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Comptroller General  
of the United States

United States General Accounting Office  
Washington, DC 20548

## Decision

**Matter of:** AirTrak Travel et al.

**File:** B-292101; B-292101.2; B-292101.3; B-292101.4; B-292101.5

**Date:** June 30, 2003

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Josephine L. Ursini, Esq., for AirTrak Travel et al., and Lars E. Anderson, Esq., J. Scott Hommer, III, Esq., and Benjamin A. Winter, Esq., Venable, Baetjer and Howard, for Alexander Travel Ltd. and El Sol Travel.

Capt. Anissa Parekh, Robert E. Dudley, Esq., Maj. Art J. Coulter, and Raymond M. Saunders, Esq., Department of the Army, for the agency.

Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Attorneys' requests for admission to GAO protective order are granted, notwithstanding agency's objections, where the attorneys have provided evidence that they are not competitive decisionmakers for a client (or another relevant firm), which has not been rebutted by the agency.
2. Solicitation for a fixed-priced contract to provide travel management services which required contractors to use developmental software did not place undue risks on offerors where the agency identified the performance uncertainties and provided sufficient information to allow offerors to intelligently prepare their proposals.
3. Solicitation contemplating multiple awards to small businesses for travel management services, which grouped the 87 nationwide locations into 28 "travel areas," did not constitute improper bundling in violation of the Competition in Contracting Act of 1984, where the procurement approach was reasonably required to satisfy the agency's legitimate needs.
4. Under a solicitation contemplating multiple awards for travel management services in 28 "travel areas," agency, which provided general advice to the offerors as to what it would consider in deciding how many travel areas an offeror, apparently in line for award under these travel areas, would be capable of performing, is not required to furnish further precise details about how it would perform this aspect of the evaluation.

5. Where an amendment to a solicitation, issued after proposals were received, significantly changed the offered contractual relationship of the parties by shifting significant risk to the government, the agency was required to reopen the competition to firms that did not submit proposals because the record evidenced that some firms may not have submitted proposals because of this risk.

6. Price evaluation scheme for travel management procurement does not provide a reasonable basis for comparing the relative costs of the proposals, where prices for categories of services which will not be provided are part of the scheme.

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## **DECISION**

Several small businesses protest the terms of request for proposals (RFP) No. DABL01-03-R-1001, issued as a small business set-aside by the Department of the Army, Information Technology, E-Commerce and Commercial Contracting Center, for travel services.<sup>1</sup> They protest that the solicitation places undue risk and burden on the offerors, that the agency has not disclosed sufficient information to enable offerors to intelligently prepare proposals, that the requirements were improperly bundled into one large multi-award procurement, that the grouping of the travel locations for each award was unreasonable, that the evaluation scheme did not sufficiently detail how awards would be made, that the agency improperly failed to reopen the competition after issuing a material amendment, and that the price evaluation scheme was defective.

We sustain the protests in part and deny them in part.

## **BACKGROUND**

This procurement is part of the Department of Defense's (DoD) effort to reengineer the DoD travel process. DoD identified this process during the National Performance Review in 1993 as being in need of reengineering because it was fragmented, inefficient, expensive to administer, and occasionally an impediment to mission accomplishment. In 1995, DoD established what became the Defense Travel System Program Management Office (DTS/PMO), whose mission was to acquire travel services DoD-wide, and support mission requirements, reduce costs, and

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<sup>1</sup> There are two groups of small business protesters before us. One group, represented by Josephine L. Ursini, Esq., includes AirTrak Travel; The Alamo Travel Group; Business Travel Advisors, Inc./BTA Travel; Creative Travel d/b/a Kreative Travel; CWT/Century Travel; N&N Travel & Tours, Inc.; Potomac Falls Travel; Ravenel Brothers, Inc. d/b/a Ravenel Travel; Sun Travel, Inc.; and WinGate Travel, Inc. The other group, represented by Lars E. Anderson, Esq., consists of Alexander Travel, Ltd. and El Sol Travel.

provide superior customer service.<sup>2</sup> The DTS/PMO initiated the Defense Travel System Program to procure a software-based travel system, designated the DTS. DoD envisioned the DTS as a general support system designed to make business travel quicker, easier, and more efficient by providing automated commercial and government travel support services to DoD travelers. See DoD Inspector General Report No. D-2002-124 at 1.

In May 1998, the DTS/PMO, through the Military Traffic Management Command, contracted with TRW, Inc. to design and deploy the DTS.<sup>3</sup> The original contract called for deploying the DTS to 11,000 sites worldwide within 120 days of the effective date of the contract with completion approximately 38 months later (April 2002). However, the DTS/PMO discovered that the travel system was more cumbersome than anticipated, and that the planned commercial-off-the-shelf product would require extensive modification and development to meet DoD's requirements. Id. at 6-7.

The DTS/PMO now anticipates that it will take until 2006 to obtain total functionality of the system, including integrating the common user interface and the DoD accounting and disbursing systems and the engineering support necessary to implement the system development of the DTS. Hearing exh. No. 5, DTS Command Briefing, at 31. The DTS/PMO has also reduced the DTS deployment plan to include only approximately 260 travel sites; the revised deployment schedule included initially fielding the DTS to a relatively small number (10) of pilot sites during 2002, and to approximately 250 high-volume travel sites from 2003 to 2006. DoD Inspector General Report No. D-2002-124 at 7. The DTS/PMO also states that the DTS software will undergo evolutionary development to add features and capabilities, and to address problems in earlier versions; the successive versions bear the names of United States presidents. The current schedule contemplates release of a Jefferson version in March 2003, a Madison version in January 2004, a Monroe version in January 2005, and an Adams version in January 2006.<sup>4</sup> See Hearing exh. No. 5, DTS

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<sup>2</sup> The DTS/PMO explained that it is chartered to conduct three primary activities: (1) conduct business process reengineering of DoD travel processes; (2) acquire an automated end-to-end system to support the reengineered temporary duty travel process; and (3) consolidate the procurement of all DoD Commercial Travel Office (CTO) services. Agency Report, DTS/PMO Statement, at 1.

<sup>3</sup> Northrop Grumman is currently the contractor for this contract.

<sup>4</sup> The evolutionary development contemplates that the successive releases of the DTS will enhance the functionality of the software, while at the same time correcting problems associated with prior releases of the software. For example, the Jefferson version, which is to be utilized initially under this procurement and which the agency advised would be released in an enhanced version on June 20, 2003, is expected to correct problems currently being experienced at the test sites with the Adams

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Command Briefing, at 31. Up to this point, the DTS has only been deployed at pilot sites within DoD utilizing the Washington and Adams versions of the software.

Currently, DoD contracts with CTOs, such as the protesters or large business travel companies, to meet its travel service needs primarily through “traditional” methods. Traditional travel services involve the traveler (or travel clerk) calling a travel agent at the CTO, orally describing the travel requirements, and working with the travel agent to make airline, hotel, and rental car reservations. To effectuate the service, the travel agent is required to obtain certain required information regarding the traveler, such as name, address, phone number, travel preferences, and credit card information. This information is utilized by the travel agent to develop a Passenger Name Record (PNR) in the Global Distribution System (GDS). The GDS consists of several databases utilized by the CTO industry to book reservations with airline, hotel and rental car vendors.<sup>5</sup> The GDS is used to book the flight, hotel, and or rental car, and to decrement the appropriate vendor’s inventory. The travel agent then completes the process by issuing a ticket or confirmation number.<sup>6</sup>

In contrast, the DTS software is designed to permit the DoD traveler or travel clerk to develop a PNR that is electronically passed through a contractor-operated PNR gateway directly to the various GDS databases. In developing the PNR, the traveler or travel clerk has the ability to directly access the information related to airline flights, hotels, and car rentals, and to make the reservations in the GDS, tasks currently being done by the CTOs using the traditional methods. The PNR is then held within the particular GDS in an electronic mailbox called a queue, which is generally used by the CTO only for purpose of fulfillment. See Agency Hearing Comments at 2-3.

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version of the software. See Hearing Transcript (Tr.), June 6, 2003, at 148; Tr., June 9, 2003, at 82, 185. (Citations are to the transcript of the 3-day hearing where our Office heard testimony on the protest issues.)

<sup>5</sup> The GDS describes several independently owned databases controlled primarily by the airline industry that provide worldwide electronic distribution of travel information to travel agencies, travel service providers, and corporations. The GDS databases that the DTS and the CTOs currently utilize to book DoD travel through traditional and automated means include Amadeus, Worldspan, Galileo/Apollo, and Sabre.

<sup>6</sup> The process of ticketing and issuing confirmation numbers is called the “fulfillment.”

DoD states that automating the travel process should result in substantial savings to the government.<sup>7</sup> In this regard, DoD believes that the CTOs should have lower labor costs because they generally need only assist in the fulfillment of travel ordered on the PNR, instead of performing traditional travel agent services, which entail manually interfacing with the system to add other information or take other actions. DoD asserts that this should cause a reduction in the CTOs' transaction fees charged the government.<sup>8</sup> In addition to allowing the traveler or travel clerk to book travel, the DTS is expected to also automate other aspects of the travel process, including travel reimbursement, accounting, and record keeping.<sup>9</sup>

## SOLICITATION

As part of the effort to deploy the DTS, the Army issued the RFP on November 22, 2002, as a small business set-aside to acquire official travel management and related additional services from CTOs on a "point-of-sale," transaction-fee basis. The RFP contemplated multiple awards of fixed-price, indefinite-delivery, indefinite-quantity, task order contracts (with one cost-reimbursable item) for a base period of 2 years, with three 1-year option periods. The RFP, as amended,<sup>10</sup> broke out the travel services requirements into 28 distinct "travel areas," each of which contained one or more "travel locations," with an overall total of 89 locations.<sup>11</sup>

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<sup>7</sup> The Army notes that commercial booking engines such as Travelocity, Expedia, and Orbitz typically result in lower fees than traditional methods. The protesters dispute that such savings will inure to the CTOs because of the complex nature of DoD's travel process and the problems currently associated with the DTS software.

<sup>8</sup> DoD recognizes that some travel requirements may result in further actions by the CTOs, notwithstanding the DTS, and thus has requirements for staffed travel offices. One example cited by the Army is complicated overseas travel where the traveler has requested CTO assistance. See Agency Report, DTS/PMO Statement, at 5. Moreover, it appears that the DTS may not be able to be utilized for Military Entrance Processing Stations (MEPS), which involve large group travel, because the GDS currently will not allow CTO to book travel for more than nine people. Tr., June 9, 2003, at 169-70. In addition, some travelers may decide not to use the DTS because they want more personal service.

<sup>9</sup> When fully deployed, the DTS is expected to include the following: order writing capability; reservations for all modes of travel; entitlements computation; automated DoD policy compliance; electronic signature verification; electronic travel claim settlement, including split disbursement; and archiving of encrypted financial and travel data. See Agency's Hearing Comments at 2.

<sup>10</sup> The Army issued 10 amendments to the RFP prior to the protests.

<sup>11</sup> Of the 89 locations, 51 are Army sites, 35 are Air Force sites, and 3 are Marine Corps sites. The travel services provided to these locations are currently being

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The RFP's statement of work (SOW) advised that travel management services to support DoD travelers whose duty stations are within the travel area(s) awarded to the CTO contractor were to include both traditional methods and automated methods, and that automated travel management services were required to be performed exclusively through the use of the DTS software. RFP amend. 10, §§ C.1.1., C.1.2. In addition, the SOW required the contractor to perform management information system (MIS) reporting requirements for all travel services, including centrally billed account (CBA) reconciliation, STATCO, and TRIP\$.<sup>12</sup> RFP amend. 10, §§ C.1.4, C.4.6. The SOW stated in this regard:

CBA reconciliation functionality is planned to be release[d] in July 2003 for those transactions facilitated through DTS. Once this functionality is in place, the CTO will no longer be required to provide that service for transactions process[ed] via DTS. Until that time for DTS facilitated transactions and for traditional travel services the Contractor is required to perform CBA reconciliation.

RFP amend. 10, § C.4.6.

The RFP provided for multiple awards by travel area.<sup>13</sup> There were several go/no-go criteria that proposals had to satisfy in order to be considered for award. Awards would then be made on a "best value" basis, considering the technical, performance risk, and price evaluation factors. The technical factor was composed of two subfactors: understanding of the requirements and feasibility of approach.<sup>14</sup>

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performed under separate contracts with the Army, Air Force, and Marine Corps. Agency Report, DTS/PMO Statement, at 1-2.

<sup>12</sup> STATCO, and TRIP\$ are statistical reports regarding various travel data, such as volume of travel between travel destinations. See Tr., June 11, 2003, at 106.

<sup>13</sup> Section L.3.2 of the RFP advised:

The Government will not further divide the twenty-eight (28) Travel Areas into smaller Travel Areas. Therefore, for each Travel Area, the Offeror shall accept all of the states and site locations represented within a Travel Area.

RFP amend. 8, § L.3.2.

<sup>14</sup> The feasibility of approach subfactor was more important than the understanding of the requirements subfactor.

Performance risk and price did not have subfactors.<sup>15</sup> Under performance risk, the government will conduct an assessment based on the “quality, relevancy, and currency of the offeror’s past performance.” RFP amend. 8, § M.4.2.1. The technical factor was said to be more important than the price factor, which was in turn more important than the performance risk factor. The RFP explained that

[f]or all offerors that pass the initial go/no go evaluation, the Government will proceed to conduct a “best value” proposal evaluation that will not use a predefined formula in the selection decision process for each Travel Area, instead, the source selection process will identify those proposals for each Travel Area that are determined to be the most beneficial to the Government with appropriate consideration given to the three (3) factors.

RFP amend. 8, § M.1.1.

The price evaluation scheme in the RFP required offerors to propose fees for performing the various services required by the contract. Offerors were specifically required to propose point-of-sale transaction fees for travel management services for air/rail transactions, fees to perform CBA reconciliation, and transaction fees to perform non-air transactions. All of these proposed fees would be considered in the price evaluation scheme.<sup>16</sup> The RFP pricing instructions explained that “[b]ecause the DTS software will be implemented in a phased approach across DoD, the pricing schedule in this contract allows the Contractor to propose a range of fees within each performance period to ensure adequate and real-time compensation for services provided.” RFP, amend. 8, § B.4.1.5. Also, offerors were provided the agency’s estimated deployment schedule for the DTS at each travel location. Hearing exh. No. 4.

The following pricing model was included in the RFP to evaluate the air/rail transaction fees:

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<sup>15</sup> We find no merit to the protesters’ contention that the performance risk factor was unclear or was required to identify subfactors.

<sup>16</sup> The RFP also required offerors to propose certain fees or prices, which would not be part of the evaluated price, for various additional services, such as, for example, leisure travel in conjunction with official travel, transportation of human remains, and an additional agent at staffed locations.

	CLIN	Performance Period				Average Across Years
		Base Yrs 1&2	Option Yr 1	Option Yr 2	Option Yr 3	
OFFICIAL TRAVEL SERVICES – AIR/RAIL TRANSACTIONS						
01	OFFICIAL TRAVEL SERVICES FOR DoD TRAVELERS -- Propose a transaction fee for travel services facilitated through DTS at 0%					
02	OFFICIAL TRAVEL SERVICES FOR DoD TRAVELERS -- Propose a transaction fee for travel services facilitated through DTS at 1-25%					
03	OFFICIAL TRAVEL SERVICES FOR DoD TRAVELERS -- Propose a transaction fee for travel services facilitated through DTS at 25-50%					
04	OFFICIAL TRAVEL SERVICES FOR DoD TRAVELERS -- Propose a transaction fee for travel services facilitated through DTS at 51-75%					
05	OFFICIAL TRAVEL SERVICES FOR DoD TRAVELERS -- Propose a transaction fee for travel services facilitated through DTS at 76-90%					
06	OFFICIAL TRAVEL SERVICES FOR DoD TRAVELERS -- Propose a transaction fee for travel services facilitated through DTS at 91-100%					
07	AVERAGE OF TRANSACTION FEES FOR ALL DTS USAGE					

See RFP amend. 9, attach. J, CTO Price Model – Input Form, at 19. The price evaluation criterion in the RFP explained that the overall average transaction fee to be used in the price evaluation will be derived for each travel area for which proposals are submitted through use of this CTO pricing model. As indicated above, this model calculates the numerical average of each of the six transaction fees for particular DTS usage percentage ranges across the base period and each option year, and then averages these six averaged transaction fees. An average CBA reconciliation fee and an average non-air transaction fee are to be calculated by averaging the fees for the base period and each option year. The sum of the average transaction fee plus the average CBA reconciliation fee was then multiplied by a “workload” figure applicable to each travel area; the non-air transaction fee was similarly multiplied by a workload figure. The sum of these figures was used to

determine the overall contract value and selecting the contractor for award for each travel area.<sup>17</sup> RFP amend. 8, § M.4.3.

Prior to the closing date, the protesters filed protests challenging the terms of the RFP. Proposals in response to the RFP were received on March 24, 2003. Three of the first group of protesters chose not to submit proposals; the other protesters submitted proposals.

In response to these protests, the Army issued amendment No. 0011, dated April 15, as corrective action to address some of the concerns raised in the protests regarding the alleged undue risks borne by small business contractors particularly with regard to the DTS.<sup>18</sup> That amendment, among other things, modified the equitable adjustment provisions in clause G.16 of the RFP concerning the recovery of costs in the case of DTS failure by shifting more of the risk to the government. In addition, amendment No. 0011 deleted the requirement for the CTO to ensure that the fare booked was the lowest fare available. The agency declined to re-open the competition to allow the non-offeror protesters to submit proposals.

#### PROTECTIVE ORDER ADMISSIONS

After the protests were filed, our Office issued a protective order. Protective orders are issued pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.4(a) (2003), limiting the release of documents that are non-public or the release of which would result in a competitive advantage--such as offerors' proposals and agency evaluation documentation--to counsel for the protester and interested parties who have been admitted to the protective order. The Army objected to the applications for admission to the protective order submitted by Mr. Anderson and Ms. Ursini on the basis that they were involved in competitive decisionmaking. As discussed below, we admitted these individuals to the protective order, notwithstanding the objections.

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<sup>17</sup> To complement the price evaluation and to assist in evaluating offerors' proposed costs, the Army developed an Independent Government Cost Estimate (IGCE). The protesters have questioned the validity of the IGCE. We find this aspect of the protests to be premature because the IGCE is an evaluation tool and no award selections have been made under the RFP, and because the agency states that it is correcting the IGCE.

<sup>18</sup> At the pre-proposal conference, the DTS/PMO officials identified four known problems with the current Adams version of the DTS software in use at the pilot sites: (1) missing data (telephone number, e-mail address, charge card number, and seat preference); (2) auto-booking failures on hotels and rental cars; (3) ticket date not always applied; and (4) incorrect flight data (sequence of flight segments).

In determining whether counsel may be permitted access to information covered by a protective order, we look to whether the attorney is involved in competitive decisionmaking for the client (or another relevant firm)—*i.e.*, whether the attorney's activities, associations, and relationship with the client (or another relevant firm) are such as to involve advice and participation in client's decisions (such as pricing and product design) made in light of similar corresponding information about a competitor. See U.S. Steel Corp. v. United States, 730 F.2d 1465, 1468 (Fed. Cir. 1984). Where an attorney is involved in competitive decisionmaking, the attorney will not be admitted to the protective order because there is an unacceptable risk of inadvertent disclosure of non-public information or the proprietary data of another company. Although it is often easier for outside counsel to establish that they are not involved in competitive decisionmaking, we approach the admission of counsel on a case-by-case basis, and we do not assume that any attorney's status as outside or in-house counsel is dispositive of whether that attorney is involved in competitive decisionmaking. See Allied-Signal Aerospace Co., B-250822, B-250822.2, Feb. 19, 1993, 93-1 CPD ¶ 201 at 9.

With respect to Mr. Anderson's application, the agency advised that Mr. Anderson represents Carlson Wagonlit Government Travel and its affiliates, which the Army alleged is attempting to market a commercial travel booking software product to DoD that will compete with the DTS software that is at issue in the protests. The Army also asserted that El Sol, represented by Mr. Anderson in this protest, is an affiliate of Carlson.<sup>19</sup> The Army also stated that Mr. Anderson had filed a Freedom of Information Act (FOIA) request on behalf of Carlson seeking government and contractor information involving the restructuring of the DTS contract with Northrop Grumman; this, the Army argued, evidenced that Mr. Anderson sought to exploit DTS acquisition source selection sensitive information to assist Carlson in marketing that firm's software product as an option to DTS. See Army Letter, May 1, 2003, attach. 1, Memorandum of Contracting Officer.

The Army also asserted that we previously determined in Omega World Travel, Inc.; SatoTravel, Inc., B-288861.5 *et al.*, Aug. 21, 2002, 2002 CPD ¶ 149 that Mr. Anderson was a competitive decisionmaker for Carlson. In that case, which resolved a protest against the award of a contract to Carlson, Mr. Anderson, who represented Carlson, was initially admitted to the protective order issued in connection with the protest. Subsequently, Mr. Anderson withdrew his admission following the objection of protester's counsel that Mr. Anderson represented Carlson at a pre-proposal conference in a manner which protester's counsel argued suggested that Mr. Anderson was a competitive decisionmaker. The Army states that the attorney in our Office who handled the protest found that the level of Mr. Anderson's participation at the pre-proposal conference reflected that he was a competitive

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<sup>19</sup> Mr. Anderson denied that El Sol is an affiliate and stated that the protesters he represents are merely franchisees of Carlson's commercial travel business.

decisionmaker for Carlson and that this was the basis for Mr. Anderson's withdrawal. During that protest, the Army never objected to Mr. Anderson's admission to the protective order.

The Army argued that Ms. Ursini should be denied admission to the protective order for the same reasons that Mr. Anderson should be denied admission. The Army advised that Ms. Ursini actively solicited questions from the Army concerning the solicitation on behalf of her clients in the pre-proposal stages of this procurement, much like Mr. Anderson did in the prior procurement's pre-proposal conference. The Army advised that she also represents an affiliate of Carlson in this protest.

Although we had concerns in the prior protest with respect to Mr. Anderson's status at the pre-proposal conference and another meeting, our Office did not rule in that matter because Mr. Anderson chose to withdraw his admission. Accordingly, the Army was incorrect in its assertion that our Office had already found Mr. Anderson to be involved in competitive decisionmaking. In addition, in these protests, Mr. Anderson and Ms. Ursini have responded to the agency's objections.

Ms. Ursini stated that, although she asked numerous questions on behalf of several clients, she has done so because these clients desired not to be identified during the pre-proposal process. She also affirmed that she is not involved in competitive decisionmaking for any of her clients.

Mr. Anderson, in response to our request, provided detailed information concerning the activities he performs on behalf of Carlson. In this regard, Mr. Anderson noted that that firm has its own in-house attorneys, who handle business matters and participate in competitive decisionmaking, and that one of its in-house counsel has considerable government contract experience. Mr. Anderson also stated that when he is engaged to represent Carlson, it is for a particular matter (such as a claim, contract dispute, or protest). Mr. Anderson also responded that although he withdrew his admission in the prior protest, this should not have been interpreted as indicating that he was involved in competitive decisionmaking; he explained that he withdrew his admission only to avoid further delay and unnecessary expense for the client. Mr. Anderson affirmed that he does not participate in competitive decisionmaking, and declared that "[s]ince the allegations were made that my participation in a pre-proposal conference in May 2001 might be construed as participating in competitive decision-making, I have not attended any pre-proposal or similar conferences with Government procurement personnel on behalf of [Carlson]."

Our review of the evidence, including a transcript of the pre-proposal conference attended by Mr. Anderson on behalf of Carlson did not establish that either Mr. Anderson or Ms. Ursini is involved in competitive decisionmaking, nor did the agency show, beyond its initial assertions, that the release of protected material to either of them in this case would result in an unacceptable risk of disclosure. Mr. Anderson offered a reasonable explanation of his activities on behalf of his

client, which related to terms in the solicitation that were the subject of an agency-level protest in which he represented Carlson. Also, notwithstanding our request for the Army to respond to Mr. Anderson's and Ms. Ursini's explanations, the Army did not provide any evidence substantiating the agency's allegations that Mr. Anderson and Ms. Ursini were involved in competitive decisionmaking. Nor did the agency, despite our request, show what competitive advantage might accrue to the protesters from their alleged affiliation with Carlson.<sup>20</sup> In short, although the Army continued its objections, it provided no evidence to counter the detailed responses and explanations provided by Mr. Anderson and Ms. Ursini. Given the lack of evidence establishing that Ms. Ursini is involved in any competitive decisionmaking and Mr. Anderson's decision to refrain from activities on behalf of Carlson that may be construed as being involved in competitive decisionmaking (such as representing that client at pre-proposal conferences), we found no basis to deny them admission under the protective order.

#### ALLEGED UNDUE RISK TO CONTRACTORS

A major thrust of the protesters' challenge to the terms of the RFP concerns what they believe are undue risks inherent in developing transaction fees on a fixed-price basis when the DTS is still in the developmental stages and has experienced several problems that would hinder the CTOs' ability to meet the contract requirements.

One risk is that associated with the DTS software itself, allegedly because a fully functional DTS system has never been deployed and has not been proven to work with all of the GDS databases, with DoD's many accounting systems, nor been shown to successfully meet the contract's MIS reporting requirements.<sup>21</sup> The protesters

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<sup>20</sup> Moreover, whether or not Carlson may have a motive to obtain information to compete against, or disrupt the implementation of, the DTS, the Army stated that it was unlikely that any software besides the DTS would be utilized to meet the agency's (including DoD's) travel needs.

<sup>21</sup> For example, the protesters assert:

the DTS software implementation has been hampered by many problems, including, but not limited to: (a) the need to interface with the different GDS [databases] operated by the major Airlines, i.e. SABRE, WorldSpan, Amadeus, and Apollo; (b) the fact that Southwest Airlines does not participate in most of the [computer reservation systems], yet has captured an ever-increasing share of the Government market, with the result that DTS reservations that should be made on [Southwest] under the city-pair fare program are being made on the wrong airlines, causing more work for the CTOs at the pilot sites; (c) the need for DTS to interface with over 50 different DoD accounting programs.

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essentially maintain that the Army's assumption that CTOs will be able to reduce costs by utilizing the DTS is unjustified.<sup>22</sup>

The protesters also have raised concerns about the sufficiency and quality of the information the Army provided offerors to prepare proposals, arguing that the agency has intentionally withheld critical information regarding the reliability of the DTS, and has failed to provide information necessary for offerors to develop sound transaction fees, particularly concerning travel related to the MEPS (which historically has been performed by large businesses).<sup>23</sup> Further, the protesters complain that the RFP requires offerors to rely on numerous pricing assumptions, many of which are inaccurate, and that workload data has been incomplete and incorrect. The protesters contend that the lack of reliable and accurate information in the RFP precludes offerors from intelligently preparing proposals.

According to the protesters, these factors, in particular the lack of reliable data and the developmental nature of the DTS, have resulted in undue risks being placed upon small businesses like the protesters, and make the solicitation of these services under a fixed-price contract inappropriate. In addition, the protesters argue that soliciting these services under a fixed-price contract exceeds the government's needs, contending that choosing the use of fixed-priced contracts is unnecessary, since the government could contract for the automated transactions with the CTOs on a cost-reimbursement basis when the DTS is deployed at each travel location until reliability and savings with the DTS were proven.

As a general rule, the contracting agency must give offerors sufficient detail in a solicitation to enable them to compete intelligently and on a relatively equal basis. National Customer Eng'g, B-254950, Jan. 27, 1994, 94-1 CPD ¶ 44 at 5. However, the contracting agency has the primary responsibility for determining its needs and the

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AirTrak Travel et al., Protest at 8-9.

<sup>22</sup> The protesters argue that the DTS performance data suggests that CTOs have incurred increased labor costs to correct errant DTS transactions. In addition, the protesters point to the fact that the DTS is still in a developmental stage, and has yet to be deployed anywhere besides at pilot sites, and that each evolutionary version of the DTS software has yet to perform as anticipated by DoD and can be expected to have concomitant problems, as has been the case so far.

<sup>23</sup> For example, the protesters point to the fact that much of the information concerning testing of the various versions of the DTS that could be useful to offerors was provided only during the protest. Since we recommend below that the competition be reopened, this information can be made available to all offerors with whatever cautionary statements the agency believes are appropriate regarding its reliability.

method of accommodating them, including the choice of the appropriate contracting format. DGS Contract Servs., Inc., B-261879, Oct. 31, 1995, 95-2 CPD ¶ 199 at 3. We will not question an agency's choice of procurement approach, absent clear evidence that its decision is arbitrary or unreasonable, or in violation of statute or regulation. Id. There is no requirement that a competition be based on specifications drafted in such detail as to completely eliminate all risk or remove every uncertainty from the mind of every prospective offeror. Indeed, an agency may offer for competition a proposed contract that imposes maximum risks on the contractor and minimum burdens on the agency. As risk exists in any contract, offerors are expected to use their professional expertise and business judgment in anticipating a variety of influences affecting performance costs. National Customer Eng'g, supra. A mere difference of opinion between the protester and the agency concerning what will best suit the agency does not establish that the agency's determination as to its requirements placed undue risk on the contractor. DGS Contract Servs., Inc., supra.

While we appreciate that a procurement requiring the use of developmental software poses risks for contractors, we do not find, on the record before us, that offerors were exposed to unacceptable or undue risks or burdens, or that the Army acted unreasonably in deciding to solicit its requirements on a fixed-price basis.

To the contrary, the evidence reflects that the DTS/PMO carefully approached this important procurement to reengineer the DoD travel process. As part of its initiative to begin deploying the DTS, it held numerous meetings with the military services, the CTO industry, including small businesses, and professional travel organizations, and a pre-proposal conference, prior to issuing the RFP, to try to decide the best approach to this effort.<sup>24</sup> See Tr., June 6, 2003, at 39. The DTS/PMO advises that much of the structure in the procurement was in response to the feedback that it received during this process. See, e.g., Tr., June 11, 2003, at 40-42. The risks associated with this procurement essentially were revealed to potential offerors at these meetings, for example, that the DTS would be developed and phased in during the contract, that the DTS software had experienced problems, and that the DTS would be initially deployed under this contract.<sup>25</sup> Moreover, contrary to the

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<sup>24</sup> The record shows that the agency's action in anticipation of issuing the RFP included demonstrating the DTS, inviting businesses to gain more information about the system, providing interested business with the opportunity for face-to-face meetings, and issuing a draft RFP to industry upon which small businesses were invited in order to help formulate the strategy for this procurement.

<sup>25</sup> The protesters argue that the magnitude of the problems with the DTS was withheld from potential offerors because the agency did not provide the detailed information related to the problems with DTS usage experienced by CTOs at the pilot sites and the extra work associated with correcting a DTS error. However, as indicated by the DoD Inspector General Report, the problems with the DTS were well known in the industry, as evidenced by the detailed contentions made in the

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protester's contentions, the agency has provided considerable information, including detailed workload and pricing assumption data, both before and during this protest, so that offerors can intelligently make business judgments regarding this procurement.<sup>26</sup> Furthermore, the agency asserts that the Jefferson release of the DTS addresses the previous problems and it believes that it and the subsequent releases will perform as designed and not place undue burdens on the contractors; while the protesters do not share this optimism, they have not shown that it is unfounded. Finally, as noted, the agency issued numerous amendments, mostly to respond to the concerns expressed by the potential offerors, including issuing amendment No. 0011 to specifically address the question of risks associated with the DTS and other aspects of the requirement, such as the requirement that the lowest fare be obtained. Thus, we believe the agency has mitigated the DTS risks borne by the small business offerors, and that the offerors have been provided with sufficient information to reasonably exercise their business judgment to intelligently prepare proposals.

Under Federal Acquisition Regulation (FAR) § 16.202, an agency properly may solicit on a fixed-price basis if performance uncertainties can be identified and reasonable estimates of their cost impact can be made, and the contractor is willing to accept a fixed price representing assumption of the risks involved. Here, we believe that the agency has made every reasonable effort to identify and disclose the performance uncertainties associated with this procurement. Moreover, as noted by the agency, travel services have traditionally been procured on a fixed-priced basis, a wealth of information was provided to offerors, and offerors could factor in the risk of the DTS in their proposed fees. Also, we believe a significant portion of the risk complained of by the protesters was addressed by certain equitable adjustment provisions in the RFP, including amendment No. 0011, as discussed in more detail below.

Although the protesters suggest that it would be more appropriate to negotiate the DTS-related services with each contractor on a cost basis after award to adequately insulate the protesters from the risks of the DTS, there is no requirement for the agency to take this approach. There are considerable problems associated with noncompetitively negotiating, evaluating and monitoring small business costs in an industry whose fees are generally fixed-price. Moreover, the agency advises that a major element of transitioning to an automated process requires the agency to

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protests, and the risk that a CTO might incur more work and expense associated with errant DTS transactions was readily discernible from the information the agency made available.

<sup>26</sup> Although the protesters have questioned the accuracy of some of this data, we believe that this problem is mitigated because the pertinent data on each travel location included a point of contact, in the event offerors sought to gain more detailed information.

establish contracts with CTOs that cover both the traditional services and the new automated DTS services, and to mix the traditional and automated services to meet the full spectrum of DoD's requirements. See Agency Report, DTS/PMO Statement, at 4. While we are mindful, as the protesters note, that miscalculating risk can be detrimental to small businesses, it is, as noted above, within the ambit of an agency's administrative discretion to solicit offers for a contract imposing maximum risk upon the contractor and minimum burdens upon the government. National Customer Eng'g, supra. We therefore find no basis to find that the agency has imposed undue risk on the offerors or question the agency's decision to use a fixed-price contract here.

#### ALLEGED IMPROPER CONSOLIDATION OF THE TRAVEL REQUIREMENTS

The protesters also contend that the way in which the Army grouped travel locations under each travel area and bundled the travel services requirements into one large single procurement discourages small business competition, even though this procurement was set aside for small businesses.

The Competition in Contracting Act of 1984 (CICA) generally requires that solicitations include specifications which permit full and open competition, and contain restrictive provisions and conditions only to the extent necessary to satisfy the needs of the agency. See 10 U.S.C. §§ 2305(a)(1)(A), (B) (2000). Since bundled, consolidated or total-package procurements combine separate, multiple requirements into one contract, they have the potential for restricting competition by excluding firms that can only furnish a portion of the requirement. We review such solicitations, when they are protested, to determine whether the approach is reasonably required to satisfy the agency's legitimate needs. The Sequoia Group, Inc., B-252016, May 24, 1993, 93-1 CPD ¶ 405 at 4.

As indicated above, the mandate of the DTS/PMO is to re-engineer the DoD travel process, including automating the travel process through the DTS and consolidating DoD CTO travel office services. The DTS/PMO reports that historically the services acquired here have been acquired through a regional approach by the Army and Navy, and a decentralized approach for the Air Force and Marine Corps. DoD reports that it has 80 known CTO contracts/task orders administered by approximately 67 separate organizations.<sup>27</sup> The DTS/PMO also reports that the acquisition strategy to accomplish consolidation is a two-step process; the first is to procure travel management services under the small business set-aside program for certain locations and the second step is to procure those services for other DoD locations on an unrestricted basis.

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<sup>27</sup> These CTO services within the continental United States primarily have been provided by two large business vendors, SatoTravel and Carlson.

This procurement constitutes the first step, and the DTS/PMO reports that in developing a strategy to consolidate CTO services it has worked with the CTO industry, military services and defense agencies over the past several years to develop a common set of requirements for CTO services and to agree on the regional groupings for travel sites. The DTS/PMO reports that one factor considered in establishing the groupings was the desire to increase the volume of business set aside for small businesses.<sup>28</sup> The DTS/PMO advises that the solicitation balances the approach of consolidating all of DoD's CTO procurements, increasing the volume of business set-aside for small business and supporting the transitioning DoD into a new era of managing travel budgets. See Agency Report, DTS/PMO Statement, at 1-2.

The protesters essentially complain that the single procurement and the particular groupings under the travel areas were only for the purpose of administrative convenience, and improperly restrict competition. For example, the protesters question the way in which the MEPS have been grouped under certain travel areas, such that some are made up exclusively of MEPS sites and some have a significant percentage of MEPS sites. They maintain that the MEPS sites, some of which under the RFP are required to be staffed with a single person, have unique travel requirements that make them unprofitable unless paired with other routine travel sites.

The reasons that the agency has offered, however, for grouping the travel locations by geographic region, and for issuing a single consolidated procurement, are not solely based on administrative convenience. As indicated previously, the underlying purposes behind the agency's single procurement included the legitimate requirement to reengineer the antiquated and costly DoD travel process, in part by consolidating the process, and structuring geographical groupings to allow for more small business participation. Agency officials testified that a major factor that was considered in structuring the RFP into 28 travel areas, with 89 locations was whether there was adequate sales volume to achieve effective competition. See Tr., June 11, 2003, at 12, 40-41. Moreover, this procurement approach allowed more choices by potential small business offerors to select the travel areas where they would be most competitive and able to successfully perform the contracts. Finally, unlike the protesters, DTS/PMO officials found, based on discussions with the Army, that the MEPS travel needs were well suited for support by small businesses because the travel services for MEPS are relatively "cut and dry"; the protesters have not shown this judgment was unreasonable.<sup>29</sup> See Tr., June 6, 2003, at 41; Tr., June 9, 2003, at 105; Tr., June 11, 2003, at 12-15.

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<sup>28</sup> A DTS/PMO official testified that one impact of the RFP as constituted was to significantly increase the volume of small business set-asides. See Tr., June 11, 2003, at 11.

<sup>29</sup> Counsel for the second group of protesters asserts that travel services for MEPS, which sometimes involve the travel for groups of recruits, may not be suitable for  
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Since the agency had a legitimate requirement to reengineer DoD travel processes by consolidating them, and the agency did reasonably consider the impact on small businesses, we find the agency has justified its approach to consolidating the agency's requirements. In this regard, we have upheld the consolidation of requirements where, as here, an agency has provided a reasonable basis for using such an approach—e.g., a definitive agency requirement that mirrors the agency's minimum needs and necessitates the questioned consolidation. See The Sequoia Group, Inc., supra.

#### DEFECTIVE EVALUATION SCHEME

The protesters contend that the evaluation scheme is defective because it does not adequately describe how it will resolve the situation where an offeror submits proposals on several travel areas and the agency does not believe the offeror can perform contracts for all of the areas where it has submitted the best-value proposal. Prior to the closing date, when queried about this matter, the agency stated its position in this matter to the offerors as follows:

An offeror will be considered for each travel area for which it submits a proposal. . . . the Government will evaluate each proposal [in accordance with] the evaluation criteria . . . For example, please note the following evaluation element of the Feasibility of Approach subfactor: "Offerors capability to perform the proposed approach based on demonstrated available resources." An offeror may be "downgraded" if it cannot demonstrate adequate available resources. Further, . . . an offeror must be deem[ed] responsible in order to receive an award or awards. However, if a responsible, small business offeror is determined to provide the most beneficial proposals, [in accordance with] the evaluation criteria and basis for award . . . for multiple travel areas, it will receive awards for such areas.

RFP amend. 2, Answer to Offeror's Question 5.

While the protesters contend that this is insufficient guidance, we do not believe the agency was required to furnish further precise details about how it would perform

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performance by small businesses because they differ from more traditional government travel services. These protesters have not explained why small businesses cannot handle these services. In any event, the small business offerors were given the option of whether or not to propose on a particular travel group, which may or may not include a MEPS, and we understand that competition has been obtained for all travel locations, including the MEPS.

this aspect of the evaluation. See ABB Power Generation, Inc., B-272681, B-272681.2, Oct. 25, 1996, 96-2 CPD ¶ 183, at 4 (agency is not required to disclose all evaluation standards as to how disclosed evaluation factors will be evaluated); Lexis-Nexis, B-260023, May 22, 1995, 95-2 CPD ¶ 14 at 6-7 (agency not required to disclose specific rating methodology).<sup>30</sup>

#### AMENDMENT NO. 0011

As noted above, amendment No. 0011 revised paragraph G.16, pertaining to equitable adjustments if the DTS web portal fails. With regard to four areas involving DTS transactions, the government agreed to allow the contractor to charge the traditional transaction fee, instead of the contractor's reduced DTS transaction fee, if the DTS failed to meet any of four separate performance standards at a 10-percent failure rate. The four performance standards are (1) 90 percent of all PNRs received through the DTS will contain all information needed to complete reservations for air, hotel, and car rental (i.e., origin/destination, dates, specific flights and/or hotels, type of care, and charge card numbers); (2) PNR segments for hotel and car rentals will be automatically booked by the DTS without involvement by the CTO 90 percent of the time when travelers make the specific selections in the DTS; (3) ticket issuance date will be applied automatically by the DTS without CTO involvement 90 percent of the time; and (4) PNRs generated through the DTS will contain complete and accurate segment data in correct sequence 90 percent of the time. In addition, amendment No. 0011 deleted the requirement for the CTO to guarantee that DoD travelers receive the lowest applicable fare available at the time of their trip.

The first group of protesters argue that these changes implemented through amendment No. 0011 constituted fundamental changes to the RFP, and the agency's failure to reopen the competition prejudiced the non-offeror protesters. We agree.

FAR § 15.206(e) provides that “[i]f in the judgment of the contracting officer, based on market research or otherwise, an amendment proposed for issuance after offers have been received is so substantial as to exceed what prospective offerors reasonably could have anticipated, so that additional sources likely would have submitted offers had the substance of the amendment been known to them, the contracting officer shall cancel the original solicitation and issue a new one, regardless of the stage of the acquisition.” The purpose of this requirement is to ensure that all potential offerors are clearly aware of the changed agency requirements, so that they may have the opportunity to compete on the new basis

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<sup>30</sup> While we do not discuss all of the numerous contentions made by the protesters associated with the foregoing issues, as well as other arguments about alleged ambiguities and improper provisions in the RFP, we have reviewed them all and find no basis to sustain their protests, with the exception of those protest issues discussed below.

and the government benefits from the competition from all offerors who decide to submit proposals based on the amended requirements. See Information Ventures, Inc., B-232094, Nov. 4, 1988, 88-2 CPD ¶ 443 at 4.

As discussed previously, a major concern of the protesters has been the risks associated with the DTS. Amendment No. 0011 was intended to, and in fact did, alleviate a major component of that concern, by shifting a significant risk burden associated with the DTS from the CTOs back to the government. The protesters also note that deleting the CTO low-cost fare guarantee is a significant departure from current government travel policy, since CTOs traditionally have been required to guarantee the lowest airfares under government travel services contracts.<sup>31</sup> In this regard, the protesters explain that the low-cost fare guarantee in the RFP gave actual and potential offerors considerable concern because of the problems associated with the DTS, including the inability of the DTS software to ensure that it displays to travelers the lowest possible airfare, and that prior to amendment No. 0011 the CTO had the responsibility to double check to verify that the DTS indeed had booked the lowest airfare, and to correct any problems identified.

The agency does not dispute that the amendment was intended to shift a considerable portion of the burden, and responsibility for policing the DTS, including risks of its failure, back to the government. See Tr., June 6, 2003, at 59-60; Tr., June 11, 2003, at 72-75. The reason the contracting officer has cited for not treating the changes contained in that amendment as a substantial change was that the amendment constituted merely a clarification of the government's existing requirements. In our view, the record belies this assertion.

As noted above, amendment No. 0011 was intended to significantly alleviate the risks associated with the DTS and to relieve the CTOs from the obligation to guarantee the lowest fare for every transaction. We believe the contractual relationship of the parties was fundamentally changed as a result of the significant changes in the obligations of, and shifting the financial risks between, the parties, and that this was the intent of amendment No. 0011. Such a change in risks that protesters asserted were unreasonable could encourage additional offerors to submit proposals. Indeed, one protester has provided a statement that the risks associated with the DTS, which primarily fell on the offerors, was a significant reason that it chose not to submit a proposal and it would reevaluate its position in this respect if this risk were adequately addressed.<sup>32</sup> Based on our review, we find that there is at least a

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<sup>31</sup> At the hearing, the DTS/PMO Chief of Travel confirmed that current contracts require CTOs to guarantee the lowest airfares. See Tr., June 11, 2003, at 88-89, 125.

<sup>32</sup> This statement, by an official at a firm in the first group of protesters, rebuts the agency citation in its comments on the hearing to statements made by counsel for the second group of protesters (which all submitted proposals) regarding the inadequacy of amendment No. 0011, as evidence that none of the non-offeror

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reasonable possibility of prejudice to the non-offeror protesters by the agency's failure to reopen the competition as a result of the significant changes made by amendment No. 0011, and we sustain the protests on this basis.<sup>33</sup>

#### DEFECTIVE PRICE EVALUATION SCHEME

The protesters finally contend that the CTO pricing model used to evaluate prices was defective.<sup>34</sup> As noted above, the price evaluation scheme was based on price figures obtained by averaging each of the six transaction fees proposed by the offerors for each travel area based on the percentage of transactions facilitated by the DTS (from 0 percent to a range of 91 to 100 percent) for the base period and each option year, and then averaging the six averaged transaction fees. The figure arrived at is basically the numerical average of 24 figures (six transaction fees for four base or option periods). This scheme is based upon the presumption that the more the DTS is utilized by a CTO the lower the cost to the contractor and presumably the better the price offered to the government. However, offerors are not precluded from offering whatever prices their business judgment suggests for these various percentages.

The protesters argue that conducting an evaluation based on such an approach bears no relationship to the actual costs for the services that the government intends to purchase under the contract because it is not linked to the agency's anticipated plan for deploying the DTS. For example, the protesters note that, according to the

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protesters would have submitted proposals, even if given the opportunity. Agency Hearing Comments at 12.

<sup>33</sup> The protesters also raise several concerns regarding the wording of the equitable adjustment clause, including the propriety of limiting damages in the case of defective government-furnished property (DTS), and the question whether amendment No. 0011 adequately disclosed the agency's decision to delete the low-cost fare guarantee because of other provisions that still remained in the RFP. The DTS/PMO officials now concede that clause G.16 requires revision. Since the agency intends to revise the solicitation to address some of the concerns noted by the protesters in this regard, we do not address the concerns here. In addressing these concerns, the agency should also consider whether there is any merit to the protesters' contention that it is improper to limit the government's liability to the level of transaction fees for traditional services, and that this clause requires a deviation to the FAR government-furnished property provisions.

<sup>34</sup> While the agency now asserts that these protest contentions concerning the price evaluation scheme are untimely raised, we find that they were clearly within the scope of the initial pre-closing date protests. Thus, these contentions are timely raised under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1).

agency's own projected schedule, deployment of the DTS will be phased in at the various locations such that it will not be deployed until the last option year in some locations, and they argue, particularly with regard to MEPS locations, that deployment of the DTS may not occur at all. Thus, not only does the price evaluation scheme bear no relationship to the ultimate relative costs to the government, but offerors can game the competition by, for example, offering unrealistically low prices for high DTS usage for travel areas where they can be confident that the DTS will be completely unavailable, such as travel areas where the DTS is not likely to be deployed at all or until the last option year.

Agencies must consider cost to the government in evaluating competitive proposals. 10 U.S.C. § 2305(a)(A)(ii); Health Servs., Int'l, Inc.; Apex Env'tl., Inc., B-247433, B-247433.2, June 5, 1992, 92-1 CPD ¶ 493 at 3-4. While it is up to the agency to decide upon some appropriate, reasonable method for proposal evaluation, an agency may not use an evaluation method that produces a misleading result. Health Servs., Int'l, Inc.; Apex Env'tl., Inc., supra, at 4. The method chosen must include some reasonable basis for evaluating or comparing the relative costs of proposals, so as to establish whether one offeror's proposal would be more or less costly than another's. See Health Servs. Int'l, Inc.; Apex Env'tl., Inc., supra; Penn, Ferrara, Adler & Eichel, B-224224, Feb. 9, 1987, 87-1 CPD ¶ 134 at 4.

Based on our review of the record, the price evaluation scheme here is fatally flawed. As noted above, the RFP methodology calls for six prices for each of the four contract or option period for each travel area with the agency averaging the 24 prices, thus giving equal weight to the prices offered for working entirely in the traditional process, for performing 1 through 25 percent of the transactions using the DTS, and so forth, as well as equal weight for prices for transaction fees for the base period and each option year. This methodology assumes that it is as likely for each travel area that no transactions will be performed that are facilitated by the DTS as that 90 to 100 percent of the transactions will be facilitated by the DTS, and that the full range of the percentages of DTS usage will be possible for each contract period or option. However, here the agency included in the RFP various target dates for deployment of DTS sites at each travel location for each travel area. Despite reflecting target dates for deployment of the DTS at certain locations as late as 2006, the last option year, the CTO pricing model requests pricing which is then used in the price evaluation to determine the lowest price to the government for DTS utilization percentages in periods where the DTS will not yet be implemented, according to the agency's own statements. This does not provide any assurance that the reasonable cost to the government is being reflected in the price evaluation. Indeed, we agree with the protesters that such a scheme encourages gaming by offerors who can propose unrealistically low prices on DTS utilization percentage ranges at locations and for periods where, by the agency's own projections, there is no or very little possibility that the DTS will be implemented, and have these costs considered in determining the evaluated price to the government of that particular proposal.

With regard to the MEPS locations, the record does not reasonably reflect when, whether or to what extent the DTS will be used in view of the different nature of the travel at those locations, yet the transaction fees based upon percentage of DTS utilization in each contract period and option are simply averaged to arrive at the evaluated price. In this regard, the solicitation did not disclose when the DTS will be fully deployed for use by the CTOs and the agency has advised offerors that 95 percent of travel at the MEPS would constitute group travel. See Tr., June 6, 2003, at 91-92. From the testimony of the agency officials, it was not clear whether the DTS can be utilized to book group travel at the MEPS because the DTS is currently configured to operate through the GDS, and the protesters have maintained that the GDS, which is controlled by the airlines, does not permit booking groups of 10 or more through the GDS, particularly where the names are unavailable; as a result, such arrangements typically are done through traditional means. See Tr., June 6, 2003, at 91-93. Agency officials gave varying testimony on whether the DTS would accomplish MEPS travel, only definitively representing that the DTS will automate some aspects of the DoD travel process at the MEPS, such as reconciliation of accounts. While the agency expresses optimism that the DTS will eventually be fully utilized for the MEPS locations, it has set no dates for the deployment and admits that there are obstacles to achieving this goal.

The agency representatives' testimony substantiates that the price evaluation scheme was fundamentally flawed. For example, the DTS/PMO Senior Financial Analyst responsible for developing the price evaluation strategy admitted that the model was primarily designed to establish the contractor's transaction fee, given the percentage of use of the DTS at a site, and was not intended to evaluate the prices for award and had "nothing to do with the costs the Government is likely to incur during this five-year period." See Tr., June 11, 2003, at 175-89. While we think that the agency has a reasonable basis to solicit the transaction fee pricing based upon a DTS utilization percentage, it cannot reasonably give equal weight to prices that it knows will not be charged under the contract (because the DTS will not have been deployed at that location) in calculating the evaluated prices of the offerors to be used in the award selection.

Finally, at the hearing, the agency officials admitted that the CTO model contained various flaws, which it planned to address in an amendment. For example, the contracting officer explained that one error in the model was that the pricing model treated the 2-year base period as 1 year, in averaging the prices, which gave insufficient weight to the base period prices in the evaluation. See Tr., June 11, 2003, 155-58. Also, the agency states that the "workload" numbers used in the announced price evaluation scheme need to be revised. Agency Hearing Comments at 5.

We find that the pricing model used here does not bear a reasonable relationship between the evaluated price and the actual price of performance by a particular offeror, as required, and that it would tend to encourage unbalanced pricing. Thus, the price evaluation scheme was defective, and we sustain the protests on this

basis.<sup>35</sup> See Health Servs. Int'l, Inc.; Apex Envtl., Inc., supra; Professional Carpet Serv., B-220913, Feb. 13, 1986, 86-1 CPD ¶158 at 2.

## CONCLUSION

In view of the changes implemented to the RFP in amendment No. 0011 that significantly mitigate risks that may have inhibited competition, we recommend that the Army reopen the competition to firms that have not yet submitted proposals and allow them to compete for the agency's revised requirements. We also recommend that the Army revise its price evaluation scheme to provide a reasonable basis for calculating the overall prices of the competing offerors. Finally, we recommend that the protesters be reimbursed the reasonable costs of filing and pursuing their protests, including attorneys' fees. 4 C.F.R. § 21.8(d)(1). The protester should submit their certified claims for such costs, 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).

Anthony H. Gamboa  
General Counsel

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<sup>35</sup> The agency may also wish to revisit the role of the CBA pricing in the price evaluation scheme, given the provision in the RFP advising that the CTO will no longer be required to provide this service after the DTS is in place.