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## Decision

**Matter of:** FedWriters, Inc.

**File:** B-422169

**Date:** January 31, 2024

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Lewis P. Rhodes, Esq., and Orest J. Jowyk, Esq., Reston Law Group, LLP, for the protester.

Lucy G. Mac Gabhann, Esq., and Jon J. Gottschalk, Esq, Department of Health and Human Services, for the agency.

Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest that agency improperly evaluated protester's quotation for the establishment of multiple blanket purchase agreements as unacceptable is denied where the record shows that determination was reasonable and consistent with the terms of the solicitation.

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### DECISION

FedWriters, Inc., of Fairfax, Virginia, a small business, protests the exclusion of its quotation from the competitive range under request for quotations (RFQ) No. 75R60223Q00198, issued by the Department of Health and Human Services (HHS) for technical and professional services for an integrated health communication, marketing, education, and information dissemination campaign for the agency's Health Resources and Services Administration. FedWriters argues that HHS unreasonably rejected its quotation as unacceptable.

We deny the protest.

### BACKGROUND

HHS issued the RFQ on August 4, 2023, seeking quotations from small businesses holding Federal Supply Schedule (FSS) contracts. The RFQ anticipated the establishment of multiple blanket purchase agreements (BPA) for a base year and four option years. The RFQ identified two evaluation factors: technical quote and price

quote. Agency Report (AR), Tab 2.1, RFQ at 17.<sup>1</sup> The responses to the two factors were to be submitted as separate enclosures. The RFQ warned that the technical quote response could not include references to the vendor's cost/price, but data concerning "labor hours and categories" was to be provided in the technical quote submission. *Id.* The RFQ specified that BPAs would be established with the vendors whose quotations "conform[ed] to this RFQ," and offered "the lowest price." *Id.* at 19. The technical quote factor response, which could be in Microsoft Word or Adobe format, was to provide an overview of the firm's organization and past performance. *Id.* at 17. The RFQ instructed each vendor to explain how its "organization could assist [the agency]," how the vendor's "experience, familiarity, resources, and expertise is consistent with the [agency's] work," and how its "expertise will provide premier insight." *Id.*

For the price quote factor, the RFQ directed vendors to submit pricing as a Microsoft Excel spreadsheet, as well as "[s]upporting [d]ocumentation," including "a copy of their GSA [General Services Administration] Rate Agreement and indicate discounts being offered." *Id.* at 18. In an amendment, HHS provided a template spreadsheet that consisted of one sheet on which were listed 20 labor categories/job titles, for each of which there was an empty cell for the vendor to enter a GSA contract "job title," and three cells per year to enter a "GSA Hourly Rate," a "Discount [percentage]" and a "GSA Discounted Hourly Rate" for each labor category. AR, Tab 2.2, RFP Pricing Volume Template at 1. The spreadsheet also stated, "[v]endor can add their own labor category - that they think is necessary for this type of work." *Id.* The RFQ also instructed vendors:

Offerors must comply with the detailed instructions for the format and content of the quote; **quotes that do not comply with the detailed instructions for the format and content of the quote will be considered non-responsive and will render the offeror ineligible for award.**

AR, Tab 2.1, RFQ at 16.<sup>2</sup>

In response to a vendor's inquiry about the format for pricing submissions, HHS responded that it had:

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<sup>1</sup> Citations to the RFQ in this decision reference page numbers in the original document, rather than the electronic pagination assigned to the Adobe portable document format [PDF] file that was submitted as an exhibit to the agency report.

<sup>2</sup> The RFQ uses the terms vendor and quote (or quotation) interchangeably with offeror and offer. Except where quoting from the record, for the sake of clarity this decision uses the terms vendor and quotation.

attached a template. Please note . . . we have requested the Offerors to provide their GSA Rate agreement and indicate the discounts being offered. As stated . . . ‘The Offeror’s response to this factor must be in Microsoft Excel Format.’

AR, Tab 2.3, Questions and Answers at 1.

Multiple questions were asked about the method the agency would use to evaluate prices among vendors. One asked specifically how pricing would be compared among vendors with differing GSA catalogs. *Id.* at 5. HHS answered that “[y]our GSA labor catalog, with the required years of experience and education that your personnel offer, will be compared with the various offerors - with same/similar experience.” *Id.*

A vendor then asked whether items that were not in Excel format, including the GSA Rate Agreement in particular, could be submitted in PDF format. HHS’s response was, “[w]e have provided you with the [E]XCEL format.” *Id.* at 11.

A further vendor question asked about the GSA rate agreement submission specifically, noting first that the RFQ specified “Supporting Documentation: The Offeror shall provide a copy of their GSA Rate Agreement and indicate discounts offered,” and then asking whether it could “provide [its] GSA Catalog in PDF format to be compliant to this request.” *Id.* at 12. HHS responded by stating that “GSA catalog in PDF format is compliant. But, the EXCEL spreadsheet is still required.” *Id.*

In preparing its quotation, FedWriters used the Excel spreadsheet in the RFQ and added two additional sheets, for a total of three sheets in the single spreadsheet electronic file. AR, Tab 3.3, FedWriters Pricing Spreadsheet. The first sheet (labeled pricing template) was a completed copy of the agency’s pricing spreadsheet; that is, FedWriters had inserted an FSS labor category for each of the 20 labor category/job title entries, and inserted a GSA hourly rate, a discount percentage, and a GSA hourly discounted rate for each position in each year. *Id.* The second sheet of the spreadsheet was labeled GSA rate agreement and listed 24 labor categories and an hourly rate for each, which were labeled “Price (including IFF [industrial funding fee]<sup>3</sup>).” *Id.* The third sheet of the spreadsheet was labeled “Sheet 1” and appears to be largely the same as the first sheet (the pricing template), but the two columns for the GSA hourly rate and the discount percentage were omitted for each year. *Id.* FedWriters’s price quotation volume consisted only of that Excel pricing spreadsheet, and did not include any PDF documents. *Id.*

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<sup>3</sup> The industrial funding fee is an amount a vendor has agreed to pay quarterly to the General Services Administration based on the total of reported sales (including the fee itself) under the firm’s Federal Supply Schedule contract(s). See 48 C.F.R. 552.238-80.

HHS received 34 quotations, including one from FedWriters. Contracting Officer's Statement (COS) at 2. When HHS evaluated FedWriters's quotation, the agency determined that the firm had failed to provide its GSA rate agreement as required by the RFQ, so the agency rejected the protester's quotation as "non-compliant." AR, Tab 4.3, Letter from HHS Deputy Director/Chief of Contracting Office to FedWriters at 1. After receiving notice of the rejection and a brief explanation, FedWriters filed this protest.

## DISCUSSION

FedWriters argues that its quotation was misevaluated as unacceptable. The firm contends that its quotation provided the firm's GSA labor categories and contract labor rates and the discounted rates being quoted for the scope of work, in Excel format, as the agency had specified. Protest at 6. The firm argues that HHS thus lacked a valid basis to reject the quotation. Additionally, FedWriters argues that to the extent the RFQ required submission of a vendor's rates in a format other than the Excel spreadsheet, that requirement was a latent ambiguity in the RFQ. *Id.* at 7.

HHS responds that the protest should be denied because FedWriters's quotation lacked a copy of the firm's GSA rate agreement that the RFQ expressly required as supporting documentation. The agency contends that any ambiguity about the requirement was patent, and argues that without a vendor's rate agreement, the agency cannot assess the specific labor categories and qualifications a vendor offered. Memorandum of Law at 3. Indeed, the agency argues that FedWriters's quotation lacked "the experience level of the labor rates proposed" that the agency needed to be able to evaluate each vendor's quotation. COS at 4. Accordingly, HHS argues, FedWriters's failure to submit its GSA contract, or at least information about its labor category qualifications, constituted a material flaw in its quotation that justified rejecting it.

FedWriters disputes that the term "GSA Rate Agreement" refers to any specific document. The protester contends that while the RFQ elsewhere refers to the vendor's GSA contract or its GSA schedule, the RFQ uses the term "GSA Rate agreement" only when specifying what should be included in the content of the pricing volume of the quotation. This limited reference, the protester asserts, indicated that neither the contract nor the schedule was being requested, otherwise the agency would have used those terms--as it had done elsewhere in the RFQ. Comments at 2. FedWriters argues that the agency's use of the term GSA rate agreement, and the agency's statements that the required rate agreement could be provided in the Excel spreadsheet, indicated that HHS was requesting the submission of just the hourly labor rates from its schedule contract. *Id.* at 3. The firm argues that it thus complied with the RFQ when it submitted only labor categories and schedule rates in clearly identified columns in the Excel format. *Id.* 4.

Our Office will review a protester's challenge to the evaluation of its quotation in a competition for the establishment of BPAs under Federal Acquisition Regulation subpart 8.4, to determine whether the evaluation was conducted reasonably and in accordance with the solicitation and applicable procurement statutes and regulations. *Fluor Fed. Servs., Inc.; CDM Fed. Programs Corp., B-420783.3 et al.*, June 1, 2023,

2023 CPD ¶ 124 at 9. Our Office will not reevaluate quotations, nor does a protester's disagreement with the agency's judgments establish that the evaluation was unreasonable. *Id.* Where the parties dispute the meaning of the terms of a solicitation, our Office will resolve the issue by reading the solicitation as a whole. To be reasonable, an interpretation must be consistent with the solicitation when read as a whole and in a manner that gives effect to all provisions of the solicitation. *Carahsoft Tech. Corp.*, B-401169, B-401169.2, June 29, 2009, 2009 CPD ¶ 134 at 6.

For the purposes of our analysis, we proceed under FedWriters's contention that the RFQ contained an ambiguity about whether the required pricing information was limited to a submission in Excel spreadsheet format. Accordingly, we must first address whether the alleged ambiguity was a patent defect--one apparent on the face of the RFQ--or latent. That distinction determines whether this aspect of the protest is untimely because a patent ambiguity must be protested when it should have been known; that is, before the due date for submission of quotations to be timely, whereas a latent ambiguity may be timely protested later, when the defect becomes apparent.

A patent ambiguity exists where a solicitation contains an obvious, gross, or glaring error; for example, where solicitation provisions appear inconsistent on their face. *Renova-Sovereign JV II*, B-421629, July 28, 2023, 2023 CPD ¶ 181 at 4 n.7. Our review of the RFQ, and the agency's answers to vendor questions that were included as an amendment to the RFQ, makes apparent that any ambiguity in the information to be submitted regarding pricing was patent. That is, as apparent from the answers quoted above, the agency stated on one hand that the required pricing information should be submitted using the Excel spreadsheet template, but also that it had to include information about experience levels for the labor categories, and that information in PDF format would be considered acceptable.

Taken together any ambiguity over whether an acceptable pricing submission could be limited to Excel format--as FedWriters did in its price quotation--was patent. The agency had answered both that the Excel spreadsheet was required, and in other responses, that required information including the vendor's labor category experience levels, would be permissible to submit in PDF format. Accordingly, to the extent the instructions made the required content of the price quote submission ambiguous, that ambiguity was patent, making FedWriters's effort to raise the alleged ambiguity now untimely. 4 C.F.R. § 21.2(a)(1).

We also find the record supports HHS's evaluation of FedWriters's quotation as unacceptable because it lacked information about the experience levels represented by each of the firm's schedule labor categories. As quoted above, the agency's responses to vendors' questions about the method for evaluating quotations under the price quote factor stated that the agency would use "the required years of experience and education that your personnel offer," as established in the vendor's schedule for each labor category to evaluate and compare quotations. AR, Tab 2.3, RFQ amend. 1 at 5. When HHS reviewed FedWriters's quotation, it determined that the quotation lacked information that the RFQ required for evaluation under the price quote factor. The

judgment to eliminate FedWriters's quotation from further consideration was reasonable and consistent with the terms of the RFQ.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel