



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: INTERLOG

File: B-249613; B-249613.2; B-249613.3; B-249613.4;
B-249613.5

Date: October 26, 1992

Jacob B. Pompan, Esq., Pompan, Ruffner & Bass, for the protester.

Dawn Elliott Oakley, Esq., DynCorp, an interested party.
Kathleen D. Martin, Esq., Department of State, for the agency.

Daniel I. Gordon, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester who submitted the highest priced proposal, which was ranked sixth technically among seven technically acceptable proposals, is not an interested party to protest the evaluation of its proposal vis-a-vis the awardee's because there are numerous intervening offerors, and the protester's proposal would not be in line for award, even if all of the protest grounds were sustained.

DECISION

INTERLOG protests the award to DynCorp of a contract under request for proposals (RFP) No. 0000-125054TMN, issued by the Department of State. INTERLOG alleges a variety of deficiencies in the source selection process.

We dismiss the protests.

The RFP, issued by the Department of State on July 23, 1991, contemplates the award of an indefinite delivery, indefinite quantity labor-hour contract for a wide range of logistic support services. Section M of the RFP states that, in the selection for award, technical merit and price will be given equal weight. Technical merit is divided into four areas: project management plan and organizational structure, relevant corporate experience, staffing plan, and resumes.

The first two are of equal importance, and each of them is twice as important as the last two, which are, again, of equal importance. In the area of relevant corporate experience, the RFP, as amended, requires offerors to list "at least four service contracts that were awarded or performed within the last five years, each of which had an annual value of \$3,000,000 or more worth of services for the same or similar services required in [the RFP]." The RFP provides that price proposals will be evaluated for realism and reasonableness.

Eight proposals were received in response to the RFP. As a result of the agency's initial evaluation, one of those proposals was eliminated from the competitive range. Written and oral discussions were conducted with the remaining seven offerors, including INTERLOG and DynCorp. During the discussions with INTERLOG, the offeror was advised that it had listed only three contracts in response to the RFP's requirement to list four contracts to demonstrate relevant corporate experience.

After completion of discussions, the agency requested best and final offers (BAFOs) from the seven offerors. With respect to relevant corporate experience, INTERLOG's BAFO failed to refer to any contracts in addition to the three cited in its initial proposal. In the agency's evaluation of BAFOs, INTERLOG's technical proposal was ranked sixth and its price proposal was the most expensive of the seven. The INTERLOG proposal's low technical ranking was substantially due to its failure to name four previous contracts as part of the offeror's corporate experience. Five of the other technical proposals received perfect or near-perfect scores. DynCorp's proposal received a perfect technical score, while its price was the lowest of the seven. A formula was then applied to ensure that technical merit and price were given equal weight in the evaluation process. Application of that formula led to each of the seven proposals being assigned an overall numerical score: DynCorp's was highest, while INTERLOG's was the next to the lowest score. After further review of DynCorp's proposed price for reasonableness, DynCorp was selected for award.

INTERLOG raises a substantial number of challenges to the technical evaluation of INTERLOG's proposal and the technical and cost evaluation of DynCorp's proposal. It does not allege that any of the four intervening proposals should have been evaluated as inferior technically to, or higher in price than, INTERLOG's proposal.

The Department of State argues that INTERLOG is not an interested party to protest to our Office since it would not be in line for award even if its protest grounds were sustained. We agree.

As explained above, four proposals, in addition to DynCorp's, were found technically superior and less costly than INTERLOG's. INTERLOG has not alleged any weakness or deficiency in those four offerors' technical proposals, either in the area of relevant corporate experience or in any other area, nor has it claimed any defect in the evaluation of those four proposals. INTERLOG's criticism of the technical evaluation of its proposal does not suggest that its proposal was superior technically to those other proposals.¹ Thus, even if we assume that the protester is correct in every area in which it disputes the lowering of the INTERLOG proposal's technical score, INTERLOG would obtain at most a technical score that would place its proposal equal, technically, to four other proposals (again excluding DynCorp).²

¹The only claim that INTERLOG presents in this area is the assertion that its allegedly excellent record as the incumbent was not adequately taken into account by the agency. INTERLOG does not allege (nor could it reasonably claim) that its incumbency gave its proposal a technical advantage that nonincumbent competitors could not equal.

²Although, for the limited purpose of analyzing whether INTERLOG is an interested party, we assume that INTERLOG's proposal could have obtained a perfect technical score, we note that INTERLOG did not timely protest the agency's decision to downgrade its proposal for failure to reference four relevant contracts. The RFP, as amended, explicitly requires that four such contracts be named and INTERLOG's failure to do so was raised by the agency with INTERLOG during discussions. Accordingly, it is now too late for INTERLOG to challenge that RFP requirement. See 4 C.F.R. § 21.2(a)(1) (1992). At best, INTERLOG can timely argue that the number of points deducted was excessive or that a qualitative evaluation should have been used in addition to, or instead of, the point scoring. Yet, even with a smaller deduction, and indeed even if no point score were used at all, INTERLOG's proposal would still require evaluation as having the weakness of demonstrating less than the corporate contract experience called out in the RFP. INTERLOG has not claimed either that it actually had four relevant prior contracts or that its competitors did not. Accordingly, INTERLOG does not dispute that its proposal was inferior in some degree to the others in the area of relevant corporate experience.

With respect to price, INTERLOG does not allege that its proposal was less costly than the intervening proposals. Even if we construe the protests to argue that DynCorp's actual price will be higher than INTERLOG's, the protester does not dispute that several other proposals are less costly than INTERLOG's.³ Consequently, because the protester does not contend that the intervening proposals are unacceptable or inferior technically and it does not dispute that those proposals are less costly, INTERLOG's proposal would not be in line for award, even if DynCorp were eliminated from consideration and all other protest grounds were granted.⁴

³Without revealing the details of the prices of the intervening proposals, we note that those prices were not clustered together either near DynCorp's price (so that INTERLOG cannot allege that they all shared the flaws it sees in DynCorp's pricing) or near INTERLOG's price (thus precluding an argument that the proposals' prices and technical quality were so close as to create uncertainty regarding which proposal would be in line for award).

⁴There is no factual basis for INTERLOG's argument that the agency's evaluation of offerors' corporate experience effectively eliminated the protester's proposal from consideration for award due to failure to satisfy a traditional responsibility factor, the corollary to which is that, because INTERLOG is apparently a small business, the question of its responsibility should have been referred to the Small Business Administration (SBA). It is true that, when traditional responsibility factors are used as technical evaluation criteria in a negotiated procurement, their use must be consistent with the relevant provisions of the Small Business Act, 15 U.S.C. § 637(b)(7) (1988). McLaughlin Research Corp., 71 Comp. Gen. 383 (1992), 92-1 CPD ¶ 422. In particular, where a responsibility-type criterion is used on a pass/fail basis and the contracting agency's evaluation leads it to conclude that a small business's proposal is technically unacceptable for failure to satisfy that criterion, the agency is required to refer the matter to SBA for a final determination under the certificate of competency (COC) procedures. Id. Here, however, while corporate experience is a responsibility-type factor, the agency did not evaluate offers on a pass/fail basis--indeed, INTERLOG's proposal was found technically acceptable, so that the factual predicate for INTERLOG's COC argument is lacking. In any event, as we have explained, the existence of lower-priced, superior technical proposals means that INTERLOG is not an interested party to challenge the award to DynCorp on any protest ground raised, including this one.

The cases relied on by INTERLOG in opposing dismissal are inapposite. Thus, while it is true that in Automation Mgmt. Consultants Inc., B-243805, Aug. 29, 1991, 91-2 CPD ¶ 213, our Office found that the protester was an interested party, despite the existence of intervening proposals, we explicitly based our finding on the agency's having found all the intervening proposals technically unacceptable. Accordingly, if the protest had been sustained and the agency had terminated the existing contract, the agency would have had to resolicit the procurement (since no acceptable proposal would have been in line for award), and the protester could have competed in such a recompetition. It was expressly on that basis that we concluded that the protester was an interested party. Here, by contrast, if the protest were sustained and DynCorp's contract were terminated, several technically acceptable proposals would be in line for award, so there would be no basis for resolicitation.

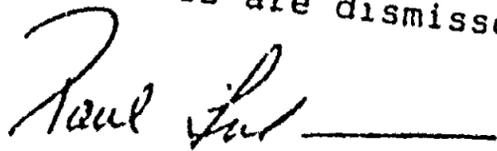
Another case cited by INTERLOG, Textron Marine Sys., B-243693, Aug. 19, 1991, 91-2 CPD ¶ 162, is also readily distinguishable. In Textron Marine, the protester had submitted the lowest cost proposal, so that, if the protester's challenge to its technical evaluation were sustained, its proposal could well have been in line for award, either as the highest ranked, lowest cost technical proposal or through a cost/technical tradeoff. In significant contrast, INTERLOG's proposal is the highest priced of all seven proposals in the competitive range, thus rendering its situation entirely dissimilar to that of the protester in Textron Marine. Even a flawless technical proposal would do no more than raise the INTERLOG proposal's technical rating up to that of several other, lower priced proposals, so that elimination of only DynCorp's proposal from consideration would still not bring INTERLOG's higher priced proposal in line for award.⁵ Accordingly, INTERLOG

⁵INTERLOG also cites our decision in U.S. Defense Sys., Inc., B-245563, Jan. 17, 1992, 92-1 CPD ¶ 89 (USDS), as part of its opposition to dismissal. That decision has no bearing on the question of a protester's status as an interested party and, indeed, contains no discussion of interested party status or any indication that the protester there would not have been in line for award, had its challenge to the technical evaluation been sustained. INTERLOG does correctly note that the decision in USDS stands for the proposition that an agency's explanation of its source selection decision must provide sufficient detail to allow our Office to review the reasonableness of the agency's decision. However, a claim that an agency has failed to meet that standard can only be raised by a

(continued...)

is not an interested party for the purpose of filing these protests before our Office.

The protests are dismissed.



Paul Lieberman
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^s(...continued)
protester where sustaining the protester's allegations would potentially place that firm's proposal in line for award. The protester in USDS made such allegations; INTERLOG has not.