



## Decision

**Matter of:** Western Metal Supply, Inc.

**File:** B-421919

**Date:** November 20, 2023

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### DIGEST

1. Protest is dismissed as untimely where the protester alleges that the solicitation was defective because it failed to include required specifications, but the protest was not filed before the closing time for the submission of quotations.

2. Protest challenging an agency's evaluation of quotations and source selection decision is denied where the agency's evaluation was consistent with the terms of the solicitation.

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### DECISION

Western Metal Supply, Inc. (WMS), a small business of Escondido, California, protests the award of a contract to Agate Steel, a small business of Scottsdale, Arizona, under request for quotations (RFQ) No. F3G3AA3111AW01, issued by the Department of the Air Force for flight-line sunshade structures. The protester argues that the RFQ failed to include necessary specifications, and that the agency otherwise deviated from the RFQ's requirements in the evaluation of quotations.

We deny the protest in part and dismiss it in part.

### BACKGROUND

The RFQ was issued on May 17, 2023, using the commercial acquisition procedures of Federal Acquisition Regulation (FAR) part 12, and the simplified acquisition procedures of FAR part 13. Contracting Officer's Statement (COS) at 2. The RFQ contemplated a lowest-priced, technically acceptable (LPTA) source selection. *Id.* The RFQ sought

quotations for two shade structures that each included six aircraft parking bays at Nellis Air Force Base, Nevada. *Id.*

The agency received quotations from several firms, including both the awardee and the protester, by the closing date of June 21, 2023. *Id.* at 4. On July 11, the agency issued amendment 5 to the solicitation, which added two additional contract line item numbers (CLINs), 0007 and 0008, and sought updated pricing. Memorandum of Law (MOL) at 4. Both CLIN 0007 and 0008 related to photovoltaic array (PVA) systems.<sup>1</sup> *Id.* Of note, while several other CLINs were marked as optional, CLINs 0007 and 0008 were not marked as optional.<sup>2</sup> *Id.* Beyond the description provided in CLINs 0007 and 0008, the agency did not provide further specifications. COS at 2. The requested date for updated pricing was July 13. MOL at 5. WMS and Agate Steel submitted updated quotations by the revised deadline, and the agency determined both quotations were acceptable with total evaluated prices of \$4,573,177 and \$3,491,356, respectively. AR Tab 13, Abstract at 1; MOL at 6. On August 8, the Air Force notified WMS that award was made to Agate Steel. MOL at 6.

Also on August 8, the Air Force provided WMS with a written debriefing via email. *Id.* WMS subsequently requested an oral debriefing, which the agency provided via phone on August 17. *Id.* This protest followed.

## DISCUSSION

WMS raises two primary bases of protest. First, WMS alleges that the RFQ lacked necessary information with respect to the specifications for the PVA system that prevented firms from competing intelligently. Comments at 1-2. Second, WMS alleges that the Air Force, in the post-award debriefing, admitted that CLINs 0007 and 0008, for the PVA Systems, were not required. The protester contends that it would have submitted a more competitive quotation had it known those CLINs were not required. Protest at 1. We address these arguments in turn.

### PVA System Requirements

WMS challenges the RFQ's lack of specifications for the PVA systems. Comments at 1-2. The protester specifically contends that the RFQ lacked key details such as the type of warranty for the PVA system's solar panels, as well as the desired PVA system

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<sup>1</sup> CLIN 0007 was for "(Row 39) PVA (Photovoltaic Array) or Solar Paneling with 12-hour battery pack for the [light-emitting diode (LED)] Lighting for a four (4) bay shade structure with LED Lighting." Agency Report (AR) Tab 10, amend. 5 at 3-4. CLIN 0008 was for "(Row 39) LED lights and their conduit, [copper] wiring, service power outlets and their locations shall match the LED light design found on shade structures Rows [No.] 21 and [No.] 22." *Id.* at 4.

<sup>2</sup> For example, amend. 5 listed CLINs 0003-0006 as "(OPTIONAL)." RFQ amend. 5 at 3. CLINs 0007 and 0008 did not have this notation. *Id.* at 3-4.

output. *Id.* WMS argues that the agency's failure to include detailed specifications prejudiced the protester because it could not provide accurate pricing and design information. *Id.* at 2.

Our Bid Protest regulations contain strict rules for the timely submission of protests. Our timeliness rules specifically require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposals be filed before that time. 4 C.F.R. § 21.2(a)(1); *Sikorsky Aircraft Corp.*, B-416027, B-416027.2, May 22, 2018, 2018 CPD ¶ 177 at 6. An apparent solicitation defect exists where the solicitation contains an obvious, gross, or glaring error. *International Bus. Machines Corp.*, B-417596.10, Mar. 17, 2021, 2021 CPD ¶ 127 at 15. An offeror has an affirmative obligation to seek clarification of an apparent defect prior to the first due date for submissions responding to a solicitation following introduction of the defect into the solicitation. 4 C.F.R. § 21.2(a)(1); *Pitney Bowes, Inc.*, B-294868, B-294868.2, Jan. 4, 2005, 2005 CPD ¶ 10 at 5.

Here, if WMS believed that the RFQ failed to include sufficient information, it had an affirmative obligation to challenge the terms of the RFQ prior to the July 13 quotation submission deadline. Since WMS failed to do so, this protest ground is untimely and is dismissed.

#### Inclusion of CLINs 0007 and 0008

WMS next argues that the agency unreasonably evaluated CLINs 0007 and 0008 as mandatory items; the protester asserts that the agency allegedly told WMS that those CLINs were not actually required during the protester's post-award debriefing. Protest at 1. Based on this alleged representation during the debriefing, the protester alleges that the Air Force violated FAR section 4.1001 by including CLINs that were not required, which led the protester to submit a quotation with a final price that was substantially higher than what it would have been had the protester not accounted for CLINs 0007 and 0008.<sup>3</sup> *Id.*

The Air Force's principal response is that the agency did not deviate from the terms of the solicitation by evaluating CLINs 0007 and 0008. Specifically, the agency argues that the RFQ did not identify those CLINs as optional. COS at 7. The agency submits that both offerors proposed CLINs 0007 and 0008, and the awardee's contract includes both CLINs. MOL at 10. Furthermore, the agency disagrees with the protester's contention that the agency told the protester that CLINs 0007 and 0008 were not necessary or required during the debriefing. *Id.* at 6. Additionally, the agency argues that even if the protester's version of the debriefing was correct, an alleged misstatement of facts during a debriefing does not create a viable basis of protest. MOL at 11.

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<sup>3</sup> Section 4.1001 of the FAR generally requires procurement instruments, including RFQs, to identify the supplies or services to be acquired as separately identified line items and, as needed, subline items.

Here, we concur with the agency that CLINs 0007 and 0008 were required elements of the RFQ. Unlike CLINs 0003-0006, CLINs 0007 and 0008 were not marked as optional CLINs. RFQ amend. 5 at 3-4. As a result, both the awardee and the protester priced both CLINs in their quotations, and the awardee's final contract included both CLINs 0007 and 0008. MOL at 10. Therefore, there is no basis to conclude that CLINs 0007 and 0008 were not required by the RFQ.

While WMS argues that the agency conceded during the post-award debriefing that CLINs 0007 and 0008 were optional, even if we were to accept the protester's representation over the agency's denial, there would be no basis to sustain the protest. See Comments at 1. Because the RFQ clearly required CLINs 0007 and 0008, any statement made at the debriefing to the contrary would have been inconsistent with the RFQ and the agency's contemporaneous evaluation. Thus, the protester's complaint would, in effect, be a complaint about the sufficiency of the debriefing. The adequacy of a debriefing, however, is not an issue that our Office will consider, because the conduct of a debriefing is a procedural matter that does not involve the validity of an award. *Camris Int'l, Inc.*, B-416561, Aug. 14, 2018, 2018 CPD ¶ 285 at 5; *The Ideal Solution, LLC*, B-298300, July 10, 2006, 2006 CPD ¶ 101 at 3 n.2; *Canadian Commercial Corp.*, B-222515, July 16, 1986, 86-2 CPD ¶ 73 at 5. Therefore, even if the agency misstated the RFQ's requirements during the debriefing, because the agency's contemporaneous evaluation was consistent with the actual terms of the RFQ, there is no basis to sustain the protest.

Moreover, even assuming for the sake of argument that CLINs 0007 and 0008 did not reflect the agency's actual requirements, we cannot conclude that the protester can credibly establish any competitive prejudice on this record. Competitive prejudice is an essential element of every viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest, even if deficiencies in the procurement are found. *Arc Aspicio, LLC, et al.*, B-412612 *et al.*, Apr. 11, 2016, 2016 CPD ¶ 117 at 7. In this regard, we note that even if CLINs 0007 and 0008 were removed from the protester's and awardee's final pricing, the protester's competitive position would remain unchanged as its final quotation would still have been significantly higher priced than the awardee's quotation. MOL at 9. On this basis, we find no possibility of competitive prejudice, and therefore no basis to sustain the protest.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel