



Decision

Matter of: DocMagic, Inc.

File: B-415702; B-415702.2

Date: February 16, 2018

Dominic Iannitti and Melanie Feliciano, for the protester.
Rand L. Allen, Esq., Brian G. Walsh, Esq., Cara L. Lasley, Esq., and Lindy Bathurst, Esq., Wiley Rein LLP, for the intervenor.
Virginia Ackerman, Esq., and Mark Beaudette, Esq., Consumer Financial Protection Bureau, for the agency.
Stephanie B. Magnell, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the solicitation contained a latent ambiguity or that the solicitation did not reflect the agency's needs is denied, where the contemporaneous record does not reflect that the agency's interpretation of the solicitation prior to the protest differed from the protester's interpretation, and there is no evidence the protester was prejudiced.

DECISION

DocMagic Inc., of Torrance, California, protests the award of a contract to LogicEase Solutions, Inc. (LogicEase), of Burlingame, California, by the Consumer Financial Protection Bureau (CFPB) under request for proposals (RFP) No. CFP-17-R-00017, which was issued for mortgage loan compliance analysis software licenses. The protester alleges that the solicitation did not reflect the agency's actual needs or, in the alternative, contained a latent ambiguity regarding the scope of services sought.

We deny the protest.

BACKGROUND

On August 30, 2017, the CFPB issued the RFP under the commercial acquisition procedures of Federal Acquisition Regulation (FAR) subpart 12.6. RFP at 3¹; Contracting Officer's Statement (COS) ¶ 8. The final solicitation anticipated award of a fixed-price contract with a 1-year base period and four 1-year option periods to the responsible offeror submitting the lowest-priced, technically-acceptable proposal. RFP at 3, 11-12. The RFP provided for a technical evaluation, starting with the lowest-priced proposal. Id. at 12. The technical evaluation consisted of a proposal review and, if the proposal was technically acceptable, a live web-based demonstration of the software. Id. at 13. A proposal found to be technically unacceptable at either the review or demonstration stage would be disqualified, and the evaluation would continue with the next highest-priced proposal. Id. at 12-13.

On September 8, the agency amended the solicitation to respond to industry questions and update various security provisions. RFP at 1; COS ¶ 10; AR, Tab 5B, Questions and Answers (Q&As). As relevant here, with regard to whether the agency wanted offerors to propose a solution where the offeror hosted the software application, the Q&As included the following exchange:

[Q:] Can the CFPB confirm that the Compliance Analysis Tool servers (web servers, application servers, databases, and other servers), can be hosted in the respondents' data centers or servers in Amazon Web Service (AWS)?

[A:] CFPB is seeking a[n] SAAS [software-as-a-service] or hosted solution.

AR, Tab 5B, Q&A #14 (emphasis removed).

CFPB received four proposals by the September 20, due date. COS ¶ 11. LogicEase proposed a total price of \$400,711, and DocMagic proposed a total price of \$5,947,000. Id. ¶ 15. Because LogicEase submitted the lowest price, its proposal was the first evaluated for technical acceptability. Id. ¶ 16. The technical evaluation team concluded that LogicEase's written proposal was technically acceptable and proceeded with a live demonstration evaluation on October 4. Id.; id. ¶ 17.

On October 19, without conducting discussions, the agency made award to LogicEase. Id. ¶ 19. Unsuccessful offerors were notified on November 6. AR, Tab 11, Unsuccessful Offeror Notice. DocMagic then requested a debriefing, which the contracting officer declined to provide. COS ¶ 20. This protest followed.

¹ Citations to the RFP are to the conformed copy attached to amendment 0001 provided at tab 5A of the agency report (AR).

DISCUSSION

DocMagic alleges that either the solicitation did not reflect the agency's actual needs or contained a latent ambiguity. Protester Comments & Supp. Protest at 7-8. In this regard, the protester identifies a conflict between the solicitation's requirement for a hosted solution and the contracting officer's representation during this protest that the agency did not seek a hosted solution. Compare AR, Tab 5B, Q&A #14 with COS ¶ 2 ("CFPB will host the [software] application."). DocMagic claims that, had it known that the CFPB did not require application hosting, it would have proposed a lower-priced solution that did not include the costs of hosting. Protester Comments & Supp. Protest at 5. CFPB argues that there is no contemporaneous evidence of any ambiguity and that the solicitation accurately reflected the agency's needs. Supp. Memorandum of Law (MOL) at 4-5. The agency also implies that, even if the solicitation contained a latent ambiguity, the protester cannot demonstrate that it was prejudiced because the awardee proposed a hosted solution.² Id. at 5.

As a general rule, an agency must provide offerors with a sufficiently detailed solicitation that enables them to compete intelligently and on a relatively equal basis.

CWTSatoTravel, B-404479.2, Apr. 22, 2011, 2011 CPD ¶ 87 at 12. 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. Where there is a latent ambiguity, both parties' interpretation of the provision may be reasonable. Id.; see also SunGard Data Sys. Inc., B-410025, Oct. 10, 2014, 2014 CPD ¶ 304 at 6. A solicitation requirement is only considered ambiguous when it is susceptible to two or more reasonable interpretations. Plum Run, B-256869, July 21, 1994, 94-2 CPD ¶ 38 at 4.

² We do not address all of the protester's allegations; however, we have considered each and find no basis to sustain the protest. For example, DocMagic states that it "has reason to believe that all stated requirements [of the solicitation] were not verified via live demonstration as required by the solicitation." Protest at 2. However, the protester fails to provide a factual predicate for its allegation. Our Bid Protest regulations provide for dismissal of protest grounds that lack factual support. 4 C.F.R. §§ 21.1(c)(4), 21.5(f). DocMagic also challenges the agency's decision not to offer it a debriefing, an issue that GAO will not consider because it is a procedural matter that does not involve the validity of an award. Protest at 1; Barnesville Dev. Corp., B-400049, June 30, 2008, 2008 CPD ¶ 132 at 5. In addition, DocMagic alleges that the "solicitation requirements were intentionally vague." Protest at 3. This argument, raised after the time set for receipt of proposals, is untimely. 4 C.F.R. § 21.2(a)(1). The protester also appears to raise several unspecified allegations that the agency acted in bad faith. These assertions are not supported by convincing proof and we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Shinwha Elecs., B-290603 et al., Sept. 3, 2002, 2002 CPD ¶ 154 at 5 n.6.

The mere allegation that a solicitation is ambiguous or restrictive does not make it so. Skyline Indus., Inc., B-257340, Sept. 22, 1994, 94-2 CPD ¶ 111 at 4.

Here, the Q&As were clear that offerors were required to propose a solution that included both software application licenses and application hosting. AR, Tab 5B, Q&A #14. Despite the language in the Q&As, in the first COS in this protest, the contracting officer stated that “CFPB will host the [software] application.” COS ¶ 2. She underscored this interpretation by contrasting the current scope of work with the larger scope of work on the prior contract, where “the contractor hosted the [software] application and servers.” Id. ¶ 3. Similarly, she justified the comparatively lower value of the IGCE [independent government cost estimate] as due, in part, “to the fact that CFPB, rather than the contractor, would be hosting the [software] application and servers.” Id. ¶ 5. DocMagic argues that either the solicitation contained a latent ambiguity or that the solicitation did not reflect the agency’s actual needs. Protester’s Comments & Supp. Protest at 2-5.

We agree that the Q&As conflict with the COS as to whether the CFPB wanted offerors to host the software. However, after this conflict was identified to the CFPB, the contracting officer stated that she “was mistaken in referencing CFPB ‘hosting’ of the tool.” Supp. COS ¶ 3. Despite the contracting officer’s earlier statements, the agency later agreed with the protester that “the solicitation was clear in its requirement for a[n] SAAS or hosted solution, and [argued that] as such, there is no ambiguity in the solicitation.” Supp. MOL at 4.

A review of the contemporaneous record reveals no evidence that, at any time prior to the contracting officer’s “mistaken” statements in the COS, the parties held differing interpretations of the solicitation. We have said that an ambiguity exists where two or more reasonable interpretations of the terms or specifications of the solicitation are possible. Colt Def., LLC, supra. However, without evidence that the parties interpreted the solicitation differently, we cannot find prejudice to the protester. Noble Supply & Logistics, B-411229.3 et al., June 24, 2015, 2015 CPD ¶ 232 at 10; see also Liquidity Servs., Inc., B-409718 et al., July 23, 2014, 2014 CPD ¶ 221 at 16 (denying protest where “the record does not establish that [the agency]’s requirements are fundamentally different than the basis upon which offerors competed”). Furthermore, the contracting officer states here that “the lowest-priced, technically acceptable offeror [i.e., the awardee] did provide a[n] SaaS solution.” Supp. COS ¶ 3. In similar situations, we have found that the protester was not prejudiced. SunGuard Data Sys., Inc., supra, at 6 (no prejudice to protester regarding allegedly ambiguous provision where the protester proposed the same product as the awardee).

The protest is denied.

Thomas H. Armstrong
General Counsel