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# Decision

**Matter of:** BICALLIS, LLC

**File:** B-415639

**Date:** February 1, 2018

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Bryan T. Bunting, Esq., and A. Ari Ghosal, Esq., Whiteford, Taylor & Preston LLP, for the protester.

Jon W. van Horne, Esq., Law Office of Jon W. van Horne, for Daniel Eke and Associates, PC, the intervenor.

Dennis J. Gallagher, Esq., Department of State, for the agency.

Joshua R. Gillerman, 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 rejected the protester's proposal is denied where the record shows that the protester's proposal failed to conform to the material terms and conditions of the solicitation.

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## DECISION

Bicallis, LLC, of Baltimore, Maryland, protests the rejection of its proposal under request for proposals (RFP) No. SFSIAQ-17-R-0009, issued by the Department of State, Foreign Service Institute (FSI), for the provision of professional services at FSI locations, including the National Foreign Affairs Training Center. The protester, the incumbent contractor, argues that the agency unreasonably rejected its proposal.

We deny the protest.

## BACKGROUND

The RFP, issued on June 20, 2017, as a total set-aside for Historically Underutilized Business Zone concerns, contemplated the award of a contract, for a 1-year base period and four 1-year options, for professional services at multiple FSI locations. RFP at 7-8. The solicitation included Federal Acquisition Regulation (FAR)

provision 52.212-2, "Evaluation--Commercial Items," which indicated that award was to be made to the firm whose quotation was most advantageous to the government, considering price and non-price factors.<sup>1</sup> RFP, at 86. The non-price factors, quality (technical) and past performance, when combined, were deemed more important than price. RFP at 88.

The quality (technical) factor was divided into three subfactors: personnel qualifications, understanding and approach, and subcontractor management plan, if applicable. RFP at 90. Under the personnel qualifications subfactor, the RFP stated that proposals must include "sample resumes of qualified individuals for each of the three labor categories/positions," which were senior procurement analyst, human resources (HR) classification specialist, and HR employee relations specialist. RFP at 89. The RFP then specified that the "[g]overnment expects 2 resumes total," *i.e.*, two resumes for each of the three positions, for a total of six resumes. *Id.* Additionally, and at issue here, the RFP stated: "[t]he offeror shall submit letters of commitment from proposed candidates." *Id.*

The agency received 19 proposals in response to the solicitation. Contracting Officer's Statement at 5. Of the proposals received, 10 proposals, including that of Bicallis, were found non-compliant with the terms of the solicitation and were excluded from the competition. *Id.* The agency found Bicallis's proposal non-compliant, and illegible for award, because the firm failed to provide six letters of commitment for all six candidates it proposed. Agency Report (AR), Tab 7, Notification of Exclusion from Competition. In this regard, while Bicallis submitted six resumes, the firm submitted only 3 letters of commitment along with those resumes. AR, Tab 5, Protester's Proposal.

On September 25, the agency made award to Daniel Eke and Associates for \$4,574,190.40, as the firm whose proposal was most advantageous to the government. AR, Tab 8, Source Selection Decision, at 31, 34.<sup>2</sup> On September 27, Bicallis filed an agency-level protest alleging that the RFP did not require letters of commitment for all proposed candidates, but only for candidates that were not currently employed by the offeror. AR, Tab 10, Agency-Level Protest, at 6-8. After the agency denied Bicallis' agency-level protest, Bicallis filed the instant protest with our Office.

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<sup>1</sup> On July 13, the agency issued amendment No. A001 to the RFP, which incorporated answers to questions received in response to the initial solicitation and clarified aspects of the RFP, including section M, "Basis for Award." RFP, amend. No. A001 at 1. Citations to the RFP in our decision below are to the amended version.

<sup>2</sup> In contrast to Bicallis, Daniel Eke submitted six letters of commitment, two for each of the three labor positions contemplated by the solicitation. AR, Tab 6, Daniel Eke's Proposal, at 19-34.

## DISCUSSION

Bicallis alleges that the agency unreasonably rejected its proposal for failure to provide letters of commitment for each of the six candidates it proposed. The protester argues that the RFP, when read in its entirety, unambiguously required letters of commitment only for candidates that were not currently employed by the offeror. Protest at 9-10; Comments at 2-5. To support its allegation, the protester highlights the fact that the solicitation utilized different language when communicating the requirements to submit resumes and letters of commitment. The protester argues that, since the solicitation required offerors to submit resumes for six “individuals,” the solicitation must have used the language “proposed candidates” with regards to the letter of commitment requirement to mean that offerors only need submit these letters for candidates that are not currently employed by the offeror. Comments at 2-3. The protester further contends that the solicitation language also must be read in the context of the questions and answers (Q&A), incorporated into the RFP by amendment A001. Protest at 10. In particular, the protester cites the following agency responses to questions received from prospective offerors:

Q 42: For the number of resumes required, does the government expect 2 resumes per labor category from each subcontractor and 2 resumes from the prime contractor?

A 42: The government expects two (2) resumes total for each labor category, however more than two may be submitted. If the prime offeror is proposing subcontractors, at least 50% of the total resumes (to include all labor categories) must come from the prime. There are three labor categories, therefore at least six resumes are required. If the offeror is proposing a subcontractor, at least three resumes must come from the prime.

AR, Tab 2, RFP Q&A, at 6.

Q 57: In the event an offeror is submitting resumes for candidates not currently employed by the offeror, will a signed [l]etter of [i]ntent or [c]ontingent [o]ffer letter be required?

A 57: Yes, see question 42.

Id. at 7.

The protester contends that “the only reasonable construction of the terms of the Q&As in conjunction with the [RFP]” was that letters of commitment were only required for candidates that were not currently employed by the offeror. Protest at 10. Finally, in the alternative, Bicallis asserts that the solicitation contained a latent ambiguity, which, upon discovery, the agency should have clarified and allowed offerors to re-submit proposals in response to the clarified requirement. Comments at 7-9.

In response to the protest, the agency argues that the RFP unambiguously required offerors to submit letters of commitment for proposed candidates, i.e., at least six letters of commitment. AR, Memorandum of Law, at 12. The agency asserts that the protester's interpretation is unreasonable because it is contradicted by the plain language of the solicitation. Id. at 2. The agency further argues that Bicallis misinterpreted the solicitation by reading a distinction into the solicitation which did not exist. Id.

Where a protester and an agency disagree over the meaning of solicitation language, we will resolve the matter by first assessing whether each posited interpretation is reasonable. H. Angelo & Co., Inc., B-249412, Nov. 13, 1992, 92-2 CPD ¶ 344 at 4. An interpretation is reasonable when it is consistent with the solicitation when read as a whole and gives effect to each of its provisions. AHNTECH, Inc., B-291998, Apr. 29, 2003, 2003 CPD ¶ 90 at 2. Furthermore, we defer to the plain meaning of the provision. Point Blank Enters., Inc., B-411839, B-411839.2, Nov. 4, 2015, 2015 CPD ¶ 345 at 4.

In our view, the agency's interpretation is reasonable and the protester's interpretation is not. The protester's interpretation is unreasonable because it contradicts the express language of the solicitation. See WingGate Travel, Inc., B-412921, July 1, 2016, 2016 CPD ¶ 179 at 7. As noted above, the RFP stated "[t]he offeror shall submit letters of commitment from proposed candidates." RFP at 89. This requirement is unqualified. The RFP never defined "proposed candidates" to mean only those candidates not currently employed by the offeror, nor did it ever express this limitation on the requirement advanced by the protester. As a result, the protester is advocating an interpretation of the solicitation that would, in effect, read in a distinction into the solicitation between "proposed candidates" and "individuals" that simply did not exist in the RFP.<sup>3</sup>

Further, we do not find that the agency's answers to the Q&A are inconsistent with its expectation that offerors provide letters of commitment for all of its proposed candidates, including those it currently employs. A prospective offeror asked whether letters of commitment were required for candidates being proposed that did not currently work for the offeror, and the agency responded with "[y]es." AR, Tab 2, RFP Q&A, at 7. Contrary to Bicallis' allegations, the agency's affirmative response to this question is consistent both with the plain language of the solicitation and the agency's

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<sup>3</sup> In its comments, Bicallis notes that the word "candidate" has a dictionary definition meaning "a person who is competing to get a job or elected to a position," in contrast to the definition of "individual," defined as "a single person or thing." Comments at 3 (citing the Cambridge Dictionary). Despite the different dictionary definitions of these two words, we still find the protester's interpretation unsupportable. Bicallis was competing for award of the contract, rendering the six people it proposed, persons "competing to get a job," regardless of whether they were currently employed by Bicallis. Accordingly, the different dictionary definitions cited by the protester do not support its interpretation of the solicitation.

interpretation of the solicitation, i.e., that offerors were required to provide letters of commitment for all proposed candidates, including those not currently employed by the offerors.

In our view, the solicitation language, read as a whole, does not support the protester's interpretation that the solicitation did not require that offerors provide letters of commitment for personnel currently employed by the offeror. We also do not agree that the solicitation language is susceptible to two different reasonable interpretations and, accordingly, find no ambiguity here.<sup>4</sup>

Having concluded that the protester's interpretation of the RFP was unreasonable, and that no ambiguity existed, we review the agency's evaluation to determine whether it was consistent with the agency's interpretation of the terms of the solicitation. Anders Constr. Inc., B-414261, Apr. 11, 2017, 2017 CPD ¶ 121 at 6. As noted above, the RFP required offerors submit letters of commitment for its proposed candidates. RFP at 89. As a result, offerors were required to submit a total of six letters of commitment, two for each of the three labor positions contemplated by the solicitation. Id. A proposal that fails to conform to material terms and conditions of the solicitation is unacceptable and may not form the basis for award. See Sealift, Inc., B-409001, Jan. 6, 2014, 2014 CPD ¶ 22 at 6. Since the protester failed to provide six letters of commitment, we find reasonable the agency's decision to find its proposal non-compliant and exclude it from consideration for award.<sup>5</sup>

The protest is denied.

Thomas H. Armstrong  
General Counsel

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<sup>4</sup> The protester's argument that, in other procurements agencies have not required letters of commitment for an offeror's current employees is immaterial; each procurement stands alone, and actions taken in a different procurement are not relevant to our consideration of the agency's actions here. Phoenix Envtl. Design, Inc., B-411746, Oct. 14, 2015, 2015 CPD ¶ 319 at 5.

<sup>5</sup> We also note that the protester relies on Computer Info. Specialist, Inc., B-293049, Jan. 23, 2004, 2004 CPD ¶ 1 at 5 n.2, to support its allegations. That reliance is misplaced. The solicitation at issue in that case provided that: "[f]or all proposed personnel who are not currently members of the offeror's staff, a letter of commitment or other evidence of availability is required . . ." Computer Info. Specialist, Inc., supra, at 6 (emphasis added). As noted above, the RFP contained no such express limitation and, accordingly, Computer Info. Specialist, Inc., supra, does not support the protester's position here.