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# Decision

**Matter of:** FI Consulting, Inc.

**File:** B-423274

**Date:** April 11, 2025

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## DIGEST

1. Protest alleging that the solicitation contained a latent ambiguity is denied where the protester's interpretation of the relevant solicitation language is not reasonable.
  2. Protest alleging that the agency should have waived the protester's quotation error as a minor informality is dismissed where the agency was not required to waive minor informalities under Federal Acquisition Regulation subpart 8.4.
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## DECISION

FI Consulting, Inc. (FIC), a small business of Arlington, Virginia, protests the elimination of its quotation under request for quotations (RFQ) No. 12SAD225Q0001, issued by the Department of Agriculture (USDA) for program support to various USDA missions, including farm production and conservation. The protester argues that the agency improperly eliminated its quotation based on ambiguous solicitation formatting instructions and in the alternative, the agency should have waived the protester's failure to follow solicitation instructions as a minor informality.

We deny the protest in part and dismiss it in part.

## BACKGROUND

On October 15, 2024, USDA issued the RFQ through the General Services Administration's electronic system, eBuy, as a small business set-aside pursuant to the federal supply schedule procedures of Federal Acquisition Regulation (FAR) subpart 8.4. Agency Report (AR), Edh. 4.1, RFQ at 47-48; AR, Exh. 3, Determination of

Compliance Review at 1.<sup>1</sup> The solicitation contemplated the establishment of a multiple award, blanket purchase agreement (BPA) for a 5-year period of performance. AR, Exh. 6.1, RFQ amend. 0002 at 1; RFQ at 48.

The RFQ advised that USDA would establish up to seven BPAs with award to be made on a best-value tradeoff basis. RFQ at 63. The following factors would be used to evaluate quotations: past performance, technical approach, and price. *Id.* Past performance was to be rated acceptable or unacceptable; a vendor had to receive an acceptable rating under this factor to be eligible for award. *Id.* The technical approach factor had two subfactors, project and portfolio management, and organizational conflicts of interest. *Id.* at 65. Each subfactor would receive a combined technical and risk rating. *Id.* The solicitation explained that these two subfactors were of equal importance, and when combined were more important than price. *Id.* at 63.

Relevant here, under the general instructions for quotations, the RFQ provided:

The [vendor]'s quot[ation] represents the quality of the performance the Government can expect in the performance of work under this BPA. Therefore, the [vendor]'s ability to present a quality quot[ation], free of spelling and grammatical errors is a reflection of the quality of work the Government will expect from awardees. The [vendor]'s ability to follow the instructions contained herein is a demonstration of the [vendor]'s ability to follow instructions in general, which is paramount to acceptable performance.

The [vendor]'s attention to detail is important to the Government as a significant amount of work under the attached PWS [performance work statement] will require the [vendor] to follow detailed instructions, including quality control. **If a [vendor]'s quot[ation] has errors attributed to not following the directions contained herein, the [vendor]'s quot[ation] shall be ineligible for award.**

*Id.* at 47.

The RFQ included specific instructions regarding quotation formatting. As relevant to this protest, the solicitation stated that in the quotations, “[i]llustrations may be placed as an imbedded picture, as long as the picture does not contain text.” *Id.* at 51. The RFQ also invited potential vendors to ask questions. One vendor asked the agency to confirm that the instructions regarding illustrations and pictures without text “does not pertain to the cover page” because “[c]over pages typically contain branding elements for companies including different fonts and pictures which may have text (e.g., logos).” AR, Exh. 6.5, Questions and Answers (Q&A) at 9. In response, the agency stated: “Do not include branding information as a picture if it includes text. Instead include your company information in accordance with the solicitation instructions.” *Id.*

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<sup>1</sup> Citations to the record reference the Adobe PDF document page numbers.

The solicitation also repeatedly warned vendors of the importance of following the formatting instructions and that failure to do so would result in elimination of the quotation from the competition. For example, the solicitation stated:

[Vendor]s that do not comply with the detailed instructions for the format and content of the quotation will be considered non-responsive or deficient and will be considered ineligible for award.

\* \* \* \* \*

A quote will be deemed unacceptable if it does not . . . comply with the quotation preparation instructions of this solicitation.

RFQ. at 51, 64.

The solicitation defined deficiency, and again warned vendors of the failure to follow instructions, as follows:

A deficiency is a material failure of a quotation to meet a requirement of the Request for Quotation. A deficiency is also called noncompliant or unacceptable within this solicitation. No award will be made to a [ ] [vendor] whose quotation is determined to have a deficiency. **[Vendor]s are cautioned to ensure all the solicitation requirements are met. [Vendor]s are cautioned to pay attention to the details of this solicitation, as a [ ] [Vendor]’s ability to follow explicit instructions is critical to the performance of the resulting orders from this award.**

A quotation will be eliminated from further consideration before complete evaluation if the quotation is deficient. . . .”

\* \* \* \* \*

A failure to provide the information called for . . . or a failure to provide the information in the format with the content as prescribed will be considered a deficiency. . . . The evaluation of a[n] [Vendor]’s quotation will end upon a determination that the [Vendor]’s quotation has a deficiency.

*Id.* at 63-64.

The agency received 48 quotations. AR, Exh. 3, Determination of Compliance Review at 1. On December 30, 2024, after the agency completed contract compliance reviews to determine whether quotations were “compliant with the criteria and instructions of the RFQ,” unsuccessful notices were sent to vendors whose quotations were determined deficient and removed from further consideration for BPA award. Memorandum of Law (MOL) at 2; AR, Exh. 3, Determination of Compliance Review at 5; AR, Exh. 10.2, Notice of Elimination.

As part of its submission, FIC's quotation included its corporate logo on the cover page of each of its quotation volumes. Protest at 3. The corporate logo was a picture that spelled out "FI CONSULTING." *Id.* After the initial compliance review of FIC's quotation, the agency determined that the quotation failed to comply with the RFQ's formatting instructions because FIC's "cover pages contain images with text (Branding Images)." AR, Exh. 10.2, Notice of Elimination. The use of pictures with text was not permissible under the RFQ's instructions. RFQ at 51. Upon notification of its elimination, FIC filed this protest on January 9, 2025.

## DISCUSSION

FIC asserts that the agency improperly excluded its quotation due to a latent ambiguity in the solicitation's formatting instructions that prohibited the inclusion of text with pictures. Protest at 4; Comments at 1. The protester alleges that a reasonable interpretation of the formatting instructions is that the prohibition did not apply to company logos. Protest at 5. In the alternative, protester argues that the agency was required under FAR section 14.405 to waive the error as a minor informality. *Id.* at 6. For the reasons explained below, we find that the solicitation was not ambiguous and the agency reasonably eliminated the protester's quotation in accordance with the solicitation's instructions.

### Quotation Formatting Requirements

The protester does not dispute that its quotation included its corporate logo, which was a picture with text, but rather alleges that the solicitation instructions for pictures were latently ambiguous. Comments at 1. Specifically, FIC explains that the formatting instructions that prohibit pictures with text did not apply to company logos because inclusion of its company name does not include text intended for "[a]gency review as part of its evaluation" of FIC's quotation. Protest at 5; Comments at 1. In this regard, the protester explains that the solicitation instructions regarding "text" in pictures are included with instructions for "page margins, font size, and line spacing." Protest at 4. The protester argues that the agency's intent was that vendors not use "illustrations" or "pictures" with text to "circumvent the [s]olicitation's instructions regarding margins, font size and line spacing." Protest at 4; Comments at 2. FIC contends that its interpretation of the formatting instructions should be accepted as "reasonable." Protest at 5.

The agency contends it properly eliminated FIC's quotation because the protester included a picture with text on the cover page in "all four volumes" and thus "ignored the solicitation requirement" and the agency response as part of the Q&A process.<sup>2</sup> Contracting Officer's Statement (COS) at 4, AR, Exh. 6.5, Q&A. The agency maintains that the protester's "interpretation fails because based on the plain language of the RFQ

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<sup>2</sup> The vendor Q&As were incorporated in the solicitation by amendment to ensure that solicitation "requirements were clear and that any ambiguities were resolved." COS at 4; AR, Exh. 6.1, RFQ. amend. 0002.

instructions, as well as the agency response to the Q&A, it was not reasonable for FIC to assume that the RFQ requirements regarding text in images did not apply to an [vendor]’s logo or that the RFQ requirement did not apply to cover pages.” MOL at 3.

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. *Bastion Techs., Inc.*, B-418432, May 5, 2020, 2020 CPD ¶ 163 at 5. An ambiguity exists where two or more reasonable interpretations of the terms or specifications of the solicitation are possible. *The HP Grp., LLC*, B-415285, Dec. 14, 2017, 2017 CPD ¶ 385 at 5. A patent ambiguity exists where the solicitation contains an obvious, gross, or glaring error, while a latent ambiguity is more subtle. *Id.* Where there is a latent ambiguity, both parties’ interpretations of the provision may be reasonable, and the appropriate course of action is to clarify the requirement and afford offerors an opportunity to submit proposals based on the clarified requirement. *Qwest Gov’t Servs., Inc. d/b/a CenturyLink QGS*, B-419597, B-419597.2, May 24, 2021, 2021 CPD ¶ 217 at 5 n.7.

As explained above, the RFQ addressed formatting instructions for pictures, specifically stating that “. . . **Illustrations may be placed as an imbedded picture, as long as the picture does not contain text.**” RFQ at 51. Moreover, the agency clarified formatting requirements for pictures. In response to a vendor’s question regarding whether it was permissible to include company logos on quotation cover pages, the agency explained, “[d]o not include branding information as a picture if it includes text. Instead include your company information in accordance with the solicitation instructions.” COS at 4; AR, Exh. 6.5, Q&A at 9. Stated otherwise, the solicitation instructions and agency response to the question both cautioned that pictures should not contain text.

On this record, the solicitation does not contain a latent ambiguity as alleged by the protester. FIC’s interpretation that company logos including text were exempt from the picture formatting requirements is incompatible with the solicitation instructions. The protester’s interpretation ignores the solicitation language, highlighted in bold font, that explained that pictures should not contain text. RFQ at 51. To the extent this language did not make the agency’s requirements plain, the agency’s response, during the Q&A process, that “branding information” should not include text if provided as a picture, foreclosed the protester’s alternative interpretation. AR, Exh. 6.5, Q&A at 9. On these facts, we conclude that the protester’s interpretation of the solicitation was not reasonable and that, therefore, no ambiguity exists.

Moreover, as explained above, the RFQ included several sections which emphasized that failure to follow the detailed solicitation instructions would be considered a “deficiency,” which mandated elimination from competition. See RFQ at 47, 63. In response to the protest, the agency explains that these instructions were intentionally included in bold font to draw attention to these requirements. COS at 4. In this regard, the contracting officer states that the solicitation “was designed to select only those

contractors capable of following detailed instructions” and that the RFQ “states the importance of a [vendor’s] ability to follow detailed instructions.” For these reasons, the agency explains that the instructions used words such as “must” and “shall” instead of discretionary terms such as “may” which was an “intentional and deliberate deviation” from previous solicitations that was “made to emphasize the criticality of the [vendor’s] ability to follow directions.” *Id.* at 2.

On this record, we find FIC’s interpretation of the RFQ to be unreasonable, and the agency’s elimination of FIC’s quotation to be reasonable and consistent with the solicitation. Consequently, this protest ground is denied.

#### Waiver of Minor Informalities

In the alternative, the protester argues that the agency should have waived FIC’s failure to follow solicitation instructions as a minor informality under FAR section 14.405. Protest at 6. The protester argues that including its company logo on the quotation cover pages did not permit FIC to have more space for quotation content than other vendors. *Id.* Furthermore, the “deviation” was “minor and immaterial,” and inclusion of its quotation only serves to benefit the agency with increased competition. *Id.*

In response, the agency argues that the “ability or inability to conform to the easy and clearly stated RFQ instruction is a material component of the RFQ to [en]sure that the [vendors] that received the award can deliver the quality of work that is expected under this BPA.” MOL at 4-5. Furthermore, the agency asserts that waiver of FIC’s error is contradictory to the RFQ’s purpose and unfair to vendors who followed solicitation instructions. *Id.* at 5.

The protester has failed to allege a cognizable basis of protest because the protester’s reliance on FAR section 14.405 is misplaced.<sup>3</sup> Section 14.405 of the FAR applies to sealed bidding procedures under FAR part 14 and therefore is not applicable to the federal supply schedule procedures used here under FAR subpart 8.4. As such, the protester’s contention that the agency was required to ignore or waive the minor and immaterial errors fails to state adequate legal grounds of protest. 4 C.F.R. § 21.5(f); *see Inalab Consulting, Inc.*, B-418950, Oct. 9, 2020, 2020 CPD ¶ 327 at 6 (finding that the decision to waive a solicitation requirement, even when permissible, is a

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<sup>3</sup> Our Bid Protest Regulations, 4 C.F.R. §§ 21.1(c)(4) and (f), require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. *Midwest Tube Fabricators, Inc.*, B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3.

discretionary action; an agency is not required to waive a solicitation requirement). Accordingly, this protest ground is dismissed.

The protest is denied in part and dismissed in part.

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General Counsel