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Comptroller General  
of the United States

United States Government Accountability Office  
Washington, DC 20548

# Decision

**Matter of:** International Management Services, Inc.

**File:** B-402645.2

**Date:** August 25, 2010

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Vera Meza, Esq., and Leslie Nepper, Esq., Department of the Army, for the agency.  
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## DIGEST

Protest that terms of solicitation were ambiguous is denied where protester did not show that challenged terms were susceptible of more than one reasonable interpretation, and solicitation did not impose undue risk on contractor.

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## DECISION

International Management Services, Inc. (IMSI), of Rumford, Maine, protests the terms of request for proposals (RFP) No. W52P1J-10-R-0050 issued by the Army Materiel Command for postal operations services at multiple locations in Afghanistan under a fixed-price performance-based contract. IMSI argues that the terms of the RFP are improperly ambiguous because it is not clear when the contractor will be entitled to additional compensation under a surge request due to increased mail volume.

We deny the protest.

The Army issued the RFP on February 9, 2010, seeking proposals to perform mail handling services at Army Post Offices (APO) at Baghram Air Field (BAF) and Kandahar Air Field (KAF) for a base year and four option years. Among other things, the performance work statement (PWS) in the RFP set forth a base requirement; that is, the volume of mail (expressed in pounds) for KAF APOs, and the volume for BAF APOs. Agency Report (AR) Tab 25, RFP Pricing Matrix, at 1-7. The RFP provided historical data on the existing APOs at each airfield, and their mail volumes, while

noting that the list of APOs was subject to change. AR Tab 24, PWS, at 3 (¶ C.2.1), 29-31 (¶ C.23.0); RFP amend. 8, at 2 (mail volume data for two additional APOs).<sup>1</sup>

The RFP also provided for offerors to submit prices for increased volumes of mail, referred to as surge levels. As amended, the RFP explained the operation of the surge pricing lines as follows:

The contractor shall support the volume of mail as shown in the pricing matrix for the base range for BAF and KAF individually in their firm fixed pricing. Any surges at individual APOs that do[] not go above the total base range mail volume for BAF and KAF will need to be covered by the contractor via movement of existing contractor personnel. Travel for movement of personnel in theater to cover individual APO surges will be provided by the Government. The only time the surge clause will be executed is when there is a surge exceeding the base range of the BAF/KAF totals which will be accommodated by exercising the surge clause. The contractor will price out a Surge range pricing that will represent the total cost to add additional personnel for potential expansion as shown on the pricing matrix for BAF and KAF. . . . The Government will provide the contractor with a 45 days notice prior to activating a new surge request or deactivating a previous surge request.

AR, Tab 24, PWS, at 6 (¶ C.4.7); see also RFP amend. 15, at 3 (surge clause).

On May 17, the Army issued amendment 19 to the RFP, which provided answers to questions posed by offerors. Among these was the following exchange addressing surge pricing:

3) In reference to C.4.7 concerning surge execution: Assuming that monitoring of mail volume is done on a monthly basis, and the Government[']s intent is to provide the contractor with a 45-day notice prior to activating a new surge request, at what point in time relative to the discovery of mail volume entering a higher surge range will the Government actually begin paying the contractor at the new surge range [price].

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<sup>1</sup> The RFP permitted the Army to establish a limited number of new locations within the area of responsibility in each option period, so long as the total mail volume remained within the applicable base or surge range. AR, Tab 24, PWS, at 3 (¶ C.2.1); RFP amend. 15 at 2-3.

ANSWER 3: The Government would begin paying the contractor the surge price on the first day of surge service execution.

RFP amend. 19.

On May 19, IMSI filed this protest, arguing that the terms of the RFP were improperly ambiguous with regard to surge pricing and mail volume. With regard to surge pricing, IMSI argues that the agency's statement that payment would begin upon service "execution" remains ambiguous and forces too much risk onto the contractor. With respect to mail volume, IMSI argues that the historical mail volume provided in the RFP is outdated and that it cannot meaningfully respond to the RFP unless the Army provides more recent information on the mail volume at each APO. IMSI argues that without this information it could not submit a proposal.

The Army maintains that the RFP is not improperly ambiguous regarding surge pricing, and that uncertainty over mail volumes that will occur during performance is a risk that is properly borne by the contractor.

Specifications must be sufficiently definite and free from ambiguity so as to permit competition on an equal basis. Dynamic Corp., B-296366, June 29, 2005, 2005 CPD ¶ 125 at 4. An ambiguity exists if a solicitation requirement is subject to more than one reasonable interpretation when read in the context of the solicitation as a whole. Phil Howry Co., B-245892, Feb. 3, 1992, 92-1 CPD ¶ 137 at 2-3.

IMSI's complaints do not demonstrate that there is a defect in the terms of this RFP. We agree with the Army that the RFP, as amended, plainly provides that the Army will give advance notice to the contractor before activating the surge request, and states that the contractor will be entitled to surge pricing on the first day of surge service execution. Contracting Officer's Statement at 2.

IMSI hypothesizes that the Army could intend to apply surge pricing either from the date when it gives notice that it will activate a surge request, or from the date on which the contractor performs at the surge level. Protester's Comments at 3-4. IMSI argues that the ambiguity is unfair because under the terms of the performance-based statement of work here, the contractor is "still responsible for the ultimate performance without regard to additional personnel or time required." We disagree.

If the volume of mail to be serviced exceeds the base level anticipated by the contract, the RFP provides that the Army will invoke the surge clause in order to obtain that level of service at the corresponding price. IMSI has not shown that any ambiguity about when payment will begin is outside the range of circumstances--whether ordinary or entirely unexpected--that can arise in the performance of contracts, and then requires the parties to manage by technical direction, contract modifications, exercise of options, or claims--in short, through contract administration. Accordingly, IMSI's arguments do not show that the RFP is defective

simply because it does not address--to the protester's satisfaction--this particular situation.

Finally, with respect to the difference between the mail volume in the pricing matrix and the historical figures in the RFP, the protester provides no basis to question the Army's position that this data is accurate historical information, and that offerors can reasonably prepare their proposals for the higher volume in the pricing matrix by considering the overall volume requirements at each airfield, in light of the history for each APO. Contracting Officer's Statement at 3; accord. RFP amend. 19 at 3. Although IMSI argues that mail volume at individual APOs has fluctuated, and that it may continue to do so during performance, the need to adjust to fluctuations is a risk that offerors may be required to bear.<sup>2</sup> It is within the discretion of an agency to impose substantial risk on the contractor and minimal administrative burden on the agency. Madison Servs., Inc., B-278962, Apr. 17, 1998, 98-1 CPD ¶ 113 at 2-3. IMSI has not provided persuasive support for its claim that the risk of mail volume fluctuations at individual APOs, when compared to the historical data provided in the PWS, imposes an undue risk, or prevents fair competition for the Army's requirements.

In short, the RFP here not defectively ambiguous.

The protest is denied.

Lynn H. Gibson  
Acting General Counsel

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<sup>2</sup> The Army points out that the RFP provides for in-theater transportation of contractor employees at no cost to the contractor, see AR, Tab 24, PWS, at 6 (¶ C.4.7), and argues that this further reduces the risk to the contractor that fluctuations in mail volume at particular APOs will require significant expense or risk to move personnel between APOs. Contracting Officer's Statement at 3.