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**United States Government Accountability Office  
Washington, DC 20548**

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## **Decision**

**Matter of:** Tamper Proof Container Systems Corporation

**File:** B-402191

**Date:** January 27, 2010

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John P. Connelly, Esq., and Christopher T. Hynes, Esq., Hinckley, Allen & Snyder LLP, for the protester.

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### **DIGEST**

Protest that agency improperly declined to award protester a contract under broad agency announcement for exploratory research in nuclear detection technology is denied where the record shows that the evaluation was conducted in accordance with the stated evaluation criteria and the agency reasonably concluded that the protester's proposal was unacceptable under all the non-cost evaluation criteria.

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### **DECISION**

Tamper Proof Container Systems Corporation (TPCS), of Belmont, Massachusetts, protests the decision by the Department of Homeland Security (DHS), Domestic Nuclear Detection Office (DNDO), not to award it a contract under Broad Agency Announcement (BAA) No. BAA 09-101 for exploratory research in nuclear detection technology. TPCS argues that the agency's evaluation of its proposal was improper.

We deny the protest.

DNDO is the office responsible for all DHS nuclear detection research, development, testing, evaluation, acquisition, and operational support; it develops the global nuclear detection architecture, conducts research and development, and acquires and supports the deployment of the domestic nuclear detection system. DNDO's Transformational and Applied Research Directorate conducts, supports, and coordinates a transformational program of research and development (R&D) to dramatically improve national capabilities to detect and report attempts to import or transport a nuclear device, special nuclear material, or radiological materials

intended for illicit use. BAA at 4. DNDO is the DHS activity which issued the BAA here.<sup>1</sup>

The BAA, issued on March 25, 2009, sought proposals for exploratory research only. Specifically, the solicitation stated that “this BAA is intended to transform the basic building blocks of nuclear detection technology” in the various technology topic areas and sub-topics that were listed in the BAA.<sup>2</sup> Id. at 5. Offerors were required to propose to a specific sub-topic. Id. at 7. Relevant to the protest here, Topic Area (TA)-02 was “passive detection,” and Sub-Topic 2.3 was “non-traditional concepts for gamma and/or neutron detection,” which the BAA described as follows:

For the detection of gamma rays and neutrons and their respective energies, alternative concepts are desired that utilize non-traditional properties of detection materials and associated readout technologies and/or techniques. . . . In this Sub-Topic, DNDO is soliciting the utilization of other material properties to sense the presence of gamma-ray or neutron radiation and to measure their energies. The intent is to stimulate investigation into these alternate means of radiation detection. . . . Submissions must involve novel concepts, and should not be related to concepts submitted in prior proposals unless substantially and justifiably different and improved. Furthermore, evidence of a literature search of prior related technology is required to help provide supporting evidence of the novelty of concepts presented in the proposal.

Id. at 11-12.

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<sup>1</sup> A BAA is a contracting method by which agencies can acquire basic and applied research to fulfill requirements for scientific study and experimentation directed toward advancing the state of the art or increasing knowledge and understanding, rather than focusing on a specific system or hardware solution. Federal Acquisition Regulation (FAR) § 35.016. Unlike sealed bidding or other competitive procurement methods, a BAA does not contain a specific statement of work, and offerors who submit proposals are not competing against each other but rather are attempting to demonstrate that their proposed research meets the agency’s requirements. The agency may decide to fund those efforts and award contracts to those offerors who submit ideas which the agency finds suitable. See id.; Microcosm, Inc., B-277326 et al., Sept. 30, 1997, 97-2 CPD ¶ 133 at 1-2.

<sup>2</sup> The BAA also contrasted exploratory research programs (like the one here) to advanced technology demonstrations, which are the final stage of development and evaluation of proven technologies in the DNDO transformational R&D program, and the potential subject of other agency BAAs. BAA at 5.

The BAA included instructions regarding the preparation of proposals. Specifically, offerors' proposals were to consist of three separate volumes: Volume I, technical and management proposal; Volume II, supplemental data; and Volume III, cost proposal. Importantly, the solicitation informed offerors that "Volume I is the primary document to be evaluated by the technical reviewers," while Volumes II and III were "supplementary materials" to be considered "at the discretion of individual reviewers." Id. at 23, 26.

The BAA announced that proposals would be evaluated under five evaluation criteria, in descending order of importance: transformational impact; technical approach; team capability and experience; management approach; and cost realism and reasonableness. Id. at 31. However, the BAA also stated that "[t]he primary basis for selecting proposals for award shall be relevance to the DNDO mission, technical merit, and funds availability." Id.

The BAA contemplated the award of multiple cost-plus-fixed-fee contracts, each with a base year and four 1-year options, although it also informed offerors that multiple awards were not guaranteed. Id. at 30, 35. In this regard, the agency also "reserve[d] the right to fund none, parts, or all of any proposal received . . ." and informed offerors that "[t]he actual number and size of awards under this BAA will be at the discretion of DNDO, based on the [stated evaluation] criteria . . . and the availability of funds." Id. at 6.

The DNDO received 34 proposals, including one from TPCS, by the June 9 closing date. TPCS submitted a proposal under Sub-Topic 2.3 (non-traditional concepts for gamma and/or neutron detection) for a six-sided intrusion detection system with embedded/integrated nuclear/radiation detection. In general terms, TPCS proposed taking a technology it had already developed to detect intrusions into freight containers (based on embedding a copper wire containing mesh into all six sides of a freight container using bespoke polymers), and extending the technology of using radiation sensitive optical fibers to add the capability of detecting gamma and neutron sources from within freight containers. Protest, Oct. 26, 2009, attach. B, TPCS Proposal, Vol. I, at 2. Among other things, TPCS' proposal detailed how its technology was a layered, or integrated, detection system that could solve a number of problems associated with cargo container security simultaneously. Id. at 7.

An agency technical evaluation board (TEB) evaluated offerors' proposals under the stated evaluation criteria using an adjectival rating system: excellent; very good; good; fair; and unacceptable. The TEB also identified the various strengths, weaknesses, and deficiencies that it found in support of its adjectival ratings. Based on the evaluation ratings, the TEB then assigned proposals one of three selection recommendations: "highly recommended" (proposals should be funded if funding exists); "selectable" (proposals should be funded if sufficient funding is available after funding the highly recommended proposals); and "not selectable" (even if sufficient funding existed, the proposal should not be funded). Agency Report (AR),

Tab 6, TEB Report, at 8. Overall, the TEB found one proposal to be “highly recommended” for selection, ten proposals to be “selectable,” and the remaining proposals to be “not selectable.”<sup>3</sup> *Id.* at 8-12. The TEB’s ratings of TPCS’ proposal, which was the lowest-ranked proposal, were as follows:

| <b>Evaluation Criteria</b>      | <b>Rating</b>  |
|---------------------------------|----------------|
| Transformational Impact         | Unacceptable   |
| Technical Approach              | Unacceptable   |
| Team Capability and Experience  | Unacceptable   |
| Management Approach             | Unacceptable   |
| Cost Realism and Reasonableness | Good           |
| Selection Recommendation        | Not Selectable |

*Id.* at 79-82.

Additionally, the TEB did not identify any strengths in TPCS’ proposal under any evaluation factor other than cost, and identified a total of 24 weaknesses under the non-cost evaluation factors, including that:

- TPCS’ proposal does not provide enough information about its detector system to determine any transformational impact. The detector system has been researched for multiple years, and TPCS is looking for funding to build a container and perform sea trials. There is no transformational impact in this proposal. This effort may be more suited to an Advanced Technology Demonstration if TPCS can provide system performance information.
- Turning an intrusion detection system into a radiation detection system by replacing copper wires with radiation sensitive optical fibers is not transformational.
- TPCS’ technical approach is really a vague concept of operations. The offeror does not provide any details about the actual detectors, nor do they discuss the science. Instead, they focus on the physical attributes, such as wire spacing and how it would be installed.
- The current team consists only of TPCS; it is not clear that they possess the necessary manpower, background, or experience in this area. Their cost estimate indicates that they need to hire two engineers/physicists if awarded, indicating they do not have the existing staff.
- No management approach provided in proposal.

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<sup>3</sup> Because of funding availability, the TEB recommended that only the nine highest-ranked offerors actually be awarded contracts. *Id.* at 9.

Id. Based on its evaluation, the agency determined that TPCS' proposal was unsuited for an exploratory research contract and not among the most meritorious proposals for negotiations and/or contract award. The agency provided TPCS with notice that its proposal was no longer being considered for award on September 24, and this protest followed.

TPCS asserts that DNDO's evaluation of its proposal as not meeting the agency's needs was unreasonable. The protester primarily argues that the agency unfairly made its conclusions and decision concerning the transformational and technical merits of TPCS' proposal without reading and considering the entire proposal, specifically Volume II, which contained the "lion's share" of the technical and scientific details regarding TPCS' submission. In support of its assertion, TPCS contends that during the post-selection debriefing, the lead TEB evaluator acknowledged that he had not read Volume II of TPCS' proposal. TPCS argues that had all three volumes of its proposal been fully, fairly, and properly evaluated, its proposal could have (and more importantly, should have) been selected for contract award.<sup>4</sup> Protest, Oct. 26, 2009, at 10; Comments, Dec. 9, 2009, at 1-3.

We find TPCS' central challenge--that the agency improperly failed to consider its entire proposal--fails to state a valid basis of protest. As detailed above, the BAA expressly and repeatedly stated that Volume I was the only aspect of offerors' proposals that the technical evaluators were required to consider, while Volumes II and III were to be considered solely at the discretion of the individual reviewers. Because the TEB members were not required to consider Volumes II and III of offerors' proposals as part of their evaluation, the protester's allegation that the lead TEB member did not read Volume II of its proposal, even if correct, does not establish a violation of any term of the solicitation or applicable procurement statute

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<sup>4</sup> TPCS also initially protested that the Security and Accountability For Every Port Act of 2006 (SAFE Port Act) required DHS to scan 100% of in-bound and out-bound high-risk cargo containers, and that TPCS' technology had the unique ability to meet the SAFE Port Act requirements of providing 100% scanning of maritime containers (thereby essentially requiring it to be selected for contract award). Protest, Oct. 26, 2009, at 9-10. The agency addressed this aspect of TPCS' protest in its report to our Office, AR, Nov. 24, 2009, at 11, and TPCS' comments offered no rebuttal of the agency's positions. Comments, Dec. 9, 2009, at 1-5. Where, as here, an agency provides a detailed response to a protester's assertion and the protester does not respond to the agency's position, we deem the issue to have been abandoned. Remington Arms Co., Inc., B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 4 n.4. Similarly, to the extent TPCS initially protested the evaluation of its proposal under the team capability and experience and management approach factors, we find these challenges to have been abandoned as well.

or regulation.<sup>5</sup> We note that the decisions relied on by TPCS (e.g., Intown Props., Inc., B-262236.2, B-262237.2, Jan. 18, 1996, 96-1 CPD ¶ 89 (holding that agency finding that certain personnel proposed by protester were unqualified was improper where the record showed that the agency failed to consider different personnel proposed in protester's revised proposal) are inapposite to this case, as the agency evaluators here were expressly not obligated to take into account the information included in Volume II as part of their evaluation. In this connection, Volume II was intended to include "supplemental data"; it was not for the purpose of providing the required technical and scientific details of TPCS' technical proposal.

To the extent TPCS challenges the agency's evaluation on bases independent from its argument regarding consideration of its proposal Volume II, the protester fails to show that the evaluation was unreasonable. We discuss below representative examples of the agency's evaluation findings and the protester's challenges.

In reviewing a protest of an agency's proposal evaluation, it is not our role to reevaluate proposals. Rather, we will consider only whether the evaluation was reasonable and consistent with the terms of the solicitation and applicable procurement statutes and regulations. Gamut Elecs., LLC, B-292347, B-292347.2, Aug. 7, 2003, 2003 CPD ¶ 150 at 4; HMX, Inc., B-291102, Nov. 4, 2002, 2003 CPD ¶ 52 at 7. An offeror's mere disagreement with an agency's judgment is not sufficient to establish that the agency acted unreasonably. HMX, Inc., supra.

Here, for example, TPCS challenges DHS' evaluation of its proposal under the transformational impact factor. As set forth above, the BAA described the exploratory research sub-topic chosen by TPCS as one involving novel concepts for the detection of gamma rays and neutrons and their respective energies by utilizing non-traditional properties of detection materials and associated readout technologies and/or techniques. The TEB found TPCS' idea of turning an intrusion detection system into a radiation detection system by using radiation sensitive optical fibers was not transformational, that the offeror's proposal failed to provide sufficient information about the detection system to determine its transformational impact, and that TPCS' proposed effort was more suited to an advanced technology demonstration and not exploratory research. The protester contends that its use of optical fiber light attenuation and the rate of attenuation for the detection of neutrons is a novel (i.e., transformational) concept. We find the protester's assertion

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<sup>5</sup> To the extent TPCS believes that DHS should have considered offerors' entire proposals in order to make an informed evaluation judgment, its protest is untimely. Our Bid Protest Regulations require that protests based upon alleged improprieties in a solicitation, which are apparent prior to the time set for receipt of proposals, must be filed prior to that time. 4 C.F.R. § 21.2(a)(1) (2009). The BAA here plainly laid out the evaluation scheme the agency would follow.

amounts to mere disagreement with the agency's judgment, which does not render it unreasonable.

TPCS also challenges DHS' evaluation of its proposal under the technical approach factor. The TEB rated the offeror's proposal as unacceptable based on numerous weaknesses, including that the technical approach portion of TPCS' proposal was "a vague concept of operations. The offeror does not provide any details about the actual detectors, nor do they discuss the science. Instead, they focus on the physical attributes, such as wire spacing and how it would be installed." AR, Tab 6, TEB Report, at 80. In challenging these findings, TPCS argues that the TEB evaluators disregarded the additional technical and scientific information contained in Volume II of its proposal when determining the merits of its technical approach (an argument which we have already considered and rejected). The protester also argues that its detection system represented a way to solve multiple problems simultaneously and not just radiation detection. However, as the BAA here was for exploratory research regarding the detection of gamma rays and neutrons and their respective energies only, and did not seek an integrated detection system network, we think that the record shows that the agency's evaluation of TPCS' technical approach, and its conclusion that TPCS' proposal was ill-matched to the sub-topic it had chosen, were reasonable.

In sum, we find reasonable the agency's evaluation of TPCS' proposal and the determination not to award a contract to TPCS under the BAA here.

The protest is denied.

Lynn H. Gibson  
Acting General Counsel