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

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# Decision

**Matter of:** Research Analysis & Maintenance, Inc.

**File:** B-296206; B-296206.2

**Date:** July 12, 2005

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William L. Walsh, Jr., Esq., Benjamin A. Winter, Esq., and Peter A. Riesen, Esq., Venable, Baetjer and Howard, for the protester.

Helaine G. Elderkin, Esq., and Carl J. Peckinpugh, Esq., for Computer Sciences Corporation, an intervenor.

John W. Klein, Esq., and Kenneth Dodds, Esq., Small Business Administration.

Raymond M. Saunders, Esq., and Capt. Peter G. Hartman, Department of the Army, for the agency.

David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## **DIGEST**

Protest against sole-source award of contract for maintenance and operation of foreign threat systems is denied where agency reasonably determined that protester's performance under its current contract was unacceptable, and that protester had not adequately addressed the unacceptable performance, casting protester's ability to satisfactorily perform new contract into doubt.

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## **DECISION**

Research Analysis & Maintenance, Inc. (RAM) protests the award by the Threat Systems Management Office (TSMO), Department of the Army, of a sole-source contract to Computer Sciences Corporation (CSC) for maintenance and operation of foreign threat systems. RAM asserts that TSMO improperly failed to consider RAM, the incumbent contractor, as a potential source.

We deny the protest.

## **BACKGROUND**

TSMO is responsible for providing realistic threats during the testing of weapon systems and during training and other exercises. Specifically, TSMO is tasked with the assembly of intelligence information and the design, development, procurement,

operation and maintenance of operational hardware simulations of threat systems. In addition, TSMO is responsible for operating and maintaining a significant inventory of actual foreign ground and aviation systems. The foreign weapon systems in TSMO's inventory represent over a 40-year span of technology dating as far back as from the early 1950s. Statement of Work (SOW) § C.1.1, Contract No. W9124Q-04-C-0158.

In 1997, RAM was awarded a contract for the operation and maintenance of foreign ground and aviation systems in support of TSMO. In 2003, TSMO conducted a competition for a follow-on contract. When, in July 2003, TSMO awarded the follow-on contract to Northrop Grumman Technical Services, RAM filed a protest with our Office, challenging the evaluation and asserting that the agency had failed to take into account an alleged organizational conflict of interest (OCI) that would be created if Northrop Grumman performed the contract. We dismissed RAM's protest as academic after the agency proposed corrective action in the form of reopening the competition (B-292587, Aug. 15, 2003).

After conducting negotiations with offerors, TSMO again selected Northrop Grumman for award, and RAM again protested to our Office. In our decision Research Analysis & Maint., Inc.; Westar Aerospace & Def. Group, Inc., B-292587.4 et al., Nov. 17, 2003, 2004 CPD ¶ 100, we sustained RAM's protest, primarily based on our finding that the agency had misled RAM into proposing a staffing approach—involving a significant reduction in core staffing from the historical staffing, reliance on extensive cross-training, and use of surge staffing to perform a significant portion of the operational requirement—that the agency viewed as essentially unacceptable. After amending the solicitation and obtaining revised proposals, TSMO again made award to Northrop Grumman. RAM again protested to our Office. In response, TSMO canceled the award and determined to resolicit, leading to our dismissal of the protest (B-292587.10, Mar. 18, 2004). On April 17, 2004, TSMO awarded RAM a bridge contract for continued performance through September 30, 2004. This contract was later extended through March 31, 2005 under the authority of Federal Acquisition Regulation (FAR) § 52.217-8, Option to Extend Services.

On March 8, 2005, the contracting office administering RAM's contract synopsis on the Federal Business Opportunities website its intention to negotiate and issue a sole-source modification to extend RAM's contract through September 30, 2005. According to the synopsis, RAM was "the only source available with the technical expertise to allow for effective and efficient continuation of effort pending award of a competitive follow-on contract." Federal Business Opportunities. Mar. 8, 2005. On March 21, however, TSMO officials met with the contracting officer and her supervisor to advise them that RAM's performance had been unacceptable in several areas. Hearing Transcript (Tr.) at 662-64.<sup>1</sup> Contracting officials then advised RAM of

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<sup>1</sup> Our Office conducted a hearing in this matter.

the specific areas of concern with its performance in a telephone call to its chief operating officer (COO) on March 21 and in an e-mail on the following day, and afforded RAM an opportunity to respond. E-mail from Director of Contracting, White Sands Missile Range to RAM COO, Mar. 22, 2005 (Default Notice). Specifically, the agency advised RAM that its performance was viewed as unacceptable in four respects: (1) RAM had failed to make progress in reworking to current standards the modernization work orders (MWO) supporting modifications that had been made to TSMO's foreign aircraft; (2) there was a hostile work environment attributable to RAM's program manager; (3) RAM had failed to furnish a satisfactory property management plan for the management of government property under RAM's control; and (4) RAM had failed to furnish an adequate number of pilots to support mission requirements. Determination and Findings (D&F), Determination of Nonresponsibility. In its response, RAM maintained that it was not in default of its obligations under the contract, and asserted that its performance instead had been "very good." According to the protester, some of the areas of concern raised by the agency, such as the backlog in reworking the MWOs to current standards and the presence of a hostile work environment, in fact were attributable to TSMO rather than to RAM. RAM (Second) Response to Default Notification, Apr. 4, 2005.

TSMO concluded that RAM's response did not furnish an acceptable plan for correction of the problems under the contract, and thereupon determined RAM to be nonresponsible. Given its immediate need, beginning April 6, for a contractor to furnish foreign threat systems in support of scheduled training and testing by other agencies, TSMO turned to the offerors that had submitted acceptable proposals in the prior, canceled competition. Although Northrop Grumman's proposal had received the highest technical/management score, the agency determined that there remained unresolved OCI issues that precluded an immediate award to that firm. CSC--in fact, the predecessor company purchased by CSC--had submitted a proposal that received the next-highest technical/ management score (after Northrop Grumman and RAM). Justification and Approval (J&A) for Other Than Full and Open Competition. In addition, CSC already was familiar with TSMO's mission through its support of other TSMO functions. Accordingly, after determining that the scheduled TSMO missions for the next 6 months would not create an OCI for CSC, on April 5 TSMO awarded CSC a sole-source bridge contract for operation and maintenance of TSMO's foreign threat systems through September 30, 2005, based on the unusual and compelling urgency exception to the requirement for full and open competition. Id. RAM thereupon filed this protest with our Office.

## PROTEST OVERVIEW

RAM generally asserts that the sole-source award to CSC was improper because RAM in fact was capable of meeting the agency's needs. In this regard, RAM specifically disputes the agency's determination that RAM's performance under its contract was unacceptable.

While the overriding mandate of the Competition in Contracting Act of 1984 (CICA) is for “full and open competition” in government procurements through the use of competitive procedures, 10 U.S.C. § 2304(a)(1)(A) (2000), CICA does permit noncompetitive acquisitions in specified circumstances, such as when an agency’s need for the services is of such an unusual and compelling urgency that the agency would be seriously injured unless permitted to limit the number of sources solicited. 10 U.S.C. § 2304(c)(2); Federal Acquisition Regulation (FAR) § 6.302-2(a)(2). Although the agency must request offers from as many sources as practicable under the circumstances, 10 U.S.C. § 2304(e), FAR § 6.302-2(c)(2), it nevertheless may limit the procurement to the only firm it reasonably believes can properly perform the work in the available time. National Aerospace Group, Inc., B-282843, Aug. 30, 1999, 99-2 CPD ¶ 43 at 5; Hercules Aerospace Co., B-254677, Jan. 10, 1994, 94-1 CPD ¶ 7 at 3.

When using noncompetitive procedures pursuant to 10 U.S.C. § 2304(c)(2), such as here, agencies are required to execute a written J&A with sufficient facts and rationale to support the use of the cited authority. See 10 U.S.C. § 2304(f)(1)(A), (B); FAR §§ 6.302-1(d)(1), 6.302-2(c), 6.303, 6.304. Our review of an agency’s decision to conduct a noncompetitive procurement focuses on the adequacy of the rationale and conclusions set forth in the J&A. National Aerospace Group, Inc., *supra*; Marconi Dynamics, Inc., B-252318, June 21, 1993, 93-1 CPD ¶ 475 at 5; Dayton-Granger, Inc., B-245450, Jan. 8, 1992, 92-1 CPD ¶ 37 at 4.

Based on our review of the record, we find that RAM’s assertions furnish no basis to question the sole-source award to CSC. Specifically, we find that, contrary to RAM’s assertions, TSMO reasonably determined that RAM’s performance under its contract to operate and maintain TSMO’s foreign threat systems was unacceptable, and that RAM’s plans to correct the unacceptable performance had been inadequate, such that RAM’s ability to satisfactorily perform a new contract for those services was in question. (In reaching our conclusions, we look only to whether the agency had a reasonable basis for determining that RAM was not a viable source for performance of the bridge contract; we make no determination as to RAM’s ultimate rights and responsibilities under the contract.) We discuss RAM’s principal arguments below.<sup>2</sup>

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<sup>2</sup> RAM, a small business concern, also asserts that TSMO’s determination to exclude RAM from consideration for the new bridge contract should have been referred to the Small Business Administration (SBA) for a certificate of competency review. However, where a contracting agency decides to satisfy an urgent requirement by limiting competition to firms it believes can perform satisfactorily, and thereby excludes a small business concern from the competition, the agency need not refer the decision to exclude the small business to the SBA. See McGregor Mfg. Corp., B-285341, Aug. 18, 2000, 2000 CPD ¶ 151 at 9 n.10; DOD Contracts, Inc., B-250603.2, Mar. 3, 1993, 93-1 CPD ¶ 195 at 4; Jay Dee Militarywear, Inc., B-243437, July 31, 1991, 91-2 CPD ¶ 105 at 6; Industrial Refrigeration Serv. Corp., B-220091, Jan. 22, 1986, 86-1 CPD ¶ 67 at 4.

## MWO BACKLOG

As noted above, the determination that RAM was nonresponsible was based in part on the agency's determination that RAM had failed to make progress in reworking to current standards the MWOs supporting modifications that had been made to TSMO's foreign aircraft. In this regard, aircraft that are modified must be certified airworthy before being flown; the engineering substantiation required in order for the modified aircraft to be certified airworthy is included in an MWO package. The MWO backlog consisted of MWOs supporting prior aircraft modifications that had been prepared while the Army Test and Evaluation Command (ATEC) had airworthiness authority over TSMO's foreign aircraft. This ultimate airworthiness authority subsequently was transferred to the Army Aviation and Missile Command (AMCOM), at which time AMCOM discovered that a number of MWOs that had been approved under ATEC lacked adequate engineering substantiation. These backlog MWOs were reported to number approximately 188 as of August 2004. While AMCOM nevertheless delegated airworthiness authority to TSMO and permitted the affected aircraft to continue flight operations, it required that TSMO revise the deficient MWOs to the satisfaction of AMCOM's Aviation Engineering Directorate (AED) within a period of 12 months, beginning in September 2004. Tr. at 14-28, 55-64, 159-63, 291-94, 534-38, 1024-28. TSMO understood that, in the event that it failed to make satisfactory progress in reworking the backlog MWOs, AMCOM might revoke its airworthiness authority. Tr. at 58-64, 159-63, 291-94, 538. Indeed, an AED official specifically cautioned TSMO in March 2005 that the lack of progress in reworking the backlog created a risk that its airworthiness authority would be withdrawn. E-mail from AED Team Leader to Director of TSMO, Mar. 22, 2005; Tr. at 278, 302-03. Withdrawal of TSMO's airworthiness authority could result in the agency's foreign aircraft being grounded for some period of time, and disruption of planned operations. Tr. at 159-60, 294.<sup>3</sup> As of March 2005, only three MWOs (including two backlog MWOs) had been submitted by RAM to TSMO and forwarded to AED for approval, and none of these had yet been approved by AED. Tr. at 22-23, 262. RAM nevertheless disputes TSMO's determination that RAM consequently had not adequately addressed the MWO backlog.

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<sup>3</sup> In December 2003, when airworthiness authority was delegated to TSMO, the agency's foreign aircraft were temporarily grounded, and there was a disruption of planned operations. Tr. at 159-60.

## Scope of Contract

As an initial matter, RAM seems to suggest that the terms of its contract did not encompass rework of the backlog MWOs. However, we find that the agency reasonably proceeded on the basis of its contrary view. (Again, we make no finding as to the actual scope of RAM's contract, a matter ultimately for resolution under the Contract Disputes Act.) In this regard, RAM was generally required under its contract to "operate aircraft [in accordance with] the applicable regulations, procedures, and GFR [government flight representative] directives," including TSMO Memo 70-62, Flight Release Qualification of TSMO Foreign and Non-standard Aircraft Systems. SOW §§ C.5.4.9, C.6.1. In addition, RAM was specifically required under its contract to "perform engineering analysis [in accordance with] TSMO Memo 70-62 and as required by applicable regulations and publications," with the "[e]ngineering analysis [to] be used to determine the airworthiness condition of all aircraft assigned or attached and all aircraft modifications needed in the normal course of testing and training." SOW § C.5.4.5.<sup>4</sup> Further, we note (as does the agency) that RAM itself implicitly recognized that reworking the backlog MWOs was within the scope of its contract when it noted in its September 2004 proposal for contract extension that the "cost of the catch-up engineering work to support the Air Worthiness Releases documentation" was included in the estimated cost plus fixed fee for aviation systems core support, one of the contract line items. E-mail from RAM COO to TSMO Contracting Officer, Sept. 20, 2004.

Moreover, the record confirms TSMO's position that, not only did TSMO specifically task RAM to rework the backlog MWOs within 12 months, but RAM understood the tasking to include this work and in fact commenced performing the work. In this regard, RAM's COO specifically acknowledged in an August 25 letter to TSMO that "RAM was tasked to devise a final approach for accomplishing the total updating of all MWOs and completion reports required to support the Air Worthiness Releases over a twelve-month period consistent with TSMO's stated priorities." Letter from RAM COO to TSMO Division Chief for Operations, Aug. 25, 2005; see RAM In-Process Review (IPR) July 13, 2004, Action Items; RAM IPR Aug. 10, 2004, Backup Slide; E-mail from TSMO Government Flight Representative (GFR) to RAM Project Manager, Aug. 19, 2004; E-mail from RAM COO to TSMO Division Chief for Operations, Mar. 11, 2005; Tr. 29-32, 36-39, 703-05; cf. Tr. at 1042-44.

In response to TSMO's tasking RAM to address the backlog MWOs, RAM offered TSMO two options. RAM proposed as one option that the rework be subcontracted to another contractor at a cost of \$[DELETED] and with a completion date of

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<sup>4</sup> Further, SOW § C.5.1.5 required the contractor to "provide engineering documentation support for establishing, maintaining, and updating engineering data, as-built drawings, and associated engineering drafting support to include aviation systems." Tr. at 555 (emphasis added).

6 months after award. The second option, as described in RAM's July and August IPRs and presented at RAM's September IPR briefing, called for the purchase of Solidworks modeling software and RAM's increasing its engineering staff and performing the work itself. RAM's COO advised TSMO with respect to this latter, in-house option, that "[t]he cost estimate for accomplishing this additional effort over [Fiscal Year] 2005 has been estimated to be approximately \$[DELETED] that covers two full-time, well versed senior engineers and one technician in support of this effort." Letter from RAM COO to TSMO Division Chief for Operations, Aug. 25, 2005; see RAM July 13, 2004 IPR Briefing, Action Items; RAM August 10, 2004 IPR Briefing, Action Items; TSMO Memorandum for Record, Feb. 25, 2005; TSMO Default Analysis, Apr. 4, 2005; Tr. at 29-32. RAM recommended the second (in-house) option on the basis that, at the completion of the effort, there would be additional engineers on staff that would be available to deal with the anticipated growth in TSMO's operations. The record indicates that TSMO accepted RAM's recommendation. RAM July 13, 2004 IPR Briefing, Action Items; RAM Aug. 10, 2004 IPR Briefing, Action Items; TSMO Default Analysis, Apr. 4, 2005; Tr. at 29-32, 1042. Again, therefore, the record supports the view that RAM fully understood that the rework was encompassed by its contract, and proceeded based on that understanding.

#### Authority to Proceed

RAM asserts that it failed to make more progress in reworking the backlog MWOs because TSMO "never authorized RAM to administer to the backlog nor did it provide additional funding to support performance." RAM Hearing Comments, June 21, 2005, at 2.

This argument is not supported by the record. First, TSMO maintains that it gave RAM verbal authorization to proceed at the September IPR, that is, at the time the agency selected RAM's proposed in-house option for reworking the backlog MWOs. Tr. at 705. In any case, inasmuch as the contract line items in RAM's contract under which the rework of the backlog MWOs was to be undertaken were of the cost-reimbursement type, we share TSMO's view that RAM already was authorized to expend funds in accomplishing the statement of work in this regard (at least up to the point where the costs the contractor expected to incur in the next 60 days, when added to all costs previously incurred, would exceed 75 percent of the estimated cost specified in the contract, at which point the contractor was obligated under the contract to furnish the contracting officer with a revised estimate of the total cost of performing the contract). See FAR Standard Clause 52.232-22, Limitation of Cost (incorporated in RAM's contract); cf. Contract Clause § H.2 (contractor required to obtain advance approval for purchases exceeding \$1,000). Indeed, RAM's COO conceded in his testimony that RAM did not need government approval in order to hire employees for the contract, so long as it operated within the funds allocated to the contract, Tr. at 1078-79, and the record indicates that RAM in fact hired employees for the contract without prior government approval. Tr. at 42-44.

Moreover, the record indicates that RAM actually commenced the MWO rework process without receiving the additional authorization RAM asserts was necessary. The Solidworks modeling software was purchased and, according to TSMO and testimony by RAM's project manager, RAM added at least two engineers to address the backlog. In this regard, when asked "[w]hat else did you do with respect to ramping up or otherwise working to correct the backlog," RAM's project manager answered that:

Sir, we hired [RAM's lead engineer] and we also hired [an engineer], who later went back to McDonnell Douglas. We also had shared on-between the ground and airborne systems- . . . , another electrical engineer who was very talented and skilled and adept to help out. We rolled him over to the airborne systems side on a 50 percent basis to help us with this backlog.

Additionally, we stood up ETOPS, Engineering Technical Operations Publications System, in order that we would have a focused approach to the engineering activity. This included draftsmen, this included technical writers and included sheet metal and the machine shop, and therefore, we had a focused effort in this area.

Tr. at 975; see Tr. at 33-36, 869-77, 886-87, 901, 974-77. (RAM maintains that its corporate quality expert, allegedly at RAM's own expense, also contributed to preparing a standard format for the reworked MWOs. Tr. at 868-69, 974-75.)

In summary, based on our review of the record, we think the agency could reasonably conclude that RAM had sufficient authority to expend funds under the contract to rework the backlog MWOs, and understood this to be the case, as evidenced by its commencing performance of the rework. Nevertheless, as of March 2005, only two of the initially reported 188 backlog MWOs had been submitted by RAM to TSMO and forwarded to AED for approval, and neither of these had yet been approved by AED. Tr. at 22-23, 262.

#### Lack of In-House Engineering Expertise

RAM also attributes its apparent lack of progress on the rework, in part, to its efforts in developing a standardized process for the work and to delays in coordinating this with TSMO. In this regard, RAM's COO advised TSMO in March 2005 as follows:

Rather than having a disjointed, simultaneous effort by several engineers to assess and correctly document these MWOs one at a time according to whatever standard they felt appropriate, RAM stopped the process and worked to develop and implement both a systemic process and a standard format for each package.

E-mail from RAM COO to TSMO Division Chief for Operations, Mar. 11, 2005.



However, RAM's position is not supported by the record. Rather, it appears that the more fundamental cause for the lack of progress was RAM's lack of the engineering expertise required to implement the in-house option it had recommended to TSMO. In this regard, the record indicates that, when TSMO expressed concern to RAM at the February 23, 2005 weekly aviation meeting about the lack of progress, RAM's lead engineer responded that he was the only one on RAM's staff with the expertise required to perform the rework. RAM's lead engineer further advised that whoever had developed the rework options RAM had previously presented to the agency "didn't know what they were talking about"; according to RAM's lead engineer, reworking the backlog MWOs would require three to five additional engineers, and at least 2 years to complete, with even more time likely necessary. Memorandum for Record, TSMO Division Chief for Operations, Feb. 25, 2005; Tr. at 33-35.

RAM's response to TSMO's March 2005 default notice further made clear its current lack of the engineering expertise required to complete the rework on a timely basis. Specifically, while RAM had proposed on August 25, 2004 to complete the rework of the backlog MWOs over the course of fiscal year 2005 with just two senior engineers and one technician, Letter from RAM COO to TSMO Division Chief for Operations, Aug. 25, 2005, on March 30, RAM estimated that under its status quo staffing it could complete only five MWOs per year. RAM went on to recommend that staffing be increased by adding two teams, each comprised of a stress engineer, general or aerospace engineer, and a computer-aided design technician. According to RAM, the recommended two-team approach would result in completion of the substantiation packages for 55 backlog MWOs per year. As noted by the agency, while RAM had also estimated that the number of items to be reworked (then estimated at a potential 200 items) could be reduced by at least 25 percent by eliminating obsolete items and combining similar items, RAM's recommended approach nevertheless appeared likely to take several years to complete, rather than the 12 months the agency required. RAM Refined Engineering Plan for MWO-Backlog Stabilization and Recovery, Mar. 30, 2005.

## Conclusion

In sum, the record indicates that TSMO tasked RAM to undertake the rework of the backlog MWOs, a process that needed to be completed on a timely basis (originally established as September 2005) in order to avoid the risk that TSMO's airworthiness authority over its foreign aircraft would be withdrawn and TSMO's operations disrupted. TSMO reasonably determined that the required rework effort was within the scope of RAM's contract and that RAM had in fact commenced work on this project. RAM failed to make timely progress toward completing the rework due largely to the lack of adequate in-house engineering expertise, and actually acknowledged, as reflected in its recommended approach, that completion of the rework would be delayed for several years. In these circumstances, we find that TSMO reasonably determined that RAM was not a viable source to perform the bridge contract.

## HOSTILE WORK ENVIRONMENT

In addition to our conclusion above, we find that TSMO reasonably determined that RAM was responsible for creating a hostile work environment, and that this also called into question RAM's ability to perform. In this regard, TSMO's aviation safety officer wrote to RAM on March 16, 2005 to express "safety concerns" in regard to "the turmoil and tension between RAM's contractor management/leadership and TSMO Aviation government management/leadership." Memorandum from TSMO Aviation Safety Officer for RAM Safety Officer, Mar. 16, 2005. According to TSMO's aviation safety officer:

Government and contractor leadership have created an environment that infringes on the ability of pilots and mechanics to perform their missions safely. The threat of being fired from one party and the constant battle between the [government flight representative] and the contractor [program manager] in my opinion have created an unsafe environment psychologically for pilots and mechanics.

Id. RAM conceded in its response to the agency's default notification that a hostile work environment existed. RAM asserted, however, that "the primary source of this hostility currently originates from [TSMO's government flight representative] with the tacit approval of TSMO leadership and maybe with some encouragement from the [White Sands Missile Range] Director of Contracting." RAM Response to Default Notice, Apr. 4, 2005. TSMO, on the other hand, assigns responsibility for the hostile workplace environment to RAM, in particular, its program manager. In this regard, the Director of TSMO testified that much of the conflict was attributable to RAM's resistance to the government's efforts to ensure that RAM would comply with the contract requirements and the government's directives. The Director cited as one example RAM's conceded reluctance to comply with the contract requirement that its pilots undergo Army flight physicals when the contractor preferred the less stringent Federal Aviation Administration flight physicals. Tr. at 343-44, 833-34, 858-61. The Director further testified that, when he raised the issue of the contentious relationship between the agency and the contractor with RAM, the COO responded that "he had hired a pit bull [as its program manager] because he was trying to respond to what he considered to be unreasonable government requirements." Tr. at 343.

The record includes testimony, declarations and contemporaneous memoranda from a number of government officials discussing incidents involving conflict or tension with RAM's program manager, as well as testimony from the program manager generally disputing the accounts or the interpretation given to the incidents. We need not resolve the discrepancies in the accounts and interpretations with respect to each incident, nor need we apportion responsibility for the overall tension between the government and the contractor here, since the record reasonably confirms the agency's position that, at the very least, the overall management

approach of RAM and its program manager contributed to a potentially hazardous safety situation. In this regard, agency witnesses testified that a lack of free communication discourages personnel from raising issues, and that this is potentially hazardous to aviation operations, creating a safety of flight issue. Tr. at 323, 492-93. This is significant since the TSMO safety officer found, and testimony at the hearing confirmed, that the free flow of information necessary to ensure a safe flight environment was threatened by the reluctance of some RAM employees to be seen communicating with government employees or making comments with which RAM's program manager might disagree, for fear of management reprisal and/or termination of employment. Memorandum from TSMO Aviation Safety Officer for RAM Safety Officer, Mar. 16, 2005; Tr. at 87-88, 192, 323-24, 513-16; see Tr. at 906-07; Government Flight Representative's Memoranda for Record, Feb. 2 and Mar. 4, 2005.

Further, it is significant that, while RAM, in its response to the default notification, offered to assign its program manager to other duties for 30 days while an independent review of the work environment was undertaken, RAM reaffirmed its commitment to retaining its program manager. Specifically, RAM informed the agency that "RAM is firmly committed to retaining [its program manager] in his present role as the Program Manager for this contract . . ." RAM Response to Default Notice, Apr. 4, 2005.

Given TSMO's reasonable determination that the actions and management style of RAM's program manager were contributing to a potentially hazardous aviation environment, and given RAM's stated unwillingness to replace the program manager, we find that the agency's concerns in this area lent further support to its determination that RAM was not a viable source for performance of the bridge contract.<sup>5</sup>

The protest is denied.

Anthony H. Gamboa  
General Counsel

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<sup>5</sup> Although RAM asserts that the sole source award to CSC will create an OCI and otherwise was improper, as discussed above, TSMO reasonably determined that RAM was not a viable source for performance of the new contract. RAM, therefore, is not an interested party to object to other aspects of the agency's sole source determination. 4 C.F.R. § 21.1(a) (2005).