



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: DIGICON Corporation

File: B-275060; B-275060.2

Date: January 21, 1997

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Alexander D. Tomaszczuk, Esq., and Matthew A. Anzaldi, Esq., Shaw Pittman Potts & Trowbridge, for Computech, Inc., the intervenor.

Arthur I. Rettinger, Esq., and William P. McGinnies, Esq., Department of the Treasury, for the agency.

John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency properly considered in its evaluation of proposals and source selection the risk associated with the unreasonably low labor rates contained in the protester's proposal where the solicitation advised offerors that among other things their compensation rates would be evaluated to assess their impact on the recruitment and retention of professional employees.
2. Protest that the contracting agency unreasonably evaluated the awardee's proposal under an evaluation subcriterion relating to past performance is denied where the record shows that the evaluation was reasonable; the protester's mere disagreement does not render the agency's judgment unreasonable.

DECISION

DIGICON Corp. protests the award of a contract to Computech, Inc., under request for proposals (RFP) No. CS-94-032, issued by the Customs Service, Department of the Treasury, for services in support of the agency's Automated Commercial System (ACS). DIGICON contends that the award to Computech was not consistent with the RFP's stated evaluation criteria, and that the evaluation of its and Computech's proposals was unreasonable.

We deny the protest.

The ACS is the central comprehensive tracking, controlling, and processing system that automates commercial applications and tasks required for import and duty collection, and is used for processing the import transactions of the international trade community, enforcing import and export laws, and generating trade statistics. The Customs Service, through the ACS, oversees the processing of \$687 billion worth of products imported into the United States each year. The successful contractor under the RFP will provide support services for the ACS, primarily involving the maintenance of the system and the development of new applications software.

The RFP provided for the award of a firm, fixed-price, indefinite delivery, indefinite quantity contract, for a base period of 1 year with four 1-year options. The RFP stated that award would be made to the offeror submitting the proposal representing the best overall value to the government, price and other factors considered, and that technical merit was significantly more important than price. The RFP listed the following technical evaluation criteria and subcriteria:

1. Past Performance
 - a. Personnel/Resumes
 - b. Project Descriptions/Abstracts

2. Technical Approach
 - a. Technical Approach
 - b. Understanding the Requirements

3. Management Approach
 - a. Management Plan
 - b. Staffing and Transition Plan

The RFP informed offerors that the past performance criterion was significantly more important than the technical approach and management approach criteria, and that the technical approach evaluation criterion was slightly more important than the management approach evaluation criterion.

The RFP included the clause at Federal Acquisition Regulation (FAR) § 52.222-46 (FAC 90-41), "Evaluation of Compensation for Professional Employees."¹ Among other things, FAR § 52.222-46 advises offerors that the agency will evaluate the offerors' compensation plans for the professional employees covered by the

¹FAR § 52.222-46 is to be included in solicitations for negotiated service contracts when the contract amount is expected to exceed \$500,000 and "the service to be provided will require meaningful numbers of professional employees." FAR § 22.1103 (FAC 90-40); Research Management Corp., 69 Comp. Gen. 368 (1990), 90-1 CPD ¶ 352.

solicitation in order to assess the impact of the plan on recruitment and retention of professional employees. Consistent with this provision, the RFP added that while "[p]rice [would] not be a scored factor," proposals would be evaluated to determine if proposed prices "accurately and adequately portray[ed] the work . . . to be performed, and if they are reasonable and realistic."

The RFP provided detailed instructions for the preparation of proposals, and requested that offerors submit separate technical and business/price proposals. Offerors were required to complete the RFP's price schedules for the base and each of the option periods of the contract by inserting the burdened hourly rate for each of the nine listed labor categories (e.g., Technical Leader, Systems Analyst, etc.), and extended prices based upon the RFP's estimated number of hours for each of the labor categories. Offerors were also instructed that their business/price proposals were to provide "a cost breakdown with supporting data, including a breakdown of direct labor cost estimates by each labor category including numbers of person-hours and applicable or average hourly rates, overhead rate and supporting schedules." The cost breakdown was also to include direct labor rates, overhead and general and administrative (G&A) rates, and burdened labor rates for each of the labor categories provided by either the prime contractor and any proposed subcontractors.

The agency received 11 proposals, and included the proposals of DIGICON, Computech, and six other offerors in the competitive range. Written discussions were held regarding the offerors' technical proposals, and revisions were received and evaluated. Face-to-face discussions were held with each of the competitive range offerors concerning their business/price proposals. Prior to the conduct of these discussions, the agency sent each offeror a letter setting the time, date, and agenda for the discussions, and requesting salary histories for certain of the offerors' employees if the information had not already been furnished. According to the record, DIGICON was the only offeror that did not provide the requested salary histories prior to the conduct of discussions. The agency informed DIGICON during discussions that its labor rates appeared low when compared with the market place, the prior contract for similar services, and historical cost data.

In its BAFO request, the agency again informed DIGICON, which still had not submitted the requested salary histories, that its "[p]roposed direct labor rates appear low in comparison to historical data for similar services, market surveys, and [the] most recent contract award." The request informed DIGICON that it should employ its "normal practice in developing hourly labor rates," and that "[t]he basis for determining hourly labor rates should include direct and indirect labor hours." The request further provided an "example development of fully loaded labor rate," which set forth a number of assumptions, and demonstrated how to calculate from the assumptions an unburdened direct labor rate, burden factor, and fully burdened labor rate.

BAFOs were received and evaluated by the agency. Computech's proposal received the highest technical rating of 79 out of 80 points, at a proposed price of \$25,778,934. DIGICON's proposal received the second-highest rating of 78.5 points, at a proposed price of \$23,524,793. The technical score difference was under the project description/abstracts subcriterion, where Computech's proposal received 8 of 9 points and DIGICON's proposal received 7.5 points.

The agency found that Computech's proposed prices "accurately and adequately" portrayed the work to be performed, and were "mostly reasonable and realistic." In contrast, the agency found that DIGICON's proposed prices were "extremely low" and that DIGICON's proposal was "a risk" because its labor rates for the labor categories with the most hours--Senior Programmer/Analyst, Programmer Analyst, and Programmer--were "unreasonable and unrealistic." The agency thus concluded that DIGICON's ability to attract and retain qualified personnel and maintain a stable workforce would be severely limited by its "extremely low" labor rates for certain labor categories, which made its "offer a risk."

The contracting officer (CO) concluded that Computech's proposal represented the best value to the government. The CO found that the "substantial operational and financial risk introduced by DIGICON's unreasonably low and unrealistic prices" justified the \$2,554,141, or 9 percent, price premium associated with the selection of Computech's proposal for award. The CO also determined that the price premium associated with Computech's proposal was justified based upon Computech's superior demonstrated experience as evaluated under the projects descriptions/abstracts evaluation subcriterion. Computech was awarded the contract, and this protest followed.

DIGICON contends that the agency imposed an evaluation factor not weighted in or consistent with the RFP where it determined that DIGICON's relatively low labor rates represented a risk, inasmuch as "risk" was not set forth in the RFP as a specific evaluation criterion. We disagree.

The consideration of the risk involved in an offeror's proposed approach is inherent in the evaluation of proposals. Communications Int'l Inc., B-246076, Feb. 18, 1992, 92-1 CPD ¶ 194. Further, the RFP here specifically informed offerors that the risk associated with their proposals would be evaluated, and, as noted above, included the standard "Evaluation of Compensation for Professional Employees" clause, FAR § 52.222-46, which provides in part that the agency will evaluate proposed compensation plans to assess "the offeror's ability to provide uninterrupted high-quality work," and that the "compensation proposed will be considered in terms of its impact upon recruiting and retention, its realism, and its consistency with a total plan for compensation." The RFP also provided that proposals would be evaluated to determine if proposed prices were "reasonable and realistic." Thus, the agency's consideration of risk in connection with its determination not to award the contract to DIGICON because of its "extremely low" labor rates for certain categories was

not improper. Information Spectrum, Inc., B-256609.3; B-256609.5, Sept. 1, 1994, 94-2 CPD ¶ 251, aff'd, B-256609.6, Sept. 28, 1995, 95-2 CPD ¶ 150.

DIGICON argues that the agency's evaluation of the risk associated with its proposal was flawed because, according to the protester, the agency referred only to "burdened labor rates to judge this risk." The protester contends that because burdened labor rates include overhead, G&A, and fringe rates, the "analysis involves many suppositions."

Contrary to the protester's assertions, the record demonstrates that the agency's evaluation of DIGICON's proposal included the review of both DIGICON's proposed burdened and unburdened labor rates. In this regard, the price negotiation memorandum and report to the contracting officer from the source evaluation board include detailed breakdowns and analyses of the offerors' price proposals on individual and comparative bases, and demonstrates that DIGICON's proposed burdened and unburdened labor rates were significantly lower than those proposed by any of the other seven offerors under five of the nine listed labor categories. For example, DIGICON's burdened and unburdened labor rates for the labor category with the most hours, Senior Programmer/Analyst, were [DELETED] and [DELETED] percent lower, respectively, than average of the labor rates proposed by the other offerors, and its burdened and unburdened rates for the labor category with the next most hours, Programmer, were [DELETED] and [DELETED] percent lower, respectively, than the average of the rates proposed. Based upon our review of the record, the agency's conclusions that the protester's proposed labor rates for certain of the labor categories were "extremely low" and thus represented substantial financial and operational risk were reasonably based. Information Spectrum Inc., supra.

DIGICON protests that it was unreasonable for the agency to find that DIGICON's proposed labor rates represented a significant risk while concluding that Computech's proposed rates represented only a minimal risk, when, according to the record, a greater percentage of Computech's proposed rates are below the average rates proposed than DIGICON's.

The agency found that Computech's proposed price reflected some risk because of Computech's relatively low labor rates for certain labor categories. The agency determined that the risk was minimized because Computech's composite rates showed that a significant percentage of the personnel within the labor categories at issue would be compensated at "mid-to-senior-level rates." For example, although Computech's blended burdened rate for its Senior Programmer/Analysts in the base period was only \$[DELETED] per hour, Computech's price proposal provided that [DELETED] percent of the hours worked by Senior Programmer Analysts would be compensated at \$[DELETED] per hour and [DELETED] percent at \$[DELETED] per

hour.² This approach was used by Computech with regard to all but one of the nine labor categories, and Computech's proposed burdened and unburdened labor rates for this category--EDI Programmer/Analyst--were [DELETED] and [DELETED] percent higher than the average rate proposed. Further, although it is true that a greater percentage of Computech's proposed rates are below the average of the rates proposed than DIGICON's, the difference between Computech's proposed rates and the average rates is, in a number of instances, relatively slight; for example, Computech's proposed average rates for its Technical Leaders and Systems Analysts are less than [DELETED] percent lower than the average rate proposed.

Accordingly, the agency's determination that Computech's proposed rates presented only "some risk" because its composite rates demonstrated that it would compensate a significant percentage of its personnel "at the mid to senior level scale," and that DIGICON's rates represented significant risk because certain of its "composite rates . . . indicate [that] they intend to staff these positions with mostly entry level and some mid level compensation rates," was reasonable and consistent with the evaluation criteria.

The protester argues that the agency's evaluation of proposals under the project descriptions/abstracts evaluation subcriterion to the past performance evaluation criterion was unreasonable.³

The RFP required that each offeror submit three recent project abstracts describing past performance managing software and applications development projects in an IBM or IBM compatible mainframe environment. The RFP provided detailed instructions as to the format for the abstracts and what information should be included in each abstract. As indicated, Computech's and DIGICON's proposals received 8 and 7.5 out of 9 available points, respectively, under this evaluation subcriterion. Computech's abstracts numbers one and three received perfect scores

²In contrast, DIGICON's blended burdened hourly labor rate for the Senior Programmer Analyst category in the base year was \$[DELETED], and its price proposal provided that [DELETED] percent of the hours worked by its Senior Programmer/Analysts would be compensated at \$[DELETED] per hour, and [DELETED] percent at \$[DELETED] per hour.

³DIGICON also argued in its protest to our Office that the agency's evaluation of proposals under each of the remaining evaluation criteria was unreasonable and that DIGICON's proposal should have been evaluated higher than Computech's. The agency responded to these arguments in its report on DIGICON's protest, and because DIGICON did not respond to the agency's position in its comments on the agency report, we consider DIGICON to have abandoned these arguments. D & M General Contracting, Inc., B-259995; B-259995.2, May 8, 1995, 95-1 CPD ¶ 235.

of 3 points, and its abstract number two received a score of 2 points. The agency found that Computech's abstract number two "failed to demonstrate experience in [customer information control system] CICS programming and a level of effort similar to ACS to warrant full credit." The protester challenges the agency's evaluation of Computech's second and third abstracts.

With regard to Computech's second abstract, the protester asserts that because the total value of the contract described was \$3.8 million, the "abstract demonstrates Computech's lack of experience with contracts the size and complexity of ACS." The record demonstrates that each of the evaluators carefully considered all of the relevant aspects of the contract described, and reasonably determined that it merited a score of two out of three points. The evaluators found, for example, that while the abstract "demonstrates experience with applications programming in an IBM environment," it warranted a rating of 2 out of 3 points because, as pointed out by the protester, the size and effort described in the abstract, consistent with its total value, was not comparable to ACS. Although the protester clearly disagrees with the agency's determination that Computech's abstract number two warranted a rating of two points, its mere disagreement with this aspect of the agency's evaluation does not provide any basis for our Office to question the propriety of the agency's evaluation. McDonnell Douglas Corp., B-259694.2; B-259694.3, June 16, 1995, 95-2 CPD ¶ 51.

The protester argues that Computech's abstract number three should not have received a perfect score of 3 points because the contract described focuses only on application support for a communication system, which the protester asserts is not comparable to ACS, and because the abstract was unclear as to the total value of the contract involved. Computech's abstract number three describes a contract supporting the Treasury Enforcement Communication Systems performed for the Customs Service by one of Computech's proposed subcontractors for this procurement. The evaluators found that the contract described met the agency's requirements and "[d]emonstrated experience with applications programming in an IBM environment." With regard to the size of the contract, the evaluators noted that although average number of personnel assigned to the contract totaled 22, the contract value was listed at only "\$734,550 (to date)." The evaluators concluded that because a contract involving 22 positions would be more likely to have a value of at least \$7 million, and the abstract provided a contract award value of \$10.5 million, the contract value provided on the abstract must have been an error. The evaluators thus concluded, based upon the work described in Computech's abstract number three and their assumption that the actual value of the contract described was \$7 million, that the abstract warranted a rating of 3 points. The protester's assertions here again reflect its disagreement with the agency's evaluation, and do not show that the agency's conclusions were unreasonable. The evaluation record here evidences that each of the evaluators carefully considered all of the relevant aspects of the contract described, and concluded that it warranted a perfect score of three points. The record further demonstrates that the evaluators

were correct in their assumptions concerning the actual value of the contract described in Computech's abstract number three, in that the contract had a total value of \$14 million, and that the work performed by Computech's subcontractor totaled \$7.7 million.

The protester argues the agency's evaluation of its project abstracts was unreasonable. DIGICON asserts that its proposal "merited a superlative evaluation" under the project description/abstracts subcriterion, and that "[t]o the extent that the [agency] gave DIGICON less than full credit under this subfactor, its evaluations were unreasonable and contrary to fact." We need not address this issue, because it is clear from the record that even if each of DIGICON's three project abstracts warranted perfect ratings, thus increasing DIGICON's total rating by one and one-half points, it still would not have been selected for award. That is, as mentioned previously, the agency found that the price premium associated with Computech's proposal was justified because of the significant operational and financial risk introduced by DIGICON's extremely low labor rates alone.

The protest is denied.

Comptroller General
of the United States