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Decision

Matter of: Language Service Associates, Inc.

File: B-293041

Date: December 22, 2003

Robert G. Fryling, Esq., and Edward J. Hoffman, Esq., Blank Rome, for the protester. G. Lindsay Simmons, Esq., Thad S. Huffman, Esq., and James Eric Whytsell, Esq., Jackson Kelly, for Bowne Global Solutions II, Inc., an intervenor. John R. Caterini, Esq., and Morton J. Posner, Esq., Department of Justice, for the agency.

Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where technical proposals were scored within a few points of one another in various award scenarios, and none was found to possess significant technical advantages over the others, agency reasonably concluded proposals were technically equivalent and properly based award on low evaluated price.

DECISION

Language Service Associates, Inc. (LSA) protests the award of a contract to Bowne Global Solutions II, Inc. (BGS) under request for proposals (RFP) No. JDOIR-03-0232, issued by the Department of Justice, Executive Office for Immigration Review (EOIR) for language interpreter services. LSA challenges the agency's "best value" award determination.

We deny the protest.

The EOIR is responsible for interpreting and administering the immigration laws and regulations of the United States through the Immigration Courts, the Board of Immigration Appeals, and the Office of the Chief Administrative Hearing Officer. When an individual appearing before an immigration judge does not speak English, the EOIR must provide an interpreter to ensure due process. The EOIR employs some 103 staff interpreters, but obtains the vast majority of its translation requirements through contract interpreters. The RFP sought proposals to provide qualified, professional, and experienced on-site and telephonic interpreters for any

language requested. The overall requirement was divided into five parts--nationwide (NW)(all languages), and four noncontiguous regions (primarily Spanish).

The RFP contemplated the award of up to five fixed-price, indefinite-delivery, indefinite-quantity contracts for any combination of the identified requirements for a base period, with 4 option years. Proposals were to be evaluated on the basis of two factors--technical merit and price. Technical merit was to be evaluated on the basis of six subfactors, listed in descending order of importance--interpreter recruitment, retention, and evaluation (35 points); quality assurance (20 points); past performance (15 points); management plan (15 points); qualifications/experience (10 points); and small disadvantaged business (SDB) participation (5 points). In deciding which proposal represented the best value, technical merit was significantly more important than price. A best value determination was to be made for each possible combination (scenario) of services--nationwide, the four regions, or any combination thereof. With regard to making these best value decision(s), the RFP provided that the total evaluated price would be the determining factor where all proposals were considered substantially equal in technical merit, but where there were significant differences in technical merit, a more expensive proposal could be selected if the government decided it was worth the price differential. RFP § M.1.2(b).

LSA and BGS were among the eight offerors submitting proposals, and (along with two other offerors) both were included in the competitive range after initial evaluations. The agency conducted discussions with the competitive range offerors and obtained revised proposals. The evaluators separately scored the proposals under each subfactor for each award combination proposed and the technical evaluation panel (TEP) then calculated a final, average consensus score for each proposal. The contracting officer then derived a technical score and price for each of the 52 possible award combinations, which in instances involving multiple awards, required the agency to calculate combined technical scores.¹ The final consensus evaluations for the top 12 technically ranked scenarios, covering the four regions and NW were as follows:

¹ For example, the score of top-ranked scenario 1, involving multiple awards to LSA and BGS, was calculated by averaging LSA's score (94.1) with BGS's (90.3), which yielded a combined score of 92.2; the agency then added the price for LSA's portion of the work [deleted] to the price for BGS's portion [deleted], which resulted in a total price of \$113 million.

Tech Rank	Scenarios: Offeror [Territory(ies)]	Average Score	Combined Price
1	BGS [NW] LSA [All Regions]	92.2	\$113,437,244
2	BGS [NW] LSA [Regs. 1,2,4] Off. 3 [Reg. 3]	90.4	[deleted]
3	BGS [NW + Reg. 4] LSA [Regs. 1,2,3]	90.4	[deleted]
4	BGS [NW + Regs. 1,4] LSA [Regs. 2, 3]	90.1	[deleted]
5	LSA [NW + Regs. 1,2,4] Off. 3 [Reg. 3]	89.9	[deleted]
6	LSA [NW + All Regions]	89.5	\$107,825,896
7	BGS [NW + Regs. 1,2,4] LSA [Reg. 3]	89.5	[deleted]
8	BGS [NW + Reg. 4] LSA [Regs.1,2] Off. 3 [Reg. 3]	89.4	[deleted]
9	BGS [NW + Regs. 1,4] LSA [Reg. 2] Off. 3 [Reg. 3]	89.3	[deleted]
10	BGS [NW] LSA [Regs.1,2] Off. 3 [Reg. 3] Off. 4 [Reg. 4]	87.5	[deleted]
11	BGS [NW] LSA [Reg. 2] Off. 3 [Reg. 3] Off. 4 [Regs. 1,4]	86.6	[deleted]
12	BGS [NW + All Regions]	86.4	\$106,545,262

In making its award recommendation, the TEP considered the strengths, weaknesses, and risks attributable to each proposal, as well as the prices for the 52 award scenarios. The TEP concluded that LSA's, BGS's, and the third offeror's proposals were essentially equal based on proposal scores ranging from the high 80's to the low 90's, and found that an award to BGS for the entire requirement (the 12th scenario) represented the apparent best value based on the fact that it was the lowest-priced scenario. The TEP conducted a further analysis to determine whether there were any technical differences among the proposals that were not reflected in the scores, and that would justify an award at a higher price. Finding no such differences, the TEP concluded that scenario 12, under which BGS would perform the entire requirement, represented the best value. The source selection official agreed and awarded the contract to BGS. After receiving notice of the award and a debriefing, LSA filed this protest.²

BEST VALUE DETERMINATION

LSA asserts that the best value determination was flawed. In LSA's view, the evaluation record does not support the agency's finding that the top 12 scenarios were technically equivalent, and it therefore was improper to make price the determining factor for the award decision.

Source selection officials are vested with broad discretion to determine the manner

² LSA raises a number of arguments. We have reviewed them all and find that none has merit. This decision addresses the more significant issues raised.

and extent to which they will make use of evaluation results. Resource Mgmt. Int'l, Inc., B-278108, Dec. 22, 1997, 98-1 CPD ¶ 29 at 4. Although evaluation ratings are useful as guides, they do not mandate automatic selection of a particular proposal. PRC, Inc., B-274698.2, B-274698.3, Jan. 23, 1997, 97-1 CPD ¶ 115 at 12. Whether a given spread between two competing proposals indicates a significant superiority of one proposal over the other depends on the facts and circumstances of each procurement and is primarily a matter within the discretion of the procuring agency. Resource Mgmt. Int'l, Inc., *supra*, at 4. Where selection officials reasonably regard proposals as being essentially equal technically, price becomes the determining factor in making award, even where the evaluation scheme assigned price less importance than technical factors. *Id.*; The Parks Co., B-249473, Nov. 17, 1992, 92-2 CPD ¶ 354 at 4.

LSA's assertions are without merit. The record shows that the agency reasonably evaluated the proposals as technically equal. In this regard, as noted, the agency recognized that the three highest-rated proposals—as well as the 12 top-ranked award scenarios—were all scored in the high 80s to low 90s, and concluded that those point differences simply were not indicative of material technical differences. Source Selection Recommendation Report (SSRR) at 11. For example, the highest-scored scenario (scenario 1), under which BGS would perform the NW portion and LSA all regions, had a combined score of 92.2 points, which was only 5.8 points higher than BGS's score to perform the entire requirement (scenario 12). The TEP noted that the cost of this multiple award scenario exceeded the cost of BGS's proposal by \$6.9 million. The scores were even closer for the scenarios involving LSA or BGS alone performing the entire requirement—89.5 points for LSA (scenario 6) and 86.4 points for BGS (scenario 12), a difference of only 3.1 points.³ Under these scenarios, award to LSA represented a price premium of some \$1.2 million. (In addition, the evaluation record shows that, for the NW requirement alone and the complete requirement scenarios, the consensus scores for BGS's proposal actually exceeded those for LSA's under the most important evaluation criterion, interpreter recruitment, retention, and evaluation.)

As indicated, the agency also considered the underlying basis for the scores. While LSA's proposal had 36 identified strengths and BGS's 26, the TEP identified four risks posed by LSA's proposal and only one risk and two weaknesses posed by BGS's. The TEP considered these different strengths, weaknesses, and risks in

³ According to the agency, the offerors' proposal scores were even closer, because the contracting officer deducted one point from BGS's SDB participation score due to erroneous information provided by the Small Business Administration regarding the SDB status of one of BGS's subcontractors. After award, and prior to the filing of this protest, BGS submitted documentation establishing the subcontractor's SDB status. Agency Report at 7, n.5. When properly calculated, the difference in scores for the entire requirement for BGS (scenario 12) and LSA (scenario 6) was 2.1 points.

making its best value recommendation, and concluded that, as the scores had indicated, the proposals were technically equivalent. SSRR at 3-4, 9-10. Having made this determination, and after finding no technical differences that would justify the higher costs associated with other award scenarios, the TEP concluded that an award under the lowest-priced of the technically equivalent scenarios--BGS alone (scenario 12)--represented the best value. While LSA asserts that its proposal offered real benefits to the agency over BGS's at a minimal price premium, it does not identify any of those alleged benefits but, rather, points only to the TEP's description of its proposal as "innovative," "excellent," "outstanding," and "comprehensive." LSA Comments at 10. Having failed to identify any particular benefit for which it did not receive credit or that would call into question the agency's determination of technical equivalence, LSA's assertions amount to mere disagreement with the agency's conclusions, which is not sufficient to establish that the best value determination was unreasonable. UNICCO Gov't Servs., Inc., B-277658, Nov. 7, 1997, 97-2 CPD ¶ 134 at 7.

LSA asserts that the agency also erred because it did not conduct a comparative analysis of each scenario before arriving at its award determination. LSA Comments at 10. This assertion is without merit. As indicated by the above chart, the agency calculated a separate score for each proposal and, where applicable, calculated an average score for multiple award scenarios. This process served to establish technical and price measures that reflected the relative merits of the proposals and scenarios. The RFP provided that price would be the determining factor where all proposals were considered substantially technically equal, and that award would be made to an offeror with a more expensive proposal only where the government determined that it offered technical advantages that were worth the price differential. RFP § M.1.2(b)(1), (2). Once the agency determined that the top solutions were essentially technically equal, price properly became the determining factor and eliminated any need for any further comparative analysis of the different solutions.

ADDITIONAL BEST VALUE REVIEW

As noted above, after concluding from the scores that the various proposal scenarios were technically equivalent and that BGS's lower-priced proposal represented the best value, the TEP re-examined the proposals specifically to determine whether there were any technical differences that would justify selecting a different scenario at a higher price. SSRR at 11. The TEP examined four proposal discriminators--transition and start-up issues and associated risk; administrative oversight by the agency; innovation and upside potential; and past performance and relevance of past performance. Id. at 12-17. Based on this analysis, which identified some proposal differences that favored LSA over BGS, the TEP concluded that "[a]ny advantages presented by LSA . . . in the merit scoring and/or the discriminator analysis . . . [were] insufficient to justify the price differential and additional risks that selection would convey to [the government]." SSRR at 17. LSA asserts that this analysis was flawed

because it duplicated matters already covered in the technical evaluation and was otherwise not supported by the record.

These assertions are without merit. First, it is not surprising that the discriminators “duplicated” matters, such as risk, which were considered as part of the technical evaluation. The discriminator analysis was not intended as an additional technical evaluation; rather it was for the sole purpose of further considering the existing evaluation record to determine if there was any technical difference that would warrant paying a price premium. Under these circumstances, there was nothing unreasonable in the agency’s again considering risk and other matters as part of this discriminator analysis.

Further, we find nothing unreasonable or unsupported in the discriminator analysis. In this regard, while the agency identified some advantages to LSA’s proposal, it found offsetting advantages in BGS’s proposal. For example, with regard to risk under the transition and start-up discriminator, the TEP observed that BGS, with 2,983 qualified interpreters in 252 languages, was in a better risk position than LSA to quickly perform the NW requirement. Specifically, the TEP noted that, unlike BGS, LSA and the other non-incumbent offerors would have to adapt the existing infrastructure or, in some instances, create a new infrastructure, and that LSA itself recognized the necessary transition investment in its price proposal. LSA asserts that the TEP’s analysis is unsupported because its proposal showed capabilities comparable to BGS’s—2,208 interpreters supplied in 2002-03 and a roster of 3,161 telephonic and on-site interpreters representing 172 languages. However, LSA’s proposal indicates that the 2,208 interpreters represented the total number of interpreters used in a year—from 59 in 1 month to 250 in another. LSA Comments, exh. 5. Therefore, this total did not necessarily represent the total number of interpreters LSA could furnish to perform this contract. Further, while LSA’s roster of interpreters exceeded the number of BGS interpreters, some unidentified number of those interpreters represent telephonic, as opposed to on-site, interpreters; although the requirement here calls for telephonic interpreter capability, we note that the majority of the requirement is for on-site interpreters.⁴ The TEP also identified as a risk the fact that the scope of LSA’s past performance involved telephonic versus on-site work. TEP Report at 11. In our view, these considerations support the TEP’s determination that there was more risk associated with LSA’s transition than with BGS’s under this discriminator. Accordingly, we have no basis to question the agency’s conclusion that there were no technical advantages to LSA’s proposal (or scenarios under which LSA would receive one of multiple awards)

⁴ For example, for evaluation purposes, offerors on the NW requirement for on-site common languages interpreters provided pricing for 55,000 hours, 17,000 half-days, 3,500 days, 4 weeks, and 2 months, but only 1,700 hours for telephonic common languages interpreters. RFP, attach. 1.

sufficient to warrant paying a price premium over the BGS solution selected for award.

The protest is denied.

Anthony H. Gamboa
General Counsel