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Decision

Matter of: Magellan Federal

File: B-416254; B-416254.2

Date: June 7, 2018

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Tony A. Ross, Esq., Department of Health and Human Services, for the agency.
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DIGEST

Protest that solicitation included a latent ambiguity is denied where the protester's reading of the solicitation is not reasonable.

DECISION

Armed Forces Services Corporation d/b/a Magellan Federal, of Arlington, Virginia, protests the exclusion of its quotation under request for quotations (RFQ) No. 18-233-SOL-00040, which was issued by the Department of Health and Human Services (HHS), Program Support Center, Federal Occupational Health Services, for a blanket purchase agreement (BPA) to support the agency's Employee Assistance and Worklife Programs. Magellan Federal alleges that the exclusion of its quotation from the competition for failing to possess a current and active authority to operate (ATO) issued by a government agency was unreasonable.

We deny the protest.

BACKGROUND

HHS issued the RFQ on December 1, 2017, to holders of the General Services Administration's (GSA) Federal Supply Schedule 738 X Human Resources & Equal Employment Opportunity Services contract for a BPA to support the agency's Employee

Assistance and Worklife Programs. RFQ at 1, 95.¹ Specifically, the awardee will provide services including in-person, telephonic, videoconference, mobile apps, webinars, and on-line consultation and problem solving for a wide range of personal, wellness, and worklife concerns, as well as educational and motivational activities, referral, monitoring, and follow-up services, behavioral health consultation and coaching, crisis intervention, management consultation and support, and union briefings. Id. at 15. In providing the above-referenced services, the awardee's data system will host personally identifiable (PII) and protected health information (PHI). Because of the hosting of this sensitive information, the awardee will be required to secure a security accreditation, or an ATO, from HHS to ensure that its system complies with policies, procedures, controls, and standards of the HHS Information Security Program.² Id. at 16. The awardee will be required to promptly submit its application for an ATO from HHS as part of the transition process, and is prohibited from commencing performance until the ATO is approved. Id.

The RFQ contemplated the award of a single BPA, with the potential for fixed-price and time-and-materials/labor hour type orders, with a not-to-exceed ceiling of \$112 million, and a 1-year base period of performance and four, 1-year options. Id. at 2-3, 78. The RFP contemplated a two-phase evaluation process; only Phase I is relevant to the issues in this protest.

In Phase I, vendors were required to submit documentation demonstrating that the vendor and its proposed subcontractors "have achieved and maintain a current and active ATO with a federal agency." Id. at 96. Specifically, separate from the ATO that will need to be secured from HHS, the RFQ required vendors to provide documentation to demonstrate that it "has an active ATO" with a federal agency, including "an active ATO Certificate." Id. at 97. The RFQ further clarified that if the vendor proposed any subcontractor or teaming partner that will collect and maintain government data, then each subcontractor or teaming partner would also need to submit the required Phase I data. Id. The RFQ provided that the Phase I quotations would be evaluated on a pass/fail basis to determine whether the vendor (and any subcontractors or teaming partners) "currently have an active, certified ATO with a federal agency." Id. at 103.

¹ The RFQ was subsequently amended four times. References herein are to the RFQ as amended.

² An ATO is the official management decision given by a senior organizational official to authorize operation of an information system and to explicitly accept the risk to organizational operations (including mission, functions, image, or reputation), organizational assets, individuals, other organizations, and the nation based on the implementation of an agreed-upon set of security controls. GAO-17-156, DATA Act: OMB and Treasury Have Issued Additional Guidance and Have Improved Pilot Design but Implementation Challenges Remain (Dec. 2016), at 28 n.37 (citing the definition for ATO set forth in National Institute of Standards and Technology Special Publication 800-37).

The RFQ further provided that if a vendor failed Phase I, the agency would deem the quotation technically unacceptable and ineligible for award. Id.

Magellan Federal submitted its timely quotation on January 22, 2018. In response to the Phase I quotation requirements, the protester represented that both Magellan Federal and its proposed contract team arrangement (CTA) partner had achieved and maintain current, active ATOs with federal agencies, and included the required supporting documentation. Agency Report (AR), Tab 4A, Magellan Federal Quotation Vol. I, at x.³ With respect to Magellan Federal's ATO, the protester provided emails demonstrating that the U.S. Army Information Technology Agency had approved an ATO effective January 20, 2015, with an authorization termination date of January 19, 2018. Id.

On February 28, HHS sent a clarification request to Magellan Federal. The agency sought clarification regarding which entity or entities would own and maintain the contractor-owned, contractor-operated case management system and store PII and PHI. The clarification request further requested that the protester provide any required documentation that was required by the RFQ but not previously provided. AR, Tab 5B, Clarification With Magellan Federal, at 1. On March 2, Magellan Federal timely responded to the clarification request. The protester represented that both it and its CTA partner would own and maintain case management systems that would house PII and PHI data. Magellan Federal further represented that it was unaware of any required documentation that was not previously provided to HHS. Id. at 2.

On March 3, HHS evaluated Magellan Federal's quotation as technically unacceptable under Phase I. Specifically, the agency determined that the protester had failed to provide the required ATO certificate with a federal agency, and that the referenced ATO with the Army had expired on January 19, which was prior to Magellan Federal's quotation submission. AR, Tab 6A, Phase I Eval. Memo., at 3. On April 3, HHS notified Magellan Federal of its exclusion from the competition, and this timely protest to our Office followed.

DECISION

Magellan Federal argues that the RFQ contained a latent ambiguity with respect to when a vendor was required to demonstrate that it had an "active and current" ATO. Specifically, the protester argues that it reasonably interpreted the RFQ to require an active and current ATO with a federal agency at the time of the RFQ's issuance date. HHS challenges the protester's interpretation of the RFQ, arguing that the repeated references to an active and current ATO as a condition for being eligible for award

³ A CTA under GSA schedule contracts is a written agreement between two or more schedule holders to work together to meet an agency's requirements and to maximize a vendor's competitiveness. Veterans Healthcare Supply Solutions, Inc., B-409888, Sept. 5, 2014, 2014 CPD ¶ 269 at 4.

clearly put vendors on notice that they had to maintain the ATO as a condition of award. The agency, therefore, contends that it reasonably eliminated Magellan Federal's quotation from the competition because the protester's ATO expired three days before the protester submitted its quotation. For the reasons that follow, we find that the protester's interpretation of the RFQ is not reasonable, and therefore that interpretation fails to demonstrate the presence of any ambiguity.⁴

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. A solicitation is not ambiguous unless it is susceptible to two or more reasonable interpretations. Shertech Pharmacy Piedmont, LLC, B-413945, Nov. 7, 2016, 2016 CPD ¶ 325 at 3. Here, we find that Magellan Federal's assertion that the RFQ's requirement for an active and current ATO to be eligible for award could be satisfied by an ATO that had expired prior to quotation submission is not reasonably supported by the terms of the solicitation.

Magellan Federal's interpretation would render superfluous the RFQ's many references to a "current" and "active" ATO, and the use of the present tense. See, e.g., RFP at 96 (requiring documentation to show the vendor has "achieved and maintain[s] a current and active ATO"); id. at 97 (requiring documentation to demonstrate that the protester "has an active ATO"); id. at 103 (requiring vendors to demonstrate that "they currently have an active, certified ATO with a federal agency"). Additionally, the protester's interpretation ignores the agency's responses to vendors' questions, which repeatedly represented that an "active ATO" is required "to be considered for award." See, e.g., RFQ, amend. No. 4, Questions & Answers, at response No. 34 ("[T]he Government requires offerors have an active ATO with a federal agency in order to be considered for award."); id. at response No. 159 ("Offerors are to maintain an active ATO with a federal agency to be considered for award."). On this record, Magellan Federal's interpretation that its ATO, which expired prior to quotation submission satisfied the requirement for an "active ATO" is not reasonable, and therefore that interpretation provides no support for its contention that the solicitation contained a latent ambiguity. UnitedHealth Military

⁴ Magellan Federal raises other collateral issues. While our decision does not specifically address every argument, we have considered all of the protester's arguments and find that none provides a basis on which to sustain the protest. For example, the protester asserts that HHS unreasonably rejected the emails from the Army demonstrating the approval of its ATO submitted in lieu of a formal ATO certificate. Because we find that HHS reasonably found the protester technically unacceptable because its ATO had expired, however, we need not resolve this issue.

& Veterans Servs., LLC, B-401652.8 et al., June 14, 2011, 2012 CPD ¶ 83 at 12 n.10;
Deco Security Servs., B-294516, Nov. 1, 2004, 2004 CPD ¶ 224 at 3.

The protest is denied.

Thomas H. Armstrong
General Counsel