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## Decision

**Matter of:** Anders Construction, Inc.

**File:** B-414261

**Date:** April 11, 2017

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Sean T. McLaughlin, Esq., Kean Miller LLP, for the protester.  
Thomas J. Warren, Esq., Capt. Zachary Jacobson, and David R. Dyer, Esq.,  
Department of the Army, Corps of Engineers, for the agency.  
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GAO, participated in the preparation of the decision.

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### DIGEST

Where solicitation required proposals to include resumes with a complete listing of training and experience, and documentation proving that divers had completed a minimum of four dives, with at least one dive occurring in the most recent nine months, the agency reasonably evaluated protester's proposal as technically unacceptable where it did not meet either requirement.

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### DECISION

Anders Construction, Inc., of Harvey, Louisiana, protests the award of a contract to Specialty Diving of Louisiana, Inc., of Loranger, Louisiana, under request for proposals (RFP) No. W912P8-16-R-0005, issued by the Department of the Army, Corps of Engineers, for professional diving services. Anders alleges that the agency improperly evaluated its proposal as technically unacceptable.

We deny the protest.

### BACKGROUND

The RFP, issued on July 22, 2016, as a small business set-aside, contemplated the award of a fixed-price indefinite-delivery/indefinite-quantity contract for professional diving services to be performed over a 1-year period and four 1-year option periods, with a ceiling value of \$2 million. Contracting Officer's Statement at 1. Specific services contemplated included the investigation, surveying, and removal of designated obstructions and sunken vessels. RFP Performance Work Statement (PWS) ¶ 1. The services will be performed in support of navigation, flood control,

environmental projects, and other missions. Id. Award was to be made on a lowest-priced, technically acceptable basis considering three evaluation factors: past performance, technical evaluation, and price. RFP §§ M.1.B., M.2. The technical evaluation factor consisted of two subfactors, personnel qualifications and experience, and management plan. RFP § M.2. Only the personnel qualifications and experience subfactor is at issue here.

Proposals were to be evaluated pass or fail under the technical evaluation factor. RFP § M.3.B. Under the personnel qualifications and experience subfactor, offerors were advised that the personnel qualifications and experience of proposed individuals would be evaluated to ensure the minimum requirements were met; the section also referred offerors to the PWS and Section L of the RFP. RFP § M.3.B.1.

Both the PWS and Section L required that each diver, stand-by diver, and dive supervisor possess at least one year of commercial diving experience in the applicable position. RFP PWS ¶ 9.b, § L.B.1. Further, to earn a pass rating, the solicitation required that “[r]ésumés shall be submitted” for each employee, and résumés “shall include a complete listing of employees’ training and experience.” RFP § L.B.1. The RFP also required offerors to submit proof of certification, such as a dive diploma or Association of Diving Contractors International (ADCI) membership card, for those employees working as part of a dive team. RFP PWS ¶ 9.b, § L.B.1. In addition, the RFP required offerors to demonstrate ability to field two six-man dive teams on any given day. RFP § L.B.1. A six-man dive team consists of one dive supervisor, two divers, one stand-by diver, and two dive tenders. RFP PWS ¶ 10.c. Offerors were required to submit documentation proving that divers had completed a minimum of four dives, with at least one dive occurring within the most recent nine months. RFP PWS ¶ 9.b, § L.B.1.

The agency received proposals from three offerors by the August 24 closing date, including Anders and the awardee. Agency Report (AR), Tab 10, Source Selection Evaluation Board Report at 1. The agency rated Anders’ proposal as a fail under the personnel qualifications and experience subfactor and therefore technically unacceptable. Id. at 3. First, the agency noted that Anders’ proposal did not include résumés with a complete listing of its employees’ training and experience. Id. Second, the agency noted that Anders’ proposal did not include documentation that at least six divers had completed a dive within the most recent nine months, and therefore the firm did not demonstrate that it could field two six-man dive teams. Id. In light of these findings, Anders’ proposal was deemed technically unacceptable. Id.

The agency awarded the contract to Specialty Diving of Louisiana at a price of \$1,637,980 and notified Anders that its proposal would not be selected. After Anders received its debriefing, it first filed an agency-level protest, and then filed the instant protest here after its agency-level protest was denied.

## DISCUSSION

Anders alleges that the agency improperly evaluated its proposal under the personnel qualifications and experience subfactor, and as technically unacceptable overall. Anders argues that it submitted résumés that demonstrated all of its employees met the experience requirements. The firm also contends that it did not need to demonstrate that all six of its proposed divers performed one dive within the last nine months because the RFP only required that the employees listed as divers, not stand-by divers, satisfy that requirement.

Concerning the résumé requirement, Anders argues that the RFP required only that proposals include proof that the proposed employees possess the requisite training and experience. Protest at 10. For its part, the agency contends that the RFP required proposals to include both résumés with complete listings of training and experience, and applicable certifications as proof of training and experience. Agency Legal Memorandum at 7.

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 Anders' interpretation is unreasonable. Section L.B.1. of the RFP provided:

Résumés shall be submitted for the individuals proposed for the dive teams and shall include a complete listing of employees' training and experience. Proof of certification (a diploma and/or official transcript) as a commercial working diver from an accredited commercial dive school is required as proof of a dive team member's certification and/or experience.

Anders' interpretation is unreasonable because it focuses on the second sentence without giving full effect to the first. By reading the second sentence as permitting an offeror to submit certifications in lieu of résumés, Anders' interpretation ignores the instruction that résumés "shall include a complete listing of employees' training and experience" and that the terms "résumés" and "certifications" are not equivalent. Id. Conversely, the agency's interpretation gives full effect to both sentences; it maintains that an offeror must submit both a prototypical résumé with a listing of training and experience, and accompanying certifications to serve as proof of the listed training and experience. Accordingly, the agency's interpretation

is reasonable because it is consistent with the RFP as a whole, whereas Anders' interpretation would render the first sentence superfluous. See WingGate Travel, Inc., B-412921, July 1, 2016, 2016 CPD ¶ 179 at 7. The plain meaning of language dictates whether we will consider an interpretation of a solicitation to be reasonable, and Anders' interpretation ignores the plain and commonsense meaning of the terms "résumé" and "certifications." See AHNTECH, Inc., supra at 3.

We now consider whether the agency reasonably assigned Anders a fail rating for omitting résumés as part of its proposal. In reviewing a protest against an agency's evaluation of proposals, our Office will not reevaluate proposals, but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. ManTech Advanced Sys. Int'l, Inc., B-413717, Dec. 16, 2016, 2016 CPD ¶ 370 at 3. A protester's disagreement with the agency's judgment in its evaluation, without more, does not establish that the evaluation was unreasonable. Dictyon, LLC, B-405504, Nov. 16, 2011, 2011 CPD ¶ 253 at 3.

The agency rated Anders' proposal as a fail under the technical evaluation factor because the proposal did not include résumés with a complete listing of training and experience. In our view, the agency acted reasonably and consistently with the solicitation's evaluation criteria because Anders omitted documents listing its employees training and experience.<sup>1</sup> See NCLN 20, Inc., B-287692, July 25, 2001, 2001 CPD ¶ 136 at 4–5 (concluding that an agency acted reasonably when it downgraded a proposal because the proposal failed to follow the terms of the solicitation by omitting résumés for key personnel). A protester has an obligation to submit documents in a manner that allows the agency meaningful review, and a protester's failure to do so constitutes reasonable grounds for the agency to reject the proposal. See Avue Tech.Corp; Carahsoft Techs. Corp., B-298380.4, June 11, 2007, 2008 CPD ¶ 182 at 8–10. Because the RFP required Anders to submit clear, concise documents listing its employees' training and experience, and because Anders failed to do so, the agency's rejection of Anders' proposal was reasonable.

Although Anders may disagree with whether a listing of its employees' training and experience was necessary to evaluate its proposal, its disagreement, without more, is insufficient to demonstrate that the agency acted unreasonably. See Wolverine Servs., LLC, B-409906.3, B-409906.5, Oct. 14, 2014, 2014 CPD ¶ 325 at 3. To the extent that Anders maintains that the agency should have inferred that it could have

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<sup>1</sup> As with the certifications, Anders' contention that one employee signature is sufficient to demonstrate that its employees satisfied the experience requirement is unpersuasive. See Protest, at 6. Although an Anders' employee certified that its employees possessed the requisite experience, his signature could not fulfil the requirement that offerors provide a complete listing of employees' training and experience.

provided a list of adequate training and experience based on the certificates submitted, we are aware of no requirement that an agency draw such an inference. See Abacus Enters., B-248969, Oct. 13, 1992, 92-2 CPD ¶ 242 at 4. Accordingly, this protest ground is denied.

Concerning the dive documentation requirement, Anders and the agency disagree over whether offerors needed to submit dive documentation for both divers and stand-by divers. The RFP provided that “[d]ivers shall have completed at least four working dives with similar decompression techniques as in the contract . . . Divers shall demonstrate that at least one out of the four qualification dives was performed in the last nine months.” RFP PWS ¶ 9.b. Section L.B.1. of the RFP further provided:

As a minimum, each diver, stand-by diver, and dive team supervisor shall have at least one (1) year of commercial experience in the applicable position. Dive tenders must have previous experience and training as a dive tender. The offeror shall submit documentation which shows that each diver has performed a minimum of four dives, with at least one of the four dives in the last nine months.

Anders contends that the RFP required offerors to submit dive documentation only for its proposed divers. Protest at 10. It asserts that the RFP required only divers to submit dive documentation because Section L.B.1. used the phrases “each diver” to refer only to divers and “stand-by diver” to refer only to stand-by divers. Protester’s Comments at 2–3. Thus, in Anders’ view, if the RFP required both divers and stand-by divers to satisfy the dive documentation requirement, then Section L.B.1. would have required proposals to include dive documentation for each diver and each stand-by diver. Id. at 3. In opposition, the agency argues that the RFP required both divers and stand-by divers to submit dive documentation because it views the phrase “each diver” as referring to both divers and stand-by divers. Agency Legal Memorandum at 3–4.

Using the same legal framework as above for resolving a dispute over solicitation language, we first assess each interpretation for reasonableness. See H. Angelo & Co., Inc., supra. In our view, the RFP is ambiguous because the language supports either interpretation. On the one hand, the RFP seemingly created a precise term when it used “each diver,” such that any subsequent use of “each diver” referred only to divers and not to stand-by divers. On the other, a stand-by diver is also a type of diver and would therefore be included when the RFP referred to “each diver.” Furthermore, PWS ¶ 9.b. used “divers,” which indicates that any diver or stand-by diver must satisfy the requirement.

Given that both interpretations are reasonable, we conclude that the solicitation was ambiguous. See Coastal Int’l Security, Inc., B-411756, B-411756.2, Oct. 19, 2015, 2015 CPD ¶ 340 at 4. After determining that an ambiguity exists, our Office must

assess whether the ambiguity is patent or latent. See RELI Grp., Inc., B-412380, Jan. 28, 2016, 2016 CPD ¶ 51 at 6. A patent ambiguity exists where a solicitation contains an obvious, gross, or glaring error (e.g., where solicitation provisions appear inconsistent on their face), while a latent ambiguity is more subtle (e.g., where the ambiguity is identified in the context of an evaluation. Qwest Gov't Servs., Inc., B-405425.2, B-405425.3, Dec. 9, 2011, 2012 CPD ¶ 192 at 11.

In our view, the solicitation's terms created a patent ambiguity, because the solicitation used "divers" in one provision to indicate that proposals should include dive documentation for both divers and stand-by divers and used "each diver" in another provision to indicate that dive documentation should only be submitted for divers. Further, the RFP provided that "[e]ach diver must have a medical examination," which even Anders asserts both divers and stand-by divers must satisfy. RFP, § L.B.1. Faced with these inconsistent and confusing instructions, any potential offeror should have been aware of the ambiguity without having to dive too deeply into the subtleties of the solicitation. Cf. Harrington, Moran, Barksdale, Inc., B-401934.2, B-401934.3, Sept. 10, 2010, 2010 CPD ¶ 231 at 5 (explaining that inconsistencies between a discussion letter and a solicitation would result in a patent ambiguity); Input Sols., Inc., B-294123, Aug. 31, 2004, 2004 CPD ¶ 185 at 3–4 (explaining that inconsistencies between a contracting officer's e-mail and a solicitation would result in a patent ambiguity).

Under our Bid Protest Regulations, a patent ambiguity must be protested prior to the time set for receipt of initial proposals or quotations, when it is most practicable to take effective action against such defects. 4 C.F.R. §21.2(a)(1); Cleveland Telecomms. Corp., B-247964.3, July 23, 1992, 92-2 CPD ¶ 47 at 3–5. An offeror that chooses to compete under a patently ambiguous solicitation does so at its own peril, and cannot later complain when the agency proceeds in a way inconsistent with its interpretation. CardioMetrix, B-274585, Nov. 18, 1996, 96-2 CPD ¶ 190 at 3. Because we have concluded that Anders' protest involves a patent ambiguity, it needed to raise this issue prior to the closing of the solicitation period. Its protest regarding the interpretation is therefore untimely. Cf. Federal Computer Int'l Corp., B-276885, July 29, 1997, 97-2 CPD ¶ 35 at 3 ("In this case, despite [the protester's] awareness of the ambiguity in the [the solicitation] regarding price evaluation, it waited until after award to raise its challenge. Accordingly, [the protester's] protest is untimely.").

In the absence of a timely challenge to the RFP, we review the agency's evaluation to determine whether it was consistent with the agency's interpretation of the terms of the solicitation. See id., at 3–4; ManTech Advanced Sys. Int'l, Inc., supra. The RFP required each offeror to include dive documentation for at least six divers because each offeror was required to demonstrate that it could field two six-man dive teams on any given day. RFP § L.B.1. Here, Anders submitted the required dive documentation for only five of its six proposed divers. As a result, the agency reasonably assigned Anders a fail rating under the personnel qualifications and

experience subfactor.<sup>2</sup> See NOVA Corp., B-411851, Nov. 6, 2015, 2015 CPD ¶ 346 at 5.

Because Anders failed to demonstrate that the agency acted unreasonably in assigning a technically unacceptable rating to its proposal, there is no basis upon which to question its elimination from the procurement. See Heuristic Devs, Inc., B-221292, Apr. 7, 1986, 86-1 CPD ¶ 338 at 4. Any remaining issues are therefore academic and need not be considered. See id.

The protest is denied.

Susan A. Poling  
General Counsel

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<sup>2</sup> To the extent that Anders argues the agency's interpretation is unreasonable because it is inconsistent with the Safety and Health Requirements Manual, Anders has not brought to our attention any evidence indicating that divers and stand-by divers have different experience requirements. Indeed, Sections 30.A.07 and 30.A.09, as well as Appendix G, of the Health and Safety Requirements Manual do not indicate that divers and stand-by divers are subject to varying experience requirements. See Department of the Army, Corps of Engineers, Safety and Health Requirements Manual, available at, <http://www.usace.army.mil/Safety-and-Occupational-Health/Safety-and-Health-Requirements-manual/>, (last visited, Mar. 29, 2017).