

LATENT AMBIGUITY

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Ambiguity is an important concept in both a solicitation and in a contract. There are two types of ambiguities—patent and latent. Where an ambiguity is obvious, gross or glaring, it is considered a patent ambiguity, and must be protested (in the case of a solicitation ambiguity) before the closing date of the solicitation. Failure to do so will result in the protester receiving no relief. A similar problem applies to a patent ambiguity in a contract—if the contractor does not bring the ambiguity to the government’s attention when it first arises, the contractor is likely to get no relief. There are a large number of patent ambiguity cases in the courts and the Government Accounting Office (“GAO”), and a much smaller number of latent ambiguity cases.

A latent ambiguity is more subtle, and is not obvious, gross or glaring. In a latent ambiguity both parties’ interpretations of the provision may be reasonable. When latent ambiguity is found in a solicitation, it should be protested at the GAO prior not later than 10 days after the basis of protest is known or should have been known (whichever is earlier). When protested, the agency must clarify the solicitation or the contract.

Perimeter Security Partners, LLC, B-422666.4, March 11, 2025 is an example of a latent ambiguity. The Army Corps of Engineers issued a solicitation for preventative and corrective maintenance services at 19 Army installations. The technical approach volume stated “Technical approach shall not exceed 15 single sided pages. (Resumes, Schedules, Table of Contents, Cover Page/Letter, Cut Sheets, **Drawings, etc.** are not counted in the page count).” (emphasis supplied). The solicitation cautioned vendors that anything exceeding the 15 page count would be removed from their proposal volume and would not be evaluated.

After an initial evaluation and a GAO outcome prediction of a protest on the past performance and trade-off evaluations, the Army agree to take corrective action. In the second evaluation, Perimeter’s technical proposal was deemed unacceptable for failing to meet solicitation requirements within the 15 page limit for proposals (two deficiencies were found). Perimeter protested that it was unreasonable for the agency to remove an organizational chart and a response chart from its proposal (the two things that were outside the 15 page limit). Perimeter maintained that those items fell under the “Drawings, etc.” statement that such items would not be counted in the 15 page count. The Army Corps disagreed. Perimeter argued that “etc.” is the Latin abbreviation for “and other similar things” and the two items the Army excluded fell within the “etc.” The Army asserted that those two things represented more than drawings, and were more complex.

The GAO held that both Perimeter and the Army’s interpretations of “Drawings, etc.” were reasonable, and therefore the solicitation was ambiguous with regard to whether the organizational chart and response times chart should have been included in the 15 page count. GAO therefore sustained the protest and recommended that the Army revise the solicitation and permit revised proposals. (The GAO also noted that there had been two different groups of evaluators, and these two groups interpreted the “Etc.” provision in two different ways, reinforcing the idea that it was latently ambiguous.)

Takeaway. Every solicitation should be examined, and if necessary either clarification should be requested or a protest submitted, if it contains a patent ambiguity. Later, after proposals have

been evaluated, a latent ambiguity should be protested immediately if it arises. In either cases, protest in a timely manner.

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