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# Decision

**Matter of:** ATP Gov, LLC

**File:** B-422938; B-422938.2

**Date:** December 12, 2024

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Colonel Nina R. Padalino, Erika Whelan Retta, Esq., Michael J. Farr, Esq., Rachel C. D'Orazio, Esq., Major Jason B. Hebart, and Sean M. Hannaway, Esq., Department of the Air Force, for the agency.

Michael Willems, Esq., and Evan D. Wesser, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protest is sustained where the solicitation required offerors to propose a product that met certification requirements at the time of proposal submission, and the awardee's proposed product was not fully certified.

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## DECISION

ATP Gov, LLC, a small business of Elk Grove, Illinois, protests the issuance of a delivery order to iGov Technologies, Inc., a small business of Reston, Virginia, pursuant to fair opportunity proposal request (FOPR) FA872624RB021 issued under the National Aeronautics and Space Administration Solution for Enterprise-Wide Procurement (NASA SEWP) indefinite-delivery, indefinite-quantity (IDIQ) contract by the United States Air Force for portable satellite terminals, related equipment, and associated services. The protester argues that iGov's proposed satellite terminal assembly did not meet material requirements of the solicitation and was therefore ineligible for award.

We sustain the protest.

## BACKGROUND

On May 2, 2024, the agency issued the FOPR for theater deployable communications agile communications package small military satellite communications equipment and associated services to small business holders of the NASA SEWP contract. Contracting Officer's Statement (COS) at 3. The solicitation contemplated the issuance of a single fixed-price delivery order with delivery of a first integration test terminal due six months after issuance. *Id.* The solicitation was amended five times, and, relevant to this protest, amendments four and five were published along with numerous questions from offerors and agency answers. *Id.* at 3-4.

Award was to be made to the responsible offeror whose proposal "conforms to the solicitation's requirements (to include all stated terms, conditions, representations, certifications, and all other information required by this FOPR) and is judged, based on the evaluation factors to represent the best value to the Government." Agency Report (AR), Tab 4c, FOPR Instructions to Offerors at 14. As to the tradeoff, the agency was to consider two factors: (1) technical; and (2) price; the technical factor was to be significantly more important than price. *Id.* at 15.

The technical factor was further divided into three subfactors: (i) useability; (ii) objectives; and (iii) management. *Id.* Relevant here, the useability and objectives subfactors specifically required offerors to meet the technical requirements of the Technical Requirements Document (TRD). See *id.* at 16 ("The Offeror's solution must meet the technical requirements of the TRD."); *id.* at 17 ("The Offeror's solution will be evaluated to determine its ability to meet the technical requirements of the system (the TRD). Threshold requirements must be met in order to be considered acceptable.").

In that regard, the solicitation provided numerous "threshold" requirements that were mandatory for award, as well as other "objective" requirements that were optional but desirable. See AR, Tab 9e, TRD at 8. The solicitation explained that requirements were subject to verification by a variety of methods including inspection and testing. *Id.* at 37. Relevant to this protest, among the threshold requirements was a requirement that terminals "**shall** provide auto-tracking/auto-acquire functionality," and that this requirement would be verified by demonstration. *Id.* at 15, 46 (emphasis in original).

Additionally, the solicitation also required that "[t]he terminal assembly **shall** be certified via [Army Forces Strategic Command] for operation with the antenna(s), allowing transmission over [Wideband Global Satellite Communications (WGS)] when integrated with WGS-certified equipment." *Id.* at 18 (emphasis in original). The solicitation provided that this requirement would be verified by inspection. *Id.* at 51. During the question and answer (Q&A) period, one offeror asked "[d]oes the terminal need to [be] WGS certified at time of proposal submission?" to which the agency responded "Yes." AR, Tab 9f, Revised Q&As Spreadsheet, Item 58.

The agency received four offers, including offers from ATP and iGov. COS at 11. Of note, ATP proposed a terminal assembly that had auto-tracking capability and was

WGS-certified at the time of proposal submission at a total evaluated price of \$300,219,569. *Id.* at 11-12. By contrast, iGov proposed a base terminal that was WGS-certified at the time of the proposal submission, but that would need to be modified to provide the required auto-tracking capability at a total evaluated price of \$180,182,031. *Id.* The agency issued a delivery order to iGov, and this protest followed.<sup>1</sup>

## DISCUSSION

The protester's principal argument is that the awardee's proposed terminal assembly did not meet material requirements of the solicitation, and therefore was ineligible for award. Protest at 12-19. Specifically, the protester contends that although the awardee's base terminal assembly was WGS certified at the time of proposal submission, the awardee's certified terminal lacks auto-tracking capability, which is a mandatory solicitation requirement. *Id.* While the awardee proposed to modify its base terminal to provide the required auto-tracking capability, the protester explains that such modifications will require that the proposed terminal assembly be recertified, and, as such, that the enhanced terminal assembly that iGov actually proposed was not WGS certified at the time of proposal submission as required by the solicitation.<sup>2</sup> Comments and Supp. Protest at 4-17.

In this regard, the parties agree about several key facts. All agree that the awardee proposed a base terminal that was WGS certified, but that the terminal as certified would not meet the solicitation's requirements for auto-tracking. Moreover, the parties agree that the awardee proposed a modified version of that terminal that appeared to meet the solicitation's requirements for auto-tracking. Finally, the parties also generally agree that the WGS certification process certifies a terminal system as a whole, and that a sufficiently modified system would require either a total recertification or a delta certification for the changed components. Although these key facts are not in dispute,

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<sup>1</sup> The delivery order is valued at \$180,182,031, and, accordingly, this protest is within our jurisdiction to hear protests of delivery orders placed under NASA IDIQ contracts valued in excess of \$25 million. 10 U.S.C. § 3406(f)(1)(B); *Vinsys Info. Tech., Inc.*, B-418892, Sept. 28, 2020, 2020 CPD ¶ 92 at 5 n.3 (explaining that NASA is subject, pursuant to 10 U.S.C. § 2302, to the procurement provisions of Title 10 of the U.S. Code).

<sup>2</sup> The protester raises other collateral arguments regarding the agency's failure to consider the risk that the awardee's proposed terminal assembly will not be certified in time to meet the agency's requirements and about the agency's price evaluation. See Comments and Supp. Protest at 17-22. However, because we conclude that the agency erred by making award to iGov because iGov's proposed terminal was not certified at the time of proposal submission as required by the solicitation and we recommend that the agency either reevaluate proposals or amend the solicitation to better reflect its requirements, we need not reach these additional arguments.

the parties disagree about the consequences of these facts for the acceptability of the awardee's terminal.

The protester contends that the modified system proposed by the awardee is, in effect, no longer WGS certified because the WGS certification guidance is explicit that only certified configurations are authorized and deviations from those configurations are no longer certified. See Supp. Comments at 6-7 (*citing* AR, Tab 25, Terminal Certification Process Document at 18-20). For example, the certification guidance provides, among other things that “[d]eviation from, or modification to the certified configuration is not authorized. To retain the performance certification, the terminal, or family of terminals, must continue to meet the minimum performance requirements in an equipment configuration identical to that subjected to the performance certification process.” AR, Tab 25, Terminal Certification Process Document at 19. Moreover, the guidance notes that “[t]he addition of a new sub-system, or modification to an existing sub-system that alters the terminal’s original performance characteristics shall warrant re-certification,” and that “[f]ailure to re-certify the terminal will result in the new terminal configuration being denied access to any military wideband satellites.” *Id.* The protester contends that this is significant because the solicitation expressly required that offerors propose a terminal assembly that was WGS certified at the time of proposal submission, and iGov’s proposed terminal assembly was not so certified because it was modified and thus was no longer identical to the equipment configuration previously certified. Supp. Comments at 7-8.

In response, the agency raises several arguments in the alternative. For example, the agency argues that the solicitation was silent on when a terminal must become WGS certified, and that it only makes sense to impose such a requirement at the time of first integration testing because the solicitation provided that the relevant terminal characteristics would be verified by inspection. See Memorandum of Law (MOL) at 8-10, COS at 23. While the agency acknowledged that it confirmed in questions and answers that an offeror’s terminal must be WGS certified at time of proposal submission, the agency contends that this answer did not actually change the solicitation’s underlying requirement for WGS certification. *Id.* In the alternative, the agency argued that even if the questions and answers modified the solicitation, in its view, “[t]o the extent the Air Force’s ‘Yes’ answer to Question 58 meant anything, it meant that the Offeror’s proposed solution had to be based on a terminal that had been WGS certified” at the time of proposal submission, and the awardee’s base terminal was so certified.<sup>3</sup> *Id.*

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<sup>3</sup> The agency also raised another alternative defense, contending that the modification proposed by iGov did not necessarily affect the terminal’s WGS certification, and that, in any case, the agency had credible reasons to believe that the awardee would have no difficulty procuring a delta recertification for the modified system if necessary. See Supp. COS and MOL at 9-10. In this regard, the agency notes that the only significant alteration that iGov made to its WGS certified base terminal was adding auto-tracking capability to meet the requirements of the solicitation. *Id.* The agency explains that the  
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We resolve questions of solicitation interpretation by reading the solicitation as a whole and in a manner that gives effect to all provisions; to be reasonable, and therefore valid, an interpretation must be consistent with such a reading. *Desbuild Inc.*, B-413613.2, Jan. 13, 2017, 2017 CPD ¶ 23 at 5. An interpretation is not reasonable if it fails to give meaning to all a solicitation's provisions, renders any part of the solicitation absurd or surplus, or creates conflicts. *Innovative Mgmt. Concepts, Inc.*, B-419834.2, B-419834.3, Sept. 20, 2021, 2021 CPD ¶ 319 at 15. Further, where, as here, an agency publishes questions and answers to all offerors alongside amendments to the solicitation, our decisions have been unequivocal that such questions and answers amount to amendments to the solicitation and form part of the solicitation's requirements. See, e.g., *Zolon PCS II, LLC; Polaris Consulting Grp., Inc.*, B-420745.2 *et al.*, Sept. 20, 2023, 2023 CPD ¶ 227 at 9 n.6; *Akima Facilities Operations, LLC*, B-421584, July 6, 2023, 2023 CPD ¶ 170 at 5 n.3.

We find the agency's reading of the solicitation to be unreasonable. In this case, while the agency is correct that the solicitation was initially silent on the question of precisely when a proposed terminal assembly needed to be WGS certified, the solicitation's silence on this point prompted an offeror to seek clarification on the timeline for certification. The agency confirmed, in question 58, which was published with a solicitation amendment, that the terminal must be WGS certified at the time of proposal submission. AR, Tab 9f, Revised Q&As Spreadsheet, Item 58. The text of question 58 and the agency's answer are as much a part of the solicitation's terms as any other portion of the solicitation. See *Zolon PCS II, LLC; Polaris Consulting Grp., Inc.*, *supra*. Moreover, while the agency is correct that the solicitation provided that WGS certification would be verified through inspection, there is no inconsistency between a requirement that the terminal be certified at time of proposal submission and a separate explanation of how the agency would subsequently verify that certification.<sup>4</sup> In short,

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WGS certification process document specifically provides that conversions of terminal tracking from manual to automatic are a modification that would be eligible to seek a comparatively faster delta recertification from a terminal's existing certification, rather than requiring a lengthier full recertification of the entire terminal assembly. *Id.* (citing AR, Tab 25, Terminal Certification Process Document at 20). We note, however, that this fact undercuts the agency's argument that iGov's modification would not affect the existing certification of the terminal; the fact that the WGS certification process provides that changes from manual to automatic tracking are suitable for delta recertification makes it clear that adding such capability to a terminal is a significant enough modification that some form of recertification is required in order for the modified terminal to remain WGS certified. In short, the agency's argument that iGov's terminal assembly would require a delta certification amounts to a concession that iGov's modified terminal assembly was not WGS certified at the time of proposal submission.

<sup>4</sup> The agency contends that it would be irrational to require certification at the time of proposal submission because our Office's decisions have concluded that otherwise legitimate agency requirements regarding an offeror's demonstrated ability to meet

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the agency's answer to question 58 was not inconsistent with any other terms of the solicitation, and the agency's suggestion that question 58 did not alter the solicitation's requirement for WGS certification would render its answer to question 58 a nullity, which is an unreasonable reading of the plain language of the solicitation.

We are equally unpersuaded by the agency's alternative argument that its answer to question 58 only communicated a requirement that the base terminal be certified at the time of proposal submission and not that the terminal assembly as a whole must be certified. The agency is correct that the solicitation required a proposed "terminal assembly" to be certified, and question 58 omitted the term "assembly." AR, Tab 9e, TRD at 8; AR, Tab 9f, Revised Q&As Spreadsheet, Item 58. However, question 58 asked "[d]oes the terminal need to [be] WGS certified at time of proposal submission," in specific reference to the paragraph of the solicitation that required terminal assemblies to be WGS certified. Compare AR, Tab 9e, TRD at 8 (requiring in paragraph 3.3.7.1.2 that terminal assemblies must be WGS certified) with AR, Tab 9f, Revised Q&As Spreadsheet, Item 58 (including a specific cross-reference to paragraph 3.3.7.1.2 of the TRD). Moreover, as discussed above, the WGS certification process applies to the entire "equipment configuration" of the terminal, *i.e.* to the terminal assembly as a whole. AR, Tab 25, Terminal Certification Process Document at 19. Given this context--that the question referred to the solicitation paragraph requiring WGS certification of terminal assemblies and the certification process applies only to assemblies as a whole--it would be irrational to read this simple question as asking whether an offeror could propose an uncertified terminal assembly so long as it was based on a certified base terminal. The text of the question and answer can only reasonably be read as addressing when the WGS certification requirements of the solicitation must be met, and the agency's answer made clear that they must be met at the time of proposal submission.

In short, the agency's reading of the solicitation is unreasonable; question 58 and the agency's answer formed part of the solicitation and clearly explained to offerors that the solicitation's requirement that the terminal assembly be WGS certified must be met at the time of proposal submission. Clearly stated RFP requirements are considered material to the needs of the government, and a proposal that fails to conform to material terms is unacceptable and may not form the basis for award. *National Shower Express*,

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contract requirements may not generally be applied at a point in time prior to when such qualifications become relevant. MOL at 9 (*citing USA Jet Airlines, Inc.; Active Aero Grp., Inc.*, B-404666, Apr. 1, 2011, 2011 CPD ¶ 91 at 5). The agency is correct that we have, in some cases, sustained timely protests of solicitations that impose certification requirements prior to the time that such qualifications become relevant. See *USA Jet Airlines, Inc.; Active Aero Grp., supra*. However, even assuming for the sake of argument that the WGS certification requirement in this case was the kind of premature requirement contemplated by our decisions, the agency established such a requirement in the questions and answers, and there was no timely protest of the terms of the solicitation. The agency cannot now advance an argument that its own requirements were impermissible.

*Inc.; Rickaby Fire Support*, B-293970, B-293970.2, July 15, 2004, 2004 CPD ¶ 140 at 4-5. Here, while the awardee's proposed base terminal was certified at the time of proposal submission, that terminal as certified did not meet the solicitation's requirement for auto-tracking. Furthermore, while the modified terminal assembly proposed by the awardee met the solicitation's requirement for auto-tracking, that modified terminal assembly was not certified at the time of proposal submission. Accordingly, the awardee's terminal assembly did not meet the material requirements of the solicitation and the agency erred by making award to iGov.

Our Office will only sustain a protest when the protester demonstrates a reasonable possibility that it was competitively prejudiced by the agency's actions. See *CW Constr. Servs. & Materials, Inc.*, B-279724, July 15, 1998, 98-2 CPD ¶ 20 at 8-9. In this regard, the protester explained that it reasonably read the solicitation as requiring a terminal assembly that was WGS certified at the time of proposal submission and that this requirement constrained its technical solution. See Supp. Comments at 11-12. For example, the protester notes that the agency's technical evaluation concluded that while the protester's terminal assembly met all mandatory requirements, the assembly did not meet optional technical objectives for, among other things, [DELETED]. *Id.* The protester notes that, had the solicitation permitted offerors to propose uncertified components and seek certification for them post-award, it would have proposed a terminal that met more of the agency's optional performance goals. *Id.* That is, the protester specifically identified a different terminal assembly that it could have proposed which was, among other things, [DELETED], which could have improved the protester's competitive standing by meeting more of the solicitation's optional criteria. *Id.*

In sum, the agency made award to an offeror that was ineligible for award because its proposed terminal assembly did not meet material requirements of the solicitation, and the protester has established a reasonable possibility that it was competitively prejudiced by this error.

## RECOMMENDATION

We find that the agency's issuance of a delivery order to iGov was inconsistent with material terms of the solicitation. We recommend that the agency either reevaluate the proposals it received and make a new award to an offeror that proposed a terminal assembly that met the solicitation's requirements, or revise the solicitation to better reflect the agency's needs. We also recommend that ATP be reimbursed the costs of filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R.

§ 21.8(d)(1). The protester should submit its certified claim for such costs, detailing the time expended and costs incurred, directly with the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Edda Emmanuelli Perez  
General Counsel