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Decision

Matter of: AllWorld Language Consultants, Inc.

File: B-411481.3

Date: January 6, 2016

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Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's issuance of a task order to a firm under its Federal Supply Schedule (FSS) contract is sustained where record shows that the task order was based on awardee quoting a labor category under its FSS contract that does not meet the requirements of the solicitation.

DECISION

AllWorld Language Consultants, Inc., of Rockville, Maryland, protests the issuance of a task order to SOS International, Ltd. (SOSI), of Reston, Virginia, under request for quotations (RFQ) No. ID0415002, issued by the General Services Administration (GSA) to acquire, on behalf of the Department of the Air Force, linguistic support services to be performed in southwest Asia. AllWorld maintains that the agency miscalculated quotations, made an unreasonable source selection decision, and failed to engage in meaningful discussions with the protester.

We sustain the protest.

BACKGROUND

The RFQ contemplates the issuance, on a best-value basis, of a fixed-price task order to provide linguist services at various locations for a one-year base period and two 1-year options. The RFQ also includes both base and optional quantities that the acquiring activity can purchase at any time during the life of the task order. The

competition was confined to firms holding federal supply schedule (FSS) contracts. Firms were advised that the agency would evaluate quotations considering price, and two non-price factors, technical approach and past performance.¹ RFQ Instructions and Evaluation Factors, at 4. The RFQ further advised that technical approach was most important, past performance was second in importance, and price was third in importance. Id.

GSA received several quotations in response to the RFQ, including those submitted by AllWorld and SOSI. The agency evaluated the quotations, provided firms with an opportunity to submit revised prices, and also engaged in limited exchanges with the vendors. After receiving and evaluating the revised quotations, the agency issued a task order to SOSI on April 21, 2015. AllWorld filed a protest in our Office, maintaining that the agency miscalculated quotations. In response to that protest, GSA advised our Office that it intended to reevaluate quotations under the technical approach factor. In light of the agency's proposed corrective action, we dismissed AllWorld's earlier protest as academic.

The agency reevaluated quotations and assigned the SOSI quotation high confidence ratings under both the technical approach and past performance factors. The agency assigned the AllWorld quotation a significant confidence rating under the technical approach factor and a high confidence rating under the past performance factor. Agency Report (AR) ex. 14, Selection Decision, at 14. SOSI quoted a price of \$17,441,318, while AllWorld quoted a price of \$31,953,248. Id. The record also shows that SOSI quoted the lowest price among all firms. Id. at 37. On the basis of these evaluation results, GSA affirmed its issuance of the task order to SOSI. After being advised of the agency's selection decision and receiving a brief explanation of the agency's actions, AllWorld filed this protest.

PROTEST

AllWorld raises several challenges to the agency's evaluation of quotations and conduct of discussions. We have reviewed all of AllWorld's challenges and sustain its protest for the reasons discussed below. We deny AllWorld's remaining allegations. We note at the outset that, in reviewing protests concerning an agency's evaluation of quotations or proposals, we do not independently review the quotations or proposals; rather, we review the record to ensure that an agency's

¹ The RFQ provided that GSA would assign the quotations adjectival ratings of high confidence, significant confidence, medium confidence, little confidence, or no confidence under the technical approach factor. RFQ Instructions and Evaluation Factors, at 9. For the past performance factor, the RFQ advised that the agency would assign adjectival ratings of high confidence, significant confidence, medium confidence, little confidence, no confidence or unknown (neutral) confidence. Id. at 11-12.

evaluation is reasonable and consistent with the terms of the solicitation, as well as applicable statutes and regulations. Intelligent Decisions, Inc., et al., B-409686 et al., July 15, 2014, 2014 CPD ¶ 213 at 15-16.

SOSI's Proposed Labor Category

AllWorld argues that the agency improperly found SOSI's quotation technically acceptable, despite the fact that it quoted a labor category that does not contemplate providing personnel qualified to perform the solicited requirements. In this connection, the solicitation's performance work statement (PWS) provides, among other things, that the linguists to be provided must be capable of expressing themselves clearly and concisely both orally and in writing in English and the local language; produce idiomatic translations of non-technical material using correct syntax and speech in both English and the local language; and conduct consecutive, accurate translations of ongoing conversations and activities in both English and the local language. PWS at 5. The PWS also provides that the proposed linguists may be required to live and work in harsh desert environments, including living and working in temporary facilities such as tents; serve during a level of heightened state of threat; function effectively and efficiently during extended periods of high pressure and stress while maintaining a professional, functional demeanor at the scenes of crimes, many of which may be the result of violent or repugnant acts; function as an integral member of a team of highly trained professionals responsible for the safety and security of U.S. military and civilian personnel; and operate government-owned vehicles. PWS at 5-6.

AllWorld maintains that SOSI quoted just a single labor category that does not include many of the duties that the linguists are required to perform under the PWS, including oral expression of translation capabilities, producing idiomatic translations using correct syntax and speech, and conducting consecutive, accurate translations of ongoing conversations and activities. AllWorld notes that SOSI's quoted labor category also is confined to providing written translations at a SOSI facility or site, and does not contemplate providing services in what essentially amounts to warzone locations with all of the attendant difficulties and stresses. Finally, AllWorld points out that SOSI was afforded a significant competitive advantage by the agency's acceptance of its quoted labor category because the hourly rate for that category is substantially lower than the rates for other SOSI FSS labor categories that arguably could meet the requirements of the PWS.

GSA responds that it reasonably found SOSI's quotation technically acceptable. Specifically, GSA maintains that no contractor's FSS labor categories align precisely with the requirements of any particular PWS, and that, accordingly, the agency looked to the SOSI technical quotation to determine what duties SOSI's proposed linguists would perform. According to the agency, SOSI's technical quotation offered a labor mix that would meet the PWS requirements. GSA also

points out that it confirmed with SOSI that its quoted labor category included all of the services required under the PWS.

We find that GSA unreasonably found the SOSI quotation acceptable under the technical approach factor. The RFQ's technical approach evaluation factor required, among other things, that firms provide a staffing plan. The RFQ advised offerors as follows:

The Staffing Plan will be evaluated on how well the Quoter addressed and described the duties and responsibilities of each position and how the positions interface with . . . each other. It will also take into account the number of linguists by language, clearance level, and proficiency level. The Staffing Plan will measure . . . the Government's confidence . . . [in] how well the Quoter demonstrates staffing the proposed personnel (to include the Base requirement and the Optional requirement).

RFQ Instructions and Evaluation Criteria at 6.

The record shows that SOSI quoted just a single labor category to perform all of the linguist duties, specifically, the category of "Translator Written Translation--All Languages" which is described narratively in SOSI's FSS contract as follows:

Translates technical and non-technical documents, audio and video recordings, and other source media from and into English and the target language. Reviews and edits translations produced by others. Work performed at Contractor site.

AR, exh. 9b, SOSI FSS Schedule Labor Categories, at 1.

This labor category, on its face, does not enumerate a number of the necessary qualifications required for the proposed linguists to perform the services called for under the PWS. The "Translator Written Translation" labor category does not include providing oral translation services of any kind. It also expressly does not contemplate providing linguist services in any location other than a SOSI facility, nor does it contemplate providing those services under what amount to extremely stressful, war-zone-type conditions.

A review of the technical portion of the SOSI quotation shows that it restates certain of the PWS requirements relating to the services to be performed. AR, exh. 9, SOSI Technical Quotation, at 20. SOSI's quotation also includes an organizational chart that identifies three categories of linguists, "Senior Linguist/Site Lead," "Senior Linguist" and "Linguist." *Id.* at 11. However, these particular labor categories are not included on--or defined in--SOSI's underlying FSS contract. Compare AR, exh.

9, SOSI Technical Quotation, at 11, with AR, exh. 9b, SOSI FSS Labor Category Definitions, and AR, exh. 9, SOSI Price Quotation, FSS Labor Categories, at 8.

A review of SOSI's price quotation shows that it is based entirely on providing just one labor category of linguists, namely, linguists that meet the definition of the "Translator Written Translation" labor category quoted above. AR, exh. 9, SOSI Price Quotation, at 4-6. This amounts to a patent inconsistency in the SOSI quotation. On the one hand, the SOSI technical quotation describes various duties that correspond to certain PWS requirements, and identifies three discrete labor categories of linguists. On the other hand, its price quotation is based on the hourly rate for a labor category of linguists that clearly do not possess the qualifications necessary to provide the services contemplated by the PWS.

GSA claims that it clarified the SOSI quotation during the acquisition, and an examination of the interchange between GSA and SOSI demonstrates that GSA apparently recognized the inconsistency in the SOSI quotation described above. However, there was no reasonable basis for GSA to have concluded, based on that exchange, that SOSI actually would be providing linguists that met the requirements of the PWS. The record of the exchange is as follows:

In the Labor Mix of the Pricing Volume the labor categories and associated labor rates used are Translator, Written Translation, All Languages at a rate of \$47.15 with escalation. The position description for the labor category in the Price List says "Translates technical and non-technical documents, audio and video recordings, and other source media from and into English and the target language. Reviews and edits translations produced by others. Work performed at Contractor site." However, in PWS section 4.1.1.1 (a) states "linguist shall be capable of: (a) Perform clear and concise expression orally and in writing (in both English and the local language).

SOSI Response: Yes.

AR, exh. 9d, Verbal Confer Memo to File. Other than this memorialization of a verbal exchange between SOSI and GSA, there is nothing in any of the materials that comprise the SOSI quotation that could be construed as a written representation on the part of SOSI to staff the task order with linguists qualified to provide all of the services contemplated under the PWS, or to utilize a labor category under its FSS contract that describes linguists that meet the RFQ's requirements in terms of their qualifications.

We note as well that GSA's underlying premise--that SOSI could identify a labor category under its FSS contract that did not meet all of the requirements of the PWS, but could somehow enhance or alter the narrative description and

qualifications of that labor category through the technical portion of its quotation--reflects a fundamental misunderstanding of the nature of FSS contracting. The labor categories identified and described in each firm's underlying FSS contract are fixed, discrete, specific labor category descriptions that are contractually binding and not subject to alteration, just as the technical specifications for products available under a firm's FSS contract are fixed, discrete, specific, contractually binding, and not subject to alteration. See American Systems Consulting, Inc., B-294644, Dec. 13, 2004, 2004 CPD ¶ 247 at 10-11.

To the extent a quoted labor category description under a firm's FSS contract does not, in the words of GSA, "align precisely" with the requirements of a given solicitation, the firm may not properly alter the underlying labor category description through the terms of its quotation. Rather, where a firm's quoted labor category description does not align with the requirements of the solicitation, it means that the quoted labor category does not meet the requirements of the solicitation, and therefore cannot serve as the basis for issuing a task order to the firm. American Systems Consulting, Inc., supra at 10-11. In addition, to the extent that GSA seems to be suggesting that it was unobjectionable to issue the task order to SOSI because one or another of the labor categories under its FSS contract may include the services to be performed, that suggestion also misses the point because SOSI did not actually quote any of the other labor categories under its FSS contract. Id. at 10 n.4.

The record also shows that this inconsistency in the SOSI quotation provided the firm with a significant competitive advantage. The price per hour for "Translator Written Translation" labor category under SOSI's FSS contract is \$47.15. AR, exh. 9, SOSI Price Quotation, at 8. Other labor categories under the SOSI FSS contract are substantially more expensive. For example, the price for a linguist providing simultaneous/consecutive interpretation is \$81.28 per hour.²

² We note that the SOSI FSS price schedule includes a total of 30 labor categories ranging from \$33.53 per hour (for Title III Electronic Surveillance Audio and Videotape Translator/Transcriber (Spanish)) to \$179.48 (for Senior Cultural Advisor). AR, exh. 9, SOSI Price Quotation, at 8. SOSI's quotation includes narrative descriptions for only 11 of its 30 FSS labor categories. AR, exh. 9b, SOSI Quotation, Labor Category Descriptions. We identify the price for "Simultaneous/Consecutive Interpreter All Languages" above for illustrative purposes because that labor category description appears to include at least some of the PWS requirements (for example, the requirement to provide consecutive translation of ongoing conversations). However, it may well be that other, even higher-priced labor categories included in the SOSI FSS price list would be more appropriate to provide all of the services called for under the PWS.

As a final matter, the agency suggests that, even if AllWorld's allegation is correct, the firm was not prejudiced because calculating SOSI's price using one of the other labor categories still would result in SOSI being lower in price compared to AllWorld.³ However, there is no basis to perform such a calculation using any particular labor category under the SOSI FSS contract since, as noted, without more information there would be no basis for the agency reasonably to determine which of the 30 labor categories apparently available under the SOSI FSS contract would be the most appropriate ones to use. In addition, to the extent that the agency essentially is asserting that it would have made the same selection decision at a substantially different price, such a suggestion amounts to a claim advanced in the heat of litigation to which we give little weight. Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 27, 1997, 97-2 CPD ¶ 91 at 15.

In the final analysis, it was unreasonable for the agency to have found the SOSI quotation acceptable under the technical approach factor because it was based on providing linguists from a labor category that was not qualified to perform the RFQ requirements. While it is possible that there are other labor categories under SOSI's FSS contract that would meet the qualifications for linguists identified in the RFQ, SOSI did not actually quote any of these other labor categories. It follows that, regardless of the agency's hypothetical recalculation of SOSI's price, SOSI's quotation could not properly form the basis for issuance of the task order. We therefore sustain this aspect of SOSI's protest.

Expiration of the SOSI FSS Contract

AllWorld alleges that issuance of the task order to SOSI also was improper because its underlying FSS contract expired just three days after the agency issued the task order. As noted, the agency originally issued the task order to SOSI on April 21, 2015. The record shows that SOSI's underlying FSS contract ended just three days later, on April 24. AR, exh. 9, SOSI Quotation Cover Letter, at 2. According to the protester, because the SOSI FSS contract was set to expire just three days after issuance of the original task order, it was improper to issue the task order to SOSI because the agency cannot, for example, exercise any of the options included in the task order.

The agency responds that it was unobjectionable to issue the task order to SOSI, notwithstanding the fact that its underlying FSS contract was set to expire. The agency points out that SOSI's underlying FSS contract provides for the completion of orders issued during the FSS contract's effective period, even if performance occurs after expiration of that period. GSA also takes the position that exercising

³ The agency performed alternative calculations using SOSI's "Simultaneous/Consecutive Interpretation" and "Linguist with Top Secret Level Clearance (Category III)" labor categories. Supplemental Agency Report at 5.

the options under the task order would be unobjectionable because the exercise of the options does not constitute placement of a new order under SOSI's FSS contract.

The record shows that SOSI's FSS contract includes, in pertinent part, the following Federal Acquisition Regulation (FAR) provision:

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period. . . .

FAR § 52.216-22. Thus, GSA is correct that SOSI's underlying FSS contract contemplates the circumstances here, namely, a situation where the agency issues a task order that includes a period of performance extending beyond the point in time when the underlying FSS contract expires. It follows that GSA properly could have issued the task order to SOSI prior to the expiration of its FSS contract.

However, we disagree with GSA that it properly may exercise any of the options included in the task order after SOSI's underlying FSS contract expired. Task orders under FSS contracts are not themselves stand-alone contracts. Rather, the rights and liabilities of the parties under every FSS task order are governed by, and subject to, the terms and conditions of the underlying FSS contract. As reflected in the FAR provision quoted above, "[t]he contract [that is, the underlying FSS contract] shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period." FAR § 52.216-22(d).

Exercising an option under a task order creates new contractual responsibilities for each party. Here, for example, unless and until the options actually are exercised by the agency, SOSI is not legally obligated to provide the services contemplated by the options and, correspondingly, GSA is not legally obligated to pay for those services. However, those new contractual responsibilities do not exist in a vacuum, but instead arise under, and are governed by, the terms and conditions of the underlying FSS contract. It follows that GSA cannot legally exercise the options included in the task order without a valid underlying FSS contract.

Our view in this connection is consistent with guidance explicitly found on GSA's FSS ordering guidelines website. In particular, GSA's website provides as follows:

Options may be included on orders placed against GSA Multiple Award Schedule (MAS) contracts, provided that the options are clearly stated in the requirement and are evaluated as part of the ordering

activity's best value determination. Such options may be exercised on GSA Schedule contract orders, provided that:

Funds are available;

The requirement covered by the option fulfills an existing government need;

Prior to exercising an option, the ordering activity ensures that it is still in the government's best interest, i.e., that the option is the most advantageous method of fulfilling the government's need, price, and other factors considered; and

The options do not extend beyond the period of the Schedule contract, including option year periods.

See <http://www.gsa.gov/portal/content/200369> (last visited on January 6, 2016; emphasis supplied).

In addition, GSA's position in this case is directly contradicted by advice it provided in connection with another case considered by our Office. That case involved circumstances where the Air Force was considering issuing a task order against a firm's FSS contract. The Air Force sought GSA's advice on the question of whether or not the agency could issue a task order to a firm whose FSS contract expired before exercise of options contemplated under that task order was to occur, and GSA advised that it would be improper to issue a task order under those circumstances. As described in our decision:

On August 29, the Air Force contract specialist contacted the GSA team lead and sought her opinion about whether the agency could exercise an option after the GSA schedule contract expired. In response, the GSA team lead stated that "[a]lthough the Contractor is obligated to complete the Task Order (even if the contract expires) you CANNOT exercise a Task Order Option if the base Contract is Expired."

HP Enterprise Serv's, LLC, B-405692, Dec. 14, 2011, 2012 CPD ¶ 13 at 3.

In light of these considerations, we conclude that, while GSA's issuance of the task order to SOSI was not, in and of itself, legally objectionable, the agency cannot properly exercise any of the options included under the task order. The practical effect of this limitation is that, while the RFQ contemplated issuance of a task order with a potential period of performance of three years, the task order issued to SOSI may only be performed for a period of one year. Similarly, the RFQ contemplated a task order that had a base quantity of 24 linguists during each year of performance, and optional quantities of, respectively, 20, 15 and 13 additional linguists during the

three years of performance. AR, exh. 6a, Mandatory Pricing Template. None of these optional quantities is available under the task order issued to SOSI. These limitations are of particular concern in light of the fact that the Air Force, not GSA, is the actual acquiring activity here, and there is no indication in the record that this truncated task order will meet the Air Force's actual requirements.

RECOMMENDATION

Ordinarily, we might be able to recommend that GSA reopen discussions and afford SOSI and the other vendors an opportunity to revise their quotations. However, because SOSI's underlying FSS contract has expired, it may not revise its quotation or be issued a new delivery order. Accordingly, we recommend that GSA terminate the task order issued to SOSI because it was based on providing linguists from a labor category that does not meet the requirements of the RFQ. We further recommend that the agency make a new source selection from among the remaining firms that is consistent with the discussion above. Finally, we recommend that the agency reimburse AllWorld the costs associated with filing and pursuing its protest, including reasonable attorneys' fees. The protester should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Susan A. Poling
General Counsel