

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548**

*1/10/86  
PL-II*

**FILE:** B-220661 **DATE:** January 13, 1986  
**MATTER OF:** Information Systems & Networks Corporation  
**DIGEST:**

Where an agency conducted competitive range discussions with offerors and selected the highest rated technical proposal for final negotiations based on the agency's determination that the other offerors in the competitive range were substantially inferior and had no reasonable chance for award, GAO finds the agency's decision unobjectionable. Whether the agency's actions are viewed as a revision of the competitive range to include only one offeror or as an award selection decision, they were consistent with the established legal principles concerning such decisions.

Information Systems & Networks Corporation (ISN) protests the award of a contract to Dynatrend, Inc. under request for proposals (RFP) No. WA84-A445, issued by the Environmental Protection Agency (EPA). The procurement is for the acquisition of security support services to assist EPA in planning, organizing and managing the agency's information and physical security program. ISN contends that EPA improperly excluded its technically acceptable proposal from the revised competitive range during the source selection process. We deny the protest.

Background

The RFP contemplated the award of a firm-fixed-price contract with options, and advised offerors that technical considerations would be more important than price in determining the successful proposal. Initial proposals were received from five offerors and were evaluated. EPA's evaluation team determined that Dynatrend's proposal contained no weaknesses or deficiencies, and gave it a score

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of 97.9 technical points out of a possible 100. ISN's initial proposal received 73.9 points and the proposal of Executive Security Consultants, Inc. (ESC) received 75.6 points. These three proposals were determined to be technically acceptable and were included within the competitive range; the remaining two proposals were determined to be outside the competitive range and were not considered further.

With regard to ISN's proposal, the evaluators determined that although the proposal was adequate and addressed most of the RFP's requirements, the proposal was weak in three major areas: experience and qualifications of proposed personnel in physical security; corporate capability; and technical understanding of EPA's unique security problems.

EPA conducted discussions with the three competitive range offerors. Although Dynatrend's proposal was evaluated as containing no weaknesses, ISN and ESC were advised through written interrogatories of the evaluators' concerns with respect to their proposals, and all three firms were given the opportunity to submit revised proposals through EPA's request for best and final offers.

Upon evaluation of the revised proposals, the evaluators determined that ISN had significantly improved the quality of its proposal by addressing the areas of weakness noted above. Accordingly, the evaluators increased ISN's technical score from 73.9 to 82.2. Dynatrend's technical score remained the same at 97.9, and ESC's score was increased from 75.6 to 79.5.

Subsequently, EPA issued several amendments to modify the RFP's requirements; for example, the portion of the work for operation of EPA's Emergency Operations Facility was changed from an option to a basic contract requirement, and additional levels were included in certain labor categories. EPA conducted oral discussions with the three offerors concerning the changes made by these amendments, and the agency requested another round of best and final offers.

Although ISN responded to these changed requirements in its new best and final offer, the contracting officer reexamined the scoring given by the evaluators to the firm's original revised proposal, and determined that the increased scores were inappropriate. Furthermore, the contracting officer reviewed the firm's latest revision to its technical proposal, and concluded that the firm remained weak in demonstrating its capability to furnish overall physical

security, in the qualifications and experience of its proposed off-site personnel, and in demonstrating its understanding of the specific security issues confronting EPA. The contracting officer raised his concerns with the evaluation team, which then lowered ISN's technical score from 82.2 to 79.6. The contracting officer felt that even this reduction did not accurately reflect his concerns regarding ISN's proposal. (Apparently, a similar situation existed with respect to ESC's proposal, as the record shows that the firm's revised score was decreased from 79.5 to 75.9 as the result of this final evaluation.)

In terms of the revised best and final prices, Dynatrend was high at \$9,780,071 (\$6,758,469 for the basic contract price and \$3,021,602 for the options); ESC was second low at \$9,634,829 (\$6,970,326/\$2,664,503), and ISN was low at \$8,918,573 (\$6,215,567/\$2,703,006).

At this point, the contracting officer determined that Dynatrend had submitted the technically superior proposal since the quality of the firm's proposed personnel as well as the firm's corporate experience and capability far exceeded that of the other two offerors. The contracting officer felt that since ISN and ESC had been given more than sufficient opportunity to revise their proposals, it would be "fruitless to provide any further opportunity for either of these two firms to improve the weak and deficient areas of their proposals, which existed in their original submission."

Accordingly, the contracting officer recommended to the source selection authority that the competitive range be narrowed to include only Dynatrend, and that final negotiations be conducted with that firm. The source selection authority concurred with the contracting officer's recommendation and approved the conduct of final negotiations with Dynatrend, resulting in an award to the firm at a basic contract price of \$6,453,097.74.

ISN principally contends that it was improper for EPA to exclude its technically acceptable proposal from the revised competitive range and to engage in "sole-source" final negotiations with Dynatrend. The firm notes that its proposal had been substantially improved in response to EPA's written interrogatories, and that its best and final price was some \$860,000 lower than Dynatrend's price. Moreover, ISN asserts that EPA's action was contrary to the express terms of the solicitation because ISN was excluded from the competitive range for technical reasons alone, whereas the RFP provided that price was the second most

important evaluation factor after technical considerations. Accordingly, ISN urges that EPA was obligated to include its technically acceptable and low priced proposal in the revised competitive range and to conduct further discussions with the firm. We do not agree.

### Analysis

As a general rule, the competitive range in a negotiated procurement consists of all proposals that have a reasonable chance of being selected for award, including deficient proposals that are reasonably susceptible of being made acceptable through discussions. Fairchild Weston Systems, Inc., B-218470, July 11, 1985, 85-2 CPD ¶ 39. However, even if a proposal is technically acceptable or capable of being made so, it need not be included in the competitive range when the agency determines that it has no reasonable chance of being selected for award. JDR Systems Corp., B-214639, Sept. 19, 1984, 84-2 CPD ¶ 325.

Moreover, there is nothing improper per se in an agency's making more than one competitive range determination. Rather, the essential question in cases such as this is not whether a second competitive range determination was proper, but whether the agency was ultimately justified in excluding the firm in question from further consideration. BASIX Controls Systems Corp., B-212668, July 2, 1984, 84-2 CPD ¶ 2.

As previously noted, ISN was given the opportunity to submit two revised proposals after EPA had identified the areas of weakness in its original proposal. Although the firm in fact improved the quality of its proposal to a certain degree, resulting in an increased technical score, the record shows that this improvement was considered insufficient to offset the significant technical superiority of Dynatrend's proposal. Thus, since ISN's proposal was still viewed as weak with regard to certain proposed personnel, overall physical security capability, and understanding EPA's unique security problems, we think that it was proper for EPA to determine that, relative to Dynatrend's much higher technical score, ISN no longer had a reasonable chance to receive the award. We have approved this "relative" approach to determining the competitive range based upon the scores obtained by the offerors even where, as here, the result is a competitive range of one.

See Cotton & Co., B-210849, Oct. 12, 1983, 83-2 CPD ¶ 451; Art Anderson Assocs., B-193054, Jan. 29, 1980, 80-1 CPD ¶ 77.<sup>1/</sup> Furthermore, while ISN also asserts that EPA improperly failed to consider price in making its determination, the record shows that in fact, the contracting officer expressly determined that the potential savings offered by ISN's proposal did not outweigh the technical superiority of Dynatrend's proposal. Accordingly, we find nothing objectionable in EPA's decision to exclude ISN's proposal from further consideration.

Although EPA views its actions as a revision of the competitive range, the agency's actions here may simply be tantamount to deciding to award the contract to Dynatrend. In this regard, we have held that negotiations after source selection with the successful offeror to obtain a small reduction in price, as here, are not improper. Environmental Enterprises, Inc., B-193090, Mar. 9, 1979, 79-1 CPD ¶ 168. Moreover, such an award decision would be fully consistent with the RFP's stated evaluation scheme. It is well-settled that an agency may make cost/technical tradeoffs in choosing between competing proposals, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the RFP's established evaluation criteria. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. Here, the RFP clearly provided that technical considerations were more important than price in determining the successful offeror. Although the contracting officer recognized that ISN's proposed price was some \$860,000 lower than Dynatrend's, a difference of approximately 10 percent, the fact remained that ISN's technical score was nearly 12 percent lower than Dynatrend's even under the most favorable scoring given the proposal by the evaluators. Therefore, we find nothing unreasonable in the contracting officer's determination that the clear technical superiority of Dynatrend's offer, as reflected by the firm's higher technical score, outweighed the price premium involved in selecting only that firm for final negotiations.

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<sup>1/</sup>ISN suggests that these cases are inapplicable to this case because they involved cost-reimbursement contracts rather than a fixed-price contract, as here. However, our decisions in Cotton & Co. and Art Anderson Assocs. did not turn on the type of contract involved, and we therefore find no merit to ISN's contention.

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Accordingly, whether we view this as a competitive range case or as an award selection case, we find that EPA acted properly. The protest is denied.

*for Seymour Efron*  
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General Counsel