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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: American Access, Inc.

File: B-414137.3

Date: April 11, 2017

Richard F. Busch II, Esq., Busch Law Firm, LLC, for the protester.
Brian R. Reed, Esq., Department of Veterans Affairs, for the agency.
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GAO, participated in the preparation of the decision.

DIGEST

Protest arguing that solicitation amendment and email transmitting the amendment created an ambiguity as to the date from which prices were requested to be extended is denied where the amendment is not susceptible to two reasonable interpretations and the record shows that the protester in fact acknowledged the amendment in a manner that reflected the amendment's intended meaning.

DECISION

American Access, Inc., of Bartlett, Tennessee, protests the terms of amendment 15 to request for proposals (RFP) No. VA240C-14-R-0015, issued by the Department of Veterans Affairs (VA) for modular ramps. The protester argues that the amendment and email transmitting the amendment contain patent ambiguities as to the date from which prices were requested to be extended for a set period of time.

We deny the protest.

BACKGROUND

The RFP, issued on October 9, 2015, under Federal Acquisition Regulation (FAR) parts 12 and 15 and set aside for small businesses, sought portable, modular ramps to be assembled at the homes of veterans who cannot navigate stairs, for three service area office (SAO) regions:¹ SAO-East, SAO-West, and SAO-Central. RFP²

¹ The management of the VA's healthcare facilities in the United States is organized into three large SAO regions and within each of the three regions facilities are

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at 1, 14. The solicitation contemplated the award of three fixed-price indefinite-delivery, indefinite-quantity contracts with a 1-year base period and four 1-year options. Original RFP at 5, 14, 31. Awards were to be made by region, but the RFP also reserved the right to make awards by VISN or a combination of VISNs. Id. at 14. This protest concerns the pending awards in the SAO-East and West regions.³

Award was to be made on a best-value basis, considering the following evaluation factors in descending order of importance: technical capability, quality control program, past performance, veteran-owned business participation, and price. RFP at 67-68. The solicitation also states that the non-price factors, when combined, are significantly more important than price. Id. at 68.

As relevant here, price proposals were to be submitted using a schedule on which offerors were to insert unit prices for both the base and option periods, for each contract line item number (CLIN) for the SAO or VISNs for which the offerors were competing.⁴ See id. at 57-58; see also Original RFP, attach. 1, Schedule of Items. The majority of the CLINs consisted of ramp components (e.g., platforms, base ramps, thresholds etc.) of varying lengths. See Original RFP, attach. 1, Schedule of Items. The schedule of items specified the quantities for each CLIN. Id.

Also of relevance here, the solicitation included FAR provision 52.212.-1, Instructions to Offerors--Commercial Items (Apr. 2014), which stated in section (c), period for acceptance of offers, that “[t]he offeror agrees to hold the prices in its offer firm for 180 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.” Id. at 50.

American Access submitted a timely response to the solicitation and was included in the competitive range. On April 26, 2016, following discussions, the agency requested final proposal revisions (FPRs), to be submitted by May 11, 2016. See

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organized within smaller veteran-integrated service networks (VISNs). Agency Report (AR), Memorandum of Law (MOL) at 2 n.2.

² Unless otherwise noted, all citations to the solicitation are to a conformed solicitation incorporating changes through amendment 15.

³ The agency made two awards for the SAO-Central region, which American Access challenged unsuccessfully. See American Access, Inc., B-414137, 414137.2, Feb. 28, 2017, 2017 CPD ¶ 78.

⁴ The solicitation allowed offerors to submit price proposals for the entire region or alternate price proposals for one or more VISNs. See RFP at 57.

American Access Request for FPRs East Region; American Access Request for FPRs West Region; see also RFP, amend. 11 at 01746.⁵

The agency made additional changes to the solicitation in amendments 12 (May 2) and 13 (May 4), including changes to the schedule of items. See RFP, amends. 12 and 13. Amendment 13 extended the due date for FPRs to May 12, 2016. RFP, amend. 13 at 001930, 001931. American Access submitted its FPR on May 6, 2016. See AR, Tab 1, American Access SAO-East FPR; AR, Tab 2, American Access SAO-West FPR.

On July 18, 2016, the agency issued amendment 14, making several changes to the solicitation. See generally RFP, amend. 14. Of significance here, the agency amended the contract type to an indefinite-delivery requirements contract. Id. at 002111, 002112. Also of relevance here, the agency changed the heading in the schedule of items from “QTY” to “EST QTY.” Id. at 002111, 002115-002299. The agency’s email transmitting the amendment to the offerors stated that the quantities provided in the schedule of items represented the government’s best estimate of annual purchases and were estimates only. See, e.g., id. at 002301. The agency also provided to each competitive range offeror, the FPR submitted by that offeror in response to amendment 13, on which the agency had changed the “QTY” headings to the “EST QTY” headings in the amended schedule. Id.

In transmitting the amendment and FPR schedule of items with the revised headings, the agency informed each offeror that the offeror was not required to complete a new pricing schedule. Id. In this regard, the agency stated that if the revised headings did not cause the offeror to change its pricing, the offeror should sign the Standard Form 30 and return it to the agency by July 21, 2016. Id. The agency further advised that if the change did result in a change to the offeror’s pricing, that a new pricing schedule was required to be submitted no later than by the amended closing date. Id. American Access signed, dated, and returned amendment 14 and did not submit a new pricing schedule. See AR, Tab 3, Protester’s Acknowledged Amend. 14; AR, Contracting Officer’s Statement (COS) at 5.

On January 18, 2017, counsel for American Access contacted the contracting officer (CO), requesting that the agency reopen discussions and seek revised proposals in light of the expiration of proposals on January 17, 2017.⁶ See generally Protest, exh. B, Protester’s Counsel Commc’n with CO at 1.

⁵ The agency used a Bates numbering system in preparing certain agency report documents. Where available, this decision uses the Bates numbers assigned by the agency for its citations.

⁶ The protester explained that this date was based on the 180-day offer acceptance period under FAR provision 52.212-1(c) from the due date established in

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On January 20, 2017, the VA issued amendment 15, requesting offerors to “hold pricing for an additional 90 days, or through April 16, 2017.” RFP, amend. 15.⁷ The closing date for the amendment was January 27, 2017. Id. In an email transmitting this amendment, the agency stated that because the “period of acceptance of offers under FAR [provision] 52.212-1(c) expired,” the amendment sought “to extend the period of acceptance for an additional 90 days, through April 16, 2017. By signing this amendment, you are willing to hold your pricing as submitted in the revised final proposals dated May 11, 2016, until the [a]gency makes a final award decision.” Amend. 15 Transmittal Email.

On January 26, 2017, American Access acknowledged and submitted to the agency amendment 15. AR, Tab 4, Protester’s Acknowledged Amend. 15. In its cover letter transmitting the amendment, the protester stated that the purpose of the letter was to submit “an extension to revised pricing . . . where the pricing submitted on July 21, 2016 . . . is expired.”⁸ AR, Tab 5, Protester’s Cover Letter to Revised FPR and Amend. 15. The cover letter also reflected the protester’s understanding that the agency requested offerors to “agree to hold our pricing for an additional 90 days or through April 16th, 2017.”⁹ Id. Notwithstanding its express agreement to the requested extension, American Access filed this protest with our Office the same day.

DISCUSSION

The protester primarily argues that the amendment and the email with which the amendment was transmitted contain patent ambiguities as to the date from which prices were requested to be extended.¹⁰ In this regard, the protester essentially contends the solicitation is ambiguous because amendment 15 did not identify the

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amendment 14 (July 21, 2016). See Protest, exh. B, Protester’s Counsel Commc’n with CO at 1.

⁷ The effective date of the amendment was January 17, 2017.

⁸ As discussed above, American Access did not revise its FPR pricing in response to amendment 14 but rather confirmed that its FPR pricing did not change as a result of the changes made in amendment 14.

⁹ The cover letter also stated that the protester was submitted revised pricing proposals for the SAO-East and West regions; however, the agency was unable to open the documents submitted by the protester. See AR, Tab 5, Protester’s Cover Letter to Revised FPR and Amend. 15.; AR, COS at 6.

¹⁰ In filing and pursuing its protest, American Access has made arguments that are in addition to, or variations of, those discussed below. We have considered all of the protester’s assertions and find no basis to sustain its protest.

date of the pricing that was to be extended, while the transmittal email referenced May 11, 2016--a date for receipt of FPRs that was superseded by subsequent amendments to the solicitation.

In response, the agency maintains that there are no ambiguities in the solicitation or amendments and observes that the protester's arguments rely only on an inconsistency between a date referenced in the agency's transmittal email and the amendment. See AR, MOL at 10-11. The agency also contends that notwithstanding the allegations in its protest, the cover letter with which American Access transmitted its acknowledged amendment 15 referred to its previously submitted FPR pricing--the only revised pricing that had been submitted subsequent to discussions and prior to the issuance of amendment 15. Id. at 10-11; see also AR, COS at 7.

When a dispute arises as to the actual meaning of solicitation language, our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all provisions of the solicitation. See Level 3 Commc'ns LLC, B-412854 et al., June 21, 2016, 2016 CPD ¶ 171 at 7; KAES Enters., LLC, B-411225 et al., June 18, 2015, 2015 CPD ¶ 186 at 5. A solicitation is not ambiguous unless it is susceptible to two or more reasonable interpretations. WingGate Travel, Inc., B-412921, July 1, 2016, 2016 CPD ¶ 179 at 7. If the solicitation language is unambiguous, our inquiry ceases. Id.

Here, the record shows that following discussions and subsequent changes to the solicitation, the only revised pricing proposals received from American Access were the three single FPRs American Access submitted (one for each SAO region) in response to amendment 13. While American Access was provided an opportunity to submit a revised proposal in response to amendment 14, it did not. Further, as evidenced in its cover letter transmitting the acknowledged amendment, it is clear that American Access itself understood amendment 15 to request that offerors extend their FPR pricing, and that the extension should be until April 16, 2017. Accordingly, on this record, we do not find that the protester has presented any reasonable interpretation of amendment 15 that is different from the agency's interpretation, nor do we find that the protester's arguments provide any basis to sustain the protest.

The protest is denied.

Susan A. Poling
General Counsel