

**July 1, 1998**

**P.S. Protest No. 98-05**

## **WORLDPAK, INC.**

### **Request for Prequalification**

#### **DIGEST**

Protest of failure to be included on list of prequalified suppliers for CPAS service is dismissed in part and denied in part. Objections to the terms of the prequalification statement are untimely raised; review of the evaluation of the protester's prequalification submission does not disclose any basis on which the evaluation may be overturned.

#### **DECISION**

WorldPak, Inc., protests its failure to be prequalified for the provision of services in support of the Postal Service's Global Package Link product.

A Commerce Business Daily notice issued by Headquarters Purchasing directed interested parties to the Postal Service's Purchasing Business Opportunities website, where a prequalification statement was posted. The statement is reproduced in full in the margin.<sup>1</sup>

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<sup>1</sup> CPAS DATA Support/maintenance

The United States Postal Service (USPS) is seeking to prequalify sources for the competitive selection of its expiring contract for Information technology work to support the Global Package Link product, including Customs Pre-Advisory Service (CPAS) support and maintenance. Interested offerors must submit their prequalifications package by December 2, 1997.

[A]. INTRODUCTION

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The USPS is seeking to pre-qualify vendors for the competitive selection of a supplier to operate its CPAS system.

CPAS is a USPS proprietary software system which enables international delivery of merchandise in an expeditious manner. The software enables foreign customs officials to electronically preview the planned shipment before it arrives in country, allowing them to decide which packages they wish to physically inspect. Those packages not needing inspection are cleared through customs for delivery to consumers.

The CPAS System operator must deliver a "turn-key" solution enabling the USPS to easily interact with foreign customs and the foreign delivery agent. CPAS provides a full "end-to-end" link between the mailer, the USPS and the ultimate customer in the foreign country.

Currently, USPS owned hardware and software is in place performing the needed functions. The USPS is seeking a supplier to perform the necessary software maintenance, telecommunications, computer operations, customer support, database management, and any other necessary "troubleshooting" to successfully support the Global Package Link and other international merchandise fulfillment services. The CPAS system is designed to function as both an out-bound (foreign destinations) and an in-bound (to U.S. destinations) customs pre-advisory system.

Interested Offerors must submit a pre-qualification package by December 2, 1997. The instructions are as follows.

#### B. PURPOSE OF THIS ANNOUNCEMENT

USPS expects to pre-qualify an adequate number of best qualified vendors who meet the following requirements. A written solicitation may or may not be issued in the future. The USPS reserves the right to restrict any potential solicitation to those pre-qualified vendors.

#### C. INSTRUCTIONS TO OFFERORS

Interested Offerors must submit a pre-qualification package that addresses the following items:

- Contact information: Your company name, mailing address, contact telephone number, fax number, e-mail address, and web page address.
- A brief description of the company and a demonstration of financial status, including current financial statements, annual report, etc.
- Each item under the pre-qualification criteria section listed below must be addressed.
- Pre-qualification response length may be no more than twenty-five (25) pages single sided with a font size of at least 10. One electronic copy in Microsoft Word version 6.0 is required.
- Forward your response to the Purchasing Department, Attn: Terry Downer  
US Postal Service, 475 L'Enfant Plaza SW Room 454 1, Washington DC

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20260-6238. TDOWNER@email.usps.gov. Responses must be received by December 2, 1997. No telephone calls will be accepted.

#### D. PRE-QUALIFICATION CRITERIA

##### 1. Past Performance

Provide at least 3 references for software design and development efforts listing: Company name, current contact name, current telephone number, contract number if applicable, and a brief paragraph describing the work effort.

##### 2. List specific experience with:

- Clients involved in at least 1 million dollars annually in international commerce
- Clients requiring foreign customs clearance
- Clients shipping/receiving 100,000 or more units per annum to/from three or more foreign countries.

[3]. Must be capable of performing the following: (Describe, in 10 pages or less, your experience or ability).

- Management of existing hardware/software infrastructure which includes Intel processor based workstations, Ethernet based networks, Novell Network and Windows 95 operating systems, AS 400 architecture, FTP, asynchronous and EDI communications protocols, and DB2 and SQL Server databases.
- Customs brokerage requirements to include product harmonization with applicable tariffs.
- Global telecommunication and networking capabilities, including Electronic Data Interchange. Off-site installation of hardware/software.
- Training of USPS, foreign postal officials, and customs officials in the operation and functionality of the software.
- Provide hardware maintenance on installed equipment
- Provide customer support for hardware and software

[4]. Describe offeror's ability to supply qualified personnel at USPS HQ and at 6-10 operational sites throughout the U.S. and its possessions to include:

- Computer operators
- Network specialists
- [S]oftware engineers

5. Ability for contractor's employees to travel internationally on short-notice to perform software/hardware/telecommunication installation, troubleshooting, and training.

Renumbered; emphasis in original, some emphasis omitted.

Five companies, including WorldPak, submitted prequalification packages. By letter dated March 9, 1998, WorldPak was advised that it "does not prequalify for [the] requirement for the following reasons:"

Past Performance - . . . [Y]ou were to provide at least three references for software design and development efforts. WorldPak did not respond to the criterion.

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Ability for contractor's employees to travel internationally on short-notice to perform software hardware telecommunications installation, troubleshooting, and training. WorldPak proposes the ability to meet this criterion, but has not current capability due to insufficient size.

WorldPak's protest was dated March 19. The protest objects to the terms of the prequalification statement, contending that it misrepresents the nature of CPAS, and that it overstates the Postal Service's needs. The protest also contends that WorldPak's submission was "strong enough to justify our being prequalified," that the grounds cited for not prequalifying it were "illusory," and that WorldPak was penalized for being a small business.

More specifically, WorldPak contends "that CPAS does not do what the [pre-qualification statement] says it does, and that the Postal Service does not need a contractor to perform all of the functions called for in [it]." WorldPak contends that it has offered its customers paperless international small package delivery service without contracting for hardware or software support.

WorldPak asserts that the statement misstates the type of customs clearance afforded by CPAS, and overstates the CPAS contractor's role, and that the overstatements are intended to benefit the incumbent contractor. It describes the statement's requirements as a mishmash and questions the need for several of them. WorldPak asserts its belief that the Postal Service should perform some of the contractor's functions itself.

With respect to the bases on which it was found not eligible for prequalification, WorldPak notes that although its submission noted that it was "not in the business of software design and development," and thus could not provide references for its work in that area, its submission further noted that it had worked with "a number of excellent software design and development companies" which could serve as subcontractors, and that it would "provide details of those subcontractors" in its formal response to the solicitation. WorldPak contends that the Postal Service had "no reason . . . to doubt" its "ability to perform whatever CPAS-related soft-

w are work the Postal Service needs.” According to WorldPak, its submission was not deficient as to this item.<sup>2</sup>

With respect to the foreign travel requirement, WorldPak notes that it recited its ability to provide local support for United States clients and “to travel internationally as required” “through its own staff and . . . business partners,” and that it would supplement its capabilities as needed through additional personnel, employees of its business partners, and subcontracted employees, and that details of its plans would be provided in its formal submission.

WorldPak states that the contention that it lacks current capability in this respect is “preposterous” because it asserted that it had the capability, and that it could not be expected to address the requirement further than it had because the request “fail[ed] to make clear just how much foreign travel was required.” WorldPak also faults the requirement as overstating the Postal Service’s needs, noting that the Postal Service may not be installing much hardware or software in foreign countries and, if it is, it makes more sense to have the work done by local subcontractors.

Finally, WorldPak contends that the Postal Service unfairly evaluated it because of its small size, noting that its submission had asserted that the prequalification statement improperly contemplated that only large contractors with extensive in-house capabilities could perform, although WorldPak had demonstrated through its prior experience that it could perform through its business model of “a network of carefully selected, managed and monitored business partners and vendors.” WorldPak asserts that its improper downrating in this respect was inconsistent with the PM’s provisions encouraging the inclusion of small businesses in the Postal Service’s supplier base, citing PM 3.2.1.a. and 3.5.2.e.1.

The contracting officer’s statement responding to the protest includes the following points:

— WorldPak’s objections to the terms of the prequalification statement are untimely raised, and that they could be timely raised only prior to the sub-

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<sup>2</sup> WorldPak cites Purchasing Manual (PM) 2.1.7.c.(c), which provides in part:

If a newly-established supplier cannot provide past performance information, the past performance of the supplier’s key personnel on similar projects may be evaluated.

WorldPak notes that two of its key personnel were formal postal employees deeply involved in the development of CPAS, and that from consideration of that experience “it would have been clear that [WorldPak] possess[es] the necessary capability.

mission of the prequalification packages under the example of PM 3.6.4.b (governing protests against the terms of solicitations apparent before the date set for the receipt of initial proposals) or not later than 10 days after the basis of the protest is known under PM 3.6.4.d (covering cases other than those involving improprieties in a solicitation).<sup>3</sup>

— The contracting officer responds to WorldPak's various challenges to the terms of the prequalification statement on their merits. That response notes that Global Package Link and CPAS "are fast evolving," and accordingly that the knowledge of WorldPak's principals concerning them "may be dated." In any event, the fact that some governments have not utilized all of CPAS's capabilities does not negate the prequalification statement's representations of those capabilities.

— The Postal Service has always fully outsourced CPAS, and intends to continue to do so. While WorldPak may disagree with that decision, "[i]t is not the role of an offeror to decide what work the USPS should perform in-house and what work it should contract out."

— The prequalification statement's criteria do not improperly favor the incumbent. They are broadly stated, and accurately describe the requirements for prequalification.

— WorldPak was properly excluded from being prequalified. Under PM 3.5.2.a, not all qualified suppliers need be included on the list of prequalified suppliers if a smaller group of suppliers will provide adequate competition, or if some suppliers are considerably more qualified than others. Here, both conditions are met: The three suppliers which were prequalified will provide adequate competition, and those suppliers were given substantially higher evaluation scores than was WorldPak.

— WorldPak was properly excluded from prequalification on the two grounds cited by the contracting officer. WorldPak failed to provide any references concerning software design, as the prequalification statement requested, nor did it describe its subcontractors or those subcontractors' personnel in its submission.

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<sup>3</sup> The first of these alternatives is correct. Our decisions have consistently treated the prequalification statement as a solicitation for purposes of determining the timeliness of a protest of the terms of the statement. See, e.g., *J.W. Bateson Company, Inc.*, P.S. Protest No. 88-44, November 1, 1988; *W.M. Schlosser Company, Inc.*, P.S. Protest No. 93-30, March 9, 1994.

— The Postal Service evaluators could not evaluate the past performance of WorldPak's key personnel, because its submission did not identify any key personnel.

— Concerning the need for software development, "CPAS requires on-going . . . support for software enhancements and customized revisions [to support its users, who have] individualized requirements that are unique to each county's postal and customs requirements and processes. . . . [T]he database in CPAS needs constant maintenance and upgrades."

— While WorldPak stated that it would hire personnel, subcontract, or partner to meet the foreign travel requirement, it reserved any details to its formal response to the solicitation. The contracting officer properly concluded that it lacked current capabilities in this regard, and that its description of how it would staff up was inadequate.

— To the extent that WorldPak questions the requirement for foreign travel, the current contractor has been tasked several times to dispatch troubleshooting teams to resolve problems experienced abroad. There may be instances in which hardware and software are to be installed abroad.

— WorldPak's size was not held against it by the evaluators. One of the firms which was qualified is a small business. It answered the prequalification statement "in its entirety," and "provid[ed] the USPS with a complete solution." WorldPak, in contrast, reserved details of its solution to the its response to a further solicitation.

In a written response to the contracting officer's statement, WorldPak reiterated its previous views and provided additional comments:

— "WorldPak believes that the . . . complete outsourcing of CPAS has been a huge mistake." WorldPak is qualified to reach such a conclusion by virtue of the experience of its principals, and its commercial experience, and it "ha[s] a sincere and strong desire to see GPL succeed." It wrote its prequalification package from that perspective, expecting "that we would be able to address how we would . . . save the Postal Service millions of dollars while enhancing CPAS in our formal response." It was not fair to deny WorldPak that opportunity because it did not accept "the Postal Service's mistaken view of the CPAS's contractor's proper role."

— While a prospective offeror "normally . . . should respond to the requirements identified . . . without questioning them," that is not the case here because CPAS's managers have "abdicated their responsibility . . ." The Postal Service's error is shown, for example, by their misguided insistence

on having the same contractor providing services such as customs harmonization support as well as hardware and software support, which would more logically be provided by different contractors.

— WorldPak's protest against the terms of the prequalification statement was timely because it reasonably believed that the postal evaluators would know that its description of CPAS contained misrepresentations and exaggerations, and that the evaluators would not use the description or the statement "to the extent they . . . were incorrect."

— WorldPak could not properly have been found "considerably less qualified" than the other firms evaluated, since it had several strengths those firms did not possess.

— Since the prequalification statement did not "prove . . . an accurate idea of what functions the CPAS contractor would be performing," WorldPak had "no way to know which subcontractors [it] would be using and to what extent."

— WorldPak's prequalification package did provide sufficient information to allow the evaluation of its past performance and that of its principals.

In a conference on its protest, WorldPak raised the following additional points:

— Neither of the rationales on which it was found deficient are justified; accordingly, WorldPak's protest must be sustained.

— Offerors responding to a prequalification statement may rely on its plain meaning. "An offeror must have notice of the factors that . . . could eliminate the offer from competition." (Citing *Adams-McClure, Inc.*, P.S. Protest No. 95-51, February 26, 1995.)

— Of the five requirements set out in the statement, only the first, past performance, called for references; and only the second, specific experience, sought "specific" information. WorldPak was downrated only with respect to the first requirement and the fifth, international travel, and accordingly concludes that it met the remaining three.

— The foreign travel requirement did not call for references or descriptions of specific experience. WorldPak's response, which "stated without equivocation" that it could meet the requirement, could not have been deficient in the absence of any indication in the statement of the frequency or destinations for the travel. The contracting officer's justification for World-



Pak's deficiency in that respect "makes it seem as if the . . . requirement was a proxy for offeror size"; if so, size should have been a stated factor.

— WorldPak reasonably understood software design and development to have its usual meaning, and responded, consistent with that understanding, that it was not in that business and thus could not provide references. Further however, it described its prior work with subcontractor software designers and developers, and described, throughout its package, its experience and ability "in receiving, editing, reformatting, and transmitting customer-provided data."

— It is clear from the contracting officer's statement that while "software design" may have been a significant requirement of the initial contract, what is now required is for "information technology" work, of which the most important is database management. Had that requirement been properly stated, WorldPak could have more than adequately responded by identifying its experience and references in that regard.

Two of the other participants in the prequalification submitted comments supporting the contracting officer's view of the protest.

## DISCUSSION

To the extent that WorldPak objects to the terms of the prequalification statement, its objections are clearly untimely. If, as it contends, the statement mischaracterizes the CPAS system, it was aware of those mischaracterizations from the text of the statement, and it may not postpone its protest with regard to those errors until it perceives that it has been harmed by them. *Sunbelt Properties, Inc. – On Reconsideration*, Comp. Gen. Dec. B-245729.5, 92-1 CPD ¶ 528, June 18, 1992. Its contention that it was entitled to rely on its belief that the Postal Service understood that the statement was incorrect and, accordingly, would not rely on it is paradoxical. To the contrary, prospective offerors should expect that contracting agencies will act consistently with the terms of solicitation documents.

WorldPak's objection to the requirement that prospective offerors demonstrate their ability to design and develop software is also untimely raised. Any inconsistency between that evaluation criterion and the prequalification statement's description of the Postal Service's requirements as stated, e.g., in the second sentence of the fourth paragraph of the Introduction ("The USPS is seeking . . .") and in the list of services in criterion D.3 was, or should have been, apparent on the face of the statement. In the face of that inconsistency, the prospective supplier had two alternatives: It could inquire seeking clarification of the contracting officer's intent before offers were due, or it could frame its response to the first

criterion in terms of the statement's description of the work to be performed. Having failed to avail itself of these alternatives, WorldPak may not now complain that the criterion overstated the Postal Service's needs.

Finally, WorldPak's objections to the Postal Service's approach to the provision of CPAS service are both untimely and irrelevant. A prospective offeror cannot expect its proposal to be evaluated on the basis of its unstated intention to proceed on a basis different from that solicited. If an offeror believes that an approach other than that requested is preferable, it must express those beliefs so as to allow the contracting agency to consider that approach and to revise its procurement documents to allow other prospective suppliers to propose on a similar basis.

This office plays a limited role in reviewing the technical evaluation of prequalification or similar information submitted by a potential offeror. Such a review affords considerable discretion to the contracting officer and the evaluators. The technical determinations of a contracting officer will not be overturned unless they are arbitrary, capricious, or otherwise unsupported by substantial evidence. The protester bears the burden of overcoming the "presumption of correctness" which accompanies the statements of contracting officers. Accordingly, we review [] the evidence on the record to determine whether it supports [the protester's] contentions of arbitrariness, inconsistency or unequal treatment . . . . The evaluation of a proposal must be based on factors outlined in the solicitation, and contractors submitting prequalification packages are entitled to the same consistent application of stated evaluation criteria, not only to their own proposals but to their competitors' as well.

*W.M. Schlosser Company, Inc., supra.* (Citations and footnotes omitted.)

The contracting officer has furnished us the prequalification packages of the successful prospective offerors and of WorldPak, together with the evaluators' comments and evaluation scores on each of the packages.

Review of WorldPak's evaluation indicates that it received less than full scores with respect to all five of the evaluation criteria, not just the two cited by the contracting officer. As to the second factor, it was faulted for not having a client shipping 100,000 units per annum to three countries. (It had indicated that it had a client which had shipped 100,000 units to two countries but that no client would ship 100,000 units through WorldPak in 1997.) As to the third factor, WorldPak was criticized for being dependent on subcontractors for EDI expertise, for lacking in-house experience in hardware and software installation and maintenance, for failing to document its past experience with respect to training, and for

lacking specificity in describing its partnering strategy. As to the fourth requirement, which WorldPak stated it would meet through subcontracting and business partnering, it was faulted for failing to discuss the specific employment categories described in the factor. Because of the deficiencies noted, WorldPak's total evaluated score was only about one-third of the scores of the firms which were pre-qualified.<sup>4</sup>

The scoring of WorldPak's prequalification package was consistent with the contents of the package. Its submission recites its abilities and past performance only in general terms,<sup>5</sup> without specifics, asserting its intention to recite specifics in a subsequent proposal. WorldPak should have understood that in doing so, it ran the risk of not advancing to the next round.<sup>6</sup>

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<sup>4</sup> After each prequalification package was scored as to each of the five evaluation points, those scores were multiplied by individual weighting factors. The criteria used in prequalification are "supplier-specific performance evaluation criteria" (PM 3.5.2.c.). When such criteria are used, "the solicitation [or, here, the prequalification package] must indicate the relative significance of the identified performance evaluation factors . . . ." PM 2.1.7.d. Because this prequalification package provided no guidance concerning the relative weight of the five evaluation criteria, the use of these weights was inappropriate. Cf. *Lingtec, Incorporated*, Comp. Gen. Dec. B-208777, 83-2 CPD ¶ 279, August 30, 1983. ("Where . . . the RFP fails to indicate the relative importance of the evaluation criteria, . . . offerors may properly assume that all have equal importance . . . .") The erroneous use of these weighing factors did not adversely affect WorldPak since its weighted score was higher than its unweighted score. *TRW Financial Systems, Inc.*, P.S. Protest No. 91-19, May 29, 1991.

<sup>5</sup> WorldPak's brief submission (seven pages, including a cover page and a one-page financial statement), is striking for its apparently intentional decision not to identify by name any of its clients, subcontractors, or business partners.

The submission was also less than forthcoming in identifying WorldPak's personnel. (While the protester takes exception to a Dun and Bradstreet's statement on which the contracting officer relied which stated that WorldPak had only three employees, it conceded at its protest conference that its correct complement was four.) Only one individual, WorldPak's president, listed as WorldPak's contact but the extent of whose involvement with the effort is not otherwise stated, is named in the prequalification package. While the prequalification statement spoke of employees having particular qualifications (e.g., as attorneys, former postal employees, or having familiarity with Japanese), no employee with any qualification was named. We cannot fault the contracting officer for failing to consider these unidentified individuals as "key personnel."

<sup>6</sup> We reject WorldPak's crabbed and formalistic suggestion that the prequalification statement did not contemplate the submission by prospective offerors of detailed responses to each of its five evaluation criteria.

In an analogous situation, when a request for proposals called for a detailed explanation how the offeror would satisfy the specific requirements of a solicitation, an offeror's response that it understood and would comply with each of the several various requirements was insufficient, and pro-

(Footnote continued on next page.)

We find no basis under the standard set out above to object to the exclusion of WorldPak from the prequalified list.

The protest is dismissed in part and denied in part.

William J. Jones  
Senior Counsel  
Contract Protests and Policies

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vided a basis for finding the offer technically unacceptable without the need to provide the offeror an opportunity to revise or supplement its proposal. *GTE Business Communication Systems, Inc.*, P.S. Protest No. 83-79, February 8, 1984.