DECISION THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-206228   DATE: June 28, 1982

MATTER OF: TechDyn Systems Corporation

DIGEST:

> Determination that proposal is not
> technically acceptable and, there-
> fore, not within the competitive
> range is within procuring agency's
> discretion and will not be disturbed
> where the record indicates that the
> proposal did not comply with manda-
> tory requirements of solicitation.
> Fact that solicitation did not state
> proposals would be technically eval-
> uated does not alter decision.

TechDyn Systems Corporation (TechDyn) protests
the exclusion from the competitive range of its pro-
posal submitted in response to request for proposals
(RFP) No. DLA 710-82-R-0008 issued by the Defense
Logistics Agency (DLA), Columbus, Ohio.

The RFP was for an investigation of the causes,
duration and costs of production delays encountered
by Environmental Tectronics Corporation (ETC) under
Contract DLA 700-73-C-9495. Under the RFP, the con-
tractor was required to furnish a report on the
investigation and to give testimony at the appeal of
ETC's delay claim before the Armed Services Board of
Contract Appeals.

TechDyn's proposal was the lowest price proposal
submitted. The second low proposal was submitted by
Touche Ross & Company (Touche). After technical
evaluation DLA notified TechDyn that its proposal was
not within the competitive range. After negotiations
with offerors within the competitive range, award was
made to Touche.

The protester contends that DLA's technical
review of the offers was not proper because the RFP
contained no evaluation factors but merely stated
that award would be made to the low responsive
responsible offeror. Contending that it was the low
responsive and responsible offeror, the protester
requests cancellation of the Touche contract and award
to TechDyn.

We find no basis to question DLA's competitive
range determination and deny the protest.

Section "C," parts I, II and III of the RFP
describes the required services. Section "C," part
V, entitled "Additional Requirements (Not Evaluation
Factors)," lists four mandatory requirements. DLA
explains that the parenthetical language was to alert
offerors that a scoring system, normally used in pro-
fessional service solicitations, would not be used.
Part V(A)(3) requires offerors to include evidence
establishing at least 4 years experience in perform-
ing services similar to those required in the solicita-
tion and evidence establishing performance of similar
services on at least four prior occasions. After
technical evaluation, the contracting officer determined
that the individual proposed by TechDyn to investigate,
report and testify did not and could not meet the
experience requirement. Therefore, TechDyn's proposal
was determined not technically acceptable and outside
the competitive range.

A proposal for a negotiated contract may be
excluded from the competitive range when it has no
reasonable chance of being made acceptable through
negotiations. Peter J. T. Nelson, B-194728,
October 29, 1979, 79-2 CPD 302. The determination of
whether a proposal is within the competitive range is
primarily a matter of administrative discretion.
Commonwealth Research Group, Inc., B-202536.2,
October 6, 1981, 81-2 CPD 281. JGMA Development
Corporation, B-200754, March 30, 1981, 81-1 CPD 234.
We will not disturb an agency's decision on competi-
tive range absent a clear showing of unreasonableness,
arbitrary abuse of discretion or violation of procure-
ment statutes and regulations. Neshaming Valley
Information Processing, Inc., B-201336, July 20, 1981,

81-2 CPD 52; Joule Technical Corporation, B-197249,
September 30, 1980, 80-2 CPD 231.

    We find no merit in the protester's argument
that the technical evaluation was not proper. Although
the RFP parenthetical language "not evaluation factors"
was an unfortunate choice of language, we will not
apply the interpretation suggested by TechDyn which
elevates form over substance. DLA clearly intended
to conduct a negotiated procurement. Generally, the
concept of responsiveness, whether a bid conforms
with all material terms and conditions of a formally
advertised solicitation, does not apply directly to
negotiated procurements. However, the term respon-
siveness may be used in a negotiated procurement to
indicate that certain terms and conditions are material
and that a proposal that fails to conform to them may
be considered unacceptable. Center for Employment
Training, B-203555, March 17, 1982, 82-1 CPD 252. To
be responsive an offeror had to meet the RFP's addi-
tional requirements. Under the RFP in question the
protester failed to satisfy the mandatory experience
requirements. If an offeror's proposal does not
clearly establish that what it proposes will meet the
Government's needs, then that offeror should not expect
to be considered for award. Mutual of Omaha Insurance
Company, B-201710, January 4, 198? 82-1 CPD 2.

    In Joule Technical Corporation, supra, the RFP
included a license requirement in a statement of the
minimum experience and education necessary for crew
members of a naval test range. The license requirement
was used to determine the technical acceptability of
the personnel proposed. We held that the failure to
propose personnel meeting the license requirement was
a legitimate basis for the assessment of a deficiency
and exclusion from the competitive range. Here, DLA
determined that because TechDyn did not and could
not meet the experience requirement of the RFP, it did
not have a reasonable chance of being selected for the
final award. The failure of TechDyn to propose
personnel meeting the experience requirement provided
a rational basis for the agency's decision to exclude
the protester's proposal from the competitive range.

We believe that the RFP provisions were
sufficient to put prospective offerors on notice that
a proposal which did not meet the experience require-
ment would not be "responsive," and would be excluded
from competition. We cannot conclude that the agency's
evaluation that the protester was not within the
competitive range was unreasonable.

We deny the protest.

Harry R. Van Cle...
for Comptroller General
of the United States