



Decision

Matter of: Resource Dimensions, LLC

File: B-404536

Date: February 24, 2011

Dr. Julie Ann Gustanski for the protester.
Thomas A. Lemmer, Esq., and Joseph G. Martinez III, Esq., McKenna Long & Aldridge LLP, for Redstone Strategy Group, LLC, the intervenor.
Pamela R. Waldron, Esq., Aaron S. Lax, Esq., and James Weiner, Esq., Department of the Interior, for the agency.
Nora K. Adkins, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is sustained where the agency failed to provide adequate supporting rationale in the record for GAO to conclude that the agency had a reasonable basis for its evaluation of the protester's oral presentation because of unresolved discrepancies regarding the unrecorded portion of the oral presentation.

DECISION

Resource Dimensions, LLC, of Gig Harbor, Washington, protests the issuance of a purchase order to Redstone Strategy Group, LLC, of Boulder, Colorado, under request for quotations (RFQ) No. D10PS18529, issued by the U.S. Department of Interior (DOI), for the review and analysis of current land acquisition prioritization processes, and the development of recommendations for future collaborative landscape conservation procedures.

We sustain the protest.¹

BACKGROUND

The RFQ was issued on August 20, 2010, as a total small business set-aside using simplified acquisition procedures pursuant to the authority of Federal Acquisition Regulation (FAR) subpart 13.5, “Test Program for Certain Commercial Items.”² RFQ at 13. The acquisition was in support of a “directive” stated in a conference report (H.R. Rep. No. 111-316 at 61), accompanying Public Law No. 111-88, 123 Stat 2904 (2009), which required the Secretaries of the Interior and Agriculture to jointly examine the policies and practices of land acquisitions for each land management agency, and submit a report of findings and recommendations to the House and Senate Committees on Appropriations by May 15, 2011.³ The RFQ sought contractor services to provide the Departments of Interior and Agriculture with support for the development of a process to optimize and prioritize landscape conservation across the federal government using funds from the Land and Water Conservation Fund (LCWF).⁴ The ultimate goal is to create a process that will enable various land management agencies to identify collaborative conservation priorities, goals, and strategies using LCWF funds. Contracting Officer’s Statement at 2.

The RFQ contemplated the issuance of a purchase order to the vendor submitting the quotation determined to represent the best value to the government. The solicitation provided for a two-step evaluation process. RFQ at 13, 30. First, the vendors were rated on a go/no-go basis regarding their past experience. RFQ at 9. The vendors whose quotations were rated “go” were then requested to provide a technical quotation by means of an oral presentation with supporting documentation. There were four technical factors to be addressed and evaluated in

¹ Resource was not represented by counsel in this protest. Accordingly, our Office did not issue a protective order, and Resource and Redstone were provided only a redacted version of the agency report. In resolving the protest, we reviewed, in camera, unredacted copies of all evaluation and source selection documents and have based our decision on the full record, including a hearing testimony. As much of the information reviewed by our Office is source selection sensitive and/or proprietary in nature, our discussion of the evaluation is necessarily limited.

² FAR subpart 13.5 authorizes the use of simplified procedures for the acquisition of commercial supplies and services in amounts greater than the simplified acquisition threshold but not exceeding \$5.5 million.

³ The initial deadline for the report was June 30, 2010, but it was extended until May 15, 2011. Contracting Officer’s Statement at 2.

⁴ The LWCF was created in 1964 to provide money to federal, state, and local governments to purchase land, water, and wetlands for the benefit of all Americans.

the presentation: management approach and technical capability, personnel qualifications, organizational experience, and past performance. RFQ at 12. In determining the best value, technical factors were said to be more important than price. RFQ at 13.

The solicitation required the successful contractor to complete three tasks for the agency. The first two tasks were to be performed during the base period: (1) analyze existing process for land acquisition prioritization and identify areas for improvement that will result in increased collaboration and enhanced outcomes, and (2) develop a multi-year strategy for landscape conservation and a derivative process to advance landscape conservation, involve the relevant participants, and allow for future adaptation. RFQ at 48. The third task--to develop an implementation plan for future years--was contained in an option that has not yet been exercised. Id.

Quotations were submitted by Resource and Redstone in response to the RFQ by the September 3, 2010 deadline, and were evaluated by DOI's Acquisition Services Directorate personnel to determine if they met the go/no-go criteria. Award Summary at 7. On September 16, both Resource and Redstone were notified of their "go" ratings. Agency Report (AR), Tab 11, Email Notification of "Go" (Sept. 16, 2010), at 1. On September 21, the agency scheduled oral presentations; Redstone's presentation was scheduled on October 12 and Resource's on October 14. AR, Tabs 12 & 13, Email Notifications of Oral Presentation (Sept. 21, 2010), at 1.

On each vendor's scheduled presentation day, the contracting officer opened the session by reading from a prepared script, as follows:

You have one hour to give your oral presentation. Your presentation will be videotaped as this is your technical quote. The evaluation panel members are evaluating during your presentation addressing each evaluation factor. When questions are asked by the panel, the camera will be paused and commence once the question has been answered. All questions and answers are to be within the scope of this requirement and for elaboration on your presentation. Timeframes for questions and answers will be carefully tracked and the time will be added on at the end to ensure you receive the full hour. . . . After your presentation, the evaluation panel will caucus and determine if there are any more questions, while the panel is doing so, you will be caucusing for your response to questions not answered during your presentation. . . . If the panel has additional questions, then you will be given those questions and time to respond. If there are no additional questions, you will be informed and will then need to respond to only questions that were tabled during the presentation, if any. . . . All questions and answers will be provided to you next week. You are to validate the written answers to the questions within two business days. These will be utilized to document the Purchase Order file. Once all

questions have been answered, then your oral presentation is considered finished

Contracting Officer's Oral Presentation Instructions, at 2-3.

Resource made its oral presentation on October 14, which was videotaped. Hearing Transcript (Tr.) at 156-57.⁵ After the presentation, the technical evaluation panel (TEP) caucused to review their notes on Resource's presentation, slides, and the supporting documentation, and to develop questions for Resource to answer. Tr. at 117-22. The TEP members returned to the presentation room after caucusing and a question-and-answer (Q&A) session ensued, which was not videotaped or otherwise recorded. Tr. at 157. Although the Q&A session was not recorded, it was documented via hand-written notes taken by agency acquisition personnel.⁶ Tr. at 232. At the conclusion of the Q&A session, the TEP concluded that Resource's quotation was technically unacceptable. Tr. at 163-64.

A few days after the TEP's evaluation, the contract specialist prepared a technical consensus document. AR, Tab 21, Consensus Evaluation of Resource's Oral Technical Quotation Presentation, at 2-4. This document reflected the conclusions reached by the TEP regarding the oral presentation, the notes taken during the Q&A session, and information set forth by individual TEP members on their rating sheets.⁷ Tr. at 166-67, 289-90. The consensus document indicated that Resource's quotation was unacceptable because it reflected a lack of understanding of the statement of work and did not adequately address specific methods and techniques, including cross-bureau collaboration. AR, Tab 21, Consensus Evaluation of Resource's Oral Technical Quotation Presentation, at 2-4. The document specifically referenced Resource's failure, during the Q&A session of the oral presentation, to articulate its methods or strategies in a variety of areas. *Id.* at 2-3. The TEP did not review this document prior to award. Tr. at 84, 124. However, a TEP member testified at the hearing that this document accurately captured the TEP's evaluation. Tr. at 124-25. The contents of the document were ultimately included in the award determination. Award Summary at 10-11.

After completing the technical consensus document, the contract specialist composed a document to memorialize each vendor's Q&A session, and provided the document to the vendors. The email transmitting the document to Resource stated:

⁵ On February 9, 2011, we conducted a hearing regarding the parties' dispute as to what Resource presented during the oral presentation.

⁶ Redstone's oral presentation was evaluated in the same manner and was found to be acceptable. Award Summary at 9.

⁷ The technical evaluation of Redstone's quotation was similarly documented.

Please find attached, for your verification, a copy of the Government questions and Resource Dimensions answers from the Oral Presentation given October 14, 2010.

The answers are written as they were stated at the time they were given.

Elaboration or revision is not permitted, however, if the answers did not capture any information given at that time to any specific Government question please use track changes and include the information. These changes will be reviewed by [Acquisition Services Directorate] and accepted and/or deleted when confirmed.

AR, Tab 19, Email from Contract Specialist Regarding Resource's Q&A During Oral Presentation (Nov. 1, 2010), at 1.

Upon receipt of the document, Resource responded to the contract specialist's email stating, "After collective careful review by those team members there at our presentation, we are concerned that many of the notes provided in the attached document as our responses do not accurately reflect, or in many instances even closely match the wording of our verbal responses." AR, Tab 19a, Resource's Email to Contract Specialist (Nov. 2, 2010). The contract specialist responded

If you feel that the answers are completely off track please use track changes and we shall review when we receive them back from you. . . . we do not allow elaboration or changes i[n] the answers[. The answers] must be the same as the responses given on the day of the presentation. Please send as soon as possible so I can confer with the other members who also documented the answers.

AR, Tab 19b, Contract Specialist's Email to Resource (Nov. 2, 2010). On November 2, Resource provided its proposed changes in the document to the contract specialist. AR, Tab 19d, attach., Resource Revised Q&A Document. Thereafter, the contract specialist and Resource participated in a telephone conference to discuss Resource's changes. Tr. at 296. On November 4, the contract specialist sent an email to Resource "accepting" the changes and "finalizing" the document. AR, Tab 19f, Contract Specialist Email to Resource (Nov. 4, 2010), at 1. This final document was added to the purchase order file. Tr. at 213-16. No version of the Q&A document, which was prepared after the TEP had already completed its evaluation, was reviewed by any TEP member. Tr. at 30-31, 84. The Q&A document, as revised by Resource and accepted by the agency, incorporated significantly more robust answers than were provided in the contract specialist's initial version, including areas where the TEP evaluation found that Resource's responses were inadequate. Compare AR, Tab 19, attach., Initial Q&A Document for Resource's Oral Presentation with Tab 19e, attach., Final Q&A Document for Resource's Oral Presentation.

The agency issued a purchase order to the awardee on November 4, effective November 5. AR, Tab 23, Purchase Order. On November 8, Resource was notified via email of the issuance of the purchase order to Redstone. AR, Tab 24, Email Notification of Unsuccessful Award/Debrief Letter (Nov. 8, 2010), at 1. A debriefing letter was attached to this notification email that outlined strengths and weaknesses noted in the technical evaluation of Resource's quotation. *Id.* at 1-3. Resource filed its protest with our Office on November 17, challenging its evaluation and the agency's selection of Redstone as the best value vendor.

DISCUSSION

Resource complains that the agency unreasonably evaluated its technical quotation because the agency's assigned weaknesses in support of its determination that Resource's quotation was technically unacceptable were, in fact, adequately addressed in Resource's presentation.

Simplified acquisition procedures are designed to, among other things, reduce administrative costs, promote efficiency and economy in contracting, and avoid unnecessary burdens for agencies and contractors. FAR § 13.002; Sawtooth Enters., Inc., B-281218, Dec. 7, 1998, 98-2 CPD ¶ 139 at 3. When using simplified acquisition procedures, an agency must conduct the procurement consistent with a concern for fair and equitable competition and must evaluate quotations in accordance with the terms of the solicitation. In reviewing protests of an allegedly improper simplified acquisition evaluation, we examine the record to determine whether the agency met this standard and executed its discretion reasonably. Computers Universal, Inc., B-297552, Feb. 14, 2006, 2006 CPD ¶ 42 at 4-5; DOER Marine, B-295087, Dec. 21, 2004, 2004 CPD ¶ 252 at 3. Moreover, even for procurements under simplified acquisition procedures, it is a fundamental principle of government accountability that an agency be able to produce a sufficient record to allow for a meaningful review where its procurement actions are challenged. See e-LYNXX Corp., B-292761, Dec. 3, 2003, 2003 CPD ¶ 219 at 8; Checchi and Co. Consulting, Inc., B-285777, Oct. 10, 2001, 2001 CPD ¶ 132 at 6. In this regard, where an agency fails to adequately document its actions, it bears the risk that there may not be adequate supporting rationale in the record for us to conclude that the agency had a reasonable basis for the source selection decision. Southwest Marine, Inc.; American Sys. Eng'g Corp., B-265865.3, B-265865.4, Jan. 23, 1996, 96-1 CPD ¶ 56 at 10. Nevertheless, in reviewing an agency's procurement actions, we do not limit our review to contemporaneous evidence, but consider, as appropriate, hearing testimony and the parties' arguments. *Id.*

Here, while Resource's 1-hour oral presentation was videotaped, the Q&A session was not. Instead, this session was documented by hand-written notes taken by

acquisition personnel.⁸ The contract specialist used these notes, and her own, to prepare a document memorializing the session. When Resource asserted that the contract specialist's account mischaracterized its answers, the contract specialist permitted Resource to submit its version of the answers, which with a few edits by the agency, was accepted as an accurate memorialization of the session. AR, Tab 19f, Email from Contract Specialist (Nov. 4, 2010). The accepted revisions provided much more detailed answers to the questions offered during the Q&A session of the oral presentation, for example, in the areas of collaboration with federal bureaus and methods. AR, Tab 19e, Resource's Final Q&A Document.

Because of the events surrounding Resource's Q&A session, this was an issue at the hearing that our Office conducted on this protest. At the hearing, a witness from the TEP was asked by the hearing officer to provide her recollection of Resource's Q&A session. The hearing officer read several of the questions from the document memorializing Resource's answers during the Q&A session to the TEP member, who testified that she had not seen either the initial or finalized version of the document. Tr. at 30-31, 84. Although the TEP member testified that she was able to recall some of the questions, she had limited recall of Resource's answers; to the extent she recalled the answers, her recollection seemed more consistent with the initial version of the Q&A document, than with the final document that the agency agreed more accurately reflected Resource's answers. Tr. at 93, 133, 135-36. Moreover, the initial, less detailed, version of Resource's responses to the questions posed in the Q&A session is more consistent with the technical consensus document concluding that Resource's quotation was technically unacceptable because it explained that the answers given by Resource on October 14, particularly in the areas of collaboration and methods, failed to provide sufficient detail to convince the technical evaluators that its quotation was technically acceptable. AR, Tab 21, Consensus of Resource, at 2-3.

Thus, despite receiving hearing testimony and the parties' post-hearing arguments, we cannot find that the agency's documentation in regard to Resource's Q&A session is sufficient to allow us to review the reasonableness of the agency's judgments. Because the final, mutually agreed-upon version of the Q&A document addresses some of the weaknesses included in the TEP's consensus report that supported Resource's unacceptable rating, this document is at odds with the consensus evaluation report. In addition, the final Q&A document, which the agency accepted as an accurate memorialization of the session, is inconsistent with the testimony of the TEP witness; at a minimum, the final document provides more robust answers than the TEP member recalled during her testimony. Compare AR, Tab 19e, attach., Final Q&A Document for Resource's Oral Presentation, at 3 with Tr. at 135-136. In view of these discrepancies, it is unclear whether the TEP members reasonably understood and considered Resource's answers at the oral presentation.

⁸ These notes were not provided to GAO.

Accordingly, we cannot find that the agency's documentation adequately supports its decision. See e-LYNXX Corp., supra; Checchi and Co. Consulting, Inc., supra.

RECOMMENDATION

The agency was not required to stay performance of this purchase order because the protest was filed more than 10 days from the date of award of the purchase order. Competition in Contracting Act of 1984, 31 U.S.C. § 3553(d) (2006). In addition, we have been advised that the awardee has been performing under the purchase order and has substantially completed the base period. Tr. at 290. We therefore conclude that disturbing the purchase order is not appropriate. We do, however, recommend that the agency not exercise the option for the third task. Because of the absence of other relief at this point, we also recommend the agency reimburse the protester its quotation preparation costs, as well as the costs of filing and pursuing its protests, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1) (2010). The protester should submit its certified claim for such costs, detailing the time expended and costs incurred, directly with the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Lynn H. Gibson
General Counsel