

NOT A LATENT AMBIGUITY

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Readers of this blog understand that an ambiguity exists in a solicitation or a contract where there are two or more *reasonable* interpretations of the terms or specifications. There are two types of possible ambiguities: patent and latent. A patent ambiguity exists where the solicitation or contract contains an obvious, gross or glaring error. The contractor is required to raise this ambiguity with the agency when it is discovered. A latent ambiguity is more subtle, and harder to detect. Where there is a latent ambiguity, both parties' interpretation of the provision may be reasonable, and the agency must clarify the requirement. In *FI Consulting, Inc.*, B-423274, April 11, 2025, the Government Accountability Office ("GAO") considered whether or not there was a latent ambiguity in a solicitation.

The Request for Quotations ("RFQ") was for program support to various US Department of Agriculture ("USDA") missions, including farm production and conservation. FI argued that the agency improperly eliminated its quote base on ambiguous formatting instructions. The RFQ stated that following the instructions for preparation of the quote was paramount to acceptable performance. "If the vendor's quote has errors attributed to not following the directions ...the quote shall be ineligible for award." The RFQ stated that in the quotations "Illustrations may be placed as an imbedded picture, as long as the picture does not contain text." One vendor asked if cover pages were included because "cover pages typically contain branding elements for companies that may include text (e.g. logos)." The agency responded by stating "Do not include branding information as a picture if it includes text. Instead include your company information in accordance with the solicitation instructions."

As part of its quote, FI included its corporate logo on the cover page of each quotation volume. The corporate logo was a picture that spelled out "FI Consulting." The USDA's initial compliance review determined that FI's quotation failed to comply with the RFQ's formatting instructions because FI's cover pages contained "images with text (Branding Images)."

FI argued that the instructions in the RFQ were latently ambiguous stating that the formatting instructions that prohibited pictures with text did not apply to company logos because inclusion of its company name in the picture did not include text "intended for agency review as part of its evaluation of FI's quotation." The agency explained that it properly eliminated FI's quote because the plain language of the RFQ as well as the agency response to a question, made it unreasonable for FI to assume that the RFQ requirements regarding text in images did not apply to a vendor's logo or to cover pages. The GAO agreed with the agency that the RFQ did not contain a latent ambiguity, and that FI's interpretation ignored the RFQ language and was unreasonable.

FI also protested that the agency should have waived its failure to follow RFQ instructions as a minor informality under Federal Acquisition Regulation ("FAR") 14.405, but the GAO rejected this argument since this procurement was held under part FAR 8.4, and the sealed bidding procedures in FAR 14.405 did not apply here.

Takeaway. Once again, it is important to remember to follow the instructions in the Solicitation for *any procurement*. Failure to do so results in protests and significant disappointment.

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