



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Interlog, Inc.

File: B-282139

Date: April 27, 1999

James P. Gallatin, Jr., Esq., Richard L. Moorhouse, Esq., and Andrew J. Hungerman, IV, Esq., Reed Smith Shaw & McClay, for the protester. John W. Chierichella, Esq., Anne B. Perry, Esq., and Timothy W. Staley, Esq., Fried, Frank, Harris, Shriver & Jacobson, for Science Applications International Corporation; and Stuart Young, Esq., for DynCorp Aerospace Technology, intervenors.

Scott J. Goldsmith, Esq., and Evelyn S. Tang, Esq., Department of Justice, for the agency.

Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In a negotiated procurement with a stated best value evaluation plan, a contracting agency reasonably may assign a technically acceptable proposal fewer than the maximum possible points, and reserve additional points for proposals that exceed the solicitation's requirements, where such rating is reasonable and consistent with the evaluation methodology applied to all proposals.

DECISION

Interlog, Inc. protests the award of contracts to Science Applications International Corporation (SAIC) and DynCorp Aerospace Technology pursuant to request for proposals (RFP) No. JPCRM-98-0010, issued by the Department of Justice for supplies and services to support the Criminal Division's International Criminal Investigative Training Assistance Program (ICITAP) and the Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT). Interlog argues that the agency improperly reserved too many of the available evaluation points for proposals that exceeded the solicitation's stated requirements, thus unfairly prejudicing offerors whose proposals met, but did not exceed, the requirements. In Interlog's view, this approach led to agency assessments that relied upon unstated evaluation criteria.

We deny the protest.

The ICITAP program within the Department of Justice provides wide-ranging civilian law enforcement support in countries accustomed to operating under totalitarian regimes. RFP amend. 2, § C-3.1. The OPDAT program assists foreign prosecutors and judicial personnel involved in developing and sustaining democratic criminal justice institutions. *Id.* § C-4.1. Both programs are funded by the Department of State and the Agency for International Development, but are operated by the Department of Justice. *Id.* § C-5. To further the missions of these programs, the RFP anticipates that the contractor(s) will, among other things, provide training, consultants, warehousing services, assist in establishing police academies and infrastructure, and provide construction management and/or facilities rehabilitation, and conference management. *See, e.g., id.* § C-3.2. In addition, the RFP advised that since many of the countries in which this contract will be performed operate in a cash-only economy, “[t]he contractor may be required to provide large sum cash advances to persons employed under this contract.” *Id.* §§ C-3.1, C-4.2

The RFP anticipated selection of a contractor or contractors to provide services for the ICITAP and OPDAT programs under an indefinite-delivery, indefinite-quantity contract for a 1-year base period, followed by four 1-year options. *Id.* §§ B-1.A, B-3, Tables at B-5 through B-9. The RFP also anticipated selection of the proposal presenting the best value to the government. *Id.* § L-1.F.(1). To measure the technical merit of proposals, the RFP identified three evaluation factors: technical approach, management plan, and past performance. *Id.* § M-2.A. Although the RFP stated that these factors were listed in descending order of importance, it cautioned that the technical approach factor would be significantly more important than the other two factors. *Id.* The RFP also advised that evaluated price (the contract was priced using estimated labor hours and materials costs combined with a program management fee) would be slightly less important than the technical factors. *Id.* § M-1.2A.(2).

After receiving several proposals, performing an initial evaluation, determining a competitive range comprised of Interlog, SAIC, and DynCorp, conducting discussions, and receiving and evaluating final revised proposals, the final scores and evaluated prices were as follows:

| Offeror | Total Price | Technical Score |
|----------------|--------------------|------------------------|
| DynCorp | \$80,143,595 | 92.43 |
| SAIC | \$82,491,595 | 98.86 |
| Interlog | [deleted] | 86.97 |

Final Award Determination, Feb. 11, 1999, at 3. Noting that Interlog’s proposal had the highest proposed pricing and the lowest technical score, the contracting officer selected SAIC and DynCorp for award. This protest followed.

Interlog's protest raises but one issue for our review—whether the agency's evaluation scheme reserved such a significant portion of available points for proposals exceeding the stated requirements of the RFP that the evaluation turned on unstated criteria. To illustrate its contention, Interlog points to extra credit given the proposals submitted by SAIC and DynCorp for their approach to delayed billing of the government for substantial cash advances paid to individuals under the contract. Interlog complains that, while its proposal was fully compliant with the solicitation's requirements, it did not know it could receive significant extra credit for proposing to delay the billing of such amounts to the government.

When an RFP states a best value evaluation plan—as opposed to selection of the lowest-priced, technically acceptable proposal—evaluation of proposals is not limited to determining whether a proposal is merely technically acceptable; rather, proposals may be further differentiated to distinguish their relative quality by considering the degree to which technically acceptable proposals exceed the standard minimum requirements or will better satisfy the agency's needs. Israel Aircraft Indus., Ltd., MATA Helicopters Div., B-274389 et al., Dec. 6, 1996, 97-1 CPD ¶ 41 at 5-6; Meridian Corp., B-246330.3, July 19, 1993, 93-2 CPD ¶ 29 at 6-7.

Here, as Interlog concedes, the RFP advised potential offerors that the agency was seeking “high quality, cost effective support services” and that the evaluation would attempt to identify areas where the proposal was likely to result in “highly successful implementation and sustained delivery of high quality services over the life of the proposed contract.” RFP amend. 2, § M-1.2.A. Under this evaluation scheme, Interlog could not reasonably assume that an acceptable proposal would receive the same score as proposals that exceed the solicitation's minimum requirements. Phoenix Med. Elecs. Servs., Inc., B-237739, Mar. 21, 1990, 90-1 CPD ¶ 312 at 6.

With respect to Interlog's contention that too many evaluation points were reserved for proposals that exceeded the solicitation's requirements, we disagree. To make judgments about the substantive merit of the proposals, the evaluators used a rating scale of 0 to 5 points, defined as follows: 0, very poor/no data; 1, poor; 2, adequate; 3, good; 4, very good; and, 5, excellent. Evaluation Plan, Mar. 6, 1998, at 4-5. A proposal that minimally met the requirements could receive a rating of adequate; a proposal that fully met the requirements could receive a rating of good; a proposal that exceeded the minimum requirements, contained significant strengths, but also contained weaknesses, could receive a rating of very good; and a proposal that exceeded the minimum requirements and contained significant strengths, but no weaknesses, could receive a rating of excellent. Id. at 4. In our view, there is nothing about this evaluation approach that is unreasonable, or, that, in any way, differs from the evaluation approach commonly used in best value procurements. See Ebasco Constructors, Inc. et al., B-244406 et al., Oct. 16, 1991, 91-2 CPD ¶ 341 at 15-16.

Interlog specifically challenges the agency's decision to give extra credit to the awardees for their approach to seeking reimbursement from the government for cash

advances. Simply put, Interlog proposed to bill the government when cash is advanced, while the two awardees proposed to bill the government upon reconciliation of the underlying expense report. While Interlog's approach was found to meet the RFP's requirement in this area, it was given an average evaluation rating of 3.3 (good) in this area, while the awardees received ratings of 5.0 and 4.7 (excellent/very good) for their approaches. Technical Evaluation Panel's Final Report, attach. A. According to Interlog, the issue of whether an offeror proposed to float cash advances—rather than bill for them immediately—was an unstated evaluation criterion.

We disagree with Interlog's contention that the solicitation did not provide notice to offerors that their approach to cash advances would be evaluated. Section L of the RFP required submission of a Financial Resources Plan within the technical proposal, wherein offerors were to set forth their plans to provide and administer the financial resources necessary to perform this contract, given, among other things, the cash advance payments involved. RFP amend. 2, § L-6.4.1. Section M indicated that the plan would be evaluated under the technical approach evaluation factor, which was significantly more important than the management or past performance factors. Id. § M-2.A.(1). Also, the cash advance issue was highlighted in the "Questions Received and Government Responses" section of the RFP, wherein offerors were advised that:

[s]ince it will be necessary for the contractor to expend large sums of money well in advance of payment in many instances, this issue is relevant to the success of contract objectives. Hence, the necessity for the submission and and evaluation of this [Financial Resources] plan as a source of information for the evaluation process.

Id., Questions Received and Government Responses, at 5. Thus, the RFP clearly put offerors on notice an offeror's approach to cash advances would be considered in the evaluation of the Financial Resources Plan.¹

The protest is denied.

Comptroller General
of the United States

¹ In addition, the question of whether cash advances would be billed to the government when made, or billed later, was expressly raised with Interlog during discussions. Letter from the Contracting Officer to Interlog attach. A, Question B (Jan. 10, 1999). Interlog cannot reasonably claim to have been unaware of the government's interest in whether the offeror intended to "float" cash advances.