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**Comptroller General  
of the United States**

**United States Government Accountability Office  
Washington, DC 20548**

**DOCUMENT FOR PUBLIC RELEASE**

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## Decision

**Matter of:** NCS Technologies, Inc.

**File:** B-404047; B-404047.2

**Date:** December 8, 2010

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Thomas K. David, Esq., and Kenneth D. Brody, Esq., David, Brody & Dondershine, LLP, for the protester.

Marvin K. Gibbs, Esq., Department of the Air Force, for the agency.

Linda C. Glass, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest alleging that the awardee misrepresented its authority to propose the product of a specific vendor is denied where the record shows that the awardee proposed its own equipment which was reasonably evaluated by the agency as meeting the stated requirements.

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### DECISION

NCS Technologies, Inc. (NCST), of Gainesville, Virginia, protests the award of a contract to Advance Military Technology, Inc. (AMT), of Lake Oswego, Oregon under request for quotations (RFQ) No. FA4890-10-R-5000, issued by the Department of the Air Force for fully rugged notebook convertible tablet personal computers. The protester alleges that the awardee misrepresented its ability to supply equipment manufactured by Getac, Inc.

We deny the protest.

### BACKGROUND

The RFQ was issued on July 15, 2010 as a combined synopsis/solicitation for commercial items in accordance with Federal Acquisition Regulation (FAR) subpart 12.6. The RFQ, issued as a total small business set-aside, required vendors to provide fully rugged notebook personal computers (along with related supplies and services) and listed minimum requirements for those items.

Although the RFQ required that vendors' quotations satisfy all the listed salient characteristics for the laptop computers, RFQ at 15, the RFQ did not require vendors

to submit any descriptive literature or other information to prove compliance with these requirements. The RFQ stated a requirement for new equipment; no remanufactured or “gray market” items were acceptable. Id. The RFQ provided for award to the vendor with the lowest-priced, technically acceptable quotation. Id.

Ten vendors, including NCST and AMT, submitted quotations in response to the RFQ. Only five quotations were considered technically acceptable and those quotations were ranked according to price. AMT submitted the lowest-priced quotation. AMT’s quotation included a listing of the minimum requirements and identified computers with part numbers “AMT-V10-V001” and a “Fully Rugged B300 Laptop.” Agency Report (AR), Tab 5, AMT’s Quotation, at AR0047, AR0055. AMT’s quotation also included documentation concerning certifications for Getac, Inc. model B300 laptop computers. Id. at AR0064-74.

After determining that AMT was responsible, the agency awarded the contract to AMT on September 15. On September 16, the agency conducted a telephonic debriefing with the protester. During that debriefing, the agency advised the protester that AMT had proposed Getac V100 and B300 products. Protest at 3. The protester informed the contracting officer that NCST had an exclusive agreement with Getac and that AMT would not be able to provide Getac computers. Id. at 4. In response to the protester’s concerns, on September 20, the contracting officer contacted AMT and was advised that AMT has worked with Getac since 2007 and had a written agreement with Getac since 2008 for the manufacturing of AMT’s customized laptops. AR, Tab 40, Contracting Officer’s Statement, at AR0282, at AR0245; AR, Tab 38, Declaration of AMT’s Vice President of Operations, at AR0245. AMT also provided the contracting officer with a copy of AMT’s written agreement with Getac, which specifically stated that “AMT is an authorized military reseller for Getac Rugged Portable Systems with sales emphasis in the Federal [Department of Defense] market.” AR, Tab 33, September 15, 2008 Letter from Getac to AMT.

On September 21, the contracting officer advised NCST that AMT had provided adequate proof of its ability to meet the requirements of the solicitation. NCST subsequently filed this protest with our Office on September 27, and later supplemented the protest on October 26.

## DISCUSSION

In its initial protest, the protester argues that AMT’s quotation should be rejected because AMT intentionally misrepresented its authority to supply Getac equipment. Protest at 4. In its supplemental protests, the protester contends that AMT may not be providing commercial items or new equipment. Supplemental Protest at 2.

Our Office reviews challenges to an agency’s technical evaluation to determine whether the agency acted reasonably and in accord with the solicitation’s evaluation criteria and applicable procurement statutes and regulations. Worldwide Language

Res., Inc., B-297210 et al., Nov. 28, 2005, 2005 CPD ¶ 211 at 3. In reviewing an agency's evaluation, we will not reevaluate vendors' quotations, and a protester's disagreement with the agency's evaluation is not sufficient to render the evaluation unreasonable. Advanced Tech. Sys., Inc., B-296493.5, Sept. 26, 2006, 2006 CPD ¶ 147 at 5.

With respect to its initial protest allegation that AMT misrepresented its authority to provide Getac equipment, NCST is incorrect. As explained above, the record confirms that AMT is an authorized reseller of Getac rugged portable systems. Accordingly, we find no basis to sustain this ground of protest.

NCST asserts a very different allegation in its October 26 supplemental protest. There, the protester contends for the first time that the model numbers on the AMT price list do not reflect equipment that is manufactured by Getac and that the model numbers appear to have been a "creation of AMT as they were all prefaced with "AMT." Supplemental Protest at 2. The protester questions AMT's commitment to offer commercial items as required by the solicitation as well as their ability to present only new equipment and not "gray market" products, which the protester points out are specifically prohibited under the terms of the solicitation. Id.

These supplemental protest allegations are untimely under our Bid Protest Regulations, as they were not raised within 10 days of when the basis of protest should have been known. 4 C.F.R. § 21.2(a)(2) (2010). The record shows that the agency provided to the protester, on October 12, AMT's price list and quotation. As the protester asserts, these documents reflect only AMT model numbers and not Getac model numbers.<sup>1</sup> Supplemental Protest at 2; E-Mail from NCST's Counsel to GAO, Oct. 26, 2010, at 1. That is, these documents provide the protester with all of the information necessary to form its basis of protest. However, the protester did not raise its supplemental protest until October 26, which is more than 10 days after receipt of the AMT price list and quotation. Although the protester's counsel asserts that he was unaware of the significance of the information until days later, when he conferred with Getac,<sup>2</sup> counsel's lack of understanding of the information provided

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<sup>1</sup> As noted above, however, AMT's quotation does reference a "Fully Rugged B300 Laptop," which appears to be a Getac product. See AR, Tab 5, AMT's Quotation, at AR0312, AR0064-74, AR0080.

<sup>2</sup> The protester's counsel argues that he was not able to confer with Getac earlier because of the GAO protective order, which required him to obtain agency approval before releasing the price list to Getac. E-Mail from NCST's Counsel to GAO, Oct. 26, 2010, at 1. We note, however, that counsel did not request approval to release the document until October 18 (which was 6 days later), and that request already expresses a concern that the price list may not be "valid and conforming" to Getac products. Id. In any event, Getac provided him with the "necessary clarity" to confirm his suspicions on October 20, which still gave counsel sufficient time to file

(continued...)

to him on October 12 does not toll our Office's well-settled timeliness rules.<sup>3</sup> See TeleLink Res., Inc., B-247052, Apr. 28, 1992, 92-1 CPD ¶ 400 at 5-6 (later confirmation or explanation of information provided earlier to the protester does extend date for filing protest).

The protest is denied.

Lynn H. Gibson  
Acting General Counsel

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(...continued)

a supplemental protest on October 22. Id. We also note that the information provided to counsel by Getac on October 20 appears to be based on publicly available information. See Supplemental Protest at 2.

<sup>3</sup> We also find untimely the additional protest issues raised in the protester's submission filed on November 29.