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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:** SPAAN Tech, Inc.

**File:** B-296305

**Date:** July 14, 2005

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Eric J. Marcotte, Esq., and Nathan C. Guerrero, Esq., Winston & Strawn LLP, for the protester.

Gena E. Cadieux, Esq., Joseph A. Lenhard, Esq., and Nancy Toppetta, Esq., Department of Energy, for the agency.

Katherine I. Riback, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

Agency's determination that protester's proposal was essentially equal to awardee's lower cost proposal has not been shown to be unreasonable.

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### **DECISION**

SPAAN Tech, Inc. protests the award of a contract to Performance Results Corporation (PRC) under request for proposals (RFP) No. DE-RP26-03NT41819, issued by the Department of Energy (DOE) for administrative support services. SPAAN Tech contends that the evaluation of its proposal and the source selection decision were improper.

We deny the protest.

DOE issued the RFP as a competitive 8(a) set-aside to acquire administrative program support services for DOE's National Energy Technology Library (NETL) at the Morgantown, West Virginia and Pittsburgh, Pennsylvania facilities. The services to be provided under this contract include management systems support services, records management support services, and library support services. The solicitation anticipated the award of a cost-plus-award-fee, task-order contract for a base period of 3 years with two 1-year options.

The RFP stated the "[s]election of the best value to the Government will be achieved through a process of evaluating the strengths and weaknesses of each Offeror's proposal in accordance with the evaluation criteria stated in the solicitation." RFP § M.2. The RFP contemplated the evaluation of a business and management

(written) electronic proposal and an oral presentation, and stated that “[t]he sum of on the written evaluation criteria are of equal importance to the sum of the oral evaluation criteria.” The evaluation criteria for the electronic (written) proposals were: (1) management approach (40%), (2) key personnel (30%), (3) organizational approach (10%), (4) experience (10%), and (5) past performance (10%).

The evaluation criteria for the oral presentation were: (1) understanding of requirements and corporate ability (40%), (2) qualified staffing personnel (30%), and (3) management of tasks (30%). The solicitation provided that the combined weight of the business and management proposal and the oral presentation were of significantly greater importance than the cost proposal. RFP amend. 6.

The RFP also stated that the government is more concerned with obtaining a superior technical proposal than making an award at the lowest evaluated cost, but that the government would not make an award at a price premium it considered disproportionate to the benefits associated with the evaluated superiority of one technical proposal over another. The RFP also provided that to the extent that the technical proposals were evaluated as close or similar in merit, then the evaluated cost would be more likely to be the determining factor. RFP § M.2. Finally, the RFP provided that the agency intended to evaluate proposals and make award without discussions, and, therefore, cautioned offerors that their proposals should contain the offeror’s best terms from a cost and technical standpoint. RFP § L.17.

The agency received five proposals by the April 1, 2004 due date, including those from SPAAN Tech and PRC. The evaluation rating committee (ERC) evaluated the written proposals against the solicitation’s criteria for the written proposals, established strengths and weaknesses, and arrived at a consensus score for each written proposal by June 14. Oral presentations were conducted from June 21 through June 24. The ERC evaluated the oral presentations against the RFP’s criteria for oral presentations, identified strengths and weaknesses, and established a consensus score for the oral presentations.

SPAAN Tech received a total score of 1,440 points (940 points oral/500 points electronic) with an evaluated most probable cost of \$26,159,046, and PRC had a total score of 1,375 points (710 oral/665 electronic) with a most probable cost of \$18,067,443.<sup>1</sup> SPAAN Tech score of only 500 points for its written proposal was the result of the agency’s conclusion that the proposal was superficial in many respects.<sup>2</sup>

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<sup>1</sup> Each offeror’s business and management proposal and oral presentation could receive 1,000 points maximum each for a maximum combined score of 2,000 points.

<sup>2</sup> As noted by the agency, the business and management approach section of SPAAN Tech’s business and management approach proposal contained 39 pages of text, while the RFP allowed up to 120 pages of text. In contrast, the business and management approach section of PRC’s business and management proposal was 120 pages of text.

In this regard, 30 specific weaknesses were identified and specified by the agency in SPAAN Tech's written proposal, of which 6 were considered significant. In contrast, SPAAN Tech's oral presentation received a relatively high score of 940 points. The source selection authority (SSA) determined that PRC's proposal represented the best value to the government, finding that SPAAN Tech's slightly higher rated proposal did offer value to the government that was worth the associated \$8,091,443 cost premium.

On October 13, SPAAN Tech filed an agency-level protest contesting the proposed award to PRC on the grounds that there was an improper cost realism analysis, technical analysis, and best value analysis. The agency took corrective action in response to this protest, and reevaluated the cost proposals and prepared a new source selection document. The technical proposals were not rescored, but SPAAN Tech's evaluated most probable cost was now calculated at \$22,232,624 and PRC's at \$16,657,506. After a detailed discussion of the similarities and the significant differences between the proposals, the SSA concluded in the revised source selection document that the proposals of SPAAN Tech and PRC were "technically equivalent," given the "nature of the strengths and weaknesses for both offerors," the 65-point difference in technical scores, and that "both offerors demonstrated a high probability of successful performance." Given the evaluated technical equivalency of the two proposals and PRC's substantially lower cost, the SSA determined that PRC's proposal represented the best value to the government. The SSA also noted that his award decision would remain the same even if SPAAN Tech's slightly higher overall technical score represented an appreciable difference between the proposals of SPAAN Tech and PRC because the SSA determined that the technical differences between the two proposals were not worth the \$5,575,118 cost premium. This protest followed.

SPAAN Tech argues that the agency's evaluation of its proposal was improper because it was based on a "mechanical reliance" on the evaluation scores assigned to its written proposal and oral presentation. The protester essentially argues that its written proposal and oral presentation covered the same topics, and that the agency downgraded the written portion of its proposal for weaknesses that the evaluators did not find in its oral presentation. According to the protester, this meant that SPAAN Tech's proposal was "subject to a blatantly contradictory evaluation that did not reasonably assess its actual ability." Protester's Comments at 5.

In reviewing protests concerning the evaluation of proposals, we will examine the agency's evaluation to ensure that it had a reasonable basis and was consistent with the evaluation listed in the RFP. Ideal Elec. Sec. Co., B-279221, B-279221.2, May 19, 1998, 98-2 CPD ¶ 14 at 4. A protester's mere disagreement with the agency's evaluation is not itself sufficient to establish that the agency acted unreasonably. Correa Enters., Inc., B-241912, Mar. 5, 1991, CPD ¶ 249 at 3. Here, the record establishes that the evaluation was reasonable and consistent with the RFP.

Notwithstanding SPAAN Tech's broad contention that there was significant overlap between the topics covered in the written proposal and oral presentation and that the weaknesses found in its written proposal were not consistent with the evaluation of its oral presentation, SPAAN Tech cites to only three of the weaknesses found in the written proposal to support this contention. SPAAN Tech does not specifically challenge the numerous other weaknesses that supported the low score awarded for its written proposal, for example, [deleted].<sup>3</sup> Thus, the protester has not shown that its written proposal score, much less the source selection decision, would have been materially affected, even if matters addressed in the oral presentation had been considered in the scoring of the written proposal.

While there appears to be some overlap between the topics covered by the written proposal and the oral presentation, the written proposal and oral presentation, as indicated above, were to be separately evaluated under different evaluation criteria under the RFP evaluation scheme.<sup>4</sup> Thus, that SPAAN Tech's oral presentation received a much high score than its written proposal is not evidence of an irrational evaluation, as contended by the protester.

Most importantly, contrary to the protester's argument, this source selection was not based on a "mechanical reliance" on the evaluation scores assigned to its written proposal and oral presentation. Instead, the source selection document discussed the similarities of the proposals and detailed the differences between the proposals, including many of their respective strengths and weaknesses, and based on this analysis concluded that the proposals were "essentially equal." The protester has not shown this judgment was unreasonable. In fact, it has not directly challenged the

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<sup>3</sup> In its initial protest, SPAAN Tech protested a number of other weaknesses found in its oral presentation and written proposal that it claimed were nonexistent or easily clarified. In its report, the agency responded to these allegations and the protester filed no further comments on these issues. Thus, we consider the protester to have abandoned these protest bases and will not consider them further. See Delco Indus. Textile Corp., B-292324, Aug. 8, 2003, 2003 CPD ¶ 141 at 3 n.2.

<sup>4</sup> To the extent that SPAAN Tech argues that the evaluation of the oral presentation as described in the RFP did not comply with the purposes of oral presentations, as stated in the DOE Acquisition Guide, <http://professionals.pr.doe.gov/ma5/MA-5Web.nsf/Procurement/Acquisition+Guide?OpenDocument>, we note that such a document is an internal agency guide that does not give the parties any rights; it is the evaluation scheme in the RFP to which an agency is required to adhere in evaluating proposals and making the award selection. See Islandwide Landscaping, Inc., B-293018, Dec. 24, 2003, 2004 CPD ¶ 19 at 4.

narrative analysis contained in the source selection document that explained why the proposals were considered technically equivalent. For example, SPAAN Tech has not argued that PRC's proposal did not have the relative strengths described in the source selection document or attack the validity of the source selection statement's observations about its proposal.

In sum, we find the agency reasonably determined that the proposals were essentially equal and properly made award based on PRC's significantly lower cost proposal.

The protest is denied.

Anthony H. Gamboa  
General Counsel