



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Systems Planning and Analysis, Inc.

File: B-261857.2

Date: November 9, 1995

Phillip E. Lantz for the protester.

David C. Rickard, Esq., Defense Nuclear Agency, for the agency.

Mary G. Curcio, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest against elimination of proposal from the competitive range is denied where agency reasonably concluded that proposal to convert Ukrainian military shipyard to civilian use was based on unsupported assumptions that rendered success questionable and made project too risky to fund.

DECISION

Systems Planning and Analysis, Inc. (SPA) protests the elimination from the competitive range of the proposal it submitted in response to request for proposals (RFP) No. DNA001-94-R-0084, issued by the Defense Nuclear Agency.

We deny the protest.

The solicitation was issued pursuant to the Cooperative Threat Reduction Program, under which efforts are to be made to assist the states that formerly comprised the Soviet Union in converting and privatizing defense-oriented enterprises from military manufacture to the manufacture of consumer products and infrastructure support. Offerors were required to propose a plan to assist one or more of 32 listed facilities, located in the Ukraine, in the conversion process with monetary investment, training, and support. The solicitation provided that offers would be evaluated based upon the following criteria: (1) business and technical evaluation, (2) leveraging (government vs. contractor investment), (3) proposed business entity, (4) impact of product, (5) long term growth and commitment, (6) conversion, (7) speed and visibility, and (8) impact on U.S. and Ukrainian industry and economy.

DNA received 18 proposals in response to the solicitation. The proposals were evaluated and the nine top-ranked proposals, with scores between 83.9 and 70.0, were considered acceptable and included in the competitive range. SPA's proposal, which received a score of 41.4 and was ranked 16th, was excluded from the

competitive range on the basis that it would require major revisions and a substantial rewrite for it to be made acceptable and have a reasonable chance for award. SPA generally questions the evaluation of its proposal and argues that the agency did not consider cost in establishing the competitive range.

In establishing a competitive range, agencies are required to include only those firms whose proposals are determined to have a reasonable chance of receiving award. Federal Acquisition Regulation (FAR) § 15.609. Offerors have an affirmative obligation to submit an adequately written proposal, and agencies are not required to include a proposal in the competitive range where, in order to be acceptable, it would have to be revised to such an extent that it would be tantamount to a new proposal. Cyber Digital, Inc., B-255225, Feb. 18, 1994, 94-1 CPD ¶ 123; Jack Faucett Assocs., B-253329, Sept. 7, 1993, 93-2 CPD ¶ 154, aff'd, Jack Faucett Assocs.--Recon., B-253329.2, Apr. 12, 1994, 94-1 CPD ¶ 250. Where a protester challenges the elimination of its proposal from the competitive range, our review is limited to considering whether the evaluation and competitive range determination were reasonable and in accordance with the terms of the RFP and applicable regulations and statutes. Better Serv., B-256498.2, Jan. 9, 1995, 95-1 CPD ¶ 11.

Our review confirms that SPA's proposal contained deficiencies and weaknesses which provided a reasonable basis for excluding the firm's proposal from the competitive range.

SPA proposed to convert the small ship line of the Black Sea Ship Yard (BSSY) into a shipyard producing medium size commercial vessels. DNA eliminated SPA's proposal from the competitive range because the agency found it was based on a number of unsupported assumptions which the agency believed made the project too risky for the government to fund. For example, the solicitation called for the offeror to enter into a business venture with the Ukrainian facility that it proposed to convert from military to civilian use; the solicitation specifically advised offerors that DNA would evaluate the business entity that was being proposed and whether the proposal "include[s] some agreement with the Ukrainian partner on the project and their business relationship." Despite this requirement, SPA's proposal provided only a "Declaration of Intentions," which it characterized as a letter of intent to form a joint venture with BSSY; this declaration, viewed by the agency as being "very vague about any future cooperation" and lacking in detail, merely expressed the fact that the parties had considered the possibility of conducting a joint commercial business activity and that "SPA will submit to BSSY a package of its proposals concerning the matter." SPA did not furnish any additional documentation to show that BSSY was committed to going forward with the project. DNA was concerned that it was being requested to accept the risk that BSSY and SPA would be unable to reach a joint venture agreement that was mutually acceptable, and without which the business venture could not go forward. DNA's concern in this regard was intensified by the fact that BSSY currently had a

large commercial order for ships; since the shipyard appeared to be operating at full capacity, the agency believed that BSSY might lack a significant incentive to enter into the joint venture.

DNA also expressed concern at SPA's proposal to obtain working capital for the venture by turning over to the joint venture "up to five" existing BSSY ships that would either be sold or used as collateral to obtain a loan. Since these five ships were necessary to provide the working capital for the entire business venture, the agency viewed the ships as central to the success of the project. In its proposal, however, SPA referenced only an oral agreement with BSSY to provide the ships to the joint venture. In addition, SPA did not provide any details on the ships such as the basis on which they were valued, their current operating condition or how the joint venture would be able to obtain title to the ships from the Ukrainian government. The agency believed that given the importance of these ships to the success of the project, the lack of a firm written commitment by BSSY to provide them, and the lack of details concerning the ships, raised substantial doubts as to the potential success of the proposed project.

Further, DNA concluded that SPA's proposal failed to clearly establish that it would further the stated purpose of the program to convert military facilities to civilian use. SPA proposed to employ people and equipment from the small ship line at BSSY. This line, however, produces both fishing vessels and specialty ships for the Soviet Navy. The agency found that SPA's proposal lacked detail about whether the equipment, resources and personnel that would be redirected to the civilian enterprise were military assets. Without such details, the agency was concerned that any funding it provided would be used to strengthen the existing civilian line, rather than to convert the military base.

Although SPA generally challenges the evaluation, it has not shown that the agency's specific concerns as discussed above were unreasonable. Instead, SPA primarily asserts that the agency did not consider cost in eliminating its proposal from the competitive range. In our view, however, the three aspects of SPA's proposal discussed above were directly relevant to the potential success of SPA's proposed venture. SPA's failure to furnish sufficient detail in these areas to assure the agency that SPA's proposed venture would be successful in furthering the purpose of the program to convert military facilities to civilian use provided a reasonable basis for DNA to evaluate SPA's proposal as technically unacceptable and requiring a major rewrite in order to be acceptable. Since SPA's proposal was technically unacceptable, DNA could properly eliminate the proposal from the

competitive range without considering its proposed cost. See EMSA Ltd. Partnership, B-254900.4, July 26, 1994, 94-2 CPD ¶ 43. Further, a procuring agency has no duty to hold discussions with an offeror whose proposal is properly eliminated from the competitive range. Novel Pharmaceutical, Inc., B-255374, Feb. 24, 1994, 94-1 CPD ¶ 149.¹

The protest is denied.

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¹In addition, SPA generally protests that the agency's procurement practices as they relate to the overall Cooperative Threat Reduction Program are fundamentally flawed. Broad issues such as these, which do not relate directly to the procurement at issue, are outside the scope of our bid protest function. Cajar Defense Support Co., B-240477, Aug. 3, 1990, 90-2 CPD ¶ 100.