for award. We therefore consider TCS to be an interested party. SAMGO dba Advanced Health Sys., Inc., B-237981.3, Apr. 24, 1990, 90-1 CPD ¶ 413.

With regard to TCS's arguments concerning the evaluation of its proposal, the evaluation of technical proposals and the resulting determination as to whether an offer is in the competitive range is a matter within the discretion of the contracting agency, since that agency is responsible for defining its needs and the best method of accommodating them. Delta Ventures, B-238655, June 25, 1990, 90-1 CPD ¶ 588. In reviewing an agency's technical evaluation, we will not reevaluate the proposal, but instead will examine the agency's evaluation to ensure that it was not arbitrary or in violation of the procurement laws and regulations. Id. A protester's disagreement with the agency's judgment is not sufficient to establish that the agency acted arbitrarily. United HealthServ Inc., B-232640 et al., Jan. 18, 1989, 89-1 CPD ¶ 43.

Here, the agency determined that TCS's proposal was unsatisfactory on all three critical elements.<sup>2/</sup> The agency noted

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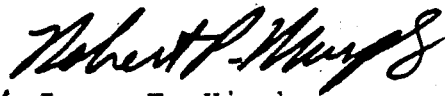
<sup>2/</sup> In its report, the agency does not address TCS's lack of experience in system safety engineering despite the fact that in the letter notifying TCS of its exclusion from the competitive range, it identified this as one of the principal shortcomings in TCS's proposal. The agency indicates that for purposes of brevity, it limited the discussion in its report to the critical elements of the RFP, but that TCS's proposal was deficient throughout. Since, as will be discussed below, the agency reasonably determined that TCS's proposal was unsatisfactory on all three critical elements and was therefore unacceptable, we need not consider whether or not the proposal was also deficient in the noncritical area of system safety engineering experience.

Similarly, the agency does not respond in its report to TCS's argument that it can provide the necessary level of expertise at the prices quoted. Again, since the agency reasonably determined that TCS's proposal was technically unacceptable, it is immaterial whether or not its prices were realistic. See Johnson Energy Management Co., Inc., B-234730, June 8, 1989, 89-1 CPD ¶ 540.

that the section of TCS's proposal addressing its experience in accident investigation and the analysis of flight data included only two sentences specifically addressing accident investigation; moreover, it contained no discussion focusing on investigative procedures and the analysis of flight data recorder information. Furthermore, although TCS's proposal indicated that its combined personnel had participated in over 25 accident investigations, the protester had failed to set out with any specificity the actual roles that these individuals had played or the extent of their involvement with flight data recorder analysis. The agency evaluators noted that reference to the resumes of TCS's proposed personnel indicated that the flight data engineer and flight data analyst had experience in only five Class A investigations and no experience in flight data recorder analysis, while other key personnel had been involved only peripherally in accident investigation. The agency found that TCS had failed to demonstrate any experience in the development, acquisition, operation, or maintenance of a flight data analysis system, and that the resumes of its employees failed to indicate any experience in this area. With regard to the third critical element, understanding the problem, the agency found that TCS had merely paraphrased the statement of work and indicated that it intended to comply.

TCS did not attempt to rebut the points raised by the agency and instead merely requested that we decide the protest on the existing record. Our review of the record confirms that the agency's findings regarding the deficiencies in TCS's proposal were reasonable. Based on those deficiencies, we find that it was reasonable and consistent with the RFP evaluation criteria for the agency to have concluded that the protester's proposal was unacceptable and that there was no reasonable expectation that it could be made acceptable through discussions. Since there was no reasonable expectation that TCS would be selected for award, it was appropriate for the contracting officer to exclude TCS from the competitive range. See Delta Ventures, B-238655, supra (competitive range consists of those proposals that have a "reasonable chance" of being selected for award).

The protest is denied.

  
for James F. Hinchman  
General Counsel