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## Decision

**Matter of:** L-3 Communications Titan Corporation

**File:** B-299317; B-299317.2; B-299317.3

**Date:** March 29, 2007

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W. Jay DeVecchio, Esq., Donald B. Verrilli, Jr., Esq., Kevin C. Dwyer, Esq., William M. Hohengarten, Esq., Richard W. Arnholt, Esq., Luke C. Platzner, Esq., and Edward Jackson, Esq., Jenner & Block LLP, for the protester.

William L. Walsh, Jr, Esq., J. Scott Hommer, III, Esq., Peter A. Riesen, Esq., Keir X. Bancroft, Esq., Kristen E. Burgers, Esq., Rebecca E. Pearson, Esq., and Anthony James Pagano, Esq., Venable LLP, for Global Linguist Solutions, LLC, an intervenor.

Raymond M. Saunders, Esq., and Capt. Christopher L. Krafchek, Department of the Army, for the agency.

Glenn G. Wolcott, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Evaluation record fails to reasonably support the agency's conclusion that protester's proposal of [deleted] linguists is more likely to create shortfalls against the solicitation's requirements to fill 7,217 linguist positions than awardee's proposal of [deleted] linguists.
2. Where solicitation established specific evaluation benchmarks for evaluation of offerors' experience, and provided for comparative assessments against those benchmarks, an agency may not substitute a previously unidentified "threshold of sufficiency" as an evaluation benchmark against which proposals are evaluated on a pass/fail basis.
3. Evaluation scheme which effectively penalizes one offeror for proposing [deleted] and effectively rewards a competing offeror for proposing [deleted] fails to comply with Federal Acquisition Regulation requirement that evaluation factors must support meaningful comparison and discrimination between and among competing proposals.

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## DECISION

L-3 Communications Titan Corporation (L-3) protests the Department of the Army's award of a contract to Global Linguist Solutions, LLC (GLS) under request for proposals (RFP) No. W911W4-05-R-0001 to provide interpretation and translation services for the U.S. armed forces in Iraq. L-3 challenges the agency's evaluation of proposals under each of the solicitation's evaluation factors, including factors related to fill rate, experience, and transition.

We sustain the protest.

## BACKGROUND

In June 2006, the Army released the solicitation at issue, seeking proposals to provide linguistic services in Iraq.<sup>1</sup> Agency Report (AR), Tab 10, at 120-294.<sup>2</sup> The solicitation provided for award of an indefinite-delivery indefinite-quantity contract for a 5-year period, during which individual task orders will be issued; offerors were advised that "[t]he maximum of all orders under the contract is \$4.65 Billion." *Id.* at 123.

The solicitation identified the linguist staffing levels, by category,<sup>3</sup> that will be required under the first task order ("task order 1"), and provided that various aspects

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<sup>1</sup> The solicitation describes the scope of contract requirements as "services necessary to rapidly and securely recruit and deploy foreign language interpretation and translation services in support of United States Army . . . attached forces, combined forces, and joint elements who are executing the military mission known as Operation Iraq Freedom. . . . The interpreters and translators will be required to accompany military units during military missions. . . . This effort requires skilled contract linguists with various foreign language capabilities to support current intelligence efforts." AR, Tab 10, at 126-27.

<sup>2</sup> The agency report responding to L-3's protest was submitted with each page consecutively numbered, employing a system commonly referred to as "Bates stamping." Our citations to particular pages within the agency report refer to the "Bates stamped" pagination.

<sup>3</sup> The solicitation identified three categories of linguists to be provided under the contract: category I (CAT I) linguists are non-U.S. citizens and do not require security clearances; category II (CAT II) linguists must be U.S. citizens who have been screened and granted interim secret security clearances; category III (CAT III) linguists must be U.S. citizens who either possess top secret security clearances or who, after prescribed counterintelligence screening, have been granted interim top secret clearances. AR, Tab 10, at 130-31.

of the offerors' proposals would be evaluated against the task order 1 requirements.<sup>4</sup> Id. at 247-49, 288.

Offerors were advised that award would be based on the proposal offering the best value to the government considering the following evaluation factors: management, past performance, and cost.<sup>5</sup> Id. at 252. With regard to the most important factor, management, the solicitation identified the following subfactors: fill rate, experience, sustainment, staffing plan, transition plan and small business participation.<sup>6</sup> Id.

On or before the August 14, 2006 closing date, proposals were submitted by three offerors, including GLS and L-3.<sup>7</sup> The proposals were evaluated by a management evaluation team (MET),<sup>8</sup> a cost evaluation team (CET),<sup>9</sup> and a past performance evaluation team (PPET);<sup>10</sup> thereafter, discussions were conducted during which various "Items for Discussion" (IFDs) were sent to each offeror. The offerors

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<sup>4</sup> The solicitation stated that, under task order 1, a total of 7,217 full-time equivalent (FTE) linguist positions (6,130 CAT I, 952 CAT II, and 135 CAT III) must be filled, and further provided that "an FTE year will consist of a total of 3744 total productive hours (12 hours a day; 6 days a week; 52 weeks a year)." Id. at 213, 288

<sup>5</sup> The solicitation provided that management was more important than past performance, which was more important than cost. Id. at 252.

<sup>6</sup> The solicitation provided that the fill rate subfactor was significantly more important than the experience subfactor, which was more important than the remaining subfactors, which were all of equal importance. Id.

<sup>7</sup> The third offeror's proposal is not relevant to resolution of this protest, and is not further discussed.

<sup>8</sup> Under the management factor and its subfactors, the MET assigned adjectival ratings of "Excellent," "Good," "Adequate," "Marginal," or "Poor." AR, Tab 7, at 67.

<sup>9</sup> With regard to evaluation of cost, the solicitation stated, "All cost proposal information . . . will be evaluated based on: (a) Reasonable and realistic data; (b) Offeror having a clear understanding of the requirements; and (c) Appropriate number of hours and skill levels that accurately reflects the proposed staffing plan." This section of the solicitation also provided that "[t]he evaluated cost will be determined by adjusting each Offeror's proposed cost, and fee when appropriate, to reflect any additions or reductions in cost elements to realistic levels when compared to the Offeror's proposed approach." AR, Tab 10, at 251.

<sup>10</sup> The evaluation teams, in the aggregate, formed the source selection evaluation board (SSEB) and reported, through the source selection advisory council (SSAC), to the source selection authority (SSA).

provided written responses to the IFDs and, at the conclusion of the discussion period, each offeror submitted a final proposal revision (FPR). Following submission of FPRs, the MET's ratings with regard to the most important management factor were as follows:

	<b>GLS</b>	<b>L-3</b>
Fill Rate	[deleted]	[deleted]
Experience	[deleted]	[deleted]
Sustainment	[deleted]	[deleted]
Staffing	[deleted]	[deleted]
Transition	[deleted]	[deleted]
Small Business	[deleted]	[deleted]
Overall Mgmt. Rating	[deleted]	[deleted]

AR, Tab 67, Source Selection Decision, at 4,535.

Under the past performance factor, [deleted] L-3's and GLS's proposal received ratings of [deleted]. AR, Tab 66, at 4,459. With regard to cost, L-3's final evaluated cost was [deleted]; GLS's final evaluated cost was [deleted] billion. *Id.* at 4,461.

The evaluation teams' reports were thereafter provided to the SSA and, following consultations with those teams and the chairs of the SSEB and SSAC, the SSA made various adjustments to the offerors' management ratings.<sup>11</sup> AR, Tab 67, at 4,540. Following the SSA's adjustments, the offerors' management ratings were as follows:

	<b>GLS</b>	<b>L-3</b>
Fill Rate	[deleted]	[deleted]
Experience	[deleted]	[deleted]
Sustainment	[deleted]	[deleted]
Staffing	[deleted]	[deleted]
Transition	[deleted]	[deleted]
Small Business	[deleted]	[deleted]
Overall Mgmt. Rating	[deleted]	[deleted]

AR, Tab 67, Source Selection Decision, at 4,535.

In lowering L-3's rating under the most important management subfactor, fill rate, the SSA stated:

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<sup>11</sup> The SSA did not make any changes to the past performance ratings or to the offerors' evaluated costs.

I judged L-3 Titan to be [deleted]. . . [T]here is a 1.1% shortfall built into the proposal that equates to a shortfall of approximately 70 linguists based on the Task Order 1 requirement of approximately 7,000. This would perpetuate a significant shortfall and impact Army operations in Iraq. . . . As a result of this weakness, I judged L-3 Titan's proposal to be second strongest in this subfactor.

AR, Tab 67 at 4,545.

Thereafter, the SSA selected GLS's proposal for award, again referencing the solicitation's fill rate requirements, concluding:

The GLS proposal constitutes least risk to the Government with the greatest assurance of achieving and sustaining required linguist levels. . . . The GLS proposal was [deleted] the L-3 Titan proposal in the Past Performance factor and although [deleted] more expensive, I consider GLS' proposal to be the best of all three proposals and worth the higher premium price.

AR, Tab 67, at 4,547.

L-3 was subsequently notified of the source selection decision. This protest followed.

## DISCUSSION

L-3 protests the bases for the agency's evaluation regarding each of the management subfactors, including fill rate, experience, and transition plan. As discussed below, the agency's evaluations regarding these subfactors reflect various flaws.

### Fill Rate

With regard to fill rate, section L of the solicitation directed offerors to "identify the number of Full-Time Equivalent (FTE) linguists proposed to satisfy the positional assignments specified in . . . Task Order 1."<sup>12</sup> AR, Tab 10, at 213. Section M of the solicitation advised offerors that the agency would assess the probability that "the Offeror will have available the necessary (Quantity and skill type) of CAT I, CAT II and CAT III linguists to successfully and timely perform the scope of work of [task order 1]." AR, Tab 10, at 247.

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<sup>12</sup> As noted above, task order 1 required a total of 7,217 FTEs and defined an FTE as "3,744 productive hours (12 hours a day; 6 days a week; 52 weeks a year)." AR, Tab 10, at 213, 288.

There is no dispute in this record that, in order to meet the task order 1 fill rate requirement of providing 7,217 FTE linguists (that is, providing 3,744 productive hours per linguist per year), it will be necessary to hire and retain more than 7,217 linguists. Hearing Transcript (Tr.) at 664.<sup>13</sup> Accordingly, in addressing the fill rate requirements, L-3's proposal provided that, "to . . . meet 100% of Task Order 1 requirements in the future, we estimate that [deleted] Full Time Equivalents (FTEs) will be required," specifically adding, "we propose to recruit and deploy these additional linguists to theater where they will be readily available to fill positions of linguists on leave [deleted] or absent [deleted]" AR, Tab 14, at 434.

During discussions, the agency asked L-3 to provide additional information regarding this aspect of its proposal, requesting that L-3: "Provide detailed information on how the additional linguists [deleted] will be used when not deployed and identify where the costs are contained in your cost proposal." AR, Tab 46, at 3,062. L-3 responded to this request, stating:

In response to the challenge to maintain 100% fill, we recommend hiring [deleted] above the Level of Effort (LOE) specified in the solicitation. At any one time, approximately [deleted] of L-3 Titan's linguist population is in a status that places the linguist "out of theater." [deleted]

In order to meet 100% of the contract's "Boots on the Ground" number, L-3 Titan will be required to "replace" linguists that enter non-direct support categories with linguists that directly support the contract. This is an ongoing process. As a result, the contract-required LOE [level of effort] will remain as close to 100% as possible, [deleted]. Current examples for L-3 Titan's Iraq-based Delivery Order 59 demonstrate the following: [deleted].

Whereas [deleted] linguists are in Iraq providing support to the INSCOM linguist contract, [deleted] are in a non-direct support category. Over the past two years, personnel in non-direct support categories have remained at the [deleted] rate.

AR, Tab 46, at 3,062.

In summary, L-3's proposal, and its response to this IFD, stated that, at any point in time, approximately [deleted] of L-3's linguists are expected to be in a non-

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<sup>13</sup> In resolving this protest, GAO conducted a 2-day hearing, during which testimony was provided by the SSA, the SSAC chair, the MET chair, and the CET chair. At the hearing, the CET chair testified: "There's no question that in order to get 7217 FTEs, you will need to hire more than 7217 people. You'll have to have more heads." Id.

productive status. The record establishes that the agency understood this concept and understood that L-3 was proposing to hire [deleted] linguists, that is, [deleted] over and above the 7,217 FTEs required by task order 1. Tr. at 89, 541-42. Further, the record is clear that the agency understood that [deleted] these costs are recovered in L-3's cost proposal [deleted]. AR, Tab 90, at 5579; Tr. at 550-53, 604-06, 662-63, 666-67.

Nonetheless, the agency criticized L-3's proposed approach on the basis that the data in the delivery order provided by L-3 in its response to the agency's IFD (that asked L-3 to discuss "how the additional linguists . . . will be used when not deployed") indicated that [deleted] of L-3's linguists were in a non-productive status under that delivery order--as compared to the slightly lower [deleted] additional linguists that L-3 proposed to hire. Accordingly--based on the agency's projection of the single delivery order to the total task order 1 requirements--the agency concluded, "there is a 1.1% shortfall built into [L-3's] proposal that equates to a shortfall of approximately 70 linguists based on the Task Order 1 requirement of approximately 7,000." AR, Tab 67, at 4,545. Based on this projection, the agency assigned a weakness to L-3's proposal, and the SSA concluded in his source selection decision that "[a]s a result of this weakness, I judged L-3 Titan's proposal to be second strongest in this subfactor." Id.

In addressing the fill rate requirement, GLS similarly stated that it was proposing to hire additional linguists above the 7,217 task order 1 requirements. However, GLS proposed to hire [deleted] fewer additional linguists, stating:

The timely commitment of linguists to theater is essential to the success of this effort. We estimate the number of Full Time Equivalent linguists necessary to fill post-transition Task Order (T.O.) 1 will be [deleted], with a total number of productive hours being [deleted] hrs/yr.

AR, Tab 35, at 1,662.

Further, the record is clear that the additional linguists proposed by GLS are to be used in the same manner as the additional linguists proposed by L-3--that is, to compensate for linguists that are in a non-productive status. Specifically, the agency's contemporaneous evaluation record includes a notation by the CET that states the additional hours proposed by GLS are "to cover transit and absence." AR, Tab 64, at 4,379. Further, the specific language of GLS's proposal, quoted above, provides that, although it intends to hire [deleted] linguists, it is only proposing "a total number of productive hours [of] [deleted]"--which is [deleted]. Notwithstanding the similarity of approach taken by both offerors, the agency viewed GLS's proposal of [deleted] linguists as more likely to meet the solicitation's fill rate requirements than L-3's proposal of [deleted] linguists.

In reviewing an agency's evaluation, we will not reevaluate offerors' proposals; rather, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and procurement statutes and regulations. E.g., Urban-Meridan Joint Venture, B-287168, B-287168.2, May 7, 2001, 2001 CPD ¶ 91 at 2. Although we will not substitute our judgment for that of the agency, we will question the agency's conclusions where they are not reasonably based, inconsistent with the solicitation criteria or undocumented. Sonetronics, Inc., B-289459.2, Mar. 18, 2002, 2002 CPD ¶ 48 at 3. Where there is inadequate support for an agency's judgments, we are unable to conclude that the agency had a reasonable basis for its source selection decision. Southwest Marine, Inc.; American Sys. Eng'g Corp., B-265865.3, B-265865.4, Jan. 23, 1996, 96-1 CPD ¶ 56 at 10.

Here, it is clear that the critical criterion for assessing how many additional linguists will be needed to successfully meet the task order 1 fill rate requirements for annual productive hours is the amount of time an offeror's linguists are expected to be in a non-productive status. Accordingly, it appears the only logical basis for the agency's conclusion that GLS's proposal of [deleted] linguists is more likely to meet the fill rate requirements than L-3's proposal of [deleted] linguists would be a rationally supported conclusion that GLS's [deleted] linguists are likely to spend [deleted] less time in a non-productive status than are L-3's [deleted] linguists. The record, however, is devoid of any meaningful analysis addressing that issue. Indeed, at the GAO hearing, the MET chair testified that the agency gave no consideration to whether the additional personnel proposed by GLS will be sufficient to compensate for its linguists' scheduled holidays and sick leave. Tr. at 526. Consistent with this testimony the record reflects no agency consideration of whether GLS's linguists will spend more or less time in a non-productive status, either scheduled or unscheduled, than L-3's linguists--nor has the agency represented that such analysis was performed. Absent the agency's consideration of this issue, reasonably documented and rationally supported by credible data, we are unable to conclude that the agency reasonably evaluated L-3's proposal of [deleted] linguists as being more likely to create a shortfall against the required fill rate than GLS's proposal of [deleted] linguists.

## Experience

With regard to the second most important management subfactor, experience, section M of the solicitation provided for a comparative assessment regarding the "extent of [the offerors'] experience," stating:

Proposals will be evaluated as more advantageous the greater the extent to which recent experience reflects the following scope of work requirements:

- (a) Interpreters and Translators speaking the required SCRL [specific contract required languages].



(b) Recruiting, Hiring and Retaining of quantities of personnel similar to Task Order 1.

(c) Managing personnel in an environment similar to the Task Order 1.

AR, Tab 10, at 247.<sup>14</sup>

In evaluating the proposals, the agency recognized that the scope of work reflected in L-3's performance of the incumbent contract was nearly identical to the scope of work here; in contrast, the scope of work reflected in GLS's performance of prior contracts was less similar. At the GAO hearing, the SSA expressly acknowledged that the extent of L-3's experience with "interpreters and translators speaking the required SCRL" was greater than that of GLS. Tr. at 142-43.

Similarly, with regard to "Recruiting, Hiring and Retaining quantities of personnel similar to Task Order 1," the agency's evaluation record identifies the following "Strength" in L-3's proposal:

- Corporate and Key Personnel experience in large scale (>[deleted])<sup>15</sup>

AR, Tab 86, at 5,549. I

In the same document, discussing the experience rating for GLS's proposal, the following "Strength" is noted:

- Corporate experience in large scale (>[deleted] personnel) deployments in partner firms

Id. at 5,548.

Despite the solicitation's evaluation criteria stating that "[p]roposals will be evaluated as more advantageous the greater the extent to which recent experience reflects the . . . scope of work requirements," along with the record discussed above indicating that L-3's performance of the incumbent contract was nearly identical to the scope of work requirements at issue, while GLS's was not, the agency evaluated GLS's and L-3's proposal as equal under the experience subfactor.

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<sup>14</sup> This section of the solicitation further provided that "To the extent that an Offeror and its subcontractors have limited experience regarding some or all the above, but have key personnel who will be playing a significant role in this effort who do have applicable experience, the experience of the individuals may be considered in the Government's evaluation." Id.

<sup>15</sup> As noted above, task order 1 contemplates hiring over 7,000 personnel.

In discussing this matter at the GAO hearing, the SSA testified that, rather than applying the criteria established in the solicitation, he applied a “threshold of sufficiency.” Specifically, the SSA testified as follows:

Q. . . . I’m looking for the [solicitation] language here, “the proposals will be evaluated as more advantageous the greater the extent to which recent experience reflects the scope of work requirements.” The scope of work requirements here are 7,000 personnel, am I right?

A. That’s correct . . . .

Q. The GLS proposal was based on [deleted]; correct?

A. That’s correct. . . .

Q. . . . yet they were evaluated equally . . .

A. In my judgment, there was a threshold of sufficiency. And I thought, I judged, [deleted] was there. . . . And I thought that was the – that was an adequate threshold for experience. So I don’t – that was my thinking.

Tr. at 152-53.<sup>16</sup>

While the evaluation of proposals is primarily within the discretion of the contracting agency, an agency may not announce in the RFP that one evaluation scheme will be used, and then follow another; once offerors are informed of the criteria against which their proposals will be evaluated, the agency must adhere to those criteria in evaluating proposals and making its award decision. Preferred Sys. Solutions, Inc., B-292322 et al., Aug. 25, 2003, 2003 CPD ¶ 166 at 6; Trijicon, Inc., B-244546, Oct. 25, 1991, 91-2 CPD ¶ 375 at 5.

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<sup>16</sup> Similarly, despite acknowledging that L-3 had a “greater extent” of experience with regard to interpreters and translators speaking the required languages, the SSA testified as follows:

Q. Well, but you didn’t give them any benefit with respect to this subfactor, did you?

A. We noted the differences in the scope of work that was provided. My judgment was that although different, that the scope that GLS – the numbers of translators that GLS was providing was substantial, not trivial . . . and that the experience level was substantive and therefore on a par.

Tr. at 143-44.

Here, contrary to the solicitation's express provisions that proposals would be comparatively evaluated against the task order 1 requirements, and would be evaluated as "more advantageous" the greater the extent to which an offeror's recent experience reflected those requirements, the agency applied materially different evaluation criteria, replacing the solicitation's comparative assessments with what was essentially the SSA's pass/fail assessment as to whether an offeror's experience was more than "trivial" or was greater than a previously unidentified "threshold of sufficiency."<sup>17</sup> Accordingly, the agency failed to apply the solicitation's stated evaluation criteria with regard to experience.

### Transition

Finally, with regard to transition, the solicitation established a 90-day transition period and required that, at the end of this period, the awardee must be performing at the full task order 1 requirements level. AR, Tab 10, at 217, 248. In addressing the proposals to perform during the transition period, GLS and L-3 took what the CET chair described as "different approaches." Tr. at 613. More specifically, as the incumbent contractor, L-3's proposal offered to provide [deleted]; in contrast, GLS proposed what the CET chair described as [deleted]. Tr. at 613. Specifically, GLS [deleted]. Tr. at 639. Consistent with the materially different levels of effort being provided, GLS's evaluated cost for the transition period was [deleted], and L-3's evaluated cost for the transition period was [deleted]. AR, Tab 66, at 4,461.

There is no dispute that the U.S. government's actual requirements for linguists during the transition period is not expected to differ in any material way from the task order 1 requirements. Similarly, there is no dispute that GLS's proposal to provide [deleted] during the transition period results in increased costs to the government, outside of the contract, in order to [deleted]. In contrast, L-3's proposal of [deleted] during the transition period, results in decreased costs the government will incur, outside of the contract, to [deleted]. In short, the offerors' "different approaches" to transition--which have a material effect on their respective evaluated costs under this procurement--have virtually no effect on the costs the government will actually incur for the required linguistic services during the transition period.

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<sup>17</sup> In defending against this protest, the agency notes that one of the key personnel proposed by GLS has experience in managing [deleted] personnel. Even if we viewed the management experience of GLS's key personnel as an appropriate proxy for GLS's corporate experience, [deleted] personnel is still significantly less than the task order 1 benchmark of over 7,000 personnel established by the solicitation.

During the GAO hearing, the CET chair testified on this issue as follows:

Q. . . . [I]n terms of actually providing interpreters/linguists to the warfighter, those requirements are not going to be any different during the transition period than during the contract performance period. Am I correct?

A. That's correct. . .

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Q. So . . . in terms of the cost to the taxpayer, the [deleted] level of effort and the [deleted] cost associated with GLS's proposal does not reflect . . . the costs to the taxpayer. Am I correct?

A. Yes. There's a differential between the two of them.

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Q. Was there any discussion . . . in the source selection process of the fact that the [deleted] cost proposed by GLS did not reflect the cost to the taxpayer?

A. That was an issue that had been decided prior to the release of the RFP.

Q. That wasn't my question. Was -- during the source selection process, was this issue discussed?

A. Was it discussed informally among -- on the cost team? Yes, we had discussion. I mean, we recognized that that was a true statement, yes.

Q. And was there any discussion as to whether or not this was, in a sort of layman's term, fair?

A. What we looked at was . . . can we deal with that issue within the structure of the RFP? And what we concluded was that given the way the RFP was structured, we had no way of dealing with that particular issue.

Tr. at 640-43.

Based on the perception that there was "no way of dealing with" this issue, the agency simply incorporated each offeror's evaluated costs for the transition period into the total evaluated costs on which the source selection decision was based.

To summarize, it appears that, due in large part to its incumbency, L-3 was effectively penalized, with regard to its evaluated costs, for proposing to provide

[deleted] to the government during the transition period and, conversely, GLS was effectively rewarded for proposing [deleted] during the transition period.

We have long held that any source selection decision must rest upon a rational basis. Grey Advertising, Inc., B-184825, May 14, 1976, 76-1 CPD ¶ 325. Further, it is a fundamental principle of government procurement that a contracting agency must provide a common basis for competition and may not disparately evaluate offerors with regard to the same requirements. See, e.g., Lockheed Martin Info. Sys., B-292836 et al., Dec. 18, 2003, 2003 CPD ¶ 230 at 11-12; Rockwell Elec. Commerce Corp., B-286201 et al., Dec. 14, 2000, 2001 CPD ¶ 65 at 5. Finally, the Federal Acquisition Regulation (FAR) provides that evaluation factors and significant subfactors must “support meaningful comparison and discrimination between and among competing proposals.” FAR § 15.304(b).

Here, it appears that GLS’s “different approach” to performance during the transition period was “different” only in that it [deleted]. In this regard, the agency has not identified any aspect of GLS’s “different approach” that is otherwise beneficial to the government. Where, as here, the agency has placed significant importance on the offerors’ capabilities to successfully provide 100% of the required linguists during the contract performance period, we do not view as rational or reasonable an evaluation scheme which effectively penalizes one offeror for proposing to provide the required linguists [deleted] and, conversely, effectively rewards a competing offeror for proposing to [deleted]—particularly when the costs associated with [deleted] accrue to the government; as such the evaluation scheme fails to comply with the FAR requirement that it support meaningful comparison and discrimination between the competing proposals.<sup>18</sup> See FAR § 15.304(b).

The protest is sustained.

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<sup>18</sup> We recognize that the agency has argued that L-3 was required to have raised this matter prior to submitting its proposal and, therefore, that the issue is not properly for GAO’s consideration pursuant to our timeliness rules. See 4 C.F.R. 21.2(a)(1) (2006). We also recognize that, in order to have raised this issue prior to submitting its proposal, L-3 would have had to have known: 1) GLS’s proposed transition approach and 2) that the agency would conclude it “had no way of dealing with” the offerors’ materially different approaches. Here, we need not resolve the timeliness issue in light of our conclusions, discussed above, that the agency’s evaluations with regard to fill rate and experience, the two most heavily-weighted evaluation subfactors, were unsupported by the record and inconsistent with the stated evaluation criteria.

## RECOMMENDATION

As discussed above, it appears the terms of the solicitation fail to reflect the agency's actual requirements with regard to experience and, with regard to transition, are perceived by the agency as precluding a reasonable evaluation of proposals against the same requirements. Accordingly, we recommend that the agency consider revising the terms of the solicitation with regard to experience and transition to reflect its actual requirements and to ensure that the offerors are being meaningfully evaluated against the same requirements. In any event, we recommend that the agency reopen discussions with all competitive range offerors, obtain revised proposals, and award a contract on the basis of the proposal offering the best value to the government, consistent with the solicitation. If an offeror other than GLS is selected for award, the agency should terminate GLS's contract and award to that offeror. We also recommend that the agency reimburse the protester for its costs of filing and pursuing the protest, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (2006). L-3's certified claim for costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

Gary L. Kepplinger  
General Counsel