



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Crew Training International, Inc.

File: B-414126

Date: February 7, 2017

Sarah Bryan, Esq., for the protester.
Alexis J. Bernstein, Esq., and Christopher S. Cole, Esq., Department of the Air Force, for the agency.
Noah B. Bleicher, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest alleging that a solicitation contained a latent ambiguity is denied where the protester's interpretation of the solicitation language is not reasonable when the solicitation is read as a whole.

DECISION

Crew Training International, Inc., (CTI) of Memphis, Tennessee, protests its exclusion from the competitive range pursuant to request for proposals (RFP) No. FA3002-16-R-0014, which was issued by the Department of the Air Force for prequalification flight training of international military students. CTI maintains that an ambiguity in the solicitation prevented the firm from properly pricing its proposal.

We deny the protest.

BACKGROUND

The solicitation, issued on February 23, 2016, pursuant to Federal Acquisition Regulation (FAR) parts 12 and 13, contemplated the award of a single indefinite-delivery, indefinite-quantity (IDIQ) contract for prequalification flight training for international military students. RFP at 1, 3, 59, 116.¹ Orders for the

¹ The agency issued several amendments to the solicitation. Citations herein to the solicitation are to a conformed version of the RFP.

aviation courses would be issued on a fixed-price basis during a 5-year ordering period. Id. at 7-42, 61. The RFP provided that award would be made to the firm that submitted the lowest-priced, technically acceptable offer with acceptable past performance.² Id. at 116.

The solicitation sought four different types of basic aviation courses--private pilot, instrument rating, multi-engine pilot, and multi-engine turbo prop--as well as logistical support such as lodging and transportation. Id. at 7-36; Performance Work Statement (PWS) ¶¶ 1.3.2, 1.3.3, 3. The RFP laid out the various contract requirements, including the different aviation courses, as separate contract line item numbers (CLINs). Each CLIN stated a "MAX QUANTITY" and offerors were to provide a unit price; the CLINs explained that the "[p]rice is per student." RFP at 7-36. For example, CLINs 0001, 1001, 2001, 3001, and 4001 were for the private pilot course (for different 12-month periods of performance) with maximum quantities of eight, seven, seven, six, and six, respectively. Id. at 7, 13, 19, 25, 31. The three other courses were delineated in a similar CLIN structure, with CLINs X002 being for the instrument rating course, X003 for the multi-engine pilot course, and X004 for the turbo prop aircraft course; maximum quantities were always six, seven, or eight.³ See id. at 7-32.

The agency published questions and answers regarding the procurement.⁴ In response to a question about the projected number of students that would participate in each course, the agency answered as follows: "Anticipated student load is 6-8 students per course per year. . . . The number of courses per year will vary based upon when the Government request[s] training for a student or students." Agency Report (AR), Tab 14, Industry Question and Answers (Q&As), at 2 (Question 15); see also id. at 3 (Question 20) (also advising that the anticipated student load was six to eight students). In two additional questions, the agency was asked to clarify whether the quantities in CLINs 0001-0004 represented classes or individual students. Id. at 6 (Questions 56 and 57). The agency responded that the numbers represented "individual students" and that the numbers were "[p]er [s]tudent per [c]ourse." Id.; see also id. at 4 (Question 34) (confirming that the

² The RFP contained five technical subfactors: Federal Aviation Administration certified courses and facilities; certified flight instructors; student management approach; safety management program; and small business subcontracting plan. RFP at 117. A proposal had to be rated as acceptable under each subfactor to be eligible for contract award. Id.

³ "X" designates a numerical variable.

⁴ The questions and answers were posted to the Federal Business Opportunities website when the agency issued RFP amendments 4 and 7. See RFP amend. 0004, at 25; amend. 0007, at 43, 45.

CLINs for the turbo prop course were always for six students, i.e., the quantity six represented the number of students).

The agency received proposals from eight offerors, including CTI, prior to the July 12 submission deadline. Contracting Officer's Statement (COS) at 7, 10. CTI's \$4,414,327 proposal--the sixth lowest-priced proposal--initially was rated technically unacceptable. Id. at 10. The two lowest-priced offers were rated technically acceptable with acceptable past performance, but the agency had concerns regarding unbalanced pricing with the lowest-priced offer. Id. at 9. Therefore, the agency established a competitive range comprised of the firms providing the two lowest-priced, technically acceptable offers that were the "most competitive for award" and entered into discussions with these firms.⁵ Id.

Subsequent to establishing a competitive range, the Air Force informed CTI that its proposal was evaluated as technically unacceptable. AR, Tab 3a, CTI Notification Letter, at 2. CTI thereafter filed an agency-level protest with the contracting officer. AR, Tab 3c, CTI Agency Protest, at 1-6. In response, the agency reevaluated CTI's proposal and agreed with CTI that its proposal was technically acceptable. AR, Tab 3d, Air Force Protest Decision, at 1. However, the Air Force advised CTI that the agency received multiple lower-priced and technically acceptable offers, and that despite being technically acceptable, CTI's proposal was "still not considered 'most competitive for award' based on its relatively high price." Id. at 2. Following the decision on its agency-level protest, CTI protested to our Office.

DISCUSSION

CTI maintains that the solicitation contained a latent ambiguity that prevented it from intelligently pricing its proposal. Specifically, CTI interpreted the CLIN structure such that the maximum quantity for each course referred to the number of courses to be provided under the CLIN, rather than the number of students in each course.⁶ For example, where CLIN 0001 (private pilot course) provided for a maximum quantity of eight, CTI interpreted this to mean eight courses with six to eight students in each course.⁷ See Comments at 3.

⁵ The RFP provided that the agency could enter into discussions if it was in the best interest of the government to do so. RFP at 116. A third, technically acceptable offer that was lower-priced than CTI was not included in the competitive range. COS at 13.

⁶ CTI asserts that it only became aware of the alleged ambiguity through the course of the protest. Comments at 5.

⁷ In its initial protest, CTI raised other arguments, as well as variations of its contention that the solicitation was ambiguous. For example, CTI broadly complained that the solicitation lacked sufficient information for offerors to compete
(continued...)

The Air Force maintains that the solicitation was clear because the question and answers advise that the solicitation contemplated courses of either six, seven, or eight students. The agency also argues that the CLIN structure clearly reflected the number of students in each course. Memorandum of Law (MOL) at 8-9.

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. An ambiguity exists where two or more reasonable interpretations of the terms or specifications of the solicitation are possible. Colt Def., LLC, B-406696, July 24, 2012, 2012 CPD ¶ 302 at 8. A patent ambiguity exists where the solicitation contains an obvious, gross, or glaring error, while a latent ambiguity is more subtle. Id.

Here, we disagree with CTI's assertion that the solicitation was ambiguous. In our view, the solicitation language, read as whole including the agency's questions and answers, does not support CTI's interpretation that the CLIN quantities represented the number of courses rather than the number of students in the course. In this regard, through the questions and answers, the agency confirmed that the expected student load for each course was six to eight students per year. See AR, Tab 14, Industry Q&As, at 2-3. Consistent with this expectation, the solicitation identified CLINs for each type of class with quantities of six, seven, or eight, and explained the unit price to be proposed was per student. See RFP at 7-36. Significantly, in the questions and answers, the agency further clarified that the quantities provided in the CLINs "represent individual students." AR, Tab 14, Industry Q&As, at 6 (Question 56).

Thus, the record is clear that the solicitation's CLIN structure anticipated unit prices, on a per student basis, for four different types of aviation courses where the classes included no more than six, seven, or eight students. The questions and answers further confirm that the number of courses to be provided each year was unknown and would vary, whereas the number of students in each class would always be six,

(...continued)

intelligently. The protester also raised aspects of its agency-level protest that the agency had resolved in CTI's favor. See Protest at 5. In its comments on the agency's report, however, the protester did not further address these issues. Consequently, we consider these arguments to have been abandoned and do not address them further. See Dellew Corp., B-410216, Nov. 13, 2014, 2014 CPD ¶ 339 at 5 n.5.

seven, or eight students.⁸ CTI's interpretation that the stated quantities were the number of courses the contractor would provide under the CLIN simply cannot withstand scrutiny given the agency's express answers to the contrary in the solicitation questions and answers.⁹

Moreover, CTI's interpretation reflects a misunderstanding of the nature of this IDIQ procurement. The solicitation contemplated that the agency would issue an order for a specific CLIN (or CLINs), most of which represented a particular course for a specific number of students. For example, a task order for CLIN 0001 anticipated a private pilot course--performed in accordance with the PWS and course syllabus--for up to eight students. Under CTI's theory, the CLIN 0001 order would actually be for eight courses for between 6 and 8 students. As explained above, such an interpretation runs counter to the CLIN structure where the unit price was the price for each student to take the class, and the questions and answers confirmed that the quantity (i.e., the number of units) represented the number of students in each class.

In sum, we do not agree that these solicitation terms are susceptible to two different reasonable meanings. We find no ambiguity here.

The protest is denied.

Susan A. Poling
General Counsel

⁸ We note that such an approach is consistent with the use of an IDIQ contract where the precise quantities of supplies or services that the government will require--here, the number of courses per year--are unknown. See FAR § 16.501-2(a).

⁹ In the alternative, if we were to accept as reasonable CTI's interpretation that the CLINs were for six, seven, or eight courses, the interpretation would be in direct conflict with the information provided in the questions and answers, such that the disconnect would represent a patent ambiguity. A patent ambiguity must be protested prior to the closing date for the submission of proposals to be considered timely. 4 C.F.R. § 21.2(a)(1); The AEGIS Techs. Group, Inc.; Wingbrace LLC, B-412884, et al., June 28, 2016, 2016 CPD ¶ 175 at 9.