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# Decision

**Matter of:** Continuity Global Solutions-SPP Security Joint Venture

**File:** B-419997

**Date:** October 12, 2021

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## DIGEST

Protest that agency improperly refused to consider the protester's proposal is dismissed where the solicitation was patently defective as to where offerors were required to submit proposals electronically and the protester failed to protest the resulting ambiguity prior to the time for receipt of proposals.

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## DECISION

Continuity Global Solutions-SPP Security Joint Venture, of Falls Church, Virginia, protests the decision of the Department of State not to consider its proposal for award under request for proposals (RFP) No. 19AQMM21R0036 for local guard services for the U.S. mission in Australia. Continuity Global contends that it submitted a timely proposal that the agency improperly declined to consider for award.

We dismiss the protest.

## BACKGROUND

The Department of State issued the RFP on December 3, 2020, seeking proposals to provide local guard services for the U.S. mission in Australia. Agency Report (AR), Tab 2, RFP at 1, 6. The solicitation, issued under Federal Acquisition Regulation (FAR) part 15, contemplated the award of an indefinite-delivery, indefinite-quantity (IDIQ) contract on a time-and-material/labor-hour basis for one base year and four 1-year option periods. *Id.* at 2, 20, 113. After the agency responded to vendor questions and issued subsequent amendments, the final due date for proposal submissions was January 10, 2021. AR, Tab 9, RFP amend. 2 at 1, 113.

The solicitation's instructions about the time and place for the submission of proposals, in its entirety, follows:

#### L.4 Time, Place, and Submission of Offer

The Offeror shall assume full and total responsibility for ensuring electronic submission via email that its offer is received by:  
January 10, 2020 - 10:00 EASTERN STANDARD TIME (SEE BLOCK 9 OF THE SF-33).

If an Offeror desires, it should contact Contract Specialist Nicholas Cloutier, at email (CloutierNS@state.gov) 48 hours in advance to notify of submission of offer.

AR, Tab 10, RFP amend. 3 at 113.<sup>1</sup> Block 9 of the standard form (SF) 33, in turn, stated as follows:

Sealed offers in original and \_\_\_\_ copies for furnishing the supplies or services in the Schedule will be received at the place specified in item 8, or if handcarried, in the depository located in \_\_\_\_ until \_\_\_\_ local time \_\_01/03/2021\_\_.

AR, Tab 2, RFP at 1. However, item 8 of the SF-33 was left blank except for the block title of "ADDRESS OFFER TO (if other than item 7)." *Id.* Item 7 of the SF-33, in turn, identified that the solicitation was "ISSUED BY" the Office of Acquisition Management and provided the mailing address for the office. *Id.*

In addition, item 10 of the SF-33, titled "FOR INFORMATION E-MAIL," provided the name, phone number, and email address of Mr. Nicholas Cloutier, the same contract specialist named in section L.4 of the RFP for advance notice of proposal submission. *Id.* at 1; see AR, Tab 10, RFP amend. 3 at 113. Item 26 of the SF-33, however, identified the "NAME OF CONTRACTING OFFICER" as Fabiola A. Bellevue, without providing any other information, such as an email address. AR, Tab 2, RFP at 1. The RFP also identified Crystal Sutliff as the primary contracting officer for the administrative contracting office. AR, Tab 10, RFP amend. 3 at 24.

The agency issued three amendments to the solicitation. None of the amendments modified section L.4 of the RFP or the form SF-33. AR, Tab 5, RFP amend. 1 at 112; Tab 9, RFP amend. 2 at 113; Tab 10, RFP amend. 3 at 113. However, in each of the three SF-30s accompanying the amendments, the "ISSUED BY" block of the form

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<sup>1</sup> The solicitation was amended three times. References to sections of the RFP will be to the final amendment number 3, provided at Tab 10 of the agency report, except when referring to the SF-33, which was included only with the RFP as initially issued, provided at Tab 2 of the agency report. See AR, Tab 10, RFP amend. 3; Tab 2, RFP at 1.

(item 6) included the name, phone number, and email address of Mr. Cloutier, in addition to the name and mailing address of the Office of Acquisition Management. AR, Tab 5, RFP amend. 1 at 1; Tab 9, RFP amend. 2 at 1; Tab 10, RFP amend. 3 at 1.

The solicitation and subsequent amendments were posted on the System for Award Management (SAM) and provided the name and email address of Mr. Cloutier as the primary--and only--point of contact for the solicitation. The posting also included the following instructions:

Offerors are requested to provide notice of their interest in the solicitation (*i.e.*, name of representative, name of firm, address) to Nicholas Cloutier at CloutierNS@state.gov[.]

AR, Tab 4, SAM Notice at 3, 5.

On January 10, the agency received two proposals, from offerors other than Continuity Global, at the email address of contract specialist Cloutier. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 3, 5. The record shows that Continuity Global also submitted its proposal to the agency on January 10, but transmitted the submittal to the email addresses of three contracting officers other than Mr. Cloutier: *i.e.*, Fabiola Bellevue, Crystal Sutliff, and a third contracting officer not identified in the RFP. AR, Tab 11, Proposal Submission Emails at 1. None of the three contracting officers who received Continuity Global's proposal opened the emails containing the protester's proposal or forwarded them to Mr. Cloutier. COS/MOL at 5-6. Consequently, according to the agency, Mr. Cloutier was not aware that Continuity Global had submitted a proposal on the date the proposals were due. *Id.* Mr. Cloutier continued to be unaware of Continuity Global's proposal submission during the evaluation period and when it awarded the resulting contract to MSS Security Pty Limited on March 26. *Id.*

On July 7, Continuity Global contacted the agency, via an email addressed to Mr. Cloutier and two other contracting officers, to inquire about the procurement. AR, Tab 20, Email Exchanges at 4. On July 12, Mr. Cloutier responded, stating that a proposal was not received from Continuity Global and that an award was made in March for this requirement. *Id.* at 1. This protest followed.

## DISCUSSION

The protester asserts that its proposal was properly and timely submitted, and the agency erred in not considering its proposal. In support of its contention, the protester argues that the RFP merely requires offerors to submit their proposals by email, without designating contract specialist Cloutier as the required email recipient. Protest at 3. The protester maintains that it met the requirement to submit its proposal "so as to reach the Government office designated in the solicitation" when it timely emailed its proposal to several contracting officers in the agency's Office of Acquisition Management. *Id.*, citing FAR 15.208(a). The protester also argues that, even if its

proposal was sent to an email address other than the one the agency had designated for receipt of proposals, the error was a minor mistake that the agency should have waived. Protest at 3-5.

In response, the agency maintains that, under the terms of the solicitation, it was not required to consider Continuity Global's proposal submission. In this regard, the agency argues that the only reasonable interpretation of the solicitation's requirement to submit proposals by email was that email transmissions must be sent to Mr. Cloutier. On this topic, the agency points out that Mr. Cloutier was the only agency representative whose email address was provided on the SF-33 and as part of the solicitation instructions on proposal submission. COS/MOL at 7-8. Therefore, the agency contends, it reasonably declined to evaluate the protester's proposal when it first learned of the proposal more than seven months past the due date for proposal submission. *Id.*

It is an offeror's responsibility to deliver its proposal to the proper place at the proper time. *Onsite OHS*, B-406449, May 30, 2012, 2012 CPD ¶ 178 at 4 (proposal properly excluded from consideration because it was not submitted through the method authorized by the solicitation). Moreover, the protester has the burden of showing that it timely delivered its proposal to the agency at the specified address. *SigNet Techs., Inc.*, B-417435, July 3, 2019, 2019 CPD ¶ 247 at 4-5.

Because the parties disagree as to whether the solicitation specified a proper place for submission of proposals, we must first turn to the language of the solicitation. As a general matter, where a dispute exists as to the meaning of a particular solicitation provision, our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of the provisions; to be reasonable, an interpretation must be consistent with such a reading. See *Crew Training Int'l, Inc.*, B-414126, Feb. 7, 2017, 2017 CPD ¶ 53 at 4.

Our review of the record shows that the solicitation was defective on its face because it failed to provide clear instructions on where to submit proposals. As noted, the solicitation instructed offerors to submit proposals by email; we disagree, however, with the agency's assertion that the solicitation's submission instructions were clear. Instead, the solicitation did not expressly state where--that is, to which email address and to which contracting officer--offerors were required to send the email submission. Tab 10, RFP amend. 3 at 113.

As discussed above, the RFP here provided the name and email address of a specific contract specialist (Mr. Cloutier) for three distinct purposes: (1) providing an advance notice of proposal submission; (2) raising "[a]ny questions, comments, exceptions, or clarifications concerning any aspect of the solicitation"; and (3) "for information." AR, Tab 2, RFP at 1; Tab 10, RFP amend. 3 at 113. There is no express mention of this contract specialist or his email address for the purpose of proposal submission. In addition, although the RFP identified two other contracting officers, neither of them was identified as the person to whom proposals should be submitted. See AR, Tab 2, RFP at 1; Tab 10, RFP amend. 3 at 24. Thus, the solicitation was defective because it failed

to specify expressly a place for submission of proposals and this defect was apparent on the face of the solicitation.

Our Bid Protest Regulations specifically require that a protest based upon improprieties in a solicitation that are apparent prior to the submission deadline for the receipt of proposals be filed before that time. 4 C.F.R. § 21.2(a)(1). One such impropriety is a patent ambiguity, which is an ambiguity in the solicitation that is an obvious, gross, or glaring error. *Sheritech Pharmacy Piedmont, LLC*, B-413945, Nov. 7, 2016, 2016 CPD ¶ 325 at 4 n.2. A latent ambiguity, by contrast, is more subtle. *Democracy Int'l, Inc.*, B-415243, B-415243.2, Dec. 13, 2017, 2018 CPD ¶ 293 at 7. An offeror has an affirmative obligation to seek clarification of a patent ambiguity prior to the due date for proposal submission. *Pitney Bowes, Inc.*, B-294868, B-294868.2, Jan. 4, 2005, 2005 CPD ¶ 10 at 5. When a patent ambiguity exists but is not challenged prior to the proposal submission deadline, we will not consider subsequent untimely arguments asserting the protester's own interpretation of the ambiguous provision. *FFLPro, LLC*, B-411427.2, Sept. 22, 2015, 2015 CPD ¶ 289 at 10.

The solicitation defect here, and thus the ambiguity that arose from the defect, was an obvious one--*i.e.*, it was apparent on the face of the solicitation. While the protester argues that it reasonably interpreted the solicitation to allow offerors to submit proposals by emailing any of the contracting officials named in the solicitation, the agency argues that the only reasonable interpretation of the solicitation was for offerors to email proposals to the only email address provided in the solicitation's instructions to offerors and the SF-33. While we conclude that the agency's interpretation of the solicitation is more reasonable than the protester's,<sup>2</sup> ultimately, the question of which interpretation was the most reasonable is not relevant to the outcome here. See *RELI Grp., Inc.*, B-412380, Jan. 28, 2016, 2016 CPD ¶ 51 at 6 ("A party's particular interpretation need not be the most reasonable to support a finding of ambiguity; rather, a party need only show that its reading of the solicitation provisions is reasonable and susceptible of the understanding it reached.").

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<sup>2</sup> We note that, even though the protester sent its submission by email to agency contracting officials other than Mr. Cloutier, the cover sheet on each of the six volumes of the protester's proposal stated that the proposals were being "[s]ubmitted to" Mr. Cloutier, and identified both his physical address and his email address. See AR, Tab 12, Protester's Proposal Vol. 1, Price, at 1; Tab 13, Protester's Proposal Vol. 1, Price Appendices, at 1; Tab 14, Protester's Proposal Vol. 2, Technical IDIQ, at 1; Tab 15, Protester's Proposal Vol. 2, Technical, Task Order 0001, at 1; Tab 16, Protester's Proposal Vol. 2, Technical, Task Order 0002, at 1; Tab 17, Protester's Proposal Vol. 2, Technical, Task Order 0003, at 1. This indicates that at least one individual involved in the preparation of this proposal for the protester interpreted the solicitation as the agency did, *i.e.*, to identify Mr. Cloutier as the agency official to whom proposals should be submitted. In addition, the cover sheets did not identify any other agency official to whom proposals were being submitted.

Because this ambiguity was patent, it should have been protested before the proposal submission date. As noted, an offeror has an affirmative obligation to seek clarification of a patent ambiguity prior to the due date for proposal submission. *Pitney Bowes, Inc., supra*. The protester cannot now, months after the date proposals were due, object to the agency's reasonable interpretation of the ambiguous solicitation provision. Because the protester did not challenge the terms of the solicitation until after award was made, this protest is untimely.

The protest is dismissed.

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General Counsel