



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Systems Integrated

**File:** B-225055

**Date:** February 4, 1987

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### **DIGEST**

Although the General Accounting Office will closely scrutinize an agency decision which results in the inclusion of only one proposal in the competitive range, an initial proposal was properly excluded from the competitive range where it enjoyed no significant technical advantage over that of its closest competitor and where its proposed cost to perform a specified level of effort was some 30 percent higher than the cost of the selected proposal--a quantum differential of more than \$600,000--with no reasonable chance that significant cost reductions would be achieved if discussions were held and a best and final offer requested.

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### **DECISION**

Systems Integrated (SI) protests the award of a contract to Trident Systems, Incorporated under request for proposals (RFP) No. N00039-86-R-0236(Q), issued by the Department of the Navy. The procurement was for technical and analytical services in support of the Navy's antisubmarine warfare (ASW) mission. SI complains that the award was improper because it was not consistent with the RFP's stated evaluation criteria.

We deny the protest.

### **BACKGROUND**

The RFP was issued on May 6, 1986 and contemplated the award of a cost-plus-fixed-fee level of effort contract for a base year period with two 1-year options. The level of effort required in each year of the contract was stated to be 15,600 man-hours of direct labor. The RFP provided that submitted proposals would be evaluated as to both their technical and cost elements with technical considerations being "substantially more important" than proposed cost.

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Although not set forth in the RFP, the Navy's proposal evaluation scheme reflected this description by assigning a weight of 80 percent to technical factors and 20 percent to cost. The stated technical criteria, in descending order of importance, were: (1) Technical Structure (Approach); (2) Technical Structure (Qualifications); (3) Management Structure; and (4) Facilities. (Respectively, these criteria were weighted 40, 20, 10, and 10 percent.) The cost evaluation criteria set forth in the RFP were: (1) Cost Realism (reasonableness and realism of total proposed cost); and (2) Cost Labor (reasonableness and realism of labor costs with respect to the proposed labor mix). These cost criteria, each weighted at 10 percent, were described as being of equal importance.

Ten proposals were received in response to the RFP and were evaluated. SI's technical proposal was awarded 68.1 points out of a maximum total of 80 possible points, the highest rating. Trident's proposal received 66.7 points, the second-highest rating. The remaining technical scores ranged from 64.7 to 35.8.

SI's proposal enjoyed a scoring advantage over Trident's in the Technical Structure (Approach) and Facilities areas, but received lower scores for Technical Structure (Qualifications) and Management Structure. The Navy's evaluators described Trident's proposal overall as "top notch" with a "very mature approach to ASW," and characterized SI's as "a strong proposal, along with Trident. . . ." These narrative descriptions are consistent with the agency's ultimate conclusion that, although SI's proposal was scored some 2 percent higher than Trident's, both proposals were essentially equal technically, with no reported weaknesses or deficiencies in either offer.

The Navy then evaluated the proposals with respect to proposed cost for both the base performance period and the two options. Under the Navy's approach to evaluation of overall cost reasonableness/realism, the proposal with the lowest proposed cost received the maximum number of possible points, 10, with higher-cost offers receiving proportionally fewer points. Trident's total proposed cost of \$2.1 million was fourth low and, accordingly, the proposal was awarded 5.79 points. Because SI's proposed cost of \$2.7 million was the third highest, the proposal only received a rating of 1.72 points for cost reasonableness/realism. (The other proposed costs ranged from a low of some \$1.5 million to a high of approximately \$3.4 million, with corresponding evaluation scores of 10 to 0 for that factor).

Finally, the Navy evaluated the proposals for the reasonableness/realism of the proposed labor mix which was also worth a maximum of 10 points as an evaluation factor. The Navy's evaluators awarded Trident's proposal the full 10 points, describing the proposal as having an "excellent labor mix." SI's proposal received 8 points for this criterion, the second-highest rating, because of the firm's "good subcontractor mix."

At the conclusion of the agency's evaluation of initial proposals, Trident's proposal received the highest overall rating at 82.49 points, followed by SI's proposal with an overall rating of 77.82. The ratings for the remaining eight proposals ranged from 76.09 to 42.8. The Navy determined that none of the proposals was technically unacceptable or unrealistic with respect to proposed cost.

However, the Navy also felt that because Trident's proposal in technical terms was essentially equal to SI's and superior to the others, and because its proposed cost was some 30 percent lower than SI's, the competitive range for discussion purposes should be limited to Trident, in the Navy's judgment, the only firm with a proposal having a reasonable chance of being selected for award. Accordingly, the Navy held discussions with only Trident. These discussions were limited to cost concerns, the Navy having questioned certain elements of Trident's cost proposal, such as the labor rate for the Project Engineer and the escalation factor for the option years. As a result of these discussions, the Navy was able to negotiate a 3.5 percent reduction in Trident's total cost. The firm was awarded the contract on October 24, and SI then filed this protest with our Office.

#### PROTEST POSITION

SI's essential ground of protest is that it was improper for the Navy to award the contract to Trident on the basis of its lower proposed cost, since this was not consistent with the stated evaluation criteria. SI points out that, under the express terms of the solicitation, technical considerations were weighted much higher than cost factors, and that its proposal, in fact, had received the greatest number of technical evaluation points. The firm contends that the Navy therefore deviated from the established evaluation scheme and misled the firm to its prejudice. SI argues that, at a minimum, if the Navy believed that cost had become the determinative factor for selection purposes, the agency should have requested best and final offers to allow the other firms the opportunity to submit revised proposals.

SI urges that it would have substantially reduced its proposed cost had it been able, as the result of discussions, to submit a best and final offer.

#### ANALYSIS

Although SI argues that the award was a reflection of the Navy's improper deviation from the evaluation criteria set forth in the RFP, we view the protest as essentially a challenge to the agency's competitive range determination which resulted in the exclusion of all but one offeror, Trident, from further award consideration.

The purpose of a competitive range determination in a negotiated procurement is to select those offerors with which the contracting agency will hold written or oral discussions. Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.609(a) (1986); S&O Corp., B-219420, Oct. 28, 1985, 85-2 CPD ¶ 471. We have consistently defined the competitive range as consisting of all proposals that have a "reasonable chance" of being selected for award, that is, as including those proposals which are technically acceptable as submitted or which are reasonably susceptible of being made acceptable through discussions. Information Systems & Networks Corp., B-220661, Jan. 13, 1986, 86-1 CPD ¶ 30; Fairchild Weston Systems, Inc., B-218470, July 11, 1985, 85-2 CPD ¶ 39. The FAR, 48 C.F.R. § 15.609(a), *supra*, mirrors this definition and provides that if doubt exists as to whether a proposal is in the competitive range, the proposal should be included. This is consistent with the overriding mandate of the Competition in Contracting Act of 1984 that military agencies obtain "full and open competition" in their procurements. 10 U.S.C. § 2304(a)(1)(A) (Supp. III 1985). Thus, as a general rule, an agency should endeavor to broaden the competitive range since this will maximize the competition and provide fairness to the various offerors. See Cotton & Co., B-210849, Oct. 12, 1983, 83-2 CPD ¶ 451.

However, we also recognize that the determination of whether a proposal is in the competitive range is principally a matter within the contracting agency's reasonable exercise of its discretion. *Id.* at 4.; see also Tracor Marine, Inc., B-222484, Aug. 5, 1986, 86-2 CPD ¶ 150. Hence, although we always closely scrutinize an agency decision which results, as here, in a competitive range of one, Art Anderson Assocs., B-193054, Jan. 29, 1980, 80-1 CPD ¶ 77, we will not disturb that determination absent a clear showing that it was

unreasonable, arbitrary, or in violation of procurement laws or regulations. Intelcom Support Services, Inc., B-222547, Aug. 1, 1986, 86-2 CPD ¶ 135; Communication Mfg. Co., B-215978, Nov. 5, 1984, 84-2 CPD ¶ 497.

It is an acceptable practice for an agency to determine whether or not to include a proposal within the competitive range by comparing the initial proposal evaluation scores and the offeror's relative standing among its competitors. Joule Engineering Corp.--Reconsideration, 64 Comp. Gen. 540 (1985), 85-1 CPD ¶ 589; JDR Systems Corp., B-214639, Sept. 19, 1984, 84-2 CPD ¶ 325. This "relative" approach to determining the competitive range may be used even where the result is a competitive range of one. See Information Systems & Networks Corp., B-220661, supra. Therefore, a proposal that is technically acceptable as submitted need not be included in the competitive range when, relative to other acceptable offers, it is determined to have no reasonable chance of being selected for award. Lee J. Kriegsfeld, B-222865, Aug. 22, 1986, 86-2 CPD ¶ 214; Cosmos Engineers, Inc., B-218318, May 1, 1985, 85-1 CPD ¶ 491.

Moreover, in this regard, cost or price may emerge as the dominant factor in a competitive range decision. See Communication Mfg. Co., B-215978, supra. This is properly so because, by low and implementing regulation, the competitive range is to be determined on the basis of "cost or price and other factors" that were stated in the solicitation. FAR, 48 C.F.R. § 15.609(a), supra. Hence, pertinent to this case, the fact that the evaluation criteria under a solicitation contemplating the award of a cost-type contract placed greater emphasis on technical factors than on cost did not waive the agency's right to consider cost in determining the competitive range for that procurement. 10 U.S.C. § 2305(b)(4)(B); Tracor Marine, Inc., B-222484, supra, 86-2 CPD ¶ 150 at 3.

In Tracor, we held that the protester's clearly technically superior initial proposal (with a score of 896 versus 780 for the next-ranked offeror) was properly excluded from the competitive range on the ground that its proposed cost, which greatly exceeded the costs of the two other technically acceptable proposals, was so high that it had no reasonable chance of being selected for award. For similar reasons, we raised no objection to an agency's exclusion from the competitive range of the third-ranked initial technical proposal (receiving 70.2 points versus 78.8 and 77.1 for its competitors) where the agency, after conducting a cost analysis, determined that the reasonable cost of the proposal was approximately 35 percent higher than the more costly of

the other two technically acceptable proposals. Jack Faucett Assocs., B-224414, Sept. 16, 1986, 86-2 CPD ¶ 310.


We believe the same rationale which allows cost to become the dominant factor for competitive range purposes applies here to justify the Navy's exclusion of SI's proposal from further award consideration. Although SI's proposal may have enjoyed a slight advantage over Trident's in terms of the number of technical points awarded, under our prior precedent we see nothing improper in the agency's determination that this 2 percent higher rating did not represent any meaningful superiority in the technical merit of SI's proposal. See Polaris, Inc., B-220066, Dec. 16, 1985, 85-2 CPD ¶ 669; cf. Harrison Systems Ltd., 63 Comp. Gen. 379 (1984), 84-1 CPD ¶ 572; Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325 (proposals with, respectively, 14.4 and 15.8 percent scoring differentials reasonably found to be essentially equal technically for source selection purposes). Thus, as in those source selection decisions, the Navy's finding of technical equivalency between Trident's and SI's proposal meant that cost necessarily became the determinative consideration affecting SI's entitlement to inclusion in the competitive range.

As indicated, the Navy's ultimate conclusion that SI's proposal had no reasonable chance of being selected for award rested on the fact that its proposed cost was 30 percent higher than Trident's. We have examined SI's cost proposal, and we have no basis to question the Navy's implicit finding that SI, even if given the opportunity to submit a best and final offer, would not be able to make cost reductions significant enough to make the proposal more advantageous to the government. See Cotton & Co., B-210849, supra, 83-2 CPD ¶ 451 at 5. We note that the contemplated contract was for a specified level of effort (man-hours) in which the final cost would largely depend upon the proposed mix of personnel. Since SI in fact received a high score under that very evaluation criterion, it is reasonable to assume that the proposed cost of the offer in terms of direct labor charges reasonably reflected what it would actually cost the government if the contract were performed by SI using that labor mix. Hence, major cost rejections, even if made by SI, might well have served to reduce the quality of the proposed labor mix or weaken the favorable technical aspects of the offer. In this regard, Trident, proposing what the agency regarded as an excellent labor mix, made no significant reductions in its proposed cost even after the agency conducted discussions with the firm to achieve its cost realism negotiation

objectives. We do not think that the record, therefore, indicates that SI, whose proposal was also favorable evaluated in this area, would have been able to make cost reductions proportionally much greater than those made by Trident.

It is significant to note that the cost differential between SI's offer and Trident's is not only 30 percent but also represents a cost quantum in excess of \$600,000. In our view, this fact fairly suggests that despite SI's present assertion that it would have reduced its cost substantially if given the opportunity to do so through discussions, the Navy had no reason to believe at the time the competitive range determination was made that SI could make a significant reduction and still have a reasonable chance for award. See Jack Faucett Assocs., B-224414, supra, 86-2 CPD ¶ 310 at 3. It is well settled that initial competitive range determinations are based upon initial proposals, so that a firm that does not submit its best cost or price at the first opportunity always runs the risk of being excluded from further competition for the award. Cosmos Engineers, B-218318, supra; Informatics General Corp., B-210709, June 30, 1983, 83-2 CPD ¶ 47. We do not find that SI has a legally sufficient basis to complain of its exclusion here.

The protest is denied.

*for*   
Harry R. Van Cleve  
General Counsel