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## Decision

**Matter of:** Digicon Corporation; Intelligent Decisions, Inc.

**File:** B-406184; B-406184.2; B-406184.5

**Date:** March 5, 2012

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Craig S. King, Esq., Richard J. Webber, Esq., and Patrick R. Quigley, Esq., Arent Fox LLP, for Digicon Corporation, and David S. Cohen, Esq., John J. O'Brien, Esq., and Gabriel E. Kennon, Esq., Cohen Mohr LLP, for Intelligent Decisions, Inc., the protesters.

Jonathan A. Baker, Esq., Department of Health and Human Services, for the agency. Louis A. Chiarella, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

The agency reasonably excluded the protesters' proposals from the competitive range where the proposals failed to demonstrate, within the solicitation's identified page limitations, that the protesters satisfied the solicitation's technical understanding and capability requirements, and where the unacceptable offers were not among the most highly rated proposals.

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### DECISION

Digicon Corporation, of Rockville, Maryland, and Intelligent Decisions, Inc., of Ashburn, Virginia, protest the exclusion of their proposals from the competitive range under request for proposals (RFP) No. NIHJT2010001, issued by the Department of Health and Human Services, National Institutes of Health (NIH), for the Chief Information Officer - Solutions and Partners 3 (CIO-SP3) government-wide acquisition contract (GWAC) for information technology (IT) solutions and services. Digicon and Intelligent Decisions contend that NIH's evaluation of their proposals as well as the subsequent determination to exclude the proposals from the competitive range were improper.

We deny the protests.

### BACKGROUND

Pursuant to Section 5112(e) of the Clinger-Cohen Act of 1996, 40 U.S.C. § 11302(e) (2006), the Office of Management and Budget has designated NIH as an executive

agent for government-wide IT acquisitions, including the CIO-SP3 GWAC. In general terms, the statement of work here required the contractor to furnish all material, personnel, facilities, and support necessary to provide general IT services, as well as health, health science, and biomedical-related IT services, to meet agencies' scientific, health administrative, operational, managerial, and information management requirements. Statement of Work (SOW) § C.1.

The RFP, issued on September 10, 2010, contemplated the award without discussions of 35 to 40 indefinite-delivery, indefinite-quantity (ID/IQ) contracts, under which fixed-price, cost-reimbursement, and time-and-materials-type task orders would be issued.<sup>1</sup> RFP § L.1.4. The solicitation established that the CIO-SP3 GWAC would have an ordering period of 10 years, a maximum order amount of \$20 billion, and a guaranteed minimum amount of \$250 per awardee. RFP § B.5. The RFP identified five evaluation factors in descending order of importance: management and technical approach; technical understanding and capability, including ten task areas or subfactors<sup>2</sup>; small disadvantaged business (SDB) participation; past performance; and price/cost. The non-price/cost factors, when combined, were significantly more important than price/cost, and award was to be made to the responsible offerors whose proposals were determined to be the “best value” to the government all factors considered. RFP § M.1.

The RFP contained detailed instructions regarding the submission of proposals. Relevant to the protests here, the solicitation required each proposal to be divided into six separate sections—one for each of the stated evaluation factors as well as a general business section. RFP § L.2.12. The RFP also established page limits for each section of the proposal, including a 30-page limit for the technical understanding and capability section, and stated that “[i]f offerors exceed the page limitations cited, the excess pages will not be considered.” Id. Additionally, the RFP informed offerors that while they could form “contractor team arrangements” (CTA) as defined by Federal Acquisition Regulation (FAR) § 9.601, the agency would not consider the experience of proposed subcontractors in evaluating the technical understanding and capability factor. See RFP §§ M.1.3, L.3.1.6.

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<sup>1</sup> The agency reserved the right to make more or less contract awards than the estimated number. RFP § L.1.4.

<sup>2</sup> The ten technical understanding and capability task areas/subfactors were: (1) IT services for biomedical research and healthcare; (2) chief information officer support; (3) imaging; (4) outsourcing; (5) IT operations and maintenance; (6) integration services; (7) critical infrastructure protection and information assurance; (8) digital government; (9) enterprise resource planning; and (10) software development. RFP § M-4.

In addition, the RFP specifically provided that the technical understanding and capability factor would be evaluated as follows:

Offerors are required to demonstrate their ability to perform in all the task areas identified in Section C, and as such, shall address each task area separately. The government will evaluate the degree to which the offeror demonstrates relevant experience and/or qualifications in each of the specific task areas proposed including the offeror’s proposed methodology, technical approach, and quality control process. This will include an assessment of any risks associated with the offeror in meeting the technical capabilities required.

RFP § M.2.3.

Sixty-six offerors, including Digicon and Intelligent Decisions, submitted proposals by the November 19 closing date. An agency technical evaluation panel (TEP) evaluated offerors’ proposals using an adjectival rating system (set forth in the RFP) for the non-price/cost factors: highly acceptable; very acceptable; acceptable; and unacceptable. A separate adjectival/color rating system was used for the price/cost factor. The agency’s evaluation ratings of the Digicon and Intelligent Decisions proposals were as follows:

<b>Factor</b>	<b>Digicon</b>	<b>Intelligent Decisions</b>
Management and Technical Approach	Acceptable	Acceptable
Technical Understanding and Capability	Unacceptable	Unacceptable
SDB Participation	Acceptable	Acceptable
Past Performance	Very Acceptable	Acceptable
Price/Cost	Green	Green

Competitive Range Determination at 8.

With regard to the technical understanding and capability factor, the TEP concluded that Digicon’s proposal was “very acceptable” in three task areas, “acceptable” in five task areas, and “unacceptable” in two task areas--integration services and enterprise resource planning. Digicon Technical Understanding Evaluation at 5-6. Similarly, the agency evaluators concluded that Intelligent Decisions’ proposal was “very acceptable” in one task area, “acceptable” in seven task areas, and “unacceptable” in two task areas--imaging and enterprise resource planning. Intelligent Decisions Technical Understanding Evaluation at 4-5.

The contracting officer then determined that discussions with offerors were necessary, and established a competitive range consisting of the forty-nine most highly-rated proposals based on consideration of all evaluation factors. The agency

eliminated the Digicon and Intelligent Decisions proposals (ranked number 56 and number 57, respectively) from the competitive range based on the determination that each firm's proposal had material failures which rendered it unacceptable under the technical understanding and capability factor. Competitive Range Determination at 12-15. These protests followed.

## DISCUSSION

Our Office will review an agency's evaluation and exclusion of a proposal from the competitive range for reasonableness and consistency with the solicitation criteria and applicable statutes and regulations. Outreach Process Partners, LLC, B-405529, Nov. 21, 2011, 2011 CPD ¶ 255 at 3. In this regard, contracting agencies are not required to retain in the competitive range proposals that are not among the most highly rated or that the agency otherwise reasonably concludes have no realistic prospect of being selected for award. FAR § 15.306(c); Wahkontah Servs., Inc., B-292768, Nov. 18, 2003, 2003 CPD ¶ 214 at 5. Further, a protester's mere disagreement with an agency's evaluation and competitive range judgment does not establish that the agency acted unreasonably. Government Telecomms., Inc., B-299542.2, June 21, 2007, 2007 CPD ¶ 136 at 4.

Based upon our review of the record, NIH's evaluation of the Digicon and Intelligent Decisions proposals and subsequent exclusion of the offerors' proposals from the competitive range were reasonable. Although we do not specifically address here all of the protesters' arguments about the evaluation of their proposals and consequent exclusion from the competitive range, we have fully considered all of them and find that they afford no basis to question the agency's competitive range decision.

### Evaluation of Digicon

Digicon challenges the agency's evaluation and determination that its proposal was unacceptable with respect to the integration services and enterprise resource planning task areas/subfactors under the technical understanding and capability factor. Regarding the integration services task area, the TEP found that the experience and qualifications cited in Digicon's proposal belonged to Digicon's team members, but not Digicon itself.<sup>3</sup> Specifically, the NIH evaluators noted that it was

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<sup>3</sup> Digicon's management and technical approach proposal stated that it had "assembled some of the brightest and most innovative businesses . . . that will provide the necessary expertise to ensure that all task orders in all ten Task Areas are addressed to the highest standard." Digicon Management Proposal at 2. The proposal then listed the subcontractors which comprised "the Digicon Team." Id. at 2-3. However, the offeror expressly stated that "Digicon is not proposing any Contractor Team Arrangements (CTA) as defined by FAR 9.601(1)." Digicon Proposal, CTA Statement.

Digicon's team members CareFusion, Standard Register, REI Systems, and Elicere that had provided the integration support services in the referenced contracts. Since the TEP concluded that the experience and/or qualifications attributable to Digicon subcontractors could not be considered in accordance with the terms of the RFP, the TEP found Digicon's proposal to be deficient in this regard. Digicon Technical Understanding Evaluation at 5.

Digicon argues that the technical evaluators ignored substantial evidence in its proposal of Digicon's own integration support services experience. For example, Digicon stated in its proposal that, "[f]or the Department of Education, the Digicon Team modeled and streamlined the Department's budgeting process and reformatted the use of the Intranet for department business operations." Digicon Technical Understanding Proposal at 19. While acknowledging that its proposal in many instances used the language "Digicon Team" when referring to Digicon and the subcontractors with which it intended to perform the CIO-SP3 contract, the protester asserts that here the language "Digicon Team" had a different meaning. Specifically, Digicon argues that it performed the work performed at the Department of Education without subcontractors, and the evaluators should have recognized that this was the case. Digicon Protest, Nov. 25, 2011, at 9-10.

We find no merit to the protester's arguments. An agency's evaluation is dependent on the information furnished in a proposal; thus, it is the offeror's responsibility to submit an adequately written proposal for the agency to evaluate. Outreach Process Partners, LLC, *supra*, at 5; SC&A, Inc., B-270160.2, Apr. 10, 1996, 96-1 CPD ¶ 197 at 5. Accordingly, an offeror that does not submit an adequately written proposal runs the risk of having its proposal rejected as unacceptable. Henry Schein, Inc., B-405319, Oct. 18, 2011, 2011 CPD ¶ 264 at 7; L-3 Commc'ns EOTech, Inc., B-311453, B-311453.2, July 14, 2008, 2008 CPD ¶ 139 at 4.

Digicon essentially argues that its use of the term "Digicon Team" had different meanings at different times; in most instances it referred to the team proposed to perform the CIO-SP3 contract, but in this particular instance it meant only Digicon. The protester fails to explain, however, how the TEP would know the offeror's Department of Education reference involved no subcontractors even though the proposal used the term "Digicon Team."<sup>4</sup> Moreover, the TEP found that Digicon's Department of Education reference lacked sufficient detail to show the capability to perform integration services: "[w]e could not definitely identify integration services among the activities there described." Declaration of TEP Chairperson, Jan. 3, 2012,

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<sup>4</sup> Indeed, Digicon's team members on its cited references were often its team members here (e.g., proposed subcontractors CareFusion and Standard Register were team members for the referenced barcode-enabled point of care technology (BEAPOCT) system), making the "Digicon Team" distinctions advanced by the protester even less apparent from the proposal.

at 2. In these circumstances, we see no basis to find unreasonable the agency's conclusion that references to the "Digicon Team" indicated performance by proposed "Digicon Team" subcontractors, for which the offeror was not entitled to credit under the terms of the solicitation.<sup>5</sup>

Digicon also asserts that for its referenced BEAPOCT contract, it was the prime contractor and had experience designing and implementing the program. The protester argues that, as the prime contractor, it is entitled to receive credit for the performance of its subcontractors. Digicon Protest, Nov. 25, 2011, at 11. The TEP, however, found that the integration services work described in Digicon's proposal for the BEAPOCT contract was actually performed by CareFusion and Standard Register, not Digicon. Declaration of TEP Chairperson, Jan. 3, 2012, at 3-4. Additionally, while our Office has held that an agency may generally credit the prime contractor with experience involving functions performed, even if the particular work was actually performed by a subcontractor under the prime contractor's supervision, ITT Corp., Sys. Div., B-310102.6 et al., Dec. 4, 2009, 2010 CPD ¶ 12 at 9, to do so here would render meaningless the unambiguous solicitation provision establishing that an offeror would not receive credit for the experience of its proposed subcontractors. RFP §§ M.1.3, L.3.1.6.

Digicon next challenges NIH's evaluation under the enterprise resource planning task area/subfactor. The TEP found that although Digicon's proposal demonstrated an understanding of enterprise resource planning, the proposal demonstrated no qualifications or experience in this specific task area that were attributable to Digicon itself.<sup>6</sup> The TEP concluded that Digicon's proposal was so lacking in this area that the offeror could not be expected to perform satisfactorily. Digicon Technical Understanding Evaluation at 5-6.

Digicon argues that the agency's evaluation was unreasonable because, under the plain language of the RFP, an offeror could submit a technically acceptable proposal that discussed only its enterprise resource planning methodology. The protester

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<sup>5</sup> Digicon also asserts that other portions of its proposal showed the offeror's own experience. Digicon Protest, Nov. 25, 2011, at 10. The record reflects, however, that the TEP considered these aspects of Digicon's proposal and found that the described activities either did not involve integration services or were statements of what the offeror could do (as opposed to evidence of actual Digicon experience). Declaration of TEP Chairperson, Jan. 3, 2012, at 3. Digicon has not shown these evaluation judgments to be unreasonable.

<sup>6</sup> The TEP also found that in addition to providing no information on Digicon's experience and/or internal resources, there are no examples of other experience and/or qualifications such as: internal initiatives, certifications, training programs, joint research projects, participation in industry organizations, and membership in government councils. Digicon Technical Understanding Evaluation at 6.

refers to the applicable RFP proposal preparation instruction, which stated as follows:

Offerors are required to demonstrate their ability to perform in all the task areas identified in Section C, and as such, shall address each task area separately. This explanation may include examples of experience and/or qualifications . . . . The proposal shall demonstrate the methodology and technical approach to be applied under each task area including applicable reference to the contractor's quality control process.

RFP § L.3.3 (emphasis added). Digicon argues that because section L.3.3 included a requirement for offerors to submit information regarding methodology, but only used permissive language with respect to providing examples of experience and/or qualifications, the agency's decision to find Digicon's proposal technically unacceptable was improper. We disagree.

As set forth above, RFP § M, Evaluation Factors for Award, directed how offerors' technical understanding and capability proposals would be evaluated, stating as follows:

Offerors are required to demonstrate their ability to perform in all the task areas . . . . The government will evaluate the degree to which the offeror demonstrates relevant experience and/or qualifications in . . . the specific task areas proposed including the offeror's proposed methodology, technical approach, and quality control process.

RFP § M.2.3. Under this language, the agency was required to evaluate the degree to which an offeror's proposal demonstrated experience, qualifications, and methodology establishing its ability to perform all task areas. Accordingly, in our view, the solicitation statement of evaluation factors placed offerors on notice that failure to demonstrate experience in all task areas could result in an evaluation finding of unacceptability.

In any case, to the extent that there was any inconsistency between the RFP's proposal preparation instructions and the RFP's statement of evaluation factors, this constituted a patent ambiguity that was apparent prior to the time set for receipt of quotations. In accordance with our Bid Protest Regulations, 4 C.F.R. § 21.2(a) (2011), solicitation improprieties apparent prior to the time set for receipt of quotations must be filed prior to that time. Having failed to seek clarification or file a protest before the closing time of the RFP, Digicon may not now assert that the only legally permissible interpretation of the ambiguity is its own. Kellogg Brown & Root, Inc., B-291769, B-291769.2, Mar. 24, 2003, 2003 CPD ¶ 96 at 8-9.

Digicon's proposal demonstrated no enterprise resource planning experience and qualifications, instead discussing only methodology, which the agency evaluators fully considered. Notwithstanding the fact that Digicon's proposal demonstrated an understanding of enterprise resource planning, the TEP found that Digicon's lack of demonstrated experience and qualifications called into question Digicon's ability to perform satisfactorily such as to render its proposal unacceptable under this subfactor as well. Digicon has not shown this evaluation judgment to be either inconsistent with the terms of the RFP or otherwise unreasonable. We therefore find no basis on which to question the exclusion of Digicon's proposal from the competitive range.

### Evaluation of Intelligent Decisions

Intelligent Decisions challenges the agency's determination that its proposal was unacceptable under the imaging and enterprise resource planning task areas/subfactors of the technical understanding and capability evaluation factor. Under the imaging task area, the TEP found that Intelligent Decisions' proposal was unclear as to the experience and qualifications provided by the offeror rather than those provided by "consultants," and that the proposal did not identify the consultants or their relationship to the offeror. The evaluators also found Intelligent Decisions' discussion in its proposal of its methodology in this area to be minimal and generic, and not specific to Imaging. The TEP concluded that without demonstrated experience and/or qualifications on the part of Intelligent Decisions itself, the proposal failed to adequately demonstrate the offeror's ability to perform the Imaging task.

Intelligent Decisions asserts that in addition to the information about its imaging experience in the technical understanding and capability section of its proposal, it provided additional information in the past performance section of its proposal regarding its imaging experience. Intelligent Decisions contends that as a result of having separate agency evaluation panels examine distinct aspects of the offerors' proposals, the evaluation under the technical understanding and capability section improperly failed to consider past performance information relevant to the offeror's experience.

We disagree. As a general rule, a bid or proposal submitted to the government is properly evaluated by reading the bid or proposal as a whole. Excalibur Laundries, Inc., B-405814, B-405814.2, Jan. 3, 2012, 2012 CPD ¶ 1 at 4; EC Corp., B-266165.2, Feb. 20, 1996, 96-1 CPD ¶ 153 at 3. Here, however, the solicitation specified page limitations for responses under each evaluation factor (the technical understanding and capability submission was limited to 30 pages), and stated that "[i]f offerors



exceed the page limitations cited, the excess pages will not be considered.”<sup>7</sup> RFP § L.2.12. Moreover, allowing the protester to satisfy the technical understanding and capability factor requirements by reference to other parts of its proposal would improperly increase the number of pages permitted for addressing company experience, without allowing other offerors the same opportunity. See Outreach Process Partners, LLC, *supra*, at 4-5; North Wind, Inc.; Earth Res. Tech., Inc., B-404880.4 *et al.*, Nov. 4, 2011, 2011 CPD ¶ 246 at 12 (an agency improperly considered portions of an awardee’s proposal that were outside the solicitation stated page limitations). In this regard, it is a fundamental principle of government procurement that competition must be conducted on an equal basis; that is, offerors must be treated equally and be provided with a common basis for the preparation of their proposals. Electronic Design, Inc., B-279662.2 *et al.*, Aug. 31, 1998, 98-2 CPD ¶ 69 at 10.

Intelligent Decisions further argues that its technical understanding and capability proposal adequately demonstrated its experience and ability to perform the imaging task. While acknowledging that the term “consultant” appeared in discussions of its experience in this regard, including a key contract involving the U.S. Patent and Trademark Office (USPTO), the protester argues that a fair reading of the proposal demonstrates that the tasks were being performed by Intelligent Decisions itself rather than by consultants. According to the protester, its “consultants” were in fact Intelligent Decisions employees, although this was not stated in the proposal. Intelligent Decisions Protest, Dec. 1, 2011, at 18-21.

Intelligent Decisions described generally its imaging experience on the referenced USPTO contract as one where the offeror “provided consulting support services for four ‘Documentum’<sup>8</sup> consultants to perform Documentum architecture and equivalent strategic-level consulting and advisory functions to the USPTO.” Intelligent Decisions Technical Understanding Proposal at 11. Elsewhere in its proposal, Intelligent Decisions stated that, “[t]he Documentum consultant[s] provide close coordination with the customer’s Documentum project team.” *Id.* While the protester maintains that it used the term “consultants” here because USPTO did likewise when referring to Intelligent Decisions in connection with the contract, we note that the offeror used the same language when describing its other relevant experience, *e.g.*, “supports the National Geospatial-Intelligence Agency (NGA) with several high level technical

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<sup>7</sup> To the extent that Intelligent Decisions believes that the RFP’s page limitations were too restrictive or that the solicitation’s instructions were ambiguous with respect to the stated limitations, these alleged apparent solicitation improprieties were required to be protested prior to the closing time for receipt of proposals. See 4 C.F.R. § 21.2(a)(1); SMARTnet, Inc., B-400651.2, Jan. 27, 2009, 2009 CPD ¶ 34 at 6 n.10.

<sup>8</sup> “Documentum” is a document management software system, produced by the EMC Corporation, in which content of all types (*e.g.*, business documents, photos, video, medical images, e-mail, web pages) is stored.

consultants,” “has 2 consultants with a combined experience of 34 years in Document Management System,” and “consults with [Department of Justice] – Civil Rights Division on the expansion of its Document Management System.” Id. at 12.

Further, we note that the TEP found that the offeror “apparently has 2 ‘consultants’ with experience in ‘Document Management System/Imaging Conversion, Optical Character Recognition (OCR)/Indexing and Search Retrieval systems,’” but noted that it was unclear what the term “consulting” meant here, or what part of the work Intelligent Decisions performed itself. Intelligent Decisions Technical Understanding Evaluation at 5. Again, it is the offeror’s responsibility to submit an adequately written proposal for the agency to evaluate. SC&A, Inc., supra.

Intelligent Decisions fails to explain, nor is it evident from the record, how the TEP would know the offeror’s consultants were actually employees of Intelligent Decisions when this was not stated and the term “consultants” was used. In light of the ambiguity created by the word “consultants,” and in light of the solicitation provisions establishing that the evaluation of technical understanding and capability would be based on an offeror’s own experience and qualifications, we find that the TEP reasonably concluded that it was unclear what experience and qualifications Intelligent Decisions actually had in the imaging task area/subfactor.

In sum, we conclude that the NIH reasonably determined that the protesters’ proposals were technically unacceptable. The record shows that Digicon failed to demonstrate through its own experience its ability to successfully perform all task areas. The record further shows that Intelligent Decisions failed to demonstrate that the company possessed the experience and qualifications to perform successfully. Because the Digicon and Intelligent Decisions proposals therefore were not among the most highly-rated offers, the firms’ proposals were reasonably excluded from the competitive range.

The protests are denied.

Lynn H. Gibson  
General Counsel