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## Decision

**Matter of:** WorldWide Language Resources, Inc.

**File:** B-412495.2

**Date:** March 23, 2016

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James S. DeSordo, Esq., James S. Phillips, Esq., and Julie M. Nichols, Esq., Argus Legal, PLLC, for the protester.  
Capt. Matthew A. Freeman, and Scott N. Flesch, Esq., Department of the Army, for the agency.  
Mary G. Curcio, Esq., and Cherie J. Owen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest that requirement for relevant past performance is vague because solicitation does not specifically define complexity and magnitude is denied where solicitation provides details regarding performance that will be required.
  2. Protest that agency should be required to provide locations where linguists in Afghanistan have been located in the past is denied where information is not required in order for offerors to propose a plan to distribute management personnel.
  3. Protest that solicitation's evaluation scheme improperly fails to consider cost of Defense Base Act (DBA) insurance in total evaluated price is denied where agency reasonably believed that excluding the cost of DBA will promote competition.
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### DECISION

WorldWide Language Resources, Inc., of Fayetteville, North Carolina, protests the terms of request for proposals (RFP) No. W911W4-15-R-0021, issued by the Department of the Army, Intelligence and Security Command, for interpretation and language services.

We deny the protest.

## BACKGROUND

The RFP anticipates the award of multiple Department of Defense Language Interpretation and Translation Enterprise II (DLITE II) indefinite-delivery, indefinite-quantity (ID/IQ) contracts for linguist support services supporting military operations and exercises throughout the world. The RFP anticipates the award of contracts for two separate mission areas: force projection operations, and train and sustain operations for a five-year base period and one five-year option period.<sup>1</sup> RFP at 3. The agency estimates that the total value of the DLITE II procurement is approximately \$9.8 billion. Contracting Officer's Statement at 1.

The solicitation provided that contracts will be awarded on a best-value basis, considering the following factors, listed in descending order of importance: technical (with subfactors for technical approach, staffing plan, transition plan); small business participation; past performance; and price. RFP at 425-26. Worldwide asserts that solicitation provisions relating to staffing plan, past performance, and price are ambiguous and unduly restrictive of competition.

## PAST PERFORMANCE

With respect to past performance, the solicitation instructed offerors to provide up to three references for relevant contracts that were performed within the past three years. RFP at 414. Relevant was defined as those contracts of a comparable magnitude and complexity to the tasks described in sections C.1 and C.3 of the performance work statement (PWS), and section J.2.1, Sample Task Order (STO) Alpha. Id. Offerors were instructed to explain how and why the referenced projects were relevant to the proposed effort. Id.

WorldWide asserts that the solicitation is ambiguous as to what constitutes comparable magnitude and complexity for purposes of relevancy. Specifically, according to WorldWide, the agency should be required to specify a dollar value or

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<sup>1</sup> Train and sustain operations include military training/field exercises, cultural familiarity and awareness missions, and performance in day-to-day operations. Agency Report at 2. Force projection operations require translation and interpretation services worldwide in support of forces engaged in humanitarian, peacekeeping, contingency and combat operations without a well-defined timeframe or quantity for delivery. Id. WorldWide is only interested in submitting an offer for force projection operations. Accordingly, we will only reference provisions of the solicitation applicable to the force projection area. We note, however, that some provisions apply to both areas.

provide a detailed explanation of what magnitude and complexity means in the context of this procurement.<sup>2</sup> Protest at 5.

Solicitations must be drafted to enable offerors to intelligently prepare their proposals and must be sufficiently free from ambiguity so that offerors may compete on a common basis. Raymond Express Int'l, B-409872.2, Nov. 6, 2014, 2014 CPD ¶ 317 at 9. There is no requirement, however, that a competition be based on specifications drafted in such detail as to completely eliminate all risk or remove every uncertainty from the mind of every prospective offeror. Rather, the solicitation must contain sufficient information for offerors to compete intelligently and on an equal basis. Id.

Here, as indicated above, with respect to magnitude and complexity, the solicitation instructed offerors to use the PWS and STO Alpha for guidance. STO Alpha, which covers Afghanistan, provides that there must be a linguist capacity that allows the agency to communicate with other foreign military units, the host nation government, and the local population, in order to gather information for force protection. RFP § J.2.1, STO Alpha PWS, ¶ 1.0. The STO further explains that the linguists will need to transcribe, translate, and interpret information gathered from a variety of sources to meet operational requirements. Id. at ¶ 1.2. The STO explains how Afghanistan is divided, the defense units that operate there, where they are located, and their missions. Id. at ¶ 1.1. The PWS and the STO provide the number of linguists required broken down by languages needed, linguist category descriptions, and the activity supported, as well as a table showing the languages and levels required between May 2012, and May 2014. RFP § J.2.1.2, STO Alpha Technical Exhibit; RFP § C.3.1.5, IDIQ PWS. In our view, this information provides offerors with sufficient information to intelligently identify which of their past contracts are of a similar magnitude and complexity to the requirements of the current solicitation. Therefore, this protest ground is denied.

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<sup>2</sup> As initially issued, the solicitation specified that contracts valued at \$40 million would be considered relevant for purposes of past performance. Contracting Officer's (CO) Statement at 4. However, after potential offerors expressed concern that the stated dollar value did not align with many of the values of task orders under the incumbent contract, and that the dollar value was much higher than the typical dollar values for efforts performed by some potential offerors, the agency amended the past performance definition to delete dollar value as an indicator of relevance. Id. at 4, 12.

## LINGUIST DENSITY

The staffing plan subfactor provides that offerors will be evaluated on their proposed approach to manage the tasks and staff a fully qualified workforce, as required in the PWS for STO Alpha. RFP at 426. Offerors were required to explain in detail their approach to managing subcontractors, the deployment of linguists, staff recruitment and retention, and managing and performing PWS tasks. Id. The solicitation required that offerors' proposed approach explain how the offeror would ensure that key management personnel would "be appropriately distributed among the highest linguist density locations and collocated in the immediate vicinity of the assigned linguist population." RFP § J.2.1, STO Alpha PWS, ¶ 2.3.1.1.

WorldWide complains that the solicitation does not provide offerors with the locations where linguists will be required, or with information about where linguists have been historically located. WorldWide asserts that without this information, offerors will not know how to properly distribute key management personnel. According to WorldWide, since the incumbent possesses historical information on the location of linguists, failure to provide it to other offerors will give the incumbent an unfair competitive advantage. Protest at 7.

In response, the Army explains that the solicitation requires offerors to propose a management and staffing plan, but not to propose where the managers or staff will be located. The Army will later inform offerors where services are required. Supp. CO Statement, Jan. 28, 2016, at 2. In this regard, at this time the agency does not know where linguists will be required. The Army notes that it has provided offerors with the number of linguists that will be required by language and level, and by the locations of the Army commands that will be serviced. The Army explains that it has not informed offerors of the **[DELETED]** of linguists because the information is classified. Id. at 1.

We agree with the agency. As noted, offerors are not required to propose linguist locations or density or to propose management personnel placement in their proposals. Offerors are only required to propose a management plan that collocates management personnel with the linguists that they manage. In our view, the information provided in the solicitation regarding the number of required linguists by language and level provides offerors with sufficient information to propose a plan for ensuring the appropriate placement of management personnel. Therefore, we deny this basis of protest.

## DEFENSE BASE ACT INSURANCE

WorldWide also protests that it is improper for the agency to evaluate price without including the proposed cost of Defense Base Act (DBA) insurance. According to WorldWide, the cost of DBA insurance will have a significant impact on the

competition because it will be a different amount for different contractors, and will be somewhere in the range of \$100 million to \$200 million dollars.

The solicitation required offerors to provide prices for various line items, with the exception of a line item for DBA insurance, by the December 1 due date for proposals. RFP at 419. With respect to the line item for DBA, offerors were required to submit either an applicable insurance binder or, if not already insured, a quotation for insurance, by May 1, 2016. Id. The DBA quotation or binder was required to include the locations covered, premium rates and total estimated premium, and be matched to the size, scope, complexity, and specific location of STO Alpha (Afghanistan). Id. The solicitation provided that the agency would compute a “total evaluated price” by adding together all line items, except the DBA line item. Id. at 430. Although the DBA line item was excluded from the definition of “total evaluated price,” the solicitation advised that DBA costs would be evaluated for realism, reasonableness, and completeness. Id. at 432; Contracting Officer’s Supp. Declaration, Feb. 19, 2016, at 1.

Agencies are required to consider the cost to the government in evaluating competitive proposals. Federal Acquisition Regulation § 15.304(c)(1); Health Servs. Int’l, Inc.; Apex Envtl., Inc., B-247433, B-247433.2, June 5, 1992, 92-1 CPD ¶ 493 at 3-4. While it is up to the agency to decide upon an appropriate and reasonable method for proposal evaluation, it may not use an evaluation method that produces a misleading result. Id. The method chosen must include some reasonable basis for evaluating or comparing the relative costs of proposals, so as to establish whether one offeror’s proposal will be more or less costly than another. SmithKline Beecham Corp., B-283939, Jan. 27, 2000, 2000 CPD ¶ 19 at 4-5.

As an initial matter, while WorldWide correctly notes that the cost of DBA will not be included in the “total evaluated price” of each offeror, WorldWide cannot claim that the Army is not considering the cost of DBA. As mentioned above, each offeror’s DBA cost will be evaluated for realism, reasonableness, and completeness. In addition, the solicitation reserved the right to procure a “single provider” DBA system, or some other system for covering DBA. RFP at 419.

The Army explains that, in its view, any cost advantage that arises from an evaluation of proposals that includes the cost of DBA insurance will be illusory. Specifically, the Army explains that DBA rates are based in part on claim loss history and performance location. Supp. CO Statement, Feb. 19, 2016, at 2. Thus, contractors that have not performed before, or who have not previously performed in a high-risk area, will initially have lower rates than contractors that have previously performed linguist services in areas like Afghanistan or Iraq. Id. The Army expects, however, that over time, as contractors perform in high-risk areas and file claims, the rates for this insurance will likely become similar for all contractors. Id.

Since the Army does not know what the difference in the cost of DBA insurance will be over the life of the contract, and in fact, does not believe that there will be any significant long-term cost difference attributable to DBA insurance, the decision to eliminate the cost of DBA insurance from the total evaluated price for award purposes provides a reasonable basis for the agency to establish what it believes will be the relative difference in costs between offerors. See Onèsimus Defense, LLC, B-411123.3, B-411123.4, July 24, 2015, 2015 CPD ¶ 224 at 5 (agency may eliminate costs from consideration where, due to potentially fluctuating costs, the agency cannot accurately determine what offer will be the least expensive over the life of a contract).

Moreover, we have recognized that an agency may reasonably exclude certain costs from a competition when doing so will appropriately level the playing field, and promote, rather than stymie, competition. New Mexico State University, B-409566, June 16, 2014, 2014 CPD ¶ 228 at 4. While New Mexico involved a situation in which the agency's decision not to consider certain costs was based on its desire to encourage competition among potential non-incumbent offerors, the overriding principle is that agencies have a legitimate interest in enhancing competition. Here, the Army's rationale for not including DBA insurance in the total evaluated price is due in part to the deleterious effect on competition of including the cost of DBA insurance in the total evaluated price. Supp. CO Statement, Feb. 19, 2016, at 1. That is, the Army explains that a contractor that has been providing linguist services in a highly volatile area, such as Afghanistan, or Iraq, could initially be charged higher DBA rates due to the high risk in those areas, while less-experienced offerors are likely be be charged rates that are initially lower, but that will be increased as those offerors, too, begin operations in a high-risk area--thus rendering illusory the initial savings. Id.

Given the agency's uncertainty about the cost of DBA insurance over the life of the contract, and its desire to promote a fair competition, we find that it has reasonably justified its decision to eliminate the cost of DBA insurance from the total evaluated price for purposes of determining which offer will provide the best value to the government.

The protest is denied.

Susan A. Poling  
General Counsel