

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Digital Technologies, Inc.

File: B-406085; B-406085.2

Date: February 6, 2012

Robert A. Klein, Digital Technologies, Inc., for the protester.
Melissa McClellan, Esq., Department of Agriculture, Farm Service Agency, for the agency.
Frank Maguire, Esq., and Scott H. Riback, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's price realism evaluation is sustained where agency failed to consider proposed prices from all offerors in its analysis (as required by the terms of the solicitation) and agency's rationale for finding protester's prices unrealistic is not otherwise supported by the record.

DECISION

Digital Technologies, Inc. (DTI), of Sterling, Virginia, protests the Department of Agriculture, Farm Service Agency's (FSA) award of a contract to Sotec Government Solutions, Inc. (SGS) of Herndon, Virginia, under request for proposals (RFP) No. AG-3151-S-11-0030 for computer hardware maintenance support. DTI asserts that the agency's evaluation of its proposal was improper.

We sustain the protest.

BACKGROUND

The RFP requested proposals for a fixed priced contract for a six-month base period and four 1-year option periods, to supply labor, supervision, tools, materials, parts, equipment, and transportation needed to maintain approximately 2,500 IBM model AS 400 computers installed throughout the United States and its territories. RFP at 3. The solicitation advised that award would be made on a "best value" basis, considering technical capability/approach, past performance, and price, with the non-price considerations deemed significantly more important than price. RFP, at 49-52. With regard to price, the RFP provided that the agency would perform an

evaluation to ensure that prices were reasonable, realistic and complete. Id. at 52. The RFP further provided: “The Government will evaluate price based on comparative, competitive pricing among the offerors. The overall price offered will be used for comparison for evaluation purposes.” RFP at 52.

The agency received seven proposals in response to the RFP. Agency Report (AR) at 2. A Technical Evaluation Panel (TEP) evaluated the proposals and prepared a consensus summary report. AR, exh. G. Both DTI and SGS received ratings of outstanding for each of the non-price factors, and both proposals were found to have numerous strengths and no weaknesses. Id. at 4. In particular, SGS proposed to perform with the incumbent workforce. Id. at 18. The following chart summarizes the overall technical rankings and total prices of all offerors:

Offeror	Overall Technical Rating¹	Total Price
Offeror A	Marginal	\$4,328,872
Offeror B	Marginal	\$6,463,207
Offeror C	Acceptable	\$8,482,188
Offeror D	Marginal	\$8,554,880
DTI	Outstanding	\$8,991,643
Offeror E	Marginal	\$10,398,122
SGS	Outstanding	\$12,558,223

AR exh. G; Agency Price Submission to GAO, Jan. 26, 2012.

The record shows that, in making an award recommendation, the agency’s contract specialist considered only the DTI and SGS proposals (as well as the independent government estimate (IGE))² when conducting the agency’s price evaluation and best value trade-off analysis. AR, exh. F, at 5.³ The contract specialist recommended that award should be made to SGS because the protester’s pricing in the option years was below the government estimate, as well as the overall price offered by SGS, thereby leading the contract specialist to conclude that DTI’s pricing was unrealistic. Id. The agency made award to SGS and this protest followed.

¹ Here, we do not set out the rankings for individual non-price evaluation factors and subfactors, since they are not relevant to our decision.

² Because the protester here did not have counsel and there was no Protective Order, the IGE was not provided to the protester as part of the agency report. The IGE, however, was provided to our Office and was part of our review.

³ This memorandum was subsequently signed by the contracting officer and became the agency’s source selection memorandum.

PROTEST

DTI challenges the agency's determination that its proposed price was unrealistically low and posed a performance risk. The protester asserts that the agency should have compared its price not just with the IGE and SGS's price, but also with all of the other offerors' prices. The protester points out that, because it is teamed with IBM (the original equipment manufacturer), it is able to realize savings on any required spare parts necessary to maintain the machines, and that such savings would not be available to other prospective vendors such as SGS who, the protester assumes, would have to acquire spare parts on the open market. The protester also notes that, as described in its proposal, its teaming arrangement with IBM allows it to use IBM's extensive network of support personnel to meet the requirements of the contract, and that there is virtually no risk related to awarding the contract to it based on these considerations.

Where, as here, a solicitation provides for the award of a fixed-price contract, an agency may provide for the use of a price realism analysis for the limited purpose of measuring a vendor's understanding of the requirements or to assess the risk inherent in a vendor's proposal. See Ball Aerospace & Tech. Corp., B-402148, Jan. 25, 2010, 2010 CPD ¶ 37 at 8. The nature and extent of an agency's price realism analysis are matters within the agency's discretion. Star Mountain, Inc., B-285883, Oct. 25, 2000, 2000 CPD ¶ 189 at 6. Nonetheless, it is axiomatic that an agency's price evaluation must, at a minimum, comport with the terms of the solicitation.

Here, as noted, the RFP expressly provided that the agency would compare the competitive pricing presented by all of the offerors, and that the overall prices would be the basis for the agency's comparison. Notwithstanding this express solicitation requirement, the record shows that in performing its price realism evaluation, the agency confined its comparison of the protester's price to only SGS's proposed price and the IGE in determining the realism of DTI's proposed price. Had the agency compared DTI's proposed price to the prices proposed by all seven offerors, it would not have had a reasonable basis to find DTI's price unrealistic.⁴ Specifically, the record shows that, of the seven proposals, three (including the protester's) were closely clustered within \$500,000 of one another, and four of the seven offers were for a price less than the price proposed by the protester. Agency Submission to GAO, Jan. 26, 2012. In fact, of the seven prices submitted, the only

⁴ The record shows that the agency's focus was, to some extent, based on DTI's prices in the option years of the contract. AR, exh. F, at 5. However, any such focus was inconsistent with the terms of the RFP which provided that overall price--as opposed to any particular element of the proposed prices--would be the basis of the agency's comparison. RFP at 52.

apparent outlier was the awardee's price, which was more than 20 percent higher than the next highest priced proposal. Id.

The record also shows that a comparison of the protester's price to the government estimate (which was almost equal to the awardee's price) also should not reasonably have led the agency to question the realism of the protester's price. In this regard, the record shows that the government estimate was expressly based on assumptions that either were inconsistent with historical data presented in the RFP or simply inapplicable to the protester. In particular, the government estimate states: "As the equipment continues to age, the cost to repair the systems will continue to climb and there could be an escalation in failures and/or parts shortages."

In contrast to this assumption, the RFP included historical data from 2008 through 2010 showing that, during this interval, the number of service calls declined by approximately 14.6 percent. Additionally, there is no basis to conclude that DTI will be subject to potential parts shortages identified as a concern in the IGE that may be experienced by other vendors such as the awardee. This is because DTI is teamed with IBM, the original equipment manufacturer. DTI's proposal specifically provides: "All parts are new, equivalent to new or certified spare parts, and are exact replacements as specified by DTI/IBM TEAM and FSA as required." DTI Technical Proposal at 9.

Although the source selection memorandum states that DTI's price reflects a "significant risk" to the government, it does not explain what the basis of that risk is, other than to quote from the government estimate which, as discussed, does not provide a basis for finding DTI's price unrealistic.⁵ In contrast, DTI's proposal received outstanding ratings under each of the solicitation's non-price evaluation factors and elements, with no mention of any weaknesses or discussion of risk. AR, exh. G, at 5-6. With respect to its technical proposal, the evaluators found that it exceeded the RFP's requirements, and specifically identified as strengths DTI's plan to handle parts issues, and its description of its plan to handle the fact that the equipment is approaching the end of its lifecycle (the agency termed this plan "excellent"). AR, exh. G, at 5.

In sum, the agency's price realism determination failed to comport with the RFP's evaluation scheme and also failed to take into consideration the unique elements of DTI's proposal (most notably its relationship with IBM) that may have explained its lower price relative to the awardee's price. The agency's price realism evaluation also failed to consider the outstanding technical rating assigned to DTI's proposal

⁵ The language quoted above from the IGE is quoted verbatim in the source selection memorandum and is offered as the sole basis for considering the DTI price unrealistic. AR, exh. F, at 5.

which was based, in part, on DTI's strengths in handling "end of life" and parts issues. In light of these considerations, we sustain DTI's protest.

RECOMMENDATION

We recommend that the agency perform a price evaluation that comports with the discussion above and make a new source selection decision.⁶ If, at the conclusion of the price evaluation, the agency decides to make award to DTI, we recommend that the agency terminate the awardee's contract for the convenience of the government. We also recommend that DTI be reimbursed its reasonable costs of filing and pursuing the protest. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (2011). The protester's certified claims for such costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Lynn H. Gibson
General Counsel

⁶ For the record, absent a competitive range determination (which would be made for the purpose of conducting discussions), the agency here cannot properly ignore the lower prices offered by other acceptable offerors. Specifically, before an agency can select a higher-priced proposal that has been rated technically superior to a lower-priced but acceptable one, the award decision must be supported by a rational explanation of why the higher-rated proposal is, in fact, superior, and explaining why its technical superiority warrants paying a price premium. Coastal Environments, Inc., B-401889, Dec. 18, 2009, 2009 CPD ¶ 261 at 4-5.