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United States General Accounting Office
Washington, DC 20548

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Decision

Matter of: AllWorld Language Consultants, Inc.

File: B-291409; B-291409.2;

Date: December 16, 2002

John E. Jensen, Esq., Shaw Pittman, for the protester.
Richard D. Lieberman, Esq., McCarthy, Sweeney & Harkaway, for Worldwide Language Resources, Inc., an intervenor.
Sherry Kinland Kaswell, Esq., Department of Interior, for the agency.
Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency improperly failed to consider that awardee's price proposal is unrealistically low is denied where solicitation contemplated award of a fixed-price contract, and did not provide that realism evaluation would be conducted for purposes of evaluating technical understanding.

2. Protest that, in evaluating awardee's technical proposal, agency failed to consider that certain linguists offered by awardee were currently employed by protester and had signed agreements not to work for any other firm, is denied where source selection official was aware of the agreements and determined that they would have no impact on performance.

DECISION

AllWorld Language Consultants, Inc (ALC) protests the award of a contract to Worldwide Language Resources, Inc. under a solicitation issued by the Department of the Interior to procure linguists to support the Department of the Air Force Office of Special Investigations (AFOSI). ALC asserts that the agency misevaluated Worldwide's technical and price proposals.

We deny the protest.

Interior issued the solicitation, in accordance with Federal Acquisition Regulation § 8.404, and the General Services Administration Federal Supply Schedule (FSS), to vendors holding applicable FSS schedule contracts. The solicitation, for a fixed-price, level-of-effort contract, provided for award based on a "best value" evaluation

under three factors--technical approach, past performance and price; the technical approach and past performance factors were significantly more important than price. The technical approach factor was comprised of four equally weighted subfactors: how personnel would obtain security clearances; project manager; qualifications; and management approach.

ALC and Worldwide submitted proposals, Air Force personnel evaluated the proposals under the technical and past performance factors, and Interior evaluated the offered prices. The two proposals received identical ratings--"exceeds" for the security clearances and qualifications subfactors, "meets" for the project manager and management approach subfactors, and "meets" for the past performance factor. Worldwide's offered price was [DELETED], and ALC's [DELETED]. Since the two proposals were considered equal with respect to the technical and past performance factors, Interior made award to Worldwide based on price.

WORLDWIDE PRICE PROPOSAL

ALC protests that, in reaching the award decision, Interior improperly failed to consider that Worldwide's offered price is unrealistically low. This argument is without merit. Where, as here, a solicitation contemplates the award of a fixed-price, rather than a cost-reimbursement, contract, the agency is not required to conduct a price realism analysis, because a fixed-price contract places the risk and responsibility for loss on the contractor rather than the government. PHP Healthcare Corp.; Sisters of Charity of the Incarnate Word, B-251799 et al., May 4, 1993, 93-1 CPD ¶ 366 at 5. An agency may provide for a price realism analysis for the limited purpose of measuring offerors' understanding of the requirements or to assess the risk inherent in an offeror's proposal, but there is no requirement that it do so. Id. Here, the solicitation did not provide that the agency would conduct a price realism analysis, or otherwise assess technical understanding with reference to the offered prices. Consequently, since the agency determined that Worldwide is responsible and, thus, that it can perform at its offered price, Worldwide's low price does not provide a basis for questioning the award. WorldTravelService, B-284155.3, Mar. 26, 2001, 2001 CPD ¶ 68 at 3.

QUALIFICATIONS SUBFACTOR

Noting that five of the Arabic linguists Worldwide proposed are current ALC employees, and have signed agreements not to work for a competing contractor on a contract in support of AFOSI, ALC maintains that the evaluation of Worldwide's proposal as "exceeds" under the qualifications subfactor was unreasonable. ALC asserts that the Air Force and Interior were aware of the non-competition agreements from an August 28, 2002 letter ALC sent to personnel at both agencies, but failed to notify the technical evaluators of the agreements.

We find the evaluation here unobjectionable. It does appear from the record that the evaluators were not advised of the non-competition agreements, and that they thus

did not take this information into account when they rated Worldwide's proposal under this factor. However, the record also shows that, before reaching the award decision on September 20, the contracting officer, who was also the source selection authority, did specifically consider whether the non-competition agreements would have an impact on Worldwide's ability to perform. Memorandum for Record, Sept. 18, 2002, at 11; Contracting Officer's Statement at 11. The contracting officer concluded that, since Worldwide's proposal showed that it had 389 Arabic-speaking linguists available to perform the contract, addressed the performance of the contract with current staff and offered a system to recruit employees, the non-competition agreements did not affect the proposal's "exceeds" rating under the qualifications subfactor. Contracting officers are not bound by lower level evaluators, and may make their own judgments regarding the merits of a proposal. See R.C.O. Reforesting, B-280774.2, Nov. 24, 1998, 98-2 CPD ¶ 119 at 2. Thus, the fact that the contracting officer, rather than the technical evaluators, considered the impact of the non-competition agreements does not affect the award decision.

There was nothing unreasonable in the contracting officer's rating Worldwide's proposal "exceeds" under the qualifications subfactor. Under that subfactor, offerors were to "state the qualifications that meet the requirements of the PWS; submit resumes for all proposed linguists; provide announcements that will be used to recruit new employees or any other plans to recruit new employees." In other words, this subfactor related generally to the overall qualifications of the offeror to perform the contract work; the linguists identified in the proposal were only one of several considerations. In evaluating Worldwide's proposal, the contracting officer concluded that Worldwide's overall qualifications for the work--and, in particular, its access to hundreds of Arabic-speaking linguists and its recruitment plans--warranted an "exceeds" rating, notwithstanding the fact that 5 of the 21 identified linguists were covered by non-competition agreements. Given the agency's conclusions that

Worldwide's qualifications were exceptional, Consensus Evaluation at 1, and that Worldwide would be able to provide the required linguists, the evaluation of Worldwide's proposal under this subfactor was reasonable.[1]

The protest is denied.

Anthony H. Gamboa
General Counsel

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[1] In its protest, ALC raised a number of additional issues to which the agency responded in its report, including, for example, assertions that the agency unreasonably evaluated ALC's past performance, and failed to consider that Worldwide would not be able to begin performance on time. ALC did not rebut the agency's responses to these issues in its comments on the report; accordingly, we consider these issues abandoned and have not addressed them in this decision. See Westinghouse Gov't and Envtl. Servs. Co., Inc., B-280928 et al., Dec. 4, 1998, 99-1 CPD ¶ 3 at 7 n.6.