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**Comptroller General
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**United States Government Accountability Office
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Decision

Matter of: SPAAN Tech, Inc.

File: B-400406; B-400406.2

Date: October 28, 2008

Marc Van Allen, Esq., Kathy C. Weinberg, Esq., and Damien C. Specht, Esq., Jenner & Block LLP, for the protester.

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DIGEST

Agency's determination to not include protester's lower technically rated, higher cost proposal in the competitive range—even though agency determined that two of the three higher technically rated offerors whose proposals were included in the range did not fully substantiate their indirect rates—was unobjectionable where agency otherwise reasonably concluded that protester's proposal was not among the most highly rated offers.

DECISION

SPAAN Tech, Inc. of Chicago, Illinois protests the exclusion of its proposal from the competitive range under request for proposal (RFP) No. DE-RP02-08CH11469, issued by the Department of Energy (DOE) for technical support services.

We deny the protest.

The RFP provided for the award of a cost-plus-award-fee contract for technical support services with respect to such areas as the environment, safety, health facilities, and project and program management. The solicitation stated that award would be made on a "best value" basis, considering cost and the following weighted technical evaluation factors: technical understanding/approach (25%); management approach (30%); personnel qualifications/availability (25%); relevant corporate experience (10%); and past performance (10%). RFP §§ M.2, M.3. The technical evaluation factors were stated to be significantly more important than cost.

The RFP did not specifically identify evaluation subfactors, but stated “components” that, although not weighted or individually rated, would be “considered as a whole in developing an overall point score for each criterion.” RFP § M.4. For example, under the technical understanding/approach factor, offerors were informed that the agency would evaluate the offerors’ approach for ensuring technical quality and their proposed quality assurance plans. Similarly, under the management approach factor, the solicitation stated that the offerors’ transition plans, as well as the firms’ ability to manage change, would be evaluated. Id.

Detailed instructions were provided for the preparation of proposals under each of the evaluation factors. Offerors were instructed to submit their proposals in three volumes, consisting of technical and cost proposals and an “Offer and Other Documents” volume. RFP §§ L.29, M.2(b), M.6. With respect to the technical understanding/approach factor, the RFP instructed that offerors describe their

approach[es] for ensuring technical quality (e.g. appropriateness, accuracy, completeness) of all of its work products and its understanding of the implications of such as they relate to the mission of the Office of Science. The offeror shall provide a summary and/or outline of its quality assurance plan and the role of the plan in ensuring quality work products. The offeror shall describe any related management efforts such as quality certifications (e.g. [International Organization for Standardization standards] or other).

RFP § L.29(a)(3)(iii)(A).

With respect to the cost factor, offerors were required to provide a “comprehensive fully-supported” proposal, which addressed all elements of cost applicable to the proposed effort.¹ RFP § L.29(a)(4)(ii)(C). Regarding the offerors’ proposed indirect rates, the solicitation required the offerors to

[s]how the proposed rates by [contractor fiscal year] for all applicable burdens (e.g. fringe benefits, overhead, and general and administrative expenses). Identify the application base for each burden rate, and provide documentation regarding the basis for the proposed rates/factors (i.e. [forward pricing rate agreements], bidding rates, [Defense Contract Audit Agency] audits). In the event

¹ The RFP provided that cost or pricing data was not required but that, “in accordance with [Federal Acquisition Regulation (FAR) §] 15.403-3 and [FAR §] 15.403-5, information other than cost or pricing data is required to determine if proposed costs are reasonable, realistic, and reflect a clear understanding of the solicitation requirements.” RFP § L.29(a)(4)(i).

the offeror does not have an approved forward pricing rate, provide details as to the composition of the base and pool costs that are being used to develop the proposed burdens.

RFP § L.29(a)(4)(ii)(C)(3). Offerors were further informed that DOE would calculate, for each offeror's proposal, an evaluated cost that may be adjusted as part of the evaluation of the cost proposal's completeness, reasonableness, and realism. RFP § M.6.

Seven offerors, including SPAAN, the incumbent contractor, submitted proposals, which were reviewed by the agency's source evaluation board (SEB). Technical proposals received point scores of 0, 2, 5, 8, or 10 under each of the technical evaluation factors; the point scores were supported by narrative explanations describing the proposals' respective strengths and weaknesses under the pertinent factors.² These point scores were then weighted to reflect the relative weight assigned by the RFP to the applicable factor.

With regard to SPAAN's technical proposal, the SEB found that the proposal had a "significant weakness" under the technical understanding/approach factor, because SPAAN did not address specifically how it would ensure technical quality and had failed to provide a summary or outline of its quality assurance plan, as required by the solicitation; accordingly, SPAAN's technical proposal received only two points under this evaluation factor. Under the most important management approach factor, SPAAN's proposal received only five points, because the SEB found that SPAAN had provided little rationale for its proposed organizational structure and the firm's organization chart was unclear as to the lines of program management; the SEB also noted some strengths, including that SPAAN, as the incumbent contractor believed that a transition plan was not necessary but the firm had nevertheless

² The agency's rating plan established standards for assigning point scores. For example, a proposal would receive eight points under an evaluation factor, where it was determined that the offeror had addressed all aspects of the factor, was highly capable/experienced, and had a high probability of success and that the offeror had few weaknesses and no deficiencies. A proposal would receive two points, on the other hand, where the offeror was found to have not addressed all aspects of the factor and was somewhat capable/experienced and where some significant weaknesses were noted or where there were "one or more deficiencies . . . noted including those triggered by significant weaknesses." AR, Tab 2, Rating Plan 5-6. The rating plan also defined what was considered to be a major or minor strength, a weakness or significant weakness, or a deficiency. For example, a "significant weakness" was defined to be "a flaw that appreciably increases the risk of unsuccessful contract performance." *Id.* at 7.

provided a good description of a transition team and timelines for transition.³ With respect to the remaining three technical evaluation factors, the SEB assigned points scores of 8, 10, and 8 points, respectively. In all, SPAAN's proposal received 33 of the available 50 points, which when weighted resulted in an evaluated point score of 5.8 points. AR, Tab 5, Initial SEB Report, at 23-24.

Cost proposals were also evaluated for completeness, reasonableness, and realism. In its cost realism evaluation, the SEB made adjustments to each of the offerors' cost proposals in order to calculate a most probable cost to the agency. These adjustments included corrections for any calculation errors, adjustments to direct labor rates, and an examination of the offerors' proposed indirect rates (including the basis for each offeror's fringe, overhead, and general and administrative rates). With regard to the offerors' proposed indirect rates, the agency found that

[f]ive of the seven offerors . . . did not provide complete information to allow the Government to determine the adequacy of the proposed indirect rates, nor was recent rate information available from [the Defense Contract Audit Agency]. However, for two of these five . . . partial information was provided For purposes of this analysis, and absent sufficient data to the contrary, the Government utilized the indirect rates as proposed for those offerors and subcontractors that did not provide sufficient back-up documentation. In instances where partial information was utilized, adjustments were made when the partial information so dictated.

AR, Tab 5, Initial SEB Report, at 29-30.

SPAAN was one of the two offerors that were found to have adequately supported the firms' proposed indirect rates. See AR, Tab 6, Competitive Range Determination, at 11. In its cost realism evaluation, DOE made only minor adjustments to SPAAN's proposed costs, which resulted in an upward adjustment of only \$109.

³ Under the agency's rating plan, a proposal received five points where the offeror was found to have addressed all aspects of the factor, was capable/experienced, and had a good probability of success and where the offeror had only a few weaknesses (none of which were significant) and no deficiencies. AR, Tab 2, Rating Plan, at 5-6.

The SEB ranked the offerors' initial proposals, as follows:

Offeror	Technical Score	Evaluated Cost
A	8.5	\$8,827,421
B	7.55	\$7,695,261
C	7.45	\$7,262,680
D	6.2	\$10,712,345
SPAAN	5.8	\$8,399,832
E	5.3	\$9,674,118
F	2.6	\$6,966,441

Id. at 7.

The contracting officer determined that the agency would conduct discussions with the most highly rated offerors, which the contracting officer concluded were offerors A, B, and C. AR, Tab 6, Competitive Range Determination, at 15. With regard to these three offerors, the contracting officer noted that offerors A and B had failed to provide adequate information to allow the agency to analyze the firms' proposed indirect rates, but that discussions would allow the agency to obtain this information.⁴ Id. at 11-13. With regard to SPAAN's proposal, the contracting officer determined that, although SPAAN's proposal had the fourth lowest evaluated cost, this did not offset the number of weaknesses evaluated in the firm's technical proposal. In particular, the contracting officer noted, among other things, the significant weakness assessed in SPAAN's proposal for its failure to address how the firm was going to ensure technical quality and its lack of a quality assurance plan outline or summary; the contracting officer also noted SPAAN's assessed weaknesses with respect to its lack of rationale for its organization structure and to its proposal of a senior project controls specialist that did not satisfy the solicitation's education and experience requirements. Id. at 13-14.

⁴ With regard to Offeror A, DOE found that, although the firm did not have forward pricing rates and had not provided its calculations for its indirect rates, the firm stated in its proposal that its indirect rates were consistent with its historical rates that had been reviewed by the Defense Contract Audit Agency. In addition, Offeror A explained its methodology for calculating the firm's expense pools and allocation bases for its indirect rates, which DOE found to be reasonable. See AR, Tab 10, Probable Cost Analysis, at 29. With regard to Offeror B, DOE found that the firm only provided its indirect rate percentages and had not adequately explained its methodology for calculating indirect rates; in this regard, Offeror B stated in its initial proposal that the firm was undergoing their first audit by the Defense Contract Audit Agency. Id. at 42.

SPAAN's proposal was excluded from the competitive range, and following a debriefing, SPAAN filed this protest with our Office.

We will review an agency's evaluation and exclusion of a proposal from the competitive range for reasonableness and consistency with the solicitation criteria and applicable statutes and regulations. Novavax, Inc., B-286167, B-286167.2, Dec. 4, 2000, 2000 CPD ¶ 202 at 13. Contracting agencies are not required to retain in the competitive range proposals that are not among the most highly rated or that the agency otherwise reasonably concludes have no realistic prospect of being selected for award. FAR § 15.306(c)(1); D & J Enter., Inc., B-310442, Dec. 13, 2007, 2008 CPD ¶ 8 at 2. We find from our review of the record, as explained below, no basis to object to the agency's evaluation of proposals or competitive range determination.

SPAAN challenges the agency's evaluation of the firm's proposal under the technical understanding/approach, management approach, and past performance factors and contends that its proposal should have been found to be one of the most highly rated and included in the competitive range.⁵ With respect to the evaluation of its proposal under the technical understanding/approach factor, SPAAN disagrees that it did not adequately discuss how the firm would ensure technical quality in performing the contract and that it had not adequately discussed its quality assurance plan.⁶ In this regard, SPAAN cites certain pages of its proposal as assertedly demonstrating the firm's approach to ensuring technical quality. See Protester's Comments at 12-13. SPAAN also argues that, as it indicated in its proposal, SPAAN, as the incumbent contractor, had successfully integrated its quality assurance plan with the agency's quality control and quality assurance requirements, which SPAAN contends satisfies the RFP's requirement to describe how the firm would ensure technical quality. SPAAN concludes that, absent DOE's allegedly unreasonable evaluation, the firm's proposal would have received more than the two points it received under this factor.

⁵ SPAAN does not protest the agency's evaluation of any of the offerors' technical proposals that were included in the competitive range.

⁶ SPAAN states in its protest that, at the debriefing, DOE informed SPAAN that a substantial weakness was assigned under the technical understanding/approach factor because SPAAN had presented a "standardized" approach rather than one specifically tailored to DOE, and SPAAN argues that its proposal provided a tailored approach. See Protester's Comments at 11. Although DOE does not dispute SPAAN's version of what the firm was told in its debriefing, DOE states that the significant weakness assessed in SPAAN's proposal under this factor was based upon the firm's failure to address how the offeror would ensure technical quality. The contemporaneous record supports the agency's explanation.

DOE contends that SPAAN's proposal addressed a "traditional program management-based approach to the work (e.g., implementing internal project controls, schedule control, tracking performance indicators)" and identified the work to be performed but did not substantively address how the firm would ensure technical quality. See AR, Tab 5, Initial SEB Report at 43. In this regard, DOE also notes that, despite the solicitation's explicit instructions, SPAAN failed to provide an outline or summary of its quality assurance plan and that it is an offeror's obligation to prepare a proposal that adequately addresses the solicitation's requirements.

We agree with DOE that an offeror bears the burden of submitting an adequately written proposal, and that it runs the risk that the firm's proposal will be evaluated unfavorably when it fails to do so. See American Ordnance, LLC, B-292847 et al., Dec. 5, 2003, 2004 CPD ¶ 3 at 4. Here, we find from our review of SPAAN's technical proposal, including those parts to which SPAAN cites in its comments, that SPAAN provided little discussion of how it would ensure technical quality (that is, little discussion of how SPAAN would ensure the "appropriateness, accuracy, completeness" of its work products, as required by the RFP). We also find that SPAAN did not provide an outline or summary of its quality assurance plan, although this too was required by the RFP. Given these shortcomings in SPAAN's proposal, we cannot say that DOE acted unreasonably in assessing these failures to be a significant proposal weakness.

Although its true that SPAAN referenced in its proposal the firm's incumbent performance, including its integration of a quality assurance plan, we disagree with SPAAN's apparent belief that, because the firm, as the incumbent contractor, had successfully implemented a quality assurance plan in its prior contract, DOE should accept SPAAN's experience in this regard in lieu of an adequately written proposal addressing all of the solicitation's requirements.⁷ See HealthStar VA, PLLC,

⁷ SPAAN contends that, in addition to the evaluation of proposals, the solicitation also required DOE to evaluate offerors' "anticipated performance." Specifically, SPAAN points to an RFP provision stating that DOE will assess "what the strengths and weaknesses between or among competing technical proposals indicate from the standpoint of (1) what the difference might mean in terms of anticipated performance . . ." RFP § M.2(c). SPAAN argues that, as the incumbent, any evaluation of other offerors' "anticipated performance" would show that their higher technical scores would not result in any differences with SPAAN's current performance. We find from our review of the record that DOE did assess the relative merits of the firms' proposals, including their assessed proposal strengths and weaknesses, and we find that this in fact was an assessment of the firms' "anticipated performance." We think that SPAAN's argument in this regard is no more than mere disagreement with the agency's judgment concerning the relative merits of the firms' proposals, which does not show that judgment to be unreasonable.

B-299737, June 22, 2007, 2007 CPD ¶ 114 at 2; Interactive Commc'n Tech., Inc., B-271051, May 30, 1996, 96-1 CPD ¶ 260 at 2. In this regard, offerors' past performance was evaluated under another evaluation factor, for which SPAAN's proposal received credit for its performance of the incumbent contract.

SPAAN also protests DOE's evaluation of the firm's proposal under the management approach factor, for which SPAAN's proposal received five points. Under this factor, DOE noted as minor strengths SPAAN's description of its project manager's decision making authority and the fact that the firm, as the incumbent contractor, may not require a transition plan (although SPAAN also provided a good description of a transition team and transition timelines); DOE also noted as a weakness, however, that SPAAN had provided little rationale for its organizational structure and that its proposal was unclear as to lines of program authority. SPAAN does not challenge the agency's assessed weakness in its proposal, but contends that it should have received a major strength, rather than a minor strength, for the fact that, as the incumbent contractor, it posed no transition risk.⁸ See Protester's Comments at 12-13.

We find no basis to object to DOE's evaluation of SPAAN's proposal under this factor. Here, the agency specifically recognized, as a minor proposal strength, the protester's incumbency status with respect to the need for a transition plan and credited the firm for its discussion of a transition team and transition timelines. Although SPAAN believes that it should have received more credit for its lack of "transition risk," we do not think that this disagreement with the agency's assignment of a minor strength demonstrates that the agency's assignment of five points was unreasonable, given the unchallenged weakness concerning organizational structure also assessed in the firm's proposal under this factor.⁹ A

⁸ In its protest, SPAAN also argued that it should have received a major strength under the management approach factor for the firm's ability to manage change. The agency responded to these arguments in its report, and SPAAN failed to address the agency's response. Accordingly, we consider this argument to have been abandoned. Citrus College; KEI Pearson, Inc., B-293543 et al., Apr. 9, 2004, 2004 CPD ¶ 104 at 8 n.4.

⁹ Similarly, SPAAN objects to the agency's evaluation of the firm's proposal under the past performance factor, for which SPAAN's proposal received eight points. SPAAN contends that, given its high performance ratings, SPAAN should have received 10 points. Given the 10% weighting assigned to this factor, increasing SPAAN's past performance score by two points would only increase SPAAN's weighted point score by .2. We do not find any reasonable possibility that this small increase in the firm's overall weighted point score would change the agency's competitive range determination. In any event, as discussed above, the agency's decision to exclude SPAAN's proposal from the competitive range was not based on a mechanical review
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protester's mere disagreement with the agency's judgment does not establish that an evaluation was unreasonable. UNICCO Gov't Servs., Inc., B-277658, Nov. 7, 1997, 97-2 CPD ¶ 134 at 7.

SPAAN also complains, citing to our decision in Global, A 1st Flagship Co., B-297235, B-297235.2, Dec. 27, 2005, 2006 CPD ¶ 14, that the agency's competitive range determination was unreasonable because it was based upon an inadequate cost realism evaluation.

It is well established that an agency may not exclude a technically acceptable proposal from the competitive range without meaningful consideration of cost or price of that proposal to the government. See Kathpal Tech., Inc.; Computer & Hi-Tech Mgmt., Inc., B-283137.3 *et al.*, Dec. 30, 1999, 2000 CPD ¶ 6 at 9, *aff'd*, Department of Commerce-- Request for Modification of Recommendation, B-283137.7, Feb. 14, 2000, 2000 CPD ¶ 27. Accordingly, we found in Global that an agency could not reasonably exclude the protester's "highly acceptable" technical proposal solely on the basis of the protester's higher evaluated cost, where the agency's cost realism analysis was not "reasonably thorough, accurate, and complete" and the cost realism analysis reflected material errors and flawed assumptions. See Global, A 1st Flagship Co., *supra*, at 5.

Here, unlike in Global, we find that the agency conducted a "reasonably thorough, accurate, and complete" cost realism evaluation. That is, the record shows that DOE assessed the cost realism of all of the offerors' proposals, *see, e.g.*, AR, Tab 5, Initial SEB Report, at 27-30, and that the contracting officer considered the offerors' evaluated costs in determining which offers were most highly rated. See AR, Tab 6, Competitive Range Determination, at 10-15. It was based upon this evaluation that DOE determined that Offerors A and B had not sufficiently supported their proposed indirect rates.

Apart from the agency's acceptance of these offerors' indirect rates for the purpose of including these firms in the competitive range, SPAAN does not otherwise contend that DOE's cost realism evaluation reflected material errors or flawed assumptions. Rather, the crux of SPAAN's complaint is that DOE concluded that the proposals of Offerors A and B were most highly rated, even though the agency also found that these firms could not substantiate their initial proposals' indirect rates.

We do not find the fact that a proposal contains weaknesses or deficiencies that may be addressed during discussions requires the exclusion of that proposal from the

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of points, but reflected the agency's significant concerns with SPAAN's proposal that resulted in SPAAN's lower point scores.

competitive range. Rather, a competitive range is established for the purpose of determining which offerors will receive discussions and to provide those offerors with an opportunity to revise proposals and address weaknesses and deficiencies, among other things. See FAR § 15.306(c), (d). Thus, we find that DOE could reasonably include the proposals of Offerors A and B in the competitive range to conduct discussions with these firms with respect to their proposed indirect rates.

Moreover, we also find reasonable the agency's conclusion that the proposals of Offerors A & B were among the most highly rated offers for inclusion in the competitive range and that SPAAN's proposal was not. As noted above, DOE reasonably found that SPAAN's technical proposal was not as highly rated as the three offerors whose proposals were included in the competitive range; in fact, DOE found that SPAAN's proposal was only the fifth highest rated offer of the seven proposals received.¹⁰ When considered with the firms' evaluated costs, the contracting officer concluded that although SPAAN's evaluated cost was lower than that of Offeror A, SPAAN's proposal was still not one of the most highly rated offers, given the significant concerns the agency had with SPAAN's proposal, which was much lower rated technically than the proposals of the competitive range offerors. In making this judgment, the contracting officer was fully aware that Offerors A and B had not substantiated their indirect rates but the contracting officer also concluded that these firms' indirect rates were "a relatively small portion of [their] overall costs" and that discussions with these firms would allow the agency to obtain information necessary to substantiate their indirect rates. See Contracting Officer's Statement at 25; AR, Tab 6, Competitive Range Determination, at 12-13.

SPAAN also complains that DOE did not consider the extent to which SPAAN could correct "information deficiencies" in its proposal and therefore the inclusion of the proposals of Offerors A and B in the competitive range to allow these firms to substantiate their indirect rates reflects disparate and unequal treatment. SPAAN's proposal, however, was not excluded from the competitive range because the proposal had deficiencies or weaknesses that could not be corrected but because the contracting officer concluded that SPAAN's proposal was not among the most highly rated offers, considering both technical merit and cost. As noted above, this

¹⁰ SPAAN also argues that the failure of Offerors A and B to substantiate the firms' proposed indirect rates should have caused DOE to downgrade the firms' technical proposals. The RFP provided that an "unrealistic, unreasonable, or incomplete Cost/Price proposal may be evidence of the Offeror's lack of, or poor understanding of, the requirements of the solicitation" and may affect the offeror's technical rating. See RFP § M.6. The agency responds that it did not find a disparity between the firms' technical and cost proposals that would have indicated a lack of, or poor understanding of, the RFP's requirements. SPAAN has not shown the agency's judgment to be unreasonable.

judgment is specifically permitted by FAR § 15.306(c)(1). We find no evidence of disparate or unequal treatment in this record.

The protest is denied.

Gary L. Kepplinger
General Counsel