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Decision

Matter of: WorldWide Language Resources, Inc.

File: B-297210; B-297210.2; B-297210.3

Date: November 28, 2005

Richard D. Lieberman, Esq., Warren S. Feldman, Esq., and Nicole S. Allen, Esq., McCarthy, Sweeney & Harkaway, PC, for the protester.

Alison L. Doyle, Esq., McKenna Long & Aldridge, LLP, for SOS International, Ltd., an intervenor.

Clarence D. Long, III, Esq., Department of the Air Force, for the agency.

Sharon L. Larkin, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging award for linguistics support services is denied, where agency reasonably concluded that protester's quotation was technically unacceptable since the protester's linguists did not meet the requirements of the solicitation.

DECISION

WorldWide Language Resources, Inc. (WWLR) protests the award of a delivery order to SOS International, Inc. under request for quotations (RFQ) No. FA4416-05-Q-0900 issued by the Department of the Air Force for linguistics support services.

We deny the protest.

The RFQ sought 22 linguists to provide 24-hour, 7-day per week coverage in support of the Air Force Office of Special Investigations (AFOSI), which is responsible for providing special investigative and counter-intelligence support services to the United States Air Force. The primary function of the linguists was to furnish language, dialect, and interpretation services for AFOSI throughout Central and Southwest Asia in furtherance of the global war on terrorism. Of the 22 linguists required, 2 were to possess "top secret" security clearances (either final or interim clearances) and 20 were to have "secret" security clearances (which had to be "verifiable [and] final"). RFQ, Performance Work Statement (PWS), §§ 1.0-1.1.1, 1.2.5.1.2; amend. 1, Q&A 22 and 39. The RFQ also stated that "[o]n a case-by-case, limited basis, interim secret clearances may be accepted by the [contracting officer's representative]." RFQ, PWS, § 1.2.5.1.2. Linguists were also required to possess a

minimum of 2 years translation experience and “demonstrate the ability to write, understand, listen, read, speak and electronically translate in clear and concise grammar and pronunciation from the required target language as well as back into English.” Id., § 1.2.5.2.

The RFQ was issued to 14 vendors holding General Services Administration (GSA) Federal Supply Schedule (FSS) contracts. The solicitation provided for award of a fixed-price delivery order for a 6-month base period with a 6-month option. Award was to be made on a “best value” basis, considering price, technical acceptability, and past performance. Technical acceptability was to be determined on a pass/fail basis, considering resumes (which were to be evaluated against standards stated in the PWS, including security clearances) and test scores (which were to “achieve a minimum of 95% accuracy rate”). The RFQ provided that technically acceptable quotations “shall be treated equally except for their prices and performance records” and that past performance was “significantly more important than cost or price considerations.” RFQ at 13-14.

WWLR and SOS were among five vendors that responded to the RFQ. WWLR’s quotation (at a price of \$5,752,580) included linguists that were providing AFOSI mission support under another contract. The agency determined that WWLR’s quotation was technically unacceptable because [redacted] of the 20 identified linguists did not possess the requisite final secret clearances (although these linguists possessed interim secret clearances). In addition, the evaluators noted that some of the linguists did not have the required experience and/or their test scores were too low.¹ Agency Report (AR), Tab 7, Memorandum for Record and Individual Technical Evaluation Sheets (WWLR).

SOS’s quotation and that of another vendor were found to be technically acceptable as those firms identified linguists with the requisite clearances, experience, and test scores. Of these two technically acceptable quotations, SOS’s received a past performance rating of “high confidence,” while the other vendor’s quotation received a rating of “unknown confidence,” and SOS’s quotation (at a price of \$5,832,728) was lower in price. AR, Tab 10, Contracting Officer Decision Document, at 4. The agency selected SOS’s quotation as the “best value” for the government, and awarded the firm a delivery order for the services.

WWLR protests the award, challenging the agency’s finding that WWLR’s quotation was technically unacceptable and asserting that two of the evaluation members were “biased” against the firm. It also contends that SOS performed a “bait and switch” of its identified personnel, arguing that the firm, instead, intended to employ WWLR

¹ Two other vendors’ quotations were also found to be technically unacceptable and were not further considered.

employees. WWLR asserts that its lower priced, technically acceptable quotation should have been selected for award.

Where, as here, an agency solicits FSS vendor responses and uses an evaluation approach like a negotiated procurement to evaluate quotations, our Office will review the agency's actions, if protested, to ensure that the evaluation is fair and reasonable, and consistent with the terms of the solicitation. COMARK Fed. Sys., B-278343, B-278343.2, Jan. 20, 1998, 98-1 CPD ¶ 34 at 5.

WWLR contends that the agency unreasonably determined its quotation to be technically unacceptable, asserting that interim secret clearances were permitted by the RFQ and were accepted under past contracts. We find no merit to this contention. Although the PWS gave authority to the agency to accept interim secret clearances, it did not require the agency to do so, and the agency further clarified in an amendment to the RFQ that although interim top secret clearances were acceptable, "interim secret [clearances] [were] not acceptable." RFQ amend. 1, Q&A 39. That the agency may have accepted interim clearances in other contracts has no bearing on the evaluation here, which required final secret clearances.² Since [redacted] of WWLR's linguists did not have the required final secret clearances (and of those, some did not possess the minimum experience or test scores), we find that the agency reasonably determined that WWLR's quotation was technically unacceptable.³

WWLR complains that, before its resumes were evaluated, the agency redacted from each of the linguist's resumes that the individual was a "Current Linguist for [AF]OSI Mission Support" and that this "den[ied] the technical panel important information about the qualifications and experience of WWLR linguists." Second Supplemental Protest at 7. However, as the agency explains, it deleted information from all vendors' resumes (including those submitted by SOS) that would identify the vendors to the evaluators in order to keep the quotations anonymous.⁴ The language

² To the extent that WWLR now asserts that the final security clearance requirement is unnecessary, that protest allegation is untimely. Protests challenging defects in an RFQ must be raised on or before the date set for receipt of initial quotations. See 4 C.F.R. § 21.2(a)(1) (2005).

³ Because the agency found WWLR's quotation to be technically unacceptable, the agency was not required to evaluate the firm's past performance or perform a past performance/price tradeoff. In addition, since the firm was not eligible for award, it is not an interested party to challenge the agency's best value determination. See 4 C.F.R. §§ 21.0(a), 21.1(a).

⁴ Although WWLR contends that the agency did not similarly redact identifying information from the linguists' resumes included in SOS's quotation, the record shows that the agency treated vendors equally in this regard. Compare AR, Tab 7, (continued...)

at issue here was redacted because it identified WWLR as the vendor. Nevertheless, the agency left disclosed the individuals' stated qualifications and experience, including a description of the tasks currently being performed in Iraq as part of the AFOSI mission support, which enabled the evaluators to reasonably evaluate the linguists' qualifications and experience. See AR, Tab 7, Memorandum for Record and Individual Technical Evaluation Sheets (WWLR) (including redacted resumes). From this information, the agency reasonably concluded that the linguists lacked final secret clearances and, in some instances, did not possess the minimum experience or test scores required by the RFQ. The redacted information does not demonstrate that these conclusions were in error.

WWLR complains that "some unknown person(s) or force changed the evaluation" of WWLR's quotation from technically acceptable to unacceptable, and that one evaluator altered another evaluator's worksheet. Second Supplemental Protest at 3, 5. However, the record shows that the evaluator was present and concurred with the other member's notations on the worksheet, and that the rating changes occurred because the evaluators reviewed the solicitation and determined that their initial ratings were based on an incorrect belief that interim secret clearances were permitted. Declaration of Deputy Director of Logistics/Technical Evaluation Team Member ¶ 4; Declaration of Supervisory Contract Specialist/Technical Evaluation Team Member ¶¶ 4-5; Declaration of Chief/Technical Evaluation Team Member ¶ 6; Declaration of Contracting Officer ¶ 4. Our review confirms that, notwithstanding these "changes," the agency reasonably ultimately determined that many of WWLR's identified personnel lacked the required final secret clearances in that they possessed only interim secret clearances.

WWLR also complains that one evaluator was biased against the firm based on interactions that occurred during the administration of a prior contract, and that the contracting officer made threatening comments toward the firm. Government officials are presumed to act in good faith and, where a protester contends that contracting officials are motivated by bias or bad faith, it must provide convincing proof, since this Office will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or suppositions. United Coatings, B-291978.2, July 7, 2003, 2003 CPD ¶ 146 at 14. WWLR's inferences do not rise to the level of proof required to demonstrate that the evaluators were biased here. Moreover, even if these individuals were biased, as noted above, the record confirms that WWLR's quotation was reasonably found unacceptable.

(...continued)

Memorandum for Record and Individual Technical Evaluation Sheets (WWLR) with AR, Tab 8, Memorandum for Record and Individual Technical Evaluation Sheets (SOS) (both of which include redacted resumes).

WWLR finally complains that SOS engaged in an impermissible “bait and switch” of its linguists by replacing the individuals identified in its quotation with WWLR employees, many of whom only had interim secret clearances. WWLR asserts that this shows that the agency was not going to require SOS to provide individuals with final secret clearances and was going to waive this requirement for SOS.

To establish an impermissible “bait and switch,” a protester must show that a firm either knowingly or negligently represented that it would rely on specific personnel that it did not expect to furnish during contract performance, and that the misrepresentation was relied on by the agency and had a material effect on the evaluation results. Computers Universal, Inc., B-292794, Nov. 18, 2003, 2003 CPD ¶ 201 at 3.

Although the record shows that SOS engaged in some discussions with WWLR employees about coming to work for SOS if the firm was awarded the contract, and SOS has since hired a few of WWLR’s personnel, the record does not support WWLR’s assertion that SOS misrepresented the intended linguistics personnel in its quotation, or that it has been, or will be, permitted to replace its identified personnel with individuals who have only an interim secret clearance.⁵ In its quotation, SOS identified 22 linguists that possessed the requisite security clearance, experience, and test scores, [redacted] of whom were WWLR employees.⁶ Although some of the identified personnel ultimately did not accept employment and SOS had to replace them, we find nothing to suggest that an impermissible “bait and switch” occurred, and the record shows that all of the replacement personnel met the agency’s security clearance, experience, and test score requirements. Contracting Officer’s Statement at 6; Declaration of Deputy Director of Logistics/Technical Team Member ¶ 5; Declaration of SOS Executive Vice President ¶¶ 6, 7, 15.

The protest is denied.

Anthony H. Gamboa
General Counsel

⁵ Although WWLR parses a series of e-mails from SOS in support of its arguments, our review of the totality of the e-mails evidences that the agency had no intention of waiving the requirements for final secret clearances.

⁶ Of [redacted] WWLR employees, only [redacted] was working on the predecessor contract providing AFOSI mission support. Declaration of SOS Executive Vice President ¶ 7.