



## Decision

**Matter of:** 49er Pressure Wash and Water Service, Inc.

**File:** B-417926; B-417926.2

**Date:** November 27, 2019

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John Sasser for the protester.

Melissa D. McClellan, Esq., Department of Agriculture, for the agency.

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### DIGEST

Protest that the agency improperly found protester's quotation ineligible for award is denied where the agency's interpretation of the solicitation's terms was reasonable.

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### DECISION

49er Pressure Wash and Water Service, Inc., a small business located in Angels Camp, California, protests the decision of the Department of Agriculture, United States Forest Service, to find its quotation ineligible for award under request for quotations (RFQ) No. 129J6119Q7005, for water handling services. The protester argues that the Forest Service unreasonably found its quotation ineligible for award in violation of the solicitation's terms and the agency's prior practices.

We deny in part and dismiss in part the protest.

### BACKGROUND

The Forest Service issued the RFQ on March 29, 2019, as a set aside for small business concerns, using the commercial item procedures of Federal Acquisition Regulation (FAR) part 12. RFQ at 1. The solicitation seeks the services of water tenders and engines to support emergency incidents on a local, regional, and nationwide basis. RFQ at 19. These services include dust abatement, such as watering down traveled areas, and providing water to other firefighting equipment (including engines, crews' backpacks, portable helicopter dipping tanks, and storage bladders). Agency Report (AR) at 1.

The solicitation anticipated establishing blanket purchase agreements (BPAs) with multiple vendors.<sup>1</sup> RFQ at 6. The RFQ provided that the dollar limitation for an individual order is the simplified acquisition threshold, but that, due to the sporadic occurrence of incident activity, the placement of any orders is not guaranteed. Id. The RFQ explained that the agency would award a sufficient number of BPAs to meet incident resource needs, and that the number of BPAs awarded would be determined based on historical usage and other relevant data such as predictive services information. Id. at 7.

The RFQ provided that BPAs would be awarded to small business vendors that were considered responsible, with fair and reasonable pricing, with low or unknown performance risk, and whose resources were considered technically acceptable after inspection. Id. Specifically, the solicitation provided that quotations would be evaluated based on the following three evaluation factors: operational acceptability of equipment, past performance dependability risk, and price reasonableness. Id. With regard to operational acceptability, the RFQ explained that “[a] quote will be considered operationally acceptable if the offered resource meets the minimum requirements stated in the specification.” Id.

Section D of the solicitation set forth the requirements for equipment. As relevant to this protest, the solicitation provided that “[n]o engine or water tender shall exceed the manufacturer’s Gross Vehicle Weight Rating (GVWR) or Gross Axle Weight Rating (GAWR) per axle when the vehicle is fully loaded and equipped.” RFQ at 20.

The solicitation also provided a “check sheet” as an attachment to the RFQ and required that vendors submit documentation to support the information required by the check sheet for each truck submitted. RFQ at 3; AR, Tab D, RFQ Water Handling Check Sheet, at 1-2. For example, vendors were required to include documentation for each piece of equipment showing the manufacturer’s front gross axle weight rating, rear gross axle weight rating, and GVWR. Id. In addition, vendors were to include weight receipts from a certified scale for fully loaded equipment showing the certified gross vehicle weight, certified front axle loaded weight, and certified rear axle loaded weight. Id.

The solicitation required that vendors submit hard copies of these documents to the Forest Service by the RFQ’s May 7 due date for receipt of quotations. RFQ at 3. The solicitation cautioned that “[a]ny documentation packet sent incomplete, i.e., without forms and/or missing documentation, is considered unacceptable,” and that “[t]here will NOT be an opportunity to make corrections/updates to the technical proposal (forms and documentation) after the due date for receipt.” RFQ at 4; AR, Tab D, RFQ Water Handling Check Sheet, at 2.

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<sup>1</sup> The Forest Service uses a software program, Virtual Incident Procurement, for soliciting, issuing awards, and managing the BPAs. RFQ at 3; Contracting Officer Statement (COS) at 1.

The Forest Service received 117 quotations pertaining to 300 engines and water tenders, including a quotation from the protester for three water tenders, by the RFQ's May 7, 2019 deadline for receipt of quotations. COS at 1.

49er's quotation proposed three water tenders. The documentation submitted by 49er for one of these water tenders--Water Tender 058--showed that that the manufacturer's gross vehicle weight rating was 46,000 pounds, and gross vehicle weight rating for the front axle was 12,000 pounds. AR, Tab F, 49er Quotation Check Sheet & Documentation, at 2. The documentation submitted by 49er further showed that the certified gross weight for Water Tender 058 was 45,360 pounds, and certified weight for the front axle for Water Tender 058 was 12,020 pounds. Id. at 3.

Based on this documentation, the agency's technical inspector determined that Water Tender 058 was not eligible for award because the certified weight for the front axle exceeded the manufacturer's gross axle weight rating for the front axle by 20 pounds. AR, Tab G, Technical Review, at 1-2. On August 26, the Forest Service notified the protester that one of its water tenders would not be considered for award because it did not pass inspection. COS at 1. Specifically, the agency advised 49er that its documentation showed that the front axle exceeded the manufacturer's weight rating by 20 pounds, in violation of the RFQ's requirements. This protest followed.

## DISCUSSION

The protester challenges the agency's determination that 49er's quotation was ineligible for award based on the documentation showing that the front axle of 49er's tender was overweight by 20 pounds. The protester argues that it complied with the solicitation by providing documentation showing that its tender met the manufacturer's gross vehicle weight rating, and that the agency unreasonably interpreted the solicitation to require that its tender also meet the front axle weight requirement. The protester also contends that the agency improperly determined that the 20 pound overage rendered 49er's tender ineligible for award because the agency, in considering the vehicle's weight, improperly failed to apply a "measurement variation factor" for the type of scale used. In this regard, the protester asserts that the allowable range of error for the scale was plus/minus 40 pounds, which the protester maintains, if applied, would bring the weight of its front axle within acceptable range. For the reasons that follow, we find no merit to 49er's allegations.<sup>2</sup>

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<sup>2</sup> Although we do not address every argument raised in 49er's protest, we have reviewed them all and find that none provides a basis to sustain the protest. For example, to the extent the protester asserts that the Forest Service must accept 49er's tender under the current solicitation because it accepted the tender under a prior solicitation, we find no merit to this argument. GAO has consistently held that "each federal procurement stands on its own, and an agency's prior practices, if independently reasonable, are not rendered improper by the fact that the agency might have viewed a prior proposal differently." Propagation Research Assocs., Inc., B-405362, Oct. 20, 2011, 2011 CPD ¶ 222 at 5. The protester has not demonstrated that its equipment met

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As noted above, the RFQ provided that “[n]o engine or water tender shall exceed the manufacturer’s Gross Vehicle Weight Rating (GVWR) or Gross Axle Weight Rating (GAWR) per axle when the vehicle is fully loaded and equipped.” RFQ at 20. In addition, the solicitation’s check sheet required that vendors submit documentation showing the manufacturer’s front gross axle weight rating, rear gross axle weight rating, and gross vehicle weight rating. AR, Tab D, RFQ Water Handling Check Sheet, at 1-2. Further, vendors were to include weight receipts from a certified scale for fully loaded equipment showing the certified gross vehicle weight, certified front axle loaded weight, and certified rear axle loaded weight. Id.

The documentation submitted by 49er for Water Tender 058 showed the following:

<b>49er Tender 058</b>	
Manufacturer Gross Vehicle Weight Rating	46,000 pounds
Certified Gross Vehicle Weight	45,360 pounds
Manufacturer Gross Axle Weight Rating - front	12,000 pounds
Certified Gross Axle Weight - front	12,020 pounds

AR, Tab F, 49er Check Sheet, at 1-3.

Based on this documentation, the technical inspector determined that the equipment was not eligible for award because it exceeded the gross axle weight rating for the front axle by 20 pounds. AR, Tab L, Technical Review, at 1-2.

49er does not dispute that the documentation submitted with its quotation showed that the front axle of one of its tenders exceeded the manufacturer’s weight rating by 20 pounds. Protest at 1. The protester contends, however, that the agency unreasonably determined that its tender was not eligible for award based on an unreasonable interpretation of the solicitation. In the protester’s view, the RFQ permitted the gross axle weight for a tender to exceed the manufacturer’s weight rating, as long as the gross vehicle weight for the tender did not also exceed the manufacturer’s gross vehicle weight rating.

In support of this interpretation, the protester points to the following sentence in the RFQ: “No . . . water tender shall exceed the manufacturer’s Gross Vehicle Weight Rating (GVWR) or Gross Axle Weight Rating (GAWR) per axle when the vehicle is fully loaded and equipped.” RFQ at 20 (emphasis added). The protester argues that by using the word “or” in articulating the requirement, the RFQ intended that vendors could provide a water tender that met either of the requirements listed. The protester contends that the agency’s determination that its water tender was ineligible for award was based on an unreasonable interpretation of the RFQ that the solicitation required

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the requirements of the instant RFQ or that the agency’s evaluation was otherwise unreasonable. On this record, we find no basis to sustain the protest.

both the gross vehicle weight and the gross axle weight not to exceed the manufacturer's weight rating.

The Forest Service disagrees with the protester's interpretation of this RFQ provision, and contends the solicitation unambiguously required that the equipment must not exceed the weight rating for both gross vehicle weight and gross axle weight. As a result, the agency contends that the protester's interpretation is unreasonable because it ignores the plain language of the solicitation.

Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. Alluviam LLC, B-297280, Dec. 15, 2005, 2005 CPD ¶ 223 at 2.

We conclude that the agency's interpretation of the RFQ was reasonable. As noted above, the RFQ provided that "[n]o engine or water tender shall exceed the manufacturer's Gross Vehicle Weight Rating (GVWR) or Gross Axle Weight Rating (GAWR) per axle when the vehicle is fully loaded and equipped." RFQ at 20. We read this provision as unequivocally requiring vendors to provide equipment that does not exceed the weight rating for both the gross vehicle weight and the gross axle weight. The agency's interpretation is further supported by the fact that the RFQ's check sheet required that vendors provide, as noted above, weight receipts from a certified scale for both the gross vehicle weight and gross axle loaded weight. Id. There is simply no support in the text of the requirement for the protester's interpretation that its equipment needed to meet only one of the listed manufacturer's weight requirements. On this record, we conclude that the Forest Service's interpretation of the RFQ's requirements was reasonable.

The protester next argues that it was unreasonable for the agency to determine that its tender was ineligible for award because the agency should have applied a "measurement variation factor" for the type of scale used.

In support of this position, the protester points to a provision in a prior solicitation for this equipment that provided for a "measurement variation factor."<sup>3</sup> Protest at 1; Comments, attach. 5, 2010 Forest Service RFQ, at 1-8. The protester also points to California highway patrol regulations, which the protester contends, set forth the tolerances allowed for vehicle scales in California. The protester essentially contends that, had the agency considered the appropriate "measurement variation factor," for the scale here, its tender would not have been found overweight.

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<sup>3</sup> The prior solicitation provided that "a 2% variance will be allowed . . . for portable scales," but that "[t]his applies to validation of total GVWR and GAWR only." Comments, attach. 5, 2010 Forest Service RFQ, at 1.

The Forest Service asserts that the RFQ's weight requirements did not include an allowance for scale tolerances. AR at 3. The agency further argues that none of the documents relied on by the protester provides a basis for interpreting the solicitation as permitting vendors to satisfy the RFQ's weight requirements by demonstrating the allowable tolerance for the scales used to weigh the equipment. In this regard, the agency maintains that the protester's argument is an untimely challenge to the terms of the solicitation. For the reasons discussed below, we agree.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. These rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Verizon Wireless, B-406854, B-406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 4. 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 or quotations be filed before that time. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1).

As relevant here, the RFQ clearly required that vendors submit documentation, by the due date for receipt of quotations, demonstrating that their proposed equipment did not exceed the manufacturer's weight rating fully loaded. RFQ at 4. The RFQ's check sheets also required that vendors include weight slips from a certified scale setting forth the following weights: certified gross vehicle weight, certified front axle loaded weight, and certified rear axle loaded weight. AR, Tab D, RFQ Water Handling Check Sheet, at 1-2. The check sheet also notified vendors that there would "NOT be an opportunity to make corrections/updates to the technical proposal (documentation)" after the due date for quotations. Id. at 2.

Although the protester points to a prior solicitation and California regulations, which both discuss tolerance for scales, there is nothing in the instant solicitation, nor does the protester cite to anything in the instant RFQ, that indicates that the required weight requirements would include allowable error or tolerance for the accuracy of the scales.<sup>4</sup> To the extent the protester believed the solicitation should have included such a provision or requirement, this argument is untimely because it was not raised prior to the time for submission of proposals. 4 C.F.R. § 21.2(a)(1). Accordingly, this protest ground is dismissed.

The protest is denied in part and dismissed in part.

Thomas H. Armstrong  
General Counsel

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<sup>4</sup> Even if the solicitation had permitted vendors to demonstrate compliance with the weight requirement based on the allowable error of scales, 49er's quotation package did not include any such documentation. AR at 4; AR, Tab F, 49er Quotation, at 1-2.