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Comptroller General  
of the United States

United States Government Accountability Office  
Washington, DC 20548

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## Decision

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

**File:** B-404047.3

**Date:** May 16, 2011

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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.

Paul E. Jordan, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Request for reconsideration is denied where record shows that supplemental issues were properly treated as untimely because all were either based on information protester possessed more than 10 days prior to protest or concerned solicitation improprieties not raised prior to closing date for quotations.

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### DECISION

NCS Technologies, Inc. (NCST), of Gainesville, Virginia, requests reconsideration of our decision in NCS Techs., Inc., B-404047, B-404047.2, Dec. 8, 2010, 2011 CPD ¶ \_\_\_\_, in which we denied its protest of the Department of the Air Force’s award of a contract to Advance Military Technology, Inc. (AMT), of Lake Oswego, Oregon, under request for quotations (RFQ) No. FA4890-10-R-5000, for fully rugged notebook convertible tablet personal computers.

We deny the request for reconsideration.

The RFQ sought rugged notebook personal computers (laptops), related supplies, and services as commercial items, in accordance with Federal Acquisition Regulation (FAR) subpart 12.6. 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.

AMT's quotation included a listing of the minimum requirements as well as identifying its computers with part numbers AMT-V10-V001 and Fully Rugged B300 Laptop. AMT's quotation also included documentation concerning certifications for Getac, Inc. model B300 laptop computers. The agency considered AMT's quotation to be technically acceptable, and based on its submission of the lowest-priced quotation awarded it the contract. However, given its own asserted exclusive agreement with Getac, NCST expressed concern to the contracting officer that AMT would not be able to provide Getac computers. After reviewing AMT's written agreement with Getac, which provided for the manufacture of AMT's customized laptops and specifically stated that "AMT is an Authorized Military Reseller for Getac Rugged Portable Systems," Letter from Getac to AMT, Sept. 15, 2008, the agency nevertheless concluded that AMT had provided adequate proof of its ability to meet the RFQ's requirements.

In its initial protest of the award, NCST asserted that AMT's quotation should be rejected because AMT intentionally misrepresented its authority to supply Getac equipment. We denied this aspect of its protest based on confirmation in the record that AMT was an authorized reseller of Getac rugged portable systems. In its first supplemental protest, NCST asserted that since the model numbers on AMT's price list differed from Getac model numbers, and thus did not reflect equipment manufactured by Getac, AMT's commitment to offer commercial items--as well as its ability to supply only new equipment--was questionable. Supplemental Protest at 2. We declined to address these arguments because we found that they were untimely, having been raised more than 10 days after NCST knew, or should have known, of them. In other supplemental protests, NCST asserted that the agency had improperly conducted the procurement as an RFQ even though it was in excess of the then-current \$5.5 million threshold for commercial item RFQs (see FAR § 13.500), and had allegedly evaluated the offers based on price alone, ignoring the RFQ requirement that quotations must be technically acceptable. We found these protests also to be untimely, but did not discuss the precise bases for reaching that conclusion.

In requesting reconsideration, NCST asserts that all of its supplemental issues were timely raised and that we should have considered them on the merits. To prevail on a request for reconsideration, the requesting party must either show that our decision contains an error of fact or law, or present information not previously considered that warrants the decision's reversal or modification. 4 C.F.R. § 21.14(a) (2010). A request for reconsideration that reiterates arguments made previously and merely expresses disagreement with the prior decision does not meet the standard for granting reconsideration. Gordon R. Fishman-Recon., B-257634.4, Sept. 9, 1996, 1996 CPD ¶ 110 at 2-3. Here, we conclude that the standard for reconsideration has not been satisfied.

## Failure to Quote on Commercial Items

NCST argues that our decision regarding its commercial item supplemental protest ground was based on various factual errors concerning when it possessed sufficient information on which it could base its protest. Request for Reconsideration at 2-3. In this regard, we found its supplemental protest on this ground untimely because NCST received a copy of AMT's price list and quotation reflecting AMT's part numbers on October 12, but it did not file its supplemental protest until October 26, more than 10 days later.

NCST, however, asserts that this was insufficient information to support a protest of AMT's failure to propose commercial items. As support for its position that AMT's price list and quotation reflecting AMT's part numbers were insufficient bases for a protest, NCST explains that until it obtained permission to share this information with Getac's president,<sup>1</sup> Request for Reconsideration at 5-6, and heard back from this individual on October 20, it did not have sufficient information to raise this issue.

We disagree. NCST was on notice of AMT's alleged failure to propose the required commercial items upon receipt of AMT's price list and quotation on October 12. In fact, the record indicates that NCST already had received a letter (dated September 16) from Getac's president stating in part:

With respect to the referenced new contract award that AMT has won with the US Air Force, neither Getac, nor any of its international or regional offices, affiliated companies, resellers or distributors are authorized to provide product to or otherwise support AMT on this new contract.

NCST Protest, Exh. B. In our view, this unequivocal statement from Getac's president was sufficient for NCST to question whether AMT had any ongoing relationship with Getac. This information, in conjunction with its October 12 receipt of AMT's quotation of items with AMT—not Getac—part numbers, put NCST on notice of the basis for its supplemental protest ground without the need for further verification. 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 not extend date for filing protest). Accordingly, AMT's failure to raise this protest ground until October 26 rendered it untimely.<sup>2</sup>

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<sup>1</sup> Our decision mistakenly referred to the entity with whom NCST conferred for verification as "the client." NCS Techs., Inc., *supra*, at 3 and n.2. We will issue a corrected version of the underlying decision changing these references to "Getac."

<sup>2</sup> Although the information alleged here was raised beyond the timeframes allotted for a GAO bid protest review, the Air Force may want to take additional steps to verify that it is receiving the equipment it specified in its solicitation.

## Improper Use of RFQ

In a November 19 response to NCST's comments on the agency report, the agency asserted that AMT's quotation did not have to be as detailed as NCST had argued because the solicitation was an RFQ. Subsequently, on November 29, NCST filed a supplemental protest asserting that conducting the solicitation as an RFQ was improper because it exceeded the \$5.5 million threshold for commercial item RFQs. NCST Final Comments/Supplemental Protest at 3. Our decision indicated that this issue was untimely, but did not explain why. NCST asserts that this protest ground was timely since it was raised within 10 days after the agency's first identification of the solicitation as an RFQ; according to the protester, prior to that time the solicitation itself, as well as agency pleadings, had identified the procurement as a request for proposals (RFP). Request for Reconsideration at 15.

The protester's request in this regard is without merit. The solicitation was originally identified as an RFQ, with later amendments indicating it was an RFP, but with the final amended solicitation indicating both that it was an RFQ and an RFP. Solicitation amend. 3. In our view, identification of the solicitation as both an RFQ and an RFP constituted a patent ambiguity. Thus, NCST was required to challenge this solicitation impropriety prior to the closing date of August 12, 2010. 4 C.F.R. 21.2(a)(1). Vendors may not make unilateral assumptions regarding the meaning of patently ambiguous aspects of a solicitation and then expect relief when the agency does not act in the manner the vendor assumed. Rather, where a solicitation contains a patent ambiguity, a bidder must seek to resolve it--and must protest if it is unable to obtain clarification--prior to the time for submission of offers. Dix Corp., B-293964, July 13, 2004, 2004 CPD ¶ 143 at 3. Moreover, contrary to NCST's assertion that it learned of the agency's view in this regard for the first time on November 19, the agency report received by NCST on October 27 clearly identified the solicitation as a "request for quotes." Agency Report at 1. Thus, NCST's request fails to provide a basis for reconsideration of our decision regarding this issue.

## Lack of Required Technical Evaluation

NCST also disputes our view that its challenge to the agency's technical evaluation was untimely. NCST's supplemental protest in this regard was based on a single statement in the agency's November 19 response to NCST's comments: "All the government really wants to know is what it will cost the government to acquire the items it precisely defined in the solicitation." Request for Reconsideration at 12. NCST interpreted this statement as indicating that the agency was only interested in price and had failed to consider the vendors' technical acceptability. Id.

Even if we were to agree with NCST as to the timeliness of its challenge to the agency's technical evaluation, this basis for protest was without merit. In this

regard, the agency report clearly outlined the technical evaluation of AMT's quotation. See AR, Tabs 7-18 (detailing evaluator questions, clarification requests, and determination of technical acceptability). In considering NCST's protest, we rejected NCST's arguments as to the adequacy of the technical evaluation, finding nothing improper in the award to AMT. NCST's strained interpretation of a single sentence in the agency's pleading, which it asserted contradicted the evaluation record, was simply inadequate to demonstrate an evaluation inconsistent with the solicitation.

The request for reconsideration is denied.

Lynn H. Gibson  
General Counsel