

Fed. Claims Court Backs \$49M Military Support Contract

By **Daniel Wilson**

Law360, Nashville (July 18, 2016, 3:49 PM ET) -- The U.S. Court of Federal Claims has rejected Dynamic Systems Technology Inc.'s protest over a \$49 million military and family support contract awarded to rival Interactive Government Holdings Inc., saying the Defense Human Resources Activity adequately supported its choice.

DHRA had justified the relative bid ratings it gave to DysTech and IGH, with available evidence of IGH's technical superiority also supporting the agency's choice of IGH's \$48.9 million bid as the "best value" choice over DysTech's \$38.2 million bid, Federal Claims Judge Elaine D. Kaplan ruled in a June 30 decision unsealed Monday.

"[Available] detailed explanations more than suffice to document the agency's proper exercise of discretion, especially because the technical and past performance factors, 'when combined, [were] significantly more important than cost or price,'" Judge Kaplan said.

The disputed contract covers support services for DHRA's Family Employer Programs and Policy initiative, which supports National Guard and Reserve members, their families and their employers, to help balance the demands of their military and civilian lives.

After receiving 17 offers, DHRA had awarded the deal to IGH, prompting protests to the U.S. Government Accountability Office from several unsuccessful bidders. DHRA re-evaluated the bids at the GAO's recommendation, but once again chose IGH, prompting DysTech and two other unsuccessful bidders to launch further protests.

The GAO rejected those follow-up protests in March, backing the relevant contracting officer's determinations regarding the various bids and prompting a further court protest from DysTech.

The CO had determined that IGH's proposal offered "significant [additional] value" that made it worth a price premium over all other bidders, exceeding solicitation requirements in several areas and using "creative and innovative" approaches to performing, to win an "outstanding" technical rating.

DysTech, whose proposal received an "acceptable" technical rating, argued that IGH's past performance was overrated by the CO as IGH had not worked on contracts of comparable size, and that the company should have been penalized for failing to properly respond to the solicitation's requirements.

Similarly, DysTech's own technical performance and past performance were underrated, as DysTech's

bid was recognized for two specific strengths and found to have no specific weaknesses, and DysTech had supported multiple military branches on previous contracts, the company claimed.

But the number of specific strengths and weaknesses was not how bids were technically assessed, Judge Kaplan ruled on June 30. Instead the review was based on a weighing up of overall probability of success against potential risk, making DysTech's "acceptable" technical rating adequately justified, according to the opinion.

Also, there was no merit to DysTech's claims that IGH failed to address the requirements of the relevant request for proposals, Judge Kaplan found. DHRA's technical evaluation board — tasked with reviewing bids for the agency, prior to the CO's ultimate decision — reasonably concluded that IGH met all bidding requirements, even if, for instance, it used different names for required employee positions than those laid out in the RFP, the judge said.

IGH's past performance was also properly assessed, Judge Kaplan ruled. This criterion had a "relatively low bar" for determining if past work was relevant to the work that would have to be performed under the new contract, according to the opinion.

And DHRA made a reasonable determination that IGH's past work was at least somewhat relevant to the required work under the disputed deal, as the past work was similar in "kind and complexity" — although on a smaller scale — to what the new contract would require, Judge Kaplan claimed.

Finally, the CO's ultimate choice to pick IGH as the best-value bidder was adequately explained, with clear identification of areas that exceeded the government's expectations, such as the company's plans for in-depth employee skill screening and training processes and use of an advisory board with specialized expertise, despite DysTech's claims that DHRA "articulated no basis" for the choice, according to the opinion.

Attempts to contact DysTech for comment Monday were unsuccessful. A representative for IGH did not immediately respond to a request for comment.

DysTech is represented by James S. DelSordo, James S. Phillips and Julie M. Nichols of Argus Legal PLLC.

The government is represented by Michael D. Austin, Robert E. Kirschman Jr. and Benjamin C. Mizer of the U.S. Department of Justice and Hattie DuBois and William Moorhouse of the Defense Human Resources Activity.

IGH, as intervenor, is represented by David E. Fletcher, Christopher J. Kimball and Erin M. Estevez of Cooley LLP.

The case is *Dynamic Systems Technology Inc. v. U.S.*, case number 1:16-cv-00353, in the U.S. Court of Federal Claims.

--Additional reporting by Bryan Koenig. Editing by Edrienne SU.
