



# Decision

**Matter of:** Owl, Inc.; MLB Transportation, Inc.

**File:** B-414962; B-414962.2

**Date:** October 17, 2017

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## DIGEST

Protest that the terms of the solicitation are vague and unfair is denied where the solicitation provided adequate information for offerors to compete intelligently and on a relatively equal basis.

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## DECISION

Owl, Inc., of St. Johns, Florida, and MLB Transportation, Inc., of Tucker, Georgia, protest the terms of request for proposals (RFP) No. VA247-17-R-0004, issued by the Department of Veterans Affairs (VA) for wheelchair van transport services for the beneficiaries of the Atlanta Veterans Affairs Medical Center (AVAMC). Owl and MLB contend, in substantively identical protests, that the RFP scope of work is vague and that the pricing schedule does not fairly price trips to non-AVAMC destinations, among other grounds of protest.

We deny the protests in part and dismiss them in part.

## BACKGROUND

The RFP was issued on June 7, 2017, anticipating the award of a single fixed-price indefinite-delivery, indefinite-quantity contract for a 1-year base period and four 1-year option periods. The RFP was subsequently amended nine times. The RFP included a comprehensive performance work statement (PWS) that defined the general scope and specific performance requirements of the contract. In general, the PWS provided that:

The Contractor shall furnish the necessary personnel (drivers) and equipment (vehicles, materials and supplies) to provide wheelchair van transport service for the beneficiaries of the Atlanta Veterans Affairs Medical Center (Atlanta VAMC) residing in metropolitan and rural counties in the State of Georgia and in rare instances across state lines to surrounding bordering states i.e. Alabama, Mississippi, Tennessee, North Carolina, South Carolina and Florida.

Agency Report (AR), Tab 1, RFP, at 8.

With respect to pricing, the PWS utilized a flat rate pricing structure for short trips within a “mileage threshold” defined as “a 30-mile radius of the AVAMC Decatur, [Georgia],” and a base rate plus additional mileage pricing structure for long trips that extended beyond the mileage threshold or for “remote trips” that involved both a pick-up and drop-off outside of the mileage threshold. Id. at 11. The PWS specified that for remote trips, additional mileage would be calculated as mileage beyond the mileage threshold, with a starting point of the Decatur AVAMC. The PWS also provided that the 30-mile radius from the AVAMC would be measured “using the latest version of BING Maps,” and cautioned that payment for mileage “shall be limited to the most economical and time effective travel distance, according to BING Maps.” Id. at 11, 37. Finally, the RFP included a pricing schedule to be completed by the offeror, which required the contractor to propose a flat fee “base rate” for short trips entirely within the mileage threshold, a separately designated flat fee “base rate” for long trips, and a per mile “mileage price” applicable to long trip and remote trip mileage in excess of the mileage threshold. Id. at 151.

Amendment 0008 to the RFP set the closing date for receipt of proposals for August 16, 2017. Owl and MLB filed agency-level protests challenging the terms of the RFP prior to the closing time for receipt of proposals. Following denial of those agency level protests, the protesters filed the instant protests with our Office.

## DISCUSSION

The two protests present a variety of allegations challenging the terms of the RFP.<sup>1</sup> Many of the allegations advanced by the protesters fail to provide a valid basis of

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<sup>1</sup> During the development of this protest, the agency requested that our Office dismiss the protest of MLB because the firm was not an interested party to pursue the protest where it was not a service-disabled veteran-owned small business listed on the VA’s vendor information pages (VIP) website, as required by the solicitation. Only an “interested party” may protest a federal procurement; a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. Bid Protest Regulations, 4 C.F.R. § 21.0(a)(1). MLB asserted that it was an interested party because it had entered into a  
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protest or were not within the jurisdiction of our Office.<sup>2</sup> We address the remaining allegations set forth in the Owl protest in this decision.<sup>3</sup>

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joint venture agreement with an SDVOSB firm to compete for the requirement, but acknowledged that the joint venture was not listed on the VIP website, and had not begun its VIP system application until after the time that it filed its protest. We agree with the agency that where neither MLB or its claimed joint venture are listed on the VIP website or likely to be approved to be listed on the VIP website during the protest process, the protester is not an interested party to pursue its protest.

<sup>2</sup> For example, Owl alleges that the RFP's \$200 minimum guarantee is an impermissibly nominal amount and that "gurney services" required by the PWS are undefined. However, the record shows that amendment 0003 to the RFP increased the minimum guarantee to \$200,000 and deleted the gurney services requirements from the PWS. AR, Tab 2, Amendments, at 4. Owl also alleges that the RFP incorrectly identifies the labor category for the drivers expected to be used under the contract as "shuttle bus driver," and argues that the most appropriate labor category is "taxicab driver." However, our Office has previously concluded that identification of expected labor categories does not require offerors to propose employees in those categories. Computer Cite, B-297291, B-297291.2, Dec. 23, 2005, 2006 CPD ¶ 31 at 5. Further, to the extent that the protester challenges the Department of Labor's prior wage rate determinations for these services, the Service Contract Act places the responsibility for enforcing its provisions on the contracting agency head and the Secretary of Labor. 41 U.S.C. § 352(b). Thus, our Office does not review wage rate determinations under the Service Contract Act. Concerns with regard to establishing proper wage rate determinations or the application of the statutory requirements should be raised with the Wage and Hour Division in the Department of Labor. See 41 U.S.C. § 6707; SAGE Sys. Techs., LLC, B-310155, Nov. 29, 2007, 2007 CPD ¶ 219 at 3.

<sup>3</sup> Additionally, we consider Owl to have abandoned several of its initial protest grounds. For example, Owl initially alleged that the RFP unreasonably restricted the types of vehicles that could be used under the contract. The agency report countered that the RFP's PWS did not specify any required vehicle types, but set forth general minimum requirements such as "operational air conditioning heating systems," a loading platform "integral to the vehicle and made of [at] least thirteen gauge steel," and "backup for all lift capacity." AR, Tab 1, RFP, at 123-124. In its comments on the agency report, the protester stated that it "still contends that . . . the solicitation impermissibly limits the vehicles the contractor can use," but failed to substantively respond to the agency's report. Comments at 1. Under these circumstances, we consider the protester to have abandoned its argument, and dismiss it. Nexagen Networks, Inc., B-411209.7, June 20, 2016, 2016 CPD ¶ 164 at 3 n.4.

Owl asserts that the RFP scope of work is impermissibly vague, because it does not specify the number of long trips that the contractor can expect or the location of the destinations and suggests that the contractor could be required to undertake implausibly distant trips of unknown frequency. Owl argues that the agency should be required to provide additional historical data concerning destinations and numbers of trips that would assist contractors submitting bids in weighing the risks of the proposals, and proposing accurate pricing consistent with the expected volume of trips. Owl also asserts that the lack of destination information renders the pricing schedule unfair with respect to non-AVAMC locations, and that the calculation of mileage based on BING Maps does not account for circumstances such as road closures or accidents that may occur.

In assessing a protester's claim that a solicitation is inadequate, our Office will review the solicitation to determine whether it provides sufficient information for offerors to compete intelligently and on a relatively equal basis. Meridian Mgmt. Corp., B-285127, July 19, 2000, 2000 CPD ¶ 121 at 6. There is no legal requirement that a solicitation be drafted so as to eliminate all performance uncertainties. Northrop Grumman Tech. Servs., Inc., B-406523, June 22, 2012, 2012 CPD ¶ 197 at 12.

Based on our review of the record, we conclude that the agency has adequately defined its requirements and provided the offerors with sufficient information to compete on a relatively equal basis. The RFP's general scope of work requires that "[t]he Contractor shall furnish the necessary personnel (drivers) and equipment (vehicles, materials and supplies) to provide wheelchair van transport service for the beneficiaries of the Atlanta Veterans Affairs Medical Center." AR, Tab 1, RFP, at 8. With respect to the specific destinations and frequency of wheelchair van transport trips, while we agree with the protester that there is some uncertainty, the RFP did in fact provide a list of counties to be served by the contract and an estimated monthly quantities of short trips, long trips, and additional mileage. Id. at 41, 151. In the latter regard, the price schedule specifically set forth estimated quantities of 1,300 short trips per month, 210 long trips per month, and 54,000 additional miles per month. Id. at 151.

We conclude that the information provided is more than adequate to permit offerors to compete intelligently. There is no requirement that the specifications in a solicitation be so detailed that they completely eliminate all risk, or remove every uncertainty from the mind of every prospective offeror. AirTrak Travel et al., B-292101 et al., June 30, 2003, 2003 CPD ¶ 117 at 14. Rather, firms must use their professional expertise and business judgment in anticipating a variety of influences affecting performance costs. JRS Mgmt., B-402650.2, June 25, 2010, 2010 CPD ¶ 147 at 5.

With regard to the pricing schedule, we see no basis for the protester's concerns. The PWS and pricing schedule fully define the compensation formulas for all trip types, with AVAMC or non-AVAMC destinations, inside or outside of the 30-mile mileage threshold. Concerning the limitation on payment for mileage, the protester is correct that the mileage of the most efficient route determined by BING Maps may not reflect contingencies that require an alternative route and additional miles driven. However,

the record reflects that the limitation on compensation for additional mileage is clearly defined and sufficient to permit offerors to intelligently price the requirement. The fact that the contractor bears risks in pricing the requirements does not demonstrate that the RFP is defective. Harmonia Holdings, LLC, B-407186.2, B-407186.3, Mar. 5, 2013, 2013 CPD ¶ 66 at 4.

The protests are denied in part and dismissed in part.

Susan A. Poling  
General Counsel