



**G A O**

Accountability \* Integrity \* Reliability

**Comptroller General  
of the United States**

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

**DOCUMENT FOR PUBLIC RELEASE**

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

## Decision

**Matter of:** 6K Systems, Inc.--Protest and Costs

**File:** B-408124.3, B-408124.4

**Date:** December 9, 2013

---

Alex E. Colon, Esq., Law Offices of Alex Colon, for the protester.  
Jacqueline Posner, Esq., Office of Personnel Management, for the agency.  
Cherie J. Owen, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

---

### DIGEST

1. Agency's evaluation of price is unreasonable where it failed to provide a reasonable basis for comparing the relative prices of offerors' competing proposals.
  2. Protest that the agency failed to engage in meaningful discussions is sustained where the record shows that, although the agency held discussions, those discussions did not address a deficiency that was present in both the protester's initial and revised proposals.
- 

### DECISION

6K Systems, Inc., of Leesburg, Virginia, protests the selection of Powertrain, Inc., of Landover, Maryland, for establishment of a blanket purchase agreement (BPA) under request for proposals (RFP) No. OPM2613R0002, issued by the Office of Personnel Management (OPM) for knowledge portal services. 6K contends that the agency's price evaluations were flawed and failed to comply with the RFP's requirements. 6K also contends that the agency failed to hold meaningful discussions during this procurement. In addition, 6K requests that we recommend that it be reimbursed its protest costs associated with its earlier challenge to this procurement.

We sustain the current protest and we recommend that 6K be reimbursed the costs of filing and pursuing its prior protest.

## BACKGROUND

On November 1, 2012, OPM issued the solicitation seeking offerors to provide a knowledge management portal, government online learning center, and e-Training program for the agency's Human Resources Solutions enterprise. The agency anticipated the establishment of a single fixed-unit price blanket purchase agreement (BPA) with a base period of one year and four 1-year option periods. The maximum value of the agreement was not to exceed \$15 million per year, for a total maximum value of \$75 million. Agency Report (AR), Tab 7-1, Acquisition Plan, at 2.

The RFP set forth the following evaluation factors in descending order of importance: technical approach; management approach and staffing; past performance; and price. AR, Tab 5-3, RFP, at 34. With regard to price, the RFP's instructions to offerors required that price proposals provide a detailed breakdown of prices for each of the following 11 deliverables<sup>1</sup>: (1) learning management systems; (2) learning content management systems; (3) course development; (4) hosting; (5) help desk services; (6) online forums; (7) technical support; (8) technical training; (9) online assessments; (10) organizational needs assessment; and (11) strategic planning, conference coordination, and executive coaching. Id. at 29-31.

For example, under CLIN 1, learning management systems, and CLIN 2, learning content management systems, offerors were instructed to provide the prices for small, medium, and large agencies<sup>2</sup> in terms of the price per implementation, as well as the price per user, and the price per license. Id. at 29-30. For CLIN 6, online forums, offerors were to propose prices per implementation for small, medium, and large agencies, as well as labor hours for customizations and technical support. Id. at 30. With regard to CLIN 7, technical support, CLIN 10, organizational needs assessment, and CLIN 11, strategic planning, conference coordination, and executive coaching, offerors were to propose prices in the form of labor hours. Id. at 30. The RFP also required a summary total price for each CLIN. Id.

---

<sup>1</sup> The contracting officer's price evaluation refers to each of these deliverables as contract line item numbers (CLINs) 1 through 11.

<sup>2</sup> The solicitation provided:

For pricing purposes the number of users [is] as follows:  
Small=2,000 or fewer  
Medium=2,001 to 5,000  
Large=5,001 to 10,000

AR, Tab 5-3, RFP, at 28.

The solicitation stated that the agency would evaluate prices “by adding the total price for all options to the total price for the basic requirements,” and warned that the agency would “evaluate only those proposals that respond to the Instructions to Offerors.” Id. at 28, 34.

The agency received proposals from two offerors, PowerTrain and 6K Systems, by the closing date of November 30, 2012. On December 21, the agency opened discussions via letters that identified weaknesses or concerns with the offerors’ proposals. With regard to PowerTrain’s pricing, the agency advised that it had no questions. AR, Tab 3-3, PowerTrain Proposal Revision Letter, at 1. With regard to 6K’s pricing, the agency: (1) requested that 6K provide definitions for its labor categories; (2) requested that 6K provide pricing for the three agency sizes listed in the RFP for CLIN 2; (3) inquired whether there was a per-item cost for course development under CLIN 3; and (4) sought to verify that 6K did not intend to charge for implementation under CLINs 6 and 9. Contracting Officer’s Statement at 3; AR, Tab 6-3, OPM’s Topics of Discussion Regarding 6K’s Price Proposal, at 1.

Upon receipt and evaluation of revised proposals, the agency found the two proposals to be “technically equal” and concluded that it would select the offeror with the lowest proposed price. AR, Tab 7-2, Initial Best Value Determination, at 1; see AR, Tab 7-19, Revised Best Value Determination, at 1 (stating that technical proposals were not reevaluated). The agency ultimately selected PowerTrain’s proposal based on its conclusion that the proposal offered a significantly lower price. AR, Tab 7-2, Initial Best Value Determination, at 1.

On March 22, 6K filed a protest with our Office challenging the agency’s technical and price evaluations. After reviewing the record, our Office convened a conference call with counsel for all parties to discuss the various protest grounds and to schedule a hearing. On June 7, a few days before the start of the scheduled hearing, OPM notified our Office that it would take corrective action by reevaluating the price proposals of both offerors and making a new selection decision. As a result, 6K’s protest was dismissed as academic. 6K Sys., Inc., B-408124, B-408124.2, June 17, 2013.

In performing its corrective action, the record reflects that the agency hired a contractor--Spartan Business & Technology Services, Inc.--to conduct a price analysis; the contracting officer also performed her own reevaluation of the offerors’ prices. Overall, Spartan concluded that it was unable to determine the magnitude of the price difference between the two competing proposals, but Spartan nonetheless concluded that PowerTrain’s price proposal offered more advantages than 6K’s. In contrast, the contracting officer’s price reevaluation concluded that 6K’s price proposal was ineligible for selection, and that PowerTrain’s price proposal was complete, reasonable, realistic, and affordable. She also concluded that

PowerTrain's proposal offered a lower evaluated price. We set forth below additional detail about Spartan's and the contracting officer's reevaluation.

### Spartan's Price Analysis

Spartan's price analysis report began with a statement that it was unable to calculate an overall evaluated "cost" because both PowerTrain's and 6K's proposals were incomplete.<sup>3</sup> AR, Tab 7-14, Spartan Recommendation Memo (Initial Version), at 4. Instead, Spartan reviewed the prices for each of the contract line item numbers (CLINs) and assigned a score of 1 when it concluded that the proposal "provid[ed] an advantage within the CLIN," and a score of 0 to the "second offeror." AR, Tab 7-16, Spartan Recommendation Memo (Final Version), at 5. If neither offeror offered a clear price advantage under a CLIN, then both were assigned a score of 1. Id. at 3. Using these results, Spartan calculated a "score" for each offeror. Id. Spartan acknowledged that "[t]he weakness of this approach is that it does not properly account for the differences in magnitude in cost between CLINs." Id. at 12.

Spartan's report also flagged issues and concerns in the price proposals by highlighting them in yellow; portions of the price proposals that contained no issues or concerns were highlighted in green. AR, Tab 7-16, Spartan Recommendation Memo (Final Version), at 3. For example, with regard to 6K's proposal under CLIN 1, Spartan's price analysis report flagged as a concern the fact that 6K had not stated what labor categories comprised the "[b]lended [s]ervices" for which it provided an hourly rate. Id. at 13. With regard to PowerTrain's price proposal under CLIN 1, Spartan noted that PowerTrain failed to provide costs for [DELETED], and therefore, the contractor was "unable to determine pricing for [DELETED]." Id. at 13. Spartan also noted that PowerTrain did not propose any specific labor categories for the CLIN ("no defined labor categories used"), and that PowerTrain failed to propose an hourly rate for its learning management system administrator. AR, Tab 7-16, Spartan Recommendation Memo (Final Version), at 13. However, these omissions were not flagged in yellow as concerns. Id.

With regard to 6K's proposal under CLIN 2, learning content management system, Spartan's price analysis report flagged as a concern the fact that 6K's proposal "did not address OpenSource" software.<sup>4</sup> Spartan also noted--but did not flag--the fact that PowerTrain's price proposal did not identify labor rates for customization or complex work under this CLIN, but instead referenced the firm's master list of labor

---

<sup>3</sup> Given that this is a fixed-price procurement, Spartan appears to have confused cost with price.

<sup>4</sup> The parties have not identified, and GAO has been unable to locate in the solicitation, any requirement to address the use of open source software.

rates on page 53 of its price proposal.<sup>5</sup> AR, Tab 7-16, Spartan Recommendation Memo (Final Version), at 13.

With regard to PowerTrain's proposal under CLIN 5, help desk services, Spartan's price analysis report stated that "[b]ased on information provided in Technical & Pricing proposals, not certain how the cost for these services priced." AR, Tab 7-16, Spartan Recommendation Memo (Final Version), at 15.

With regard to PowerTrain's proposal under CLIN 7, technical support, Spartan's price analysis report attempted to identify "comparable labor categories [and] rates" from PowerTrain's master list of labor rates that were similar to those proposed by 6K. AR, Tab 7-16, Spartan Recommendation Memo (Final Version), at 15, 45. This was necessary because PowerTrain's price proposal for this CLIN contained only a general reference to its master table of labor rates. AR, Tab 3-2, PowerTrain Price Proposal, at 42. For example, Spartan selected the labor category "program support II" to match 6K's proposal of a configuration management specialist. Id. at 45.

With regard to PowerTrain's proposal under CLIN 9, online assessments, Spartan's price analysis report stated: "PowerTrain provided a flat rate for basic service. No Labor Hours Provided."<sup>6</sup> AR, Tab 7-16, Spartan Recommendation Memo (Final Version), at 17. Therefore, Spartan again selected labor categories and rates from PowerTrain's master list that appeared to most closely match the labor categories identified by 6K in its proposal.<sup>7</sup> See AR, Tab 7-16, Spartan Recommendation Memo (Final Version), at 58; AR, Tab 3-2, PowerTrain Price Proposal, at 47.

With regard to PowerTrain's proposal under CLINs 10 and 11, Spartan's price analysis report again selected labor rates from PowerTrain's master list that appeared to be comparable to the labor rates proposed by 6K, since PowerTrain's price proposal did not identify labor categories or rates for these CLINs. AR, Tab 7-16, Spartan Recommendation Memo (Final Version), at 17-18.

---

<sup>5</sup> Page 53 of PowerTrain's proposal contained the labor rates for 44 different labor categories. PowerTrain's price proposal for each of the 11 CLINs contained a general reference to this table, but did not specify which of the particular labor categories might apply to the specific CLIN at issue.

<sup>6</sup> For CLIN 9, the RFP required that offerors propose mixed pricing, including the price per implementation and the cost of labor hours for support and customization. RFP at 31.

<sup>7</sup> Spartan's selected labor categories are labeled "assumed similarities." AR, Tab 7-16, Spartan Recommendation Memo (Final Version), at 58.

Ultimately, due to the missing information in both offerors' proposals, Spartan was unable to determine an evaluated price or to make a judgment regarding the magnitude of any price advantage offered under the various CLINs. Even so, Spartan concluded that PowerTrain's proposal offered a price advantage under more of the CLINs than 6K's proposal. AR, Tab 7-16, Spartan Recommendation Memo (Final Version), at 12. Specifically, when Spartan totaled the 1s and 0s assigned to each proposal under each of the CLINs, it found that 6K's proposal earned a total score of 9 and PowerTrain's proposal earned a total score of 13. Id. at 5. The initially-submitted version of Spartan's Recommendation Memo, provided to the agency on July 11, stated the following:

If a determination must be made based on this analysis, our recommendation would be PowerTrain as the awardee based on cost. However, based on the significant cost information that is missing, it would be more prudent to have both offerors resubmit and provide all required costs in the same, very specific format for each and every requirement/need for a fair and realistic, side by side cost analysis.

AR, Tab 7-14, Spartan Recommendation Memo (Initial Version), at 4.

After the agency received Spartan's price analysis report, the contracting officer and another agency official met with Spartan on July 15 to discuss the report. Contracting Officer's Statement at 15. After the meeting, Spartan submitted a final version of its report, which omitted the statement that, based on the significant amount of missing price information, it would be more prudent to have both offerors resubmit and provide all required prices. AR, Tab 7-16, Spartan Recommendation Memo (Final Version). The final version of Spartan's report concluded that PowerTrain's price proposal offered more advantages under the CLINs and recommended selection of PowerTrain. Id.

#### Contracting Officer's Price Analysis

As part of the agency's corrective action, the contracting officer also conducted her own reevaluation of the price proposals. The reevaluation began with a finding that 6K's (previously-acceptable) price proposal was determined to be "incomplete and . . . not submitted in accordance with the [RFP's] instructions" because the firm did not provide separate pricing for each option year for each CLIN. AR, Tab 4-9, Contracting Officer's Price Reevaluation, at 2. Although the contracting officer's price reevaluation acknowledged that 6K indicated that the pricing in its proposal was applicable to the base and all option years, id., she concluded that without separately-identified option prices, 6K's proposal was incomplete, noncompliant, nonresponsive, unrealistic, and did not reflect a clear understanding of the contract requirements. Id. at 2, 5. The contracting officer concluded that PowerTrain's price proposal was "complete, reasonable, realistic, and affordable." Id. at 7.

The contracting officer's price reevaluation further stated that, "[a]lthough 6K System's price proposal . . . was deemed nonresponsive, for the sake of this protest argument a price comparison was conducted." Id. at 4. For example, with regard to CLIN 6, online forums, the RFP required that price proposals include the price per implementation for small, medium, and large agencies, as well as labor hours for customizations and technical support. RFP at 30. 6K's proposal for CLIN 6 provided the price per implementation for small, medium, and large agencies and also identified the applicable labor rates for each of eight labor categories to be used for customizations and technical support. AR, Tab 2-5, 6K Price Proposal, at 11. PowerTrain's price proposal for CLIN 6 contained a price per implementation for the three sizes of agencies, but did not identify labor hours or rates for customizations and technical support. Instead, the proposal contained a reference to PowerTrain's master list of labor rates, without specifying any particular labor mix. AR, Tab 3-2, PowerTrain Price Proposal, at 36.

In her reevaluation of 6K's price proposal under CLIN 6, the contracting officer used the labor rates and categories provided in 6K's proposal for this CLIN and multiplied each of the eight labor rate categories by 1920 hours. AR, Tab 4-9, Contracting Officer's Price Reevaluation, at 11-12. However, some labor categories, such as project manager, business analyst, and configuration management specialist, were listed multiple times in the price evaluation for this CLIN, and each time the labor category was listed, it was multiplied by 1920 hours. Id. As a result, some labor categories, such as application integration, were multiplied by 1920 hours, while others were multiplied a multiple of 1920 hours, such as 5760 hours for the labor category of configuration management specialist. Id. at 11.

In contrast, in the reevaluation of PowerTrain's price proposal under CLIN 6, since PowerTrain's price proposal itself did not identify any proposed labor categories for this CLIN, the contracting officer selected 21 labor categories from PowerTrain's master list and multiplied each one by 1920 hours. AR, Tab 4-9, Contracting Officer's Price Reevaluation, at 11-12. The record does not indicate how the contracting officer selected these categories.

Similarly, with regard to CLIN 7, technical support, the RFP instructed offerors to provide labor hour pricing. RFP at 30. 6K's proposal identified 8 labor categories that would be used to perform this requirement and provided the hourly rate for each category. AR, Tab 2-5, 6K Price Proposal, at 12. In contrast, PowerTrain's proposal contained the following table:

CLIN	Supplies/Services	Quantity	Unit of Delivery	Unit Price	Total
B7001 <sup>[8]</sup>	Technical Support	Hourly Rates	Technical Support Services	See Labor Rates on page 53	Proposal based on client agency requirements

AR, Tab 3-2, PowerTrain’s Price Proposal, at 42.

To evaluate PowerTrain’s price proposal under this CLIN, since the offeror had not identified any specific labor categories, the contracting officer selected 21 labor categories from PowerTrain’s master list and multiplied each of them by 1920 hours.<sup>9</sup> AR, Tab 4-9, Contracting Officer’s Price Reevaluation, at 12-14. With regard to 6K’s proposal, the contracting officer did not calculate a price based on 6K’s 8 proposed labor categories. Instead, the evaluation stated that the contracting officer “cannot compare pricing since 6K didn’t propose this CLIN in accordance with the RFP<sup>[10]</sup>.” Id. at 12-14.

In summarizing her price analysis, the contracting officer concluded that PowerTrain’s proposal offered a lower price, but noted that the price comparison included only CLINs 2, 4, 5, 6, 8, and 9 because 6K’s price proposal was not prepared in accordance with the RFP’s requirements for the other 5 CLINs. AR, Tab 4-9, Contracting Officer’s Price Reevaluation, at 20.

#### Best Value Decision

The agency’s best value decision, also prepared by the contracting officer, relied on both the contracting officer’s price reevaluation and Spartan’s price analysis. AR, Tab 7-19, Best Value Determination, at 3. With regard to Spartan’s analysis, the contracting officer acknowledged that Spartan relied on a 1 point/0 point methodology “due to offerors not providing all requested information.” Id. at 5. With regard to Spartan’s approach, the selection decision acknowledged that “[t]he weakness of this approach is that it does not properly account for the differences in

<sup>8</sup> The CLIN number varied for each contract period.

<sup>9</sup> The 21 labor categories that the contracting officer selected as relevant to this CLIN varied from the labor categories that Spartan selected in its price evaluation of the same CLIN--only 6 labor categories overlapped. Compare AR, Tab 4-9, Contracting Officer’s Price Reevaluation, at 12-14 with AR, Tab 7-16, Spartan Recommendation Memo (Final Version), at 45.

<sup>10</sup> This was apparently due to 6K’s failure to provide separate pricing for all the option periods. See AR, Tab 4-9, Contracting Officer’s Price Reevaluation, at 12-14.



magnitude in cost between CLINs.” Id. The decision also stated that, since 6K’s price proposal failed to comply with all of the RFP’s instructions regarding preparation of the price proposal, the firm’s proposal was considered to be incomplete, noncompliant, and nonresponsive. Id. at 2. PowerTrain’s price proposal was determined to be “complete, reasonable, realistic, and affordable.” AR, Tab 7-19, Best Value Determination, at 8. Thereafter, the agency selected PowerTrain for this BPA. This protest followed.

## DISCUSSION

6K argues that the agency’s price evaluation was unreasonable and inconsistent with the terms of the solicitation. 6K also contends that the agency failed to hold meaningful discussions. Comments at 11-12. We agree.

### Interested Party Status

As a preliminary matter, although OPM does not raise the issue of whether 6K is an interested party to pursue this protest, we note that the agency concluded that 6K’s price proposal was incomplete, noncompliant, nonresponsive, and unrealistic. AR, Tab 7-19, Best Value Determination, at 2, 6. We read this conclusion to raise the possibility that the agency viewed 6K’s proposal as unacceptable, which presents questions about whether 6K would even be eligible for award if its protest were sustained. Therefore, we will first consider whether 6K is an interested party to pursue this protest before addressing its arguments on the merits.

The record here shows that, while the agency found that 6K’s price proposal was nonresponsive because it failed to comply with the solicitation’s requirements, PowerTrain submitted the only other proposal. Thus, if PowerTrain’s proposal was unreasonably evaluated by the agency to the extent that it also should have been considered unacceptable (for example, if PowerTrain’s price proposal also did not satisfy the RFP’s requirements), our remedy would be to recommend that the agency reopen the competition to obtain revised proposals or resolicit the requirement. In either case, notwithstanding the nonresponsiveness of its proposal, 6K may be in a position to either submit a revised proposal or participate in a resolicitation. Accordingly, 6K has a sufficient economic interest to maintain a protest of the evaluation of PowerTrain’s proposal. See Wilcox Indus. Corp., B-281437.2 et al., June 30, 1999, 99-2 CPD ¶ 3 at 5 (finding that protester was an interested party to challenge agency’s evaluation of awardee’s technical proposal, despite the fact that protester’s proposal was found to be unacceptable, where protester was the only other offeror and where, if the protest were sustained, our recommendation would be for the agency to reopen the competition to obtain revised proposals or resolicit the requirement). Moreover, we note that in the agency’s initial evaluation of proposals, it found 6K’s price proposal to be acceptable. It was only during the agency’s corrective action that it concluded that 6K’s price proposal was nonresponsive, incomplete, noncompliant, and unrealistic.

As discussed more fully below, none of these concerns were ever raised with 6K during discussions.

### Price Evaluation

6K contends that the agency's price evaluation was fundamentally flawed and failed to provide for a reasonable assessment of the prices of the competing proposals. Comments at 4. Our review of the record here leads us to conclude that OPM's price evaluation was fundamentally flawed.

In creating BPAs, the FAR requires that price be considered when making a best value decision. See FAR § 8.405-3(a)(2). Under the FAR, price is the one factor that, at a minimum, must always be considered when determining best value for purposes of establishing a BPA. Cyberdata Tech., Inc., B-406692, Aug. 8, 2012, 2012 CPD ¶ 230 at 4. While it is up to the agency to decide upon some appropriate and reasonable method for the evaluation of offerors' prices, an agency may not use an evaluation method that produces a misleading result. R&G Food Serv., Inc., d/b/a Port-A-Pit Catering, B-296435.4, B-296435.9, Sept. 15, 2005, 2005 CPD ¶ 194 at 4; see Bristol-Myers Squibb Co., B-294944.2, Jan. 18, 2005, 2005 CPD ¶ 16 at 4; AirTrak Travel et al., B-292101 et al., June 30, 2003, 2003 CPD ¶ 117 at 22. In evaluating price, the agency must use an evaluation method that provides a basis for a reasonable assessment of the price of performance under the competing proposals. S.J. Thomas Co., Inc., B-283192, Oct. 20, 1999, 99-2 CPD ¶ 73 at 3. That is, the method chosen must include some reasonable basis for comparing the relative prices of proposals, so as to establish whether one offeror's proposal would be more or less costly than another's. R&G Food Serv., Inc., d/b/a Port-A-Pit Catering, supra.

As set forth above, the agency found the two competing proposals here to be technically equal, and therefore, the agency determined that the selection would be made on the basis of price. AR, Tab 7-2, Initial Best Value Determination, at 1; AR, Tab 7-19, Revised Best Value Determination, at 1. However, this record provides no basis to determine which of these competing proposals offers the lower price. The agency's own price analyst, Spartan, concluded that there was no basis to determine the magnitude of price differences for each of the 11 CLINs--an observation that the contracting officer acknowledged in her best value decision. AR, Tab 7-16, Spartan Recommendation Memo (Final Version), at 12; AR, Tab 7-19, Revised Best Value Determination, at 5. Because the selection decision rested solely on price, and because the agency was unable to determine, based on the information submitted, which proposal offered the best price, we find the selection decision to be unreasonable.

The situation here is similar to the situation addressed in Health Servs. Int'l, Inc.; Apex Envtl., Inc., B-247433, B-247433.2, June 5, 1992, 92-1 CPD ¶ 493. In that procurement, the solicitation contemplated the award of a fixed-price,

indefinite-quantity contract and offerors' proposals were required to include hourly rates for six categories of labor. We sustained a protest challenging the agency's price evaluation because it was based solely upon offerors' average hourly labor rates, without consideration of the estimated quantities of each labor category the agency expected to order, and thereby failed to establish whether one offeror's proposal was in fact more or less costly than another's. While the record here suggests that prices could be determined under this solicitation, without knowing the awardee's labor mix, the agency could not assess the price of the awardee's performance.<sup>11</sup>

We set forth below several specific examples of problems with the evaluation of prices here. For example, with regard to CLINs 6 and 7, the record provides no rationale for the contracting officer's selection of certain labor categories for purposes of evaluating PowerTrain's proposal. In addition, we note that when Spartan conducted its evaluation of PowerTrain's proposal, Spartan selected different labor categories than those selected by the contracting officer. Since PowerTrain's proposal failed to propose specific labor categories or rates under this CLIN, Spartan and the contracting officer elected different approaches for calculating PowerTrain's fixed price.

In addition, there is no rationale in the record for the contracting officer's determination that each of the 21 labor categories that she selected from PowerTrain's master list would likely require 1920 hours of work. Although the agency states that 1920 hours is equivalent to a year's worth of labor hours, AR, Tab 4-9 Contracting Officer's Price Reevaluation, at 4, the record contains no support for the assumption that all of the selected labor categories would need a full year's worth of effort.

As a second example, we note that PowerTrain's proposal under CLIN 9 provided a unit price for basic online assessments, but failed to respond to the RFP's requirement that offerors provide "labor hours for support and customization." RFP at 31. Instead, PowerTrain provided only a general reference to its master list of

---

<sup>11</sup> In the context of indefinite-delivery/indefinite-quantity contracts or BPAs, where the agency is uncertain of the quantities of supplies or services that will be required, GAO has found that one acceptable method of evaluating prices is to have offerors respond to a representative hypothetical scenario, also called a sample task. See High-Point Schaer, B-242616, B-242616.2, May 28, 1991, 91-1 CPD ¶ 509. We note for the record that OPM's contractor, Spartan, also recommended that the agency consider the use of a sample task to evaluate prices. AR, Tab 7-16, Spartan Recommendation Memo (Final Version), at 6. Alternatively, an agency can use its knowledge of the historical quantities of goods and services procured under the predecessor contract to develop estimated quantities of hours for each labor category to be used in evaluating offerors' prices.

labor rates. To calculate a price of PowerTrain's proposal under this CLIN, the contracting officer selected 13 labor rates from PowerTrain's master list and multiplied each of them by 1920 hours. AR, Tab 4-9, Contracting Officer's Price Reevaluation, at 15. In contrast, 6K's proposal specifically identified nine labor rates responsive to CLIN 9 and provided the projected number of hours needed for each labor category. AR, Tab 2-5, 6K Price Proposal, at 14. For example, 6K proposed [DELETED] hours of work by the business analyst at \$[DELETED]/hour and [DELETED] hours of work by the senior instructional technician at \$[DELETED]/hour. Id. In evaluating 6K's price proposal under CLIN 9, however, the contracting officer multiplied each of 6K's proposed labor categories by 1920 hours or multiples of 1920.<sup>12</sup> The record contains multiple similar instances of the agency's failure to reasonably assess the price of performance of various CLINs under the competing proposals. In short, the record here does not support a finding that the evaluation of prices reasonably assessed the price of performance under these competing proposals. See S.J. Thomas Co., Inc., supra.

Over the period covered by this contract, the agency will require different amounts of each of the various labor categories--a fact that is not taken into account in the contracting officer's price analysis, which multiplied each of the labor rates by 1920, regardless of the number hours that will likely be used, resulting in an evaluated price for PowerTrain of over \$444 million.<sup>13</sup> Contracting Officer's Price Reevaluation, at 5, 21. This evaluated price appears to bear no relation to the likely cost of performance under this BPA, which the agency anticipated would have an annual "not to exceed" amount of at \$15 million. AR, Tab 7-1, Acquisition Plan, at 2; AR, Tab 7-19, Best Value Determination, at 9. Although the agency was not required to calculate the exact dollar amount of prices to be paid under the contract, the agency was required conduct a reasonable assessment of the price of performance under the competing proposals. Therefore, we sustain the protest on this basis.

---

<sup>12</sup> Some of 6K's proposed labor categories were listed twice in the price evaluation. Therefore, the total number of hours for some labor categories was 1920, while the total number of hours for other labor categories was a multiple of 1920. For example, the project manager labor category was listed three times; therefore, the project manager labor rate was multiplied by 5760. AR, Tab 4-9, Contracting Officer's Price Reevaluation, at 15.

<sup>13</sup> The record contains several different prices associated with the offerors' proposals. For example, the contracting officer's price reevaluation found that PowerTrain's price for the base year plus the option periods totaled \$444,126,255.80. Contracting Officer's Price Reevaluation, at 5, 21. The Best Value Determination states that PowerTrain's price for the base year plus the option periods totaled \$3,166,779.67. AR, Tab 7-19, Best Value Determination, at 3. Another section of the best value determination states that PowerTrain's total price was \$2,583,374.45. Id. at 4.

## Discussions

Finally, 6K argues that the agency failed to provide meaningful discussions. In this regard, the contracting officer's reevaluation of price states that during the price evaluation, OPM "discovered" that 6K did not propose pricing in accordance with the RFP's instructions. AR, Tab 4-9 Contracting Officer's Price Reevaluation, at 1. Specifically, the agency found that 6K failed to propose separate prices for the four option periods. Id. at 1, 5-6. This deficiency was a basis for the agency's determination, upon reevaluation, that 6K's price proposal was nonresponsive. Id. at 2. Although the agency states that it first discovered this deficiency in its reevaluation, it also claims that it noted this issue in its first evaluation of proposals and it "was one of the questions during oral discussions held on December 20." Id. at 2. We see no support in the record for the agency's claim that it raised the issue of 6K's failure to propose separate prices for the option years during discussions with 6K.

It is a fundamental principle of negotiated procurements that discussions, when conducted, must be meaningful; that is, discussions must identify deficiencies and significant weaknesses in an offeror's proposal that could reasonably be addressed so as to materially enhance the offeror's potential for receiving award. Sentrillion Corp., B-406843.3, B-406843.4, Apr. 22, 2013, 2013 CPD ¶ 207 at 6; PAI Corp., B-298349, Aug. 18, 2006, 2006 CPD ¶ 124 at 8; Federal Acquisition Regulation (FAR) § 15.306(d). We will sustain a protest where the record shows that, although the agency held discussions, it failed to raise a deficiency that was present in both the protester's initial and revised proposals. Sentrillion Corp., supra.

There are two documents in the agency report that describe the topics raised during discussions. First, the agency's contemporaneous notes from its oral discussions with 6K reflect that the agency: (1) requested that 6K provide definitions for its labor categories; (2) requested that 6K provide pricing for the three agency sizes listed in the RFP for CLIN 2; (3) inquired whether there was a per-item cost for course development under CLIN 3; and (4) sought to verify that 6K did not intend to charge for implementation under CLINs 6 and 9. AR, Tab 6-3, OPM's Topics of Discussion Regarding 6K's Price Proposal, at 1. This document makes no mention of the missing option year prices in 6K's proposal. The second document is the contracting officer's statement prepared in response to this protest, which also contains a list of issues raised during discussions. This list mirrors the issues identified in the agency's contemporaneous notes. Contracting Officer's Statement at 3. Thus neither of these documents provide support for the agency's claim that the issue of missing option year prices was raised during discussions with 6K. Id. Further, the contracting officer's price reevaluation itself states that this issue was "discovered" during the agency's reevaluation, AR, Tab 4-9 Contracting Officer's Price Reevaluation, at 1.

Therefore, we accept the agency's representation that it first determined that 6K's price proposal was deficient during its reevaluation. As a result--and given the absence of any evidence to the contrary--we conclude that this issue was not raised with 6K during discussions. Since this issue existed in 6K's initial proposal and was not identified as a problem during discussions, and since this issue now leads the agency to conclude that the proposal was deficient, we conclude that 6K was not provided with meaningful discussions. See Sentrillion Corp., supra, at 8.

## RECOMMENDATION

We recommend that OPM reopen the competition, conduct meaningful discussions with both offerors, request revised proposals that comply with the RFP's requirements, and make a new source selection. If a proposal other than PowerTrain's is selected, the agency should terminate for convenience the BPA established with PowerTrain, and establish a BPA with the appropriate offeror. Finally, we recommend that 6K be reimbursed the costs of filing and pursuing this protest with regard to the issues discussed above, including attorneys' fees.<sup>14</sup>

---

<sup>14</sup> 6K also requests that we recommend it be reimbursed the costs associated with filing its March 22 protest and its April 15 supplemental protest. Our Office may recommend that a protester be reimbursed the costs of filing and pursuing a protest where the contracting agency decides to take corrective action in response to the protest. Bid Protest Regulations, 4 C.F.R. § 21.8(e) (2013). Such recommendations generally are based upon a concern that an agency has taken longer than necessary to initiate corrective action in the face of a clearly meritorious protest, thereby causing protesters to expend unnecessary time and resources to make further use of the protest process to obtain relief. AAR Aircraft Servs.--Costs, B-291670.6, May 12, 2003, 2003 CPD ¶ 100 at 5. As a prerequisite to our recommending that costs be reimbursed where a protest has been settled by corrective action, not only must the protest have been meritorious, but it also must have been clearly meritorious. Apptis Inc.--Costs, B-402146.3, Mar. 31, 2010, 2010 CPD ¶ 123 at 4; Triple Canopy, Inc.--Costs, B-310566.9, B-400437.4, Mar. 25, 2009, 2009 CPD ¶ 62 at 3. Here, 6K's prior protests identified many of the same flaws discussed above. Specifically, 6K argued that PowerTrain's price proposal was incomplete, and that the agency's price evaluation was flawed and failed to provide a reasonable basis to assess the price of the competing proposals. A review of the offerors' proposals and the agency's prior price evaluation evidenced that the protester's arguments in this regard were clearly meritorious. There, as here, the agency's evaluated price for each proposal bore no relation to the expected price of performance under the BPA. Further, the agency unduly delayed taking corrective action, since the agency did not take corrective action prior to the agency report due date for the initial or the supplemental protest. As a result, we recommend that 6K be reimbursed the costs of filing and pursuing its prior protests also.

4 C.F.R. § 21.8(d)(1) (2013). The protester should submit its certified claim, detailing the time expended and costs, incurred, directly to the contracting agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Susan A. Poling  
General Counsel