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**Comptroller General
of the United States**

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

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Decision

Matter of: TMC Design Corporation

File: B-296194.3

Date: August 10, 2005

Robert H. Koehler, Esq., Patton Boggs LLP, for the protester.
Capt. Victor G. Vogel, U.S. Army Materiel Command, for the agency.
Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the
General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly excluded protester's proposal from the competitive range before field testing protester's hardware system samples where agency reasonably concluded that protester's written proposal contained weaknesses and deficiencies that could not be overcome through performance in field testing, and which rendered the proposal technically unacceptable.

DECISION

TMC Design Corporation protests the exclusion of its proposal from the competitive range prior to field testing of its hardware samples under request for proposals (RFP) No. W15P7T-05-S502, issued by the U.S. Army Communications-Electronics Life Cycle Management Command, Fort Monmouth, New Jersey, for a Counter Remote Control Improvised Explosive Device (RCIED) Electronic Warfare (CREW) System.

We deny the protest.

BACKGROUND

The solicitation seeks to acquire a next-generation CREW system, to be used to prevent and defeat improvised explosive device ambushes [redacted]. The goal is to improve on the capabilities of the currently-fielded CREW system by providing for simultaneous coverage against all RCIED threats at increased ranges, broader frequency coverage extendable to higher frequencies, ease of programmability, reduced size, weight, and power, and built-in capacity for future growth.

The RFP, which was issued on February 4, 2005, contemplated the award of one or more 4-year, indefinite-delivery/indefinite-quantity and time-and-materials contracts to the offerors whose proposals were determined most beneficial to the government. The solicitation provided for the evaluation of proposals on the basis of the following four factors, listed in order of importance: technical performance, price, performance risk, and small business participation. The technical performance factor included the following subfactors, listed in order of importance: technical approach, schedule and production capacity, and supportability. The solicitation advised offerors that to receive consideration for award, proposals had to be rated no less than acceptable under the technical performance factor, each of its three subfactors, and the small business participation factor.

The RFP's Statement of Objectives identified Band A (required) and Band B (desired) capabilities of the systems to be procured. The RFP advised that the government would evaluate the offeror's ability to meet the Band A requirements, as well as any offered capabilities from Band B. The RFP further advised that failure to meet any Band A requirement would render a proposal unacceptable. Offerors were cautioned that "[u]nsupported promises to comply with contractual requirements will not be sufficient," and that "[p]roposals must contain supporting rationale for any statements relating to proposed performance." RFP § M-3(C)(1). Similarly, offerors were advised that one of the criteria that would be considered in evaluating their proposals under the technical performance factor and its subfactors was completeness/adequacy of responses and that "[m]ere statements of compliance or repetition of the technical requirements without a complete discussion and analysis [are] unsatisfactory." Id.

The solicitation required the submission of at least two hardware system samples for testing in a laboratory anechoic chamber at Fort Monmouth and in the field at Yuma Proving Ground in Arizona, with results of the testing to be considered in the evaluation of proposals under the technical approach subfactor. The solicitation provided that the test results would be used to verify the content of the offeror's written proposal and to help the government assess the risk in the offeror's ability to meet solicitation requirements. The RFP further provided that an offeror's failure to submit at least two system samples for laboratory anechoic chamber and Yuma Proving Ground testing at the time of proposal submission would render the offeror's proposal ineligible for award.

Eight proposals were received by the March 21 closing date. TMC was randomly selected to proceed first with testing in the anechoic chamber. The testing began on March 23, but was aborted when the government determined that TMC's system samples, as submitted, were incomplete. By letter dated March 28, the contracting officer notified TMC that its proposal had been determined ineligible for award because the samples were incomplete. TMC protested to our Office. In response to the protest, the agency agreed to reinstate TMC in the competition and permit it to return to the anechoic chamber to continue testing. Upon receipt of notification

from the agency that it had rescinded its determination of ineligibility and would allow the protester to resume testing, we dismissed TMC's protest as academic.

The protester proceeded with chamber testing of its samples. On May 5, the agency notified TMC that its proposal had been excluded from the competitive range and thereby eliminated from the competition. The letter directed the protester's attention to section M-3 of the RFP, which placed offerors on notice that to receive consideration for award, a proposal had to be rated no less than acceptable under the technical performance factor and each of its three subfactors. The agency noted that TMC's proposal had been rated as follows:

TECHNICAL PERFORMANCE FACTOR	UNACCEPTABLE
Technical Approach	Unacceptable
Schedule/Production Capacity	Susceptible
Supportability	Susceptible
PERFORMANCE RISK	In progress
SMALL BUSINESS PARTICIPATION	Acceptable

Agency Letter to Protester, May 5, 2005, at 1. On May 13, TMC protested the exclusion of its proposal from the competitive range to our Office.

ANALYSIS

TMC protests the exclusion of its proposal from the competitive range prior to field testing of its hardware samples. The protester contends that the solicitation did not provide for a competitive range determination until after completion of field testing.

As a preliminary matter, while the agency's May 5 letter to the protester stated that TMC's proposal was excluded from the competitive range because it was not among the most highly rated proposals, suggesting that the protester's proposal was excluded based on comparison to other proposals, it is clear from other parts of the letter and the record that the proposal was in fact excluded because the agency determined it to be technically unacceptable. In this regard, we think that the agency's rating of TMC's proposal as unacceptable under both the technical performance factor and the technical approach subfactor can only reasonably be construed as a determination of technical unacceptability, given the RFP's admonition that ratings of no less than acceptable under the technical performance factor and each of its subfactors were required for a proposal to receive consideration for award. Similarly, as discussed below, the grounds for the agency's conclusion that the proposal was technically unacceptable are set out in the competitive range determination, which describes in detail the deficiencies in the proposal under the technical performance factor and the technical approach subfactor.

It is well settled that a technically unacceptable proposal cannot be considered for award, LifeCare, Inc., B-291672, B-291672.2, Feb. 20, 2003, 2003 CPD ¶ 95 at 4 n.13, 7, and thus properly may be excluded from the competitive range. CMC & Maint., Inc., B-290152, June 24, 2002, 2002 CPD ¶ 107 at 2. In our view, then, the issue is not whether it was proper for the agency to make a competitive range determination prior to field testing, but rather whether it was appropriate for the agency to reach a conclusion regarding the technical unacceptability of the protester's proposal prior to field testing. As we explain in further detail below, because it is clear from the record that the agency's determination of technical unacceptability was based on deficiencies and weaknesses in the protester's written proposal that could not have been overcome through performance on the field test, no matter how outstanding, we do not think that the agency acted improperly in determining TMC's proposal technically unacceptable prior to field testing.

It is clear from the evaluation record that the protester's proposal was determined technically unacceptable due in large part to the proposal's lack of detail and elaboration regarding the capabilities of TMC's system vis-à-vis the solicitation's requirements. In this regard, both the competitive range determination and the agency's May 5 letter to the protester noted that TMC's proposal had received a rating of unacceptable under the technical approach subfactor due to the lack of detail furnished in the proposal and its failure to address significant technical matters dealing with fundamental system capabilities. The letter and competitive range determination further noted that TMC's proposal did not demonstrate a clear understanding of the solicitation's requirements, with the proposal often merely repeating requirements or stating intended compliance without a complete discussion and/or analysis to substantiate the claims. The letter and competitive range determination concluded that a major rewrite of the proposal would be required to make it eligible for award.¹

¹ Details regarding the deficiencies and weaknesses in the protester's proposal were furnished in briefings to the source selection advisory council (SSAC) and the source selection authority (SSA). The briefing documents identified 12 deficiencies and 11 weaknesses in TMC's proposal, including the following:

- System architecture not adequately described
- No technical detail on major hardware components
- Proposed SOW [Statement of Work] is merely a reiteration of the SOO
- Proposed Performance Specification is merely a reiteration of the Government PBS [Performance Based Specification]
- Growth is not addressed
- Programming is not described with any detail.

SSAC and SSA Briefings at 29.

The protester has not challenged the agency's conclusions regarding the deficiencies in its written proposal; its only argument is that these deficiencies could have been overcome through performance on the field test. It was clear from the terms of the solicitation that offerors were required to demonstrate compliance with the Band A requirements in their written proposals and that the test results would be used to verify that compliance, but were not a substitute for the proposal requirements. Thus, we think that it was clear that the test results could not be used to cure deficiencies in a written proposal. Accordingly, we are persuaded that the agency reasonably concluded that the deficiencies in TMC's proposal could not have been overcome through further testing of its samples.

TMC also argues that the agency improperly failed to consider price and performance risk in determining to exclude its proposal from the competitive range. While an agency may not exclude a technically acceptable proposal from the competitive range without consideration of price, Kathpal Techs., Inc.; Computer & Hi-Tech Mgmt., Inc., B-283137.3 *et al.*, Dec. 30, 1999, 2000 CPD ¶ 6 at 9, where, as here, the agency reasonably concludes that a proposal is technically unacceptable, and thus cannot be considered for award, it is proper to exclude the proposal from the competitive range without considering price. LifeCare, Inc., supra; Aid Maint. Co., Inc.; TEAM Inc., B-255552, B-255552.2, Mar. 9, 1994, 94-1 CPD ¶ 188 at 8. Similarly, given TMC's unacceptable rating under the technical performance factor, which rendered the proposal as a whole technically unacceptable, its rating under the performance risk criterion is irrelevant.²

The protest is denied.

Anthony H. Gamboa
General Counsel

² While the protester also initially alleged that the agency was biased against it, it abandoned this argument in its comments. Moreover, we see no evidence of bias in the record.