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## Decision

**Matter of:** Transworld Systems, Inc.; Account Control Technology, Inc.

**File:** B-414090.13; B-414090.14; B-414090.15; B-414090.16

**Date:** December 22, 2017

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### DIGEST

1. Protest that the agency evaluated quotations unequally is sustained where the record does not reasonably show the agency's basis for distinguishing between the protester's and the awardees' quotations.

2. Protest challenging the agency's evaluation is denied where the agency's evaluation was reasonable and consistent with the stated evaluation criteria.

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## DECISION

Transworld Systems, Inc. (TSI), of Lake Forest, Illinois, and Account Control Technology, Inc. (ACT), of Woodland Hills, California, protest the award of multiple indefinite-delivery/indefinite-quantity (IDIQ) contracts to Pioneer Credit Recovery, Inc. (Pioneer), of Arcade, New York; The CBE Group, Inc. (CBE), of Cedar Falls, Iowa; Performant Recovery, Inc. (Performant), of Livermore, California; Continental Service Group, Inc. (ConServe), of Fairport, New York; and Coast Professional, Inc. (Coast), of West Monroe, Louisiana, pursuant to request for quotations (RFQ) No. TFSAFSA17Q0001 issued by the Department of the Treasury, Bureau of the Fiscal Service (the Bureau) for private debt collection services.<sup>1</sup> The protesters challenge various aspects of the agency's evaluation.

We sustain TSI's protest and deny ACT's protest.

## BACKGROUND

On September 13, 2016, the Bureau issued the RFQ under the procedures of the Federal Acquisition Regulation (FAR) subpart 8.4 to contractors holding Federal Supply Schedule (FSS) contracts under professional services schedule 00CORP; specifically, financial and business solutions category 520-4.<sup>2</sup> AR, Tab 5, RFQ at 1; Tab 7, Amend. 1, at 3.<sup>3</sup> The Bureau collects delinquent, non-tax debts owed to the United States, including consumer or commercial debt. AR, Tab 5, RFQ Performance Work Statement (PWS) at 9. If the Bureau is unsuccessful in its attempts to collect debt, it may refer eligible debts to private collection agencies. Id. Here, the Bureau sought a contractor to perform debt collection services on a fee-for-service basis in a competitive environment with other collection agencies contracted by the Bureau in order to increase the recovery of delinquent non-tax debts and to resolve debts that are otherwise uncollectable. Id. at 11.

Quotations were to be evaluated under a two-phase approach. AR, Tab 6, RFQ Instructions, at 4. Under Phase 1, firms would be given a pass/fail rating for two non-price criteria, related to the firm's experience and systems capabilities. Id. As relevant

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<sup>1</sup> Pioneer, CBE, Performant, and ConServe are incumbent contractors for this effort. Agency Report (AR), Tab 7, Amend. 1, at 9.

<sup>2</sup> Although the solicitation was issued under FAR subpart 8.4, throughout the record the parties use the term "proposal" rather than "quotation" to refer to the vendors' responses to the solicitation. The distinction between a quotation and proposal is not relevant to our analysis. For purposes of this decision, we use the term quotation throughout.

<sup>3</sup> The agency submitted separate agency reports in response to these protests. Unless a document relates to a specific protester, citations in the record are applicable to both protesters.

here, under Phase 2, quotations would be evaluated by a technical evaluation panel (TEP) using the respective weights assigned to the following five non-price evaluation factors: (1) technical approach (25%); (2) management approach and organizational structure (management approach) (25%); (3) quality control approach (20%); (4) past performance (25%); and (5) utilization of small business concerns (5%).<sup>4</sup> Id. at 4-5. Price would not be weighted. Id. at 5. Firms were to propose commission fee percentages that the agency would review and use to establish a fee objective, or target fee. Id. The agency would then engage in fee negotiations with firms to establish final negotiated fees. Id.

Additionally, the RFQ explained that non-price evaluation factors would be rated using an adjectival/numeric point scale. Id. at 6. In this regard, the adjectival ratings and corresponding point scores available for the non-price factors, from highest to lowest, were excellent (4 points), very good (3 points), satisfactory (2 points), poor (1 point), and unacceptable (0 points). Id. The non-price point scores would then be multiplied by the respective weights assigned to each evaluation factor to reach a numerical value for each non-price factor. The agency would then add the value for the non-price factors to reach an overall non-price rating. Id.

The RFQ contemplated the award of multiple fixed-price contracts for a one-year base period and four one-year option periods.<sup>5</sup> RFQ at 2. The RFQ stated that award would be made to the responsible firms whose quotations were found to be most advantageous to the government, considering all factors. AR, Tab 6, RFQ Instructions, at 4. The RFQ also explained that award would be made using a tradeoff decision between price and non-price factors, with combined non-price factors being significantly more important than price. Id. In this regard, the RFQ advised that in making the tradeoff comparison, the government would be more concerned with obtaining superior technical features, capabilities, and experience than with obtaining the lowest price. Id.

The RFQ required that the technical information in a firm's quotation include a narrative addressing the general service requirements and clearly showing the firm's proposed methods/approach for satisfying the RFQ requirements, and that the information be specific, detailed, and complete to clearly demonstrate a firm's understanding of the requirements. Id. at 2. As relevant here, a vendor's technical approach would be evaluated on, among other items, its ability to address anticipated problem areas and

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<sup>4</sup> Firms were required to submit technical quotations in four sections: (1) systems capabilities; (2) technical management, and quality control approach, and organizational information; (3) past performance/experience; and (4) utilization of small business concerns. AR, Tab 6, RFQ Instructions, at 2.

<sup>5</sup> Amendment 1 to the solicitation stated that the agency intended to award a maximum of five contracts, and in the event of unforeseen circumstances, may reconsider the number of awards as necessary. AR, Tab 7, RFQ Amend. 1, at 4.

the feasibility/creativity of solutions to problems, and its proposed approach to addressing future integration of new processes and applications. Id. at 4.

As relevant to the quality control approach factor, the RFQ required a firm to address its approach to quality control, including a firm's methodology for transitioning work between employees when employees are replaced or removed during performance. AR, Tab 6, RFQ Instructions at 2. As additionally relevant here, firms were required to submit a training plan detailing how staff would be trained on applicable laws, regulations, procedures, and Bureau requirements.<sup>6</sup> Id. at 3. A firm would be evaluated on its demonstrated methodology for transitioning work between contract employees when needed to ensure continuity of service with negligible impact, and its demonstration of a training plan that ensured compliance with applicable laws, regulations, procedures, and Bureau requirements. Id. at 5.

The agency received 28 quotations by the closing date of October 13, 2016. Contracting Officer's Statement of Facts (COSF) at 2. After quotations were evaluated under Phase 1, [DELETED] quotations were assigned an overall pass rating and moved to Phase 2. Id. at 2-3. After evaluating quotations, establishing a competitive range, and engaging in discussions and fee negotiations, the contracting officer (CO), who was also the source selection authority (SSA), made awards on May 5, 2017 to Pioneer, CBE, Performant, ConServe, and Coast.<sup>7</sup>

Following award in May 2017, five protesters, including TSI and ACT, filed post-award protests challenging the award. On June 8, the agency indicated its intent to take

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<sup>6</sup> Section 4.1 of the PWS outlined a list of 11 principal federal statutes and regulations governing the contractor's collection activities, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and three other applicable federal laws and guidance with which a contractor should be familiar, including laws and regulations related to Treasury's debt collection programs, such as the Treasury Offset Program (TOP regulations). PWS at 11-13. Additionally, section 8.1, Training, required a contractor to train its employees to ensure adherence to applicable laws and regulations, Bureau policies, and the Private Collection Agency Operations and Procedures Manual. PWS at 17. This section specifically states that the contractor shall train its employees on the Privacy Act of 1974, the Fair Debt Collection Practices Act, the Federal Claims Collection Standards, other applicable federal debt collection laws and regulations, and the debt collection laws of states and localities. Id.

<sup>7</sup> Prior to the May 5 award decision, three protesters raised pre-award challenges that were either dismissed or withdrawn. See Alltran Edu., Inc., B-414090.1, Nov. 8, 2016 (unpublished decision); Value Recovery Holding, B-414090.2, Jan. 3, 2017 (unpublished decision); Windham Professionals, Inc., B-414090.3, Mar. 29, 2017 (unpublished decision).

corrective action in four protests and those protests were dismissed as academic.<sup>8</sup> See Transworld Sys., Inc. et al., B-414090.4 et al., June 14, 2017 (unpublished decision).

In implementing its corrective action, the SSA appointed a new chairperson and reconvened the TEP multiple times to review quotations and discuss strengths, weaknesses, and/or deficiencies and assign a new consensus rating. AR, Tab 10, Source Selection Decision (SSD), at 10. Upon completion of the reevaluation, TSI was rated [DELETED] and ACT was rated [DELETED]. Id. at 11. The final ratings are as follows:

	<b>Technical Approach (25%)</b>	<b>Management Approach (25%)</b>	<b>Quality Control (20%)</b>	<b>Past Performance (25%)</b>	<b>Small Business Utilization (5%)</b>	<b>Overall Point Score</b>
<b>ACT</b>	Poor (0.250)	Very Good (0.750)	Very Good (0.600)	Very Good (0.750)	Excellent (0.200)	2.550
<b>TSI</b>	Satisfactory (0.500)	Excellent (1.00)	Poor (0.200)	Very Good (0.750)	Excellent (0.200)	2.650
<b>Coast</b>	Very Good (0.750)	Very Good (0.750)	Very Good (0.600)	Very Good (0.750)	Excellent (0.200)	3.050
<b>Pioneer</b>	Very Good (0.750)	Excellent (1.00)	Very Good (0.600)	Very Good (0.750)	Satisfactory (0.100)	3.200
<b>ConServe</b>	Very Good (0.750)	Very Good (0.750)	Very Good (0.600)	Excellent (1.00)	Excellent (0.200)	3.300
<b>Performant</b>	Very Good (0.750)	Excellent (1.00)	Very Good (0.600)	Excellent (1.00)	Very Good (0.150)	3.500
<b>CBE</b>	Very Good (0.750)	Excellent (1.00)	Excellent (0.800)	Excellent (1.00)	Excellent (0.200)	3.760

AR, Tab 10, SSD, at 11. All firms agreed to final negotiated fees of 23% for debt less than two years old and 25% for debt older than two years. Id. at 5.

<sup>8</sup> The agency stated that it intended to take corrective action by reexamining past performance and conducting new past performance evaluations; reviewing technical evaluations and arriving at new consensus ratings in accordance with RFQ evaluation criteria; and making a new award decision. The fifth protester withdrew its protest on June 5. See Progressive Financial Servs., B-414090.6, June 8, 2017 (unpublished decision).

As relevant here, TSI's quotation received a deficiency and a weakness under the quality control factor. The consensus evaluation report states that the weakness was assessed because TSI's quotation did not address HIPAA and TOP regulations in addressing training on laws and regulations and Bureau requirements. TSI AR, Tab 20, TSI Phase 2 Consensus Evaluation, at 4. Additionally, the report states that the agency assessed a deficiency because the quotation did not adequately demonstrate TSI's methodology for transitioning work projects between personnel when needed. Id.

As additionally relevant here, ACT's quotation was assessed two minor weaknesses, two deficiencies under the technical approach factor; one minor weakness under the management approach and past performance factors, respectively; and two minor weaknesses under the quality control factor. ACT AR, Tab 22, ACT Phase 2 Consensus Evaluation, at 2-5.

In its award recommendation, the source selection panel (SSP) outlined the ratings received by Pioneer, CBE, Performant, ConServe, and Coast, the five awardees. AR, Tab 22, SSP Award Recommendation, at 1-4. As relevant here, the quotations of CBE, Performant, ConServe, and Coast did not address both HIPAA and TOP regulations and their quotations were not assessed weaknesses under the quality control factor for their omission. Id.; TSI AR, Tab 121, Performant Quotation, at 27-28; Tab 126, ConServe Quotation, at 7-8; Tab 116, CBE Quotation, at 25-26; Tab 131, Coast Quotation, at 19-20. The SSP also states that, with the exception of Pioneer's satisfactory rating for the small business utilization factor, the top five rated firms received ratings of very good or better for all individual non-price factors. AR, Tab 22, SSP Award Recommendation, at 4. The SSA selected Pioneer, CBE, Performant, ConServe, and Coast as the top rated firms with established fees determined to be fair and reasonable. AR, Tab 10, SSD, at 14.

On September 11, the agency notified TSI and ACT of the awards. These protests timely followed.

## DISCUSSION

The protesters challenge multiple aspects of the agency's evaluation. As discussed below, we deny ACT's challenge to the awards and sustain TSI's challenge to the awards.<sup>9</sup>

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<sup>9</sup> During our consideration of this protest, we considered requests for dismissal challenging the technical acceptability of TSI's quotation based on the availability of its key personnel, and alleging that ACT could not demonstrate competitive prejudice. We decline to dismiss the protests on these bases.

## ACT's Protest

ACT challenges the evaluation of ACT's and select awardees' quotations, and maintains that the agency did not engage in meaningful discussions.<sup>10</sup> We have reviewed all of ACT's challenges and conclude that none furnishes a basis to sustain ACT's protest. We discuss a few examples below.

Where, as here, an agency issues an RFQ to FSS contractors under FAR subpart 8.4 and conducts a competition, we will review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation. Digital Solutions, Inc., B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 3-4. In reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate the quotations; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. DEI Consulting, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2. A vendor is responsible for affirmatively demonstrating the merits of its quotation and risks the rejection of its quotation if it fails to do so. Verizon Fed., Inc., B-293527, Mar. 26, 2004, 2004 CPD ¶ 186 at 4. A protester's disagreement with the agency's judgment does not establish that an evaluation was unreasonable. DEI Consulting, *supra*, at 2.

ACT challenges the deficiencies received under the technical approach factor pertaining to addressing anticipated potential problem areas and addressing the integration of new applications and processes. In this regard, for each deficiency, ACT asserts that the agency's evaluation was unreasonable because the RFQ did not define "problem areas" or "new processes and/or applications," and that ACT addressed these elements in its quotation. Protest at 32-34. For example, for the approach to addressing anticipated potential problems areas, ACT asserts that it met this requirement by, among other responses, proposing [DELETED]. *Id.* at 32. As relevant to the integration of new applications and processes, the protester contends that, among other responses, it met this requirement by stating that it would [DELETED]. *Id.* at 33.

The agency responds that ACT's quotation did not include a specific section to address these areas, nor did it provide specific examples of how ACT would meet these requirements, and that the quotation sections to which ACT cites demonstrate normal debt collection operations rather than directly or comprehensively showing an ability to meet each requirement. Memorandum of Law (MOL) at 7.

We find no basis to challenge the agency's conclusions. The protester's reiteration or summary of examples included in its quotation does not show that the agency's evaluation was improper. Additionally, although the protester disagrees with the agency's assessment of the usefulness of the information that ACT provided in its

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<sup>10</sup> ACT initially challenged the best-value determination, but withdrew that ground. See Comments and Supp. Protest (B-414090.16) at 3 n.1.

quotation, this disagreement, without more, does not provide a basis to sustain the protest.<sup>11</sup>

ACT also asserts that the agency failed to conduct meaningful discussions because the agency did not notify firms of deficiencies and significant weaknesses contained within their quotations. Protest at 40-41. In support of this argument, the protester relies on an email from March 30, 2017, in which the agency notified parties that it intended to engage in discussions. See Protest, Exh. 2, Email from Agency to ACT, Mar. 31, 2017.

Our Bid Protest Regulations, 4 C.F.R. § 21.1(c)(4) and (f), require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. Midwest Tube Fabricators, Inc., B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3.

The protester has not met this standard. The record shows that the March 2017 email related to discussions that the agency held prior to making the first award in May 2017-- rather than the second award in September 2017. In this regard, the record shows that in implementing the corrective action prior to making the second award in September 2017, the agency specifically concluded that it was “unnecessary” to request clarifications or engage in discussions, and determined that “[quotation] revisions of a technical nature were not permitted.” See AR, Tab 10, SSD, at 12-13.<sup>12</sup> Accordingly, we dismiss this challenge for failure to state a valid basis of protest. 4 C.F.R. § 21.5(f).

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<sup>11</sup> To the extent ACT argues that the Bureau’s consensus technical evaluation should have reflected the views raised by individual evaluators, instead of the consensus judgment, the protester’s disagreement provides no basis to conclude that the consensus evaluation was unreasonable. Additionally, we find unavailing ACT’s assertions that the agency’s changes to ratings assigned under the evaluation performed prior to corrective action were unreasonable where the record shows that the TEP and SSA did not change scores in a vacuum; rather, the changes were made with reference to the contents of the quotations and the instructions for reviewing Phase 2 quotations and assigning a new consensus rating.

<sup>12</sup> Additionally, to the extent we understand this argument as a challenge to the terms of the corrective action, we find this challenge to be untimely. See 4 C.F.R. § 21.2(a)(2). In this regard, the agency’s corrective action notice provided a basis for protest prior to award. See supra note 8; see e.g., American K-9 Detection Servs., Inc., B-400464.6, May 5, 2009, 2009 CPD ¶ 107 at 5 n.4.



## TSI's Protest

TSI challenges the agency's evaluation of various aspects of its quotation and asserts that the agency engaged in disparate treatment. We have reviewed TSI's challenges and conclude that, with the exception of the issues specifically identified below, none provides a basis to sustain the protest.

### Unequal Treatment

TSI argues that the Bureau evaluated its quotation in an unequal manner as compared to four awardees: CBE, Performant, ConServe, and Coast.<sup>13</sup> Specifically, TSI challenges the agency's assessment of a weakness for TSI's quotation under the quality control factor for failing to mention HIPAA or the TOP regulations, but not assessing any weakness for the same omission by the awardees. Comments and Supp. Protest (B-414090.15) at 4.

In response, the agency asserts that TSI is requesting that GAO reevaluate quotations and that TSI's failure to address these two important laws and regulations in its quotation left the TEP unable to determine whether TSI would in fact provide training on those laws. Additionally, the agency contends that TSI's allegations of disparate treatment fail to show that "any awardee received a higher rating for a quote that contained the same or similar omissions as TSI." Supp. MOL at 4.

In TSI's comments on the supplemental agency report, TSI demonstrated that the training plans under the quality control factor for three of the four awardees failed to specifically mention HIPAA or TOP regulations, and that the plan for the fourth awardee mentions only HIPAA in its response. See TSI AR, Tab 121, Performant Quotation, at 27-28; Tab 126, ConServe Quotation, at 7-8; Tab 116, CBE Quotation, at 25-26; Tab 131, Coast Quotation, at 19-20.

It is a fundamental principle of government procurement that competition must be conducted on an equal basis; that is, the contracting agency must treat all offerors or vendors equally; it must even-handedly evaluate offers against common requirements and evaluation criteria. Electrosoft Servs., Inc., B-409065 et al., Jan. 27, 2014, 2014 CPD ¶ 252 at 9.

Here, the record shows that the agency assessed TSI's quotation a weakness for not addressing HIPAA or TOP regulations in addressing training on laws, regulations and Bureau requirements. TSI AR, Tab 20, TSI Consensus Evaluation, at 4. The record also shows that the quotations of the four challenged awardees similarly did not address HIPAA and/or the TOP regulations. See TSI AR, Tab 121, Performant Quotation, at 27-28; Tab 126, ConServe Quotation, at 7-8; Tab 116, CBE Quotation, at 25-26; Tab 131, Coast Quotation, at 19-20. Yet, these awardees' quotations were not assessed

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<sup>13</sup> TSI did not challenge the quotation of Pioneer's quotation regarding this issue.

weaknesses for their omission. TSI AR, Tab 22, SSP Award Recommendation, at 1-4; Tab 10, SSD, at 13. On this record, we conclude that the Bureau's evaluation of TSI's quotation was unequal as compared to the evaluation of the quotations of CBE, Performant, ConServe, and Coast. We therefore sustain the protest on this basis.

### Prejudice

Competitive prejudice is an essential element of a viable protest and we will sustain a protest only where the protester demonstrates that, but for the agency's improper actions, it would have had a substantial chance of receiving the award. Deloitte Consulting, LLP et al., B-411884 et al., Nov. 16, 2015, 2016 CPD ¶ 2 at 18-19.

As discussed above, we concluded that the assessment of a weakness under the quality control factor for not mentioning HIPAA and TOP regulations in TSI's training plan was unequal when compared to the evaluation of the quotations of awardees Performant, ConServe, Coast, and CBE.

In its initial protest, TSI challenged the deficiency assessed to its quotation under the quality control factor. In the memorandum of law submitted in response to this protest, the agency states:

Upon reviewing TSI's [quotation], the technical evaluation panel agrees that TSI's [quotation] was not, in fact, lacking for this sub-factor as previously indicated, and that TSI should not have been assessed a deficiency in this area. Accordingly, TSI's consensus rating for the Quality Control Approach Factor has been adjusted from "Poor" to "Satisfactory." With this correction, TSI's overall technical rating will increase from 2.650 to 2.850. While TSI's score has increased as a result of this change, TSI's score is still below those of the five awardees.<sup>14</sup>

MOL at 7.

Considering our conclusions above, combined with the agency's acknowledgement that the deficiency under the quality control factor was assessed in error, it appears likely that TSI's quotation under the quality control factor should have been rated higher.<sup>15</sup> In

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<sup>14</sup> The agency also withdrew its assessment of a weakness under the technical approach regarding credit card payments. MOL at 10. While we generally disfavor, and afford less weight to, reevaluations prepared in the heat of an adversarial process, see Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15, we need not consider whether the agency's reevaluations here were unreasonable considering the record provides a separate basis to sustain TSI's protest.

<sup>15</sup> Based on the agency's representations, the RFQ evaluation scheme would appear to dictate that a quotation with no deficiencies or weaknesses could well have been assessed a rating of very good or excellent. Agency Email to GAO, Nov. 14, 2017.

this regard, a higher rating under the quality control factor could increase TSI's overall point score above or equal to at least one or more of the awardees, and could have resulted in selection of TSI's quotation for award. Additionally, to the extent the agency concluded that TSI's quotation was ineligible for award based solely on TSI's ratings or point scores, this Office has consistently explained that while adjectival ratings and/or point scores may be useful guides to decision-making, they are not controlling and must be supported by an agency's consideration of the relative strengths and weaknesses in firms' quotations. See Bio-Rad Labs., Inc., B-297553, Feb. 15, 2007, 2006 CPD ¶ 58 at 11; U.S. Info. Techs. Corp., B-404357, B-404357.2, Feb. 2, 2011, 2011 CPD ¶ 74 at 10. Accordingly, we conclude that TSI has established the requisite competitive prejudice to prevail in a bid protest.

## RECOMMENDATION

For the reasons discussed above, we conclude that the Bureau's evaluation of TSI's quotation under the quality control factor was unreasonable and that the agency treated TSI unequally under this factor. We further conclude that TSI was prejudiced by these errors because a new evaluation could change TSI's relative technical standing. We recommend that the agency reevaluate TSI's quotation consistent with our decision, determine the proper rating for its quality control approach, and consider whether TSI's quotation is eligible to receive award. We also recommend that TSI be reimbursed the reasonable costs of filing and pursuing the protest, including attorneys' fees. 4 C.F.R. § 21.8(f)(1). TSI should submit its claim for costs, detailing and certifying the time expended and costs incurred, with the contracting agency within 60 days after receipt of this decision.

TSI's protest is sustained; ACT's protest is denied.

Thomas H. Armstrong  
General Counsel