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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Miracle Systems, LLC

File: B-408947

Date: December 24, 2013

Thomas K. David, Esq., and Kenneth D. Brody, Esq., David, Brody & Dondershine, LLP, for the protester.

Jeffrey C. Walker, Esq., and George C. Brown, Esq., Securities and Exchange Commission, for the agency.

Noah B. Bleicher, Esq., Pedro E. Briones, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that request for proposal's (RFP) proscription against escalating labor rates contained a latent ambiguity is denied where protester's reading of RFP is not reasonable or consistent with the RFP's plain language, including its answers to several questions from offerors regarding the proscription.

DECISION

Miracle Systems, LLC, of Arlington, Virginia, protests the rejection of its proposal under request for proposals (RFP) No. SECHQ1-13-R-0004, issued by the Securities and Exchange Commission (SEC) for software and systems development and support services. The protester challenges the agency's determination that its proposal was non-compliant with the RFP's non-price escalation clause.

We deny the protest.

BACKGROUND

The RFP provided for the award of multiple indefinite-delivery/indefinite quantity (ID/IQ) contracts for a 5-year base period and one 5-year option period. RFP amend. 10, at 26. The solicitation contemplated that future task orders would be issued under the awarded contracts on a fixed-price or time-and-materials/labor hour basis for a total, potential ordering period of 10 years. Id. Offerors were to propose

fully-loaded hourly labor rates for 22 labor categories using a contract line item (CLIN) table provided with the RFP.¹ Id. at 96-97; RFP, attach. 7 (Labor Categories), at 1-2. The RFP cautioned that non-compliance with any of the RFP's terms and conditions could result in a proposal being determined unacceptable. RFP amend. 10, at 92-93, 96.

Of significance here, the RFP stated that the "labor rates are fixed for all contract year periods, and are not subject to any escalation through the course of the ordering periods. . . ." and the "loaded hourly rates are ceiling price rates." RFP, attach. 7, at 1. The RFP advised the following in response to several questions submitted by offerors regarding rate escalation: (1) the SEC will not consider an annual escalation or discount based on a mutually agreed upon index; (2) the SEC will not "consider allowing contractors to provide fixed [labor] rates only for the base period (5 years)--subject to renegotiation for the five-year optional ordering period[]"; (3) the SEC will not consider allowing the contractor to include escalation in its pricing submission; (4) vendors will "be allowed to escalate rates across Task Order years, so long as the proposed rates remain below the labor category rate in the contract CLIN Rate Table"; (5) the SEC will not "reconsider the issue of annual escalation for both the 5 year base period and the 5 year optio[n]"; and (6) the SEC requires a government and contractor site ceiling rate for each labor category to cover the entire 10-year performance period. RFP amend. 3, at 3, 6; amend. 10, at 5, 7, 16.

The SEC received proposals from 21 offerors, including Miracle Systems. Contracting Officer's Statement at 3. The agency rejected Miracle Systems' proposal as unacceptable, because the firm proposed escalating its ceiling labor rates at the beginning of the option period, and this protest followed. Id.; Protest at 5.

DISCUSSION

Miracle Systems protests the rejection of its proposal, arguing that the agency's interpretation of the RFP's pricing provisions is unreasonable and reflects, at best, a latent ambiguity in the solicitation. Protest at 8. In the protester's view, the RFP's escalation provision can reasonably be read to permit escalation at the beginning of the option period, based, among other things, on the provisions' use of the plural "contract year periods" and "ordering periods." Id. at 5 (emphasis added). According to Miracle Systems, the RFP's answers to offerors' questions regarding

¹ The CLIN table included, for each labor category, one column for a proposed government site rate and one column for a contractor site rate; neither the CLIN table, nor the RFP instructions, required offerors to propose separate labor rates by performance period. RFP, attach. 7; see RFP amend. 10 at 96-97.

price escalation failed to clarify whether the RFP provided for one 10-year performance period or two 5-year performance periods. Id. at 6.

Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. See Raytheon Co., B-404998, July 25, 2011, 2011 CPD ¶ 232 at 17; Alluviam LLC, B-297280, Dec. 15, 2005, 2005 CPD ¶ 223 at 2. An ambiguity exists if a specification is susceptible to more than one reasonable interpretation that is consistent with the solicitation, when read as a whole. Poly-Pacific Techs., Inc., B-293925.3, May 16, 2005, 2005 CPD ¶ 100 at 3.

Reading the solicitation language as a whole, including the RFP's questions and answers, we agree with the SEC here that the solicitation unambiguously restricts the proposal of escalating labor rates, regardless of performance period. Notwithstanding the protester's interpretation, the RFP's non-escalation provision plainly states that labor rates are fixed for all contract year periods, and are not subject to any escalation through the course of the ordering periods.² RFP attach. 7 at 1 (emphasis added). In our view, any alleged ambiguity that may exist in that regard was resolved by the SEC's responses to offerors' questions, particularly, that the agency required "ceiling" rates for each labor category "to cover the entire 10-year performance period," and that the agency would not consider escalating labor rates.

The protest is denied.

Susan A. Poling
General Counsel

² The protester complains that it is unreasonable for the agency to believe that a contract employee will work for the same labor rate for a decade, and that it is virtually unheard of for an agency to try to lock-in a contractor's labor rates for a decade. Protest at 5, 8. While we agree that locking in labor rates for this period of time is unusual, we think the agency's solicitation clearly communicated its intent. To the extent the protester disagrees, it was required to raise the issue prior to the closing time for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (2013). Miracle Systems could not ignore the language of the RFP and raise the matter after failing to win a contract.