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# Decision

**Matter of:** Omni2Max**File:** B-419445**Date:** March 4, 2021

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**DIGEST**

Protest challenging protester's exclusion from competition is denied where the solicitation required evidence of legally enforceable agreements, and the protester did not provide such evidence.

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**DECISION**

Omni2Max, a small business of La Mesa, California, protests its exclusion from competition under solicitation No. N32205-18-R-4041 issued by the Department of the Navy, Military Sealift Command, for the charter of a vessel to support a towed array sensor system. The protester alleges that the agency unreasonably excluded its proposal from the competition for failing to demonstrate that Omni2Max possessed the requisite legal interest in the vessel it proposed, per the terms of the solicitation.

We deny the protest.

**BACKGROUND**

The agency issued the request for proposals (RFP) on June 16, 2020, seeking to charter a vessel for a period of up to four years and eleven months. Memorandum of Law (MOL) at 1. The solicitation provided that award would be made to the lowest-priced, technically acceptable offeror considering the following evaluation factors: (1) critical submission data; (2) technical; (3) past performance; and (4) price. Agency Report (AR), Tab 4, Request for Proposals (RFP) at 54. Relevant to this protest, concerning the critical submission data evaluation factor, the solicitation required offerors to certify that they: (1) owned the proposed vessel; (2) were the bareboat

charterer of the vessel; or (3) had an “irrevocable, legally enforceable right (e.g. contract or option) to purchase, bareboat charter or lease the vessel(s) proposed.” *Id.* at 51.

The solicitation further provided that if an offeror was not the owner or bareboat charterer of the vessel at the time of proposal submission, the offeror was required to provide supporting evidence concerning its legally enforceable right to purchase, bareboat charter, or lease the vessel. *Id.* Specifically, the RFP required that the provided evidence must establish: (1) the identity of the current owner; (2) the current nation of registry; (3) a description and date of the contract or option to purchase, bareboat charter or lease the vessel; and (4) the name and position of signatories to such contract or option. *Id.* The RFP explained that the agency would evaluate the critical submission data evaluation factor first, and that offerors without acceptable responses would not be further evaluated or considered for award. RFP at 54.

The protester submitted an offer in response to the solicitation, and proposed a vessel that the protester neither owned nor had chartered. MOL at 2. Rather, the protester’s proposal included two documents styled as “letters of commitment.” AR, Tab 5, Letters of Commitment at 1-2. The first letter was signed by representatives of the protester and the company that operates the vessel, and included the solicitation number and information about the owner of the vessel. With respect to the protester’s right to offer the vessel, the letter provided, in full:

Manager is authorized to offer the vessel OCEAN GUARDIAN in the above-referenced solicitation and commit to making the vessel available to charter the vessel to Omni2Max, Inc., for a minimum initial period of 365 days charter days [sic], plus 50 transit days, as well as up to three subsequent charter option periods of 365 days and one charter option period of 334 days.

*Id.* at 1.

The second letter was signed twice by a single individual both on behalf of the company that owns the vessel and on behalf of the company that operates the vessel. This letter included identical substantive language authorizing the “manager” to offer and commit the vessel to the protester. *Id.* at 2.

The agency evaluated the protester’s proposal and concluded that the letters of commitment did not provide adequate evidence that the protester had an irrevocable, legally enforceable right to purchase, bareboat charter, or lease the vessel it proposed. MOL at 2-3. Specifically, the agency concluded that the letters themselves did not constitute irrevocable, legally enforceable agreements, nor did they describe and provide the date of an underlying contract or option. *Id.*

Accordingly, the agency sent a notice of exclusion from further competition to the protester on November 20, 2020. *Id.* The protester requested and received a debriefing, and this protest followed.

## DISCUSSION

The protester contends that the agency erred in excluding its proposal from the competition because its letters of commitment addressed all of the solicitation's requirements, and were legally binding agreements. Comments at 2-4. In support of its position, the protester notes that the solicitation did not limit offerors to submitting only contracts or options. *Id.* Rather the solicitation specified that offerors must submit evidence of an irrevocable, legally enforceable right "(e.g. contract or option)." *Id.* (citing RFP at 51). The protester contends that the solicitation's use of the Latin abbreviation "e.g." for *exempli gratia* signifies that contracts or options are merely illustrative examples of acceptable documents, not an exhaustive list of acceptable documents. *Id.* Finally, the protester argues that, for prior procurements, the agency has accepted similar letters of commitment provided in response to identical solicitation language, and that the agency had established a "course of dealing" with respect to letters of commitment. *Id.* at 5-6.

When an evaluation is challenged, our Office will not reevaluate proposals but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. *Lear Siegler Servs., Inc.*, B-280834, B-280834.2, Nov. 25, 1998, 98-2 CPD ¶ 136 at 7. Furthermore, it is an offeror's responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation requirements, and an offeror risks having its proposal evaluated unfavorably where it fails to submit an adequately written proposal. See *International Med. Corps*, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 8; *STG, Inc.*, B-411415, B-411415.2, July 22, 2015, 2015 CPD ¶ 240 at 5-6.

In this case, the solicitation required evidence of an irrevocable, legally enforceable right to purchase, charter, or lease the proposed vessel. RFP at 51. As explained above, the protester's proposal included two letters of commitment that each contained only two sentences followed by signatures. AR, Tab 5, Letters of Commitment at 1-2. In both letters, the first sentence provided information about the signatories, and the second sentence of both letters was identical--authorizing an unidentified manager to offer the vessel in the solicitation and commit to making the vessel available for charter to the protester. *Id.*

The agency concluded that this language did not establish an irrevocable, legally enforceable right to purchase, charter, or lease the vessel, because it did not demonstrate key features of a legally enforceable contract or option.<sup>1</sup> MOL at 4. The

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<sup>1</sup> The agency explained it defined a contract as "[a]n agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law," and defined an option as "[a]n offer that is included in a formal or informal contract; esp., a contractual obligation to keep an offer open for a specified period, so that the offeror cannot revoke the offer during that period." MOL at 4 (citing Black's Law Dictionary, 11th ed. (2019)).

agency notes that the elements required to establish an enforceable contract or option are: (1) mutuality of intent to contract; (2) consideration; and, (3) lack of ambiguity in offer and acceptance. MOL at 4 (citing *Harvey v. United States*, 149 Fed. Cl. 751, 769 (2020); *City of Cincinnati v. United States*, 153 F.3d 1375, 1377 (Fed. Cir. 1998)). Here, the agency argues that the letters provided by the protester demonstrate neither consideration, nor a mutual intent to contract, and are therefore not enforceable agreements. *Id.* Further, the agency argues that, even were the letters enforceable agreements, they do not, by their terms, actually commit the vessel to the protester. *Id.*

We agree with the agency's analysis. First, and most significantly, the letters include no mutual obligation, or consideration--the letters impose no obligations whatsoever on the protester. See AR, Tab 5, Letters of Commitment at 1-2. Accordingly, it is not clear that the letters represent legally enforceable agreements. Second, even assuming they were enforceable, the letters are vague in several respects. For example, they do not identify the "manager" who is authorized by the letters. *Id.* While both signatories to both letters are identified in their signature blocks as managers, it is unclear which of the signatories is the manager that is authorized to offer and commit the vessel, or, indeed, if some other person is intended. *Id.* Furthermore, the letters, by their terms, only "authorize" the unidentified manager to offer and commit the vessel--the letters do not actually commit the vessel to the protester, they merely authorize the manager to do so. *Id.*

On the record before us, we see no basis to conclude that the agency erred in finding that the protester's letters do not establish an irrevocable, legally enforceable right to purchase, charter, or lease the vessel, and that the protester's proposal was unacceptable on that basis.

Turning to the protester's other arguments, Omni2Max is correct that the solicitation suggested that contracts or options were merely examples of documents establishing irrevocable, legally enforceable rights. RFP at 51. However, the protester's argument is unavailing because its letters do not actually provide evidence of an irrevocable, legally enforceable right to purchase, charter, or lease the vessel. That is to say, while it is unclear what types of documents--other than contracts or options--the solicitation contemplated as acceptable evidence of an irrevocable, legally enforceable right, the protester's letters of commitment clearly do not fall into that category for the reasons discussed above.<sup>2</sup>

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<sup>2</sup> In this connection, the protester relies on our decision in *TransAtlantic Lines, LLC*, B-401825, Nov. 23, 2009, 2009 CPD ¶ 232, but that decision is readily distinguishable from this one. In that decision, we concluded that letters of commitment were adequate to satisfy a solicitation requirement that offerors provide proof acceptable to the contracting officer that the true owner of the vessel had committed the vessel. *TransAtlantic Lines, LLC, supra* at 3. *TransAtlantic* is inapposite here because, unlike the present case, the solicitation in *TransAtlantic* did not require evidence of an

Finally, the protester's argument that the agency accepted similar letters of commitment in a prior procurement is also without merit for two reasons. First, in general, each procurement stands alone, and actions taken in a different procurement are not relevant to our consideration of the agency's actions in this procurement. See, e.g., *Genesis Design and Development, Inc.*, B-414254, Feb. 28, 2017, 2017 CPD ¶ 79 at 3 n.2. Second, even assuming, for the sake of argument, that the prior procurement is relevant to our analysis here, the protester acknowledges that it submitted an executed bareboat charter agreement in that procurement, in addition to letters of commitment.<sup>3</sup> Protester's Response to Agency's Supp. Response at 4-5. Accordingly, the protester's experience under the prior solicitation cannot give rise to a reasonable expectation that unenforceable letters of commitment, alone, would satisfy the requirement for an irrevocable, legally enforceable right in this procurement.

The protest is denied.

Thomas H. Armstrong  
General Counsel

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irrevocable, legally-enforceable right to purchase, charter, or lease the proposed vessel.  
*Id.*

<sup>3</sup> The protester makes much of the fact that the requirement to demonstrate a legally enforceable right in the prior solicitation was included in the section with instructions for offerors' business proposals, rather than, as here, in the instructions for critical submission data. Protester's Response to Agency's Supp. Response at 4-5. However, the fact that the prior solicitation was differently arranged and included slightly different requirements renders it, if anything, less relevant to the instant solicitation, not more.