



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Viking Instruments Corporation

**File:** B-238183

**Date:** April 24, 1990

William M. Rosen, Esq., Dickstein, Shapiro & Morin, for the protester.

John R. McCaw, Esq., Department of Transportation, for the agency.

Anne B. Perry, Esq., Paul Lieberman, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Agency properly determined not to include proposal in the competitive range where the agency reasonably determined that the technical proposal contained several major deficiencies, any one of which raised a serious question as to the proposal's liability, and that major revisions would be required to make the proposal technically acceptable, particularly where the proposal had no reasonable chance for award because there were numerous other higher rated proposals which were included in the competitive range.

### DECISION

Viking Instruments Corporation protests the rejection of its proposal from the competitive range under request for proposals (RFP) No. DTFA03-89-R-90027, issued by the Federal Aviation Administration, Department of Transportation, for a research and development contract for new explosives detection concepts utilizing vapor analysis technologies.

We deny the protest.

The RFP, issued April 20, 1989, solicited proposals for a two-phase, multi-year research and development effort, for the purpose of developing a sensor system designed to obtain vapor eluting from either personal or checked baggage and cargo as a means to detect explosives' vapors. Proof of feasibility is to be demonstrated under Phase I of the procurement, and if warranted, a prototype system will be developed under Phase II.

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Offerors were advised to submit separate cost and technical proposals. The technical proposal was to provide details on how the offeror proposed to meet all of the requirements in the statement of work. The cost proposal was to contain detailed cost data. Offerors were informed that cost and technical evaluations would be conducted independently. In addition, offerors were required to submit separate proposals for Phase I and Phase II. The solicitation advised that technical proposals which failed to address the requirements of the statement of work and which the FAA considered grossly deficient to the extent that the corrections would require a major rewriting, would not be further considered. The following evaluation factors were listed in the RFP, in descending order of importance:

- Technical Quality
- Technical Risk
- Corporate Talent/Capability
- Understanding the Problem
- Program/Organization
- Cost

A large number of proposals were received by the June 29 closing date. On the basis of its initial technical evaluation, the Technical Evaluation Committee (TEC) recommended that approximately 40 percent of the proposals be included in the competitive range. Viking's technical proposal received a score which was approximately 10 percent lower than that of the lowest scored proposal in the technical range. In addition, Viking's estimated cost was more than twice as high as that of half of the competitors in the competitive range and substantially higher than most others. Also, we note that a number of other proposals which were higher scored than Viking's were also eliminated from the competitive range.

The TEC cited four specific major deficiencies which warranted the elimination of Viking's proposal from the competitive range;

1. detection evidence is provided for a dissimilar compound;
2. detection evidence is for low sensitivity;
3. the offeror is extremely dependent on subcontractors for a large portion of the work; and
4. previous studies have shown that vacuum decompression sampling is ineffective.

Viking was notified that its proposal was eliminated from the preliminary competitive range by letter dated October 12. Viking, by letter dated October 27, filed an agency-level protest challenging this decision. The contracting activity denied Viking's protest in a letter which Viking received December 18, and Viking filed a protest in our Office on December 29, challenging the agency's actions on the basis that the four cited deficiencies are based on an erroneous evaluation of its proposal.

The determination of the relative merits of proposals is primarily the responsibility of the contracting agency, which must bear the burden of any difficulties resulting from a defective evaluation. Interaction Research Institute, Inc., B-234141.7, June 30, 1989, 89-2 CPD ¶ 15. Accordingly, in reviewing challenges to the evaluation of a technical proposal and the resulting determination of whether the proposal is within the competitive range, we will not reevaluate the proposal and independently judge its merits; we will only consider whether the evaluation was reasonable and otherwise consistent with procurement laws and regulations. Id. Moreover, it is the offeror's responsibility to demonstrate in its initial proposal its capability to comply with the solicitation requirements. TIW Sys., Inc., B-222585.8, Feb. 10, 1987, 87-1 CPD ¶ 140. Based on our review of Viking's proposal and its technical evaluation, we find that the agency's determination to eliminate the proposal from the competitive range was not unreasonable.

The first two alleged defects concern the type of detection evidence provided in Viking's proposal. The TEC noted that in its proposal, Viking stated that it expected to develop a system which could detect explosive vapors in amounts as small as 10 to the minus 19 grams. Since current technology only has a sensitivity for detection levels of 10 to the minus 15, the TEC examined Viking's proposal for evidence of this heightened sensitivity and relied on a diagram which was based on a compound which was dissimilar in that it possessed a much lower sensitivity. This led the TEC to conclude that Viking either misunderstood the requirement or had no proof that this heightened sensitivity could be achieved.

The protester contends, and we agree, that the reliance of the TEC on the diagram in question was misplaced, since the diagram was included and specifically referenced to show a different aspect of the system, automatic gain control. Automatic gain control allows the system to respond to signal intensities which vary widely and is unrelated to sensitivity detection. Nevertheless, while we find that the

agency's use of this diagram to determine that Viking did not understand the requirements of the solicitation was misplaced, the agency considered the diagram only because Viking's proposal did not otherwise contain sufficient evidence to suggest that this heightened sensitivity could be achieved. Thus, ultimately it was not unreasonable for the agency to assign a high technical risk to Viking's proposal in this respect.

The third reason cited by the agency was the TEC's conclusion that Viking was extremely dependent on subcontractors for a large portion of the work. This was based on the inclusion in Viking's proposal of a letter from a company which stated that a tandem mass spectrometer would be available--which indicated Viking did not have this capability in-house--and on a paragraph in the Corporate Talent/Capability section of Viking's proposal which stated that Viking had assembled a technical advisory group of subcontractors. This paragraph also stated that the group members' experience was summarized in the "Key Personnel Section." The TEC concluded that the experience of the subcontractors was a very significant component of the effort proposed by Viking and due to this reliance on subcontractors, Viking was given a low score in the area of self-sufficiency.

Viking argues that the TEC's conclusion that Viking relied heavily on subcontractors was unwarranted since in its cost proposal it clearly stipulated that subcontractors would account for only 1.7 percent of the total contract cost. Moreover, Viking contends that the letter pledging the tandem mass spectrometer was included only to show that in the event it received the contract, Viking would be able to acquire this sophisticated piece of machinery from its manufacturer in a timely manner.

Viking did indeed indicate subcontractor costs as only 1.7 percent of the contract cost. However, Viking's technical proposal did not provide or suggest this percentage, and the TEC is not required to fill in the gaps of the technical proposal with information contained in the cost proposal. See Sikora & Fogleman, B-236960, Jan. 17, 1990, 90-1 CPD ¶ 61; Electronic Warfare Assocs., B-224504; B-223938, Nov. 3, 1986, 86-2 CPD ¶ 514. Since Viking's technical proposal did not explicitly state that such a small portion of its effort was to be subcontracted, we do not find the TEC's assumption to be unreasonable. Further, in view of Viking's stated intention to acquire the proposed tandem mass spectrometer from a subcontractor since Viking's own spectrometer was not adequate, in conjunction with Viking's proposed use of subcontractor experts to staff a

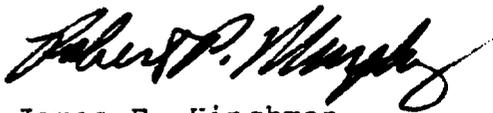
technical advisory group, the agency reasonably believed that despite the fact that the subcontractor cost was only 1.7 percent, the real expertise necessary for this contract lay outside of Viking, with the subcontractor personnel.

The final justification for the elimination of Viking's proposal from the competitive range was that the TEC believed Viking relied on a sampling method which has been shown to be ineffective, the vacuum decompression or "burping" technique. Although the TEC observed that Viking's proposal also contained a discussion of a "brushing" technique, there was minimal supporting data for this experimental method, and, therefore, the TEC believed that the burping technique was to be the primary method utilized. The protester contends that this interpretation of its proposal was unreasonable, because it clearly pointed out that the burping technique was only effective for certain explosives, and that it anticipated developing a brushing technique for more sensitive explosives, and that the latter method was to be the primary method. We agree that the proposal stated that burping was only one method to be used and that another had to be developed. However, while Viking provided a brief discussion of the brushing technique, its proposal failed to address any of the problems which were associated with this experimental technique, or to suggest how it proposed to handle these problems. Accordingly, the TEC reasonably concluded that Viking did not offer sufficient information concerning the experimental brushing technique to demonstrate its feasibility. Although Viking argues that it does not have any additional information because this is an experimental method, we do not find the agency's finding that this technical approach was too speculative to be unreasonable. An agency may reasonably exclude proposals with serious informational deficiencies from further consideration. HITCO, B-232093, Oct. 11, 1988, 88-2 CPD ¶ 337.

Viking also argues that the agency should have conducted discussions with the firm to allow it to clear up these discrepancies. We disagree. Agencies are not required to conduct discussions with offerors whose proposals are technically unacceptable. See Madison Servs., Inc., B-236776, Nov. 17, 1989, 89-2 CPD ¶ 475. We conclude that it was not unreasonable for the agency to determine that Viking's proposal would require major revisions to be made acceptable, and to eliminate the firm's proposal from the competitive range. Further, in view of Viking's relative standing, and the significant number of higher rated proposals which were included in the competitive range, as well as the other higher rated proposals which were not included, the agency also had a reasonable basis to exclude

Viking from the competitive range because Viking had no reasonable chance for award. American Contract Health, Inc., B-236544.2, Jan. 17, 1990, 90-1 CPD ¶ 59; ITECH, Inc., et al., B-231693 et al., Sept. 20, 1988, 88-2 CPD ¶ 268.

The protest is denied.

  
for James F. Hinchman  
General Counsel