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## Decision

**Matter of:** General Dynamics C4 Systems, Inc.

**File:** B-406965; B-406965.2

**Date:** October 9, 2012

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### DIGEST

An agency properly rejected the protester's proposal where the agency reasonably found that the proposal did not satisfy a material solicitation requirement.

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### DECISION

General Dynamics C4 Systems, Inc., of Scottsdale, Arizona, protests the award of a contract to iGov Technologies, Inc., of Reston, Virginia, under request for proposals (RFP) No. M67854-11-R-2233, issued by the United States Marine Corps for hardware modernization of its Combat Operations Center.

We deny the protest.

### BACKGROUND

The Combat Operations Center provides a transportable command and control unit that integrates tents, trailers, communications equipment, power generators, environmental control units, software programs, operator workstations, and local area network/wide area network systems to support Marine Air Ground Task Force operations in the field. See RFP amend. 12, Statement of Objectives (SOO), at 69. The Combat Operations Center currently consists of three variants supporting different-sized organizations: Variant 2, the largest, which supports a division, wing,

or Marine Logistics Group; Variant 3, which supports a regiment or group; and Variant 4, the smallest, which supports a battalion or squadron. Id. Various upgrades to the Combat Operations Center systems resulted in the variants having multiple hardware baselines, denoted as models D, E, and F (F0 through F5). See Hearing Transcript (Tr.) 18-19, 538-39.<sup>1</sup> The Combat Operations Center currently fields 17 different baselines among the three variants. See id. at 538.

The RFP, which was amended 12 times, provided for the award of a fixed-price contract with a performance period that was not to exceed 48 months for hardware modernization of the Combat Operations Center system.<sup>2</sup> RFP amend. 12, at 26, 55. The RFP contained a number of contract line items (CLIN) for the required services and hardware, including CLINs for a formal engineering change proposal for modernizing Combat Operations Center hardware and another for a Variant 4 prototype/test modification kit, as well as optional CLINs for modernization kit production and training. See id. at 2-5.

Offerors were informed that award would be made on a best value basis, considering price and (in descending order of importance) technical, program management, and past performance. Id. at 80, 83. The non-price factors, when combined, were stated to be of significantly greater importance than price. Id. at 82. The following subfactors were identified in descending order of importance:

<b>Technical</b>	
	System design and development approach
	Integrated logistics support
	System integration
<b>Program Management</b>	
	Management
	Integrated master schedule
	Configuration management process
	Teaming arrangements
<b>Past Performance</b>	

Id. at 83-85.

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<sup>1</sup> We conducted a four-day hearing, at which we received testimony from two members of the agency's technical evaluation review panel (TERP) and the contracting officer (CO), who also served as the source selection authority for this procurement.

<sup>2</sup> The RFP also provided for other direct costs and travel on a cost reimbursement basis. RFP amend. 12, at 55.

Offerors were advised that proposals would be rated at the subfactor level for the technical and program management factors as outstanding, good, acceptable, marginal, or unacceptable.<sup>3</sup> Id. at 80-81. Any proposal found to be less than acceptable would not be considered for contract award. Id. at 80. The RFP also informed offerors that a technical risk rating would be applied at the subfactor level for the technical and program management factors, based on identified weaknesses in the proposal,<sup>4</sup> taking into consideration the potential for schedule disruption, increased costs, degradation of performance, the need for increased government oversight, or the likelihood of unsuccessful contract performance.<sup>5</sup> Id. at 81.

The RFP included a SOO that provided overall program goals and basic objectives. Offerors were informed that the SOO approach would allow offerors “the flexibility to develop cost effective solutions and the opportunity to propose innovative alternatives meeting the stated objectives.” RFP amend. 12, SOO, at 69. For example, the SOO stated as an objective “a preliminary design of a common, scalable and modular hardware modernization kit to streamline total system integration.” Id. The RFP also included system/subsystem specifications (SSS) that contained both threshold and objective “requirements.”<sup>6</sup> RFP amend. 12, SSS,

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<sup>3</sup> As relevant here, an acceptable proposal was defined as meeting requirements, indicating an adequate approach and understanding of the requirements, and having no strengths or deficiencies; a marginal proposal as not clearly meeting requirements and not having demonstrated an adequate approach and understanding of the requirements; and an unacceptable proposal as not meeting requirements, containing one or more deficiencies, and is unawardable. A deficiency was defined as “a material failure of a proposal to meet a Government requirement.” RFP amend. 12, at 81.

<sup>4</sup> Although “weakness” was not defined in the RFP, the Federal Acquisition Regulation (FAR) defines a weakness as “a flaw in the proposal that increases the risk of unsuccessful contract performance.” FAR § 15.001.

<sup>5</sup> Offerors were informed that risk would be rated as low, moderate, or high. Low risk was defined as having little potential to cause schedule disruption or degradation of performance, and requiring normal contractor effort and normal government monitoring to overcome any difficulties; moderate risk was defined as potentially causing schedule disruption or degradation of performance, and requiring special contractor emphasis and close government monitoring to overcome any difficulties; and high risk was defined as likely to cause significant schedule disruption or degradation of performance, and difficulties were unlikely to be overcome, even with special contractor emphasis and close government monitoring. See RFP amend. 12, at 81.

<sup>6</sup> A threshold requirement is the minimum performance requirement that an offeror must satisfy to be acceptable. Tr. at 36. An objective requirement is a desired performance goal, and not a minimum requirement. See Tr. at 36-37.

at 1-238. For example, specification 8.04 contained a threshold requirement for power systems to be “sized so that with all [Combat Operations Center] equipment in steady-state operation, the generator(s) operate(s) below 90 percent of rated maximum load.” Id. at 22.

Detailed instructions were provided for the preparation of proposals. RFP amend. 12, at 57-67. The RFP advised offerors to submit only one proposal in response to the solicitation, and established proposal page limitations. Id. at 57, 60. Offerors were also cautioned that data previously submitted, or otherwise known by the government, would not be considered unless the data was submitted with and incorporated into the proposal. Id. at 57.

The Marine Corps received proposals from three offerors, including General Dynamics (the incumbent contractor) and iGov. CO’s Statement at 1. Technical proposals were evaluated by the agency’s technical evaluation review panel (TERP), which assigned strengths, deficiencies, and weaknesses (referred to as “does not clearly meet requirements” or DNCMR).<sup>7</sup> The TERP also discussed the impact of each deficiency and DNCMR and identified issues for discussion. See, e.g., AR, Tab 24, Initial TERP Report, at 127-28.

As relevant here, the TERP found from its evaluation of initial proposals that General Dynamics had 1 deficiency, 30 DNCMRs, and 14 strengths under the system design and development approach subfactor, and numerous other DNCMRs and strengths under the other technical and program management subfactors. See id. at 127-71. The deficiency evaluated in General Dynamics’s proposal under the system design and development approach subfactor related to the protester’s failure to propose equipment that would permit the existing generators to operate below 90 percent of the rated maximum load, as required by specification 8.04. See RFP amend. 12, SSS, at 22.

Specifically, the TERP found that, although General Dynamics claimed to meet the 90 percent requirement of specification 8.04, its proposal showed otherwise. In this regard, General Dynamics stated that its proposed equipment would draw no more than 22,222 watts of power, and the existing generators could provide 24,700 watts of power. Tr. at 191; AR, Tab 24, Initial TERP Report, at 127. The TERP noted, however, that the existing generators were rated for a maximum load of 20,000 watts. Thus, General Dynamics’s proposed system would require the existing generators to operate well above 90 percent of the output for which they were rated. AR, Tab 24, Initial TERP Report, at 127.

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<sup>7</sup> Although the parties disagree as to whether a DNCMR and a weakness are equivalent, we find from our review of the record that the agency’s assignment of a DNCMR was equivalent to, and consistent with, the assignment of a weakness. See, e.g., Tr. at 14-15.

The Marine Corps included all three offers in the competitive range and conducted discussions. See AR, Tab 25, Competitive Range Determination, at 2; Tab 27, Competitive Range Notice to General Dynamics. As relevant here, General Dynamics was informed that its proposal did not satisfy specification 8.04. In response, General Dynamics represented in its final proposal revision (FPR) that its proposed equipment would operate (at a steady-state) using between 20,252 and 20,453 watts (depending upon the hardware baseline). In apparent recognition of the fact that even these reduced levels of power would exceed the maximum load ratings for the generators, the company also stated that it would retest and rerate the existing generators, such that they would be rated for a maximum load of 24,700 watts. See AR, Tab 45, General Dynamics FPR, at A-27, A-28. General Dynamics stated that this was a low-risk approach to meeting the requirement, because the generator had previously been tested to perform at greater than 24,700 watts. Id., citing a 2006 test report.<sup>8</sup> General Dynamics also proposed to further mitigate risk by using a larger alternator to boost the power output of the generator. Id. However, the proposal did not provide additional information concerning the alternator.

Following the evaluation of FPRs, the TERP found that General Dynamics's FPR contained 2 deficiencies (one of which was failing to meet specification 8.04), 13 DNCMRs, and 13 strengths under the system design and development approach subfactor.<sup>9</sup> As a result, the protester's proposal was rated unacceptable under this subfactor. See AR, Tab 29, Final TERP Report, at 68-91.

The TERP's initial and final evaluation reports were presented to the CO. Based upon the TERP's evaluation findings, the CO found that only iGov's FPR was technically acceptable. Tr. at 932. General Dynamics's FPR was found to be technically unacceptable because of the two evaluated deficiencies and multiple DNCMRs.<sup>10</sup> AR, Tab 30, Source Selection Decision, at 15, 40. The CO also reviewed the agency's price evaluation, and concluded that iGov's total evaluated

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<sup>8</sup> The current 20,000 watt maximum load rating of the existing generators was based upon the 2006 Sprial I Regression Test and Evaluation Report cited by General Dynamics in its FPR. See CO's Statement at 19; Hearing Exhib. No. 23, 2006 Sprial I Test Report.

<sup>9</sup> In comparison, the TERP found that iGov's FPR had 1 DNCMR, 14 strengths, and no deficiencies under the system design and development approach subfactor. AR, Tab 29, Final TERP Report, at 10-11. For the proposal overall, the TERP found iGov's FPR had a total of 2 DNCMRs, no deficiencies, and multiple strengths.

<sup>10</sup> The SSA also found the third offeror unacceptable for award. AR, Tab 30, Source Selection Decision, at 10.

price of \$306,217,666 was realistic, fair, and reasonable. Id. at 39. As the only offeror with a technically acceptable proposal, iGov received the award.

Following a debriefing, General Dynamics protested to our Office.

## DISCUSSION

General Dynamics raises multiple challenges to the Marine Corps' evaluation of its proposal, price evaluation, and selection decision--specifically, General Dynamics challenges every deficiency and DNCMR evaluated in its proposal. General Dynamics also complains that the Marine Corps misled offerors as to the importance of certain evaluation criteria, and treated offerors disparately. As explained below, we find that the Marine Corps reasonably determined that General Dynamics's proposal was technically unacceptable because it did not meet a material requirement of the solicitation. Because we conclude that General Dynamics's proposal was reasonably found to be unacceptable for its failure to propose a generator that meets specification 8.04, we need not address the protester's challenges with respect to the other evaluated deficiency and multiple DNCMRs.

In reviewing protests challenging the evaluation of proposals, we do not conduct a new evaluation or substitute our judgment for that of the agency but examine the record to determine whether the agency's judgment was reasonable and in accord with the RFP evaluation criteria. JSR, Inc., B-405463, Nov. 8, 2011, 2011 CPD ¶ 265 at 4. A protester's mere disagreement with an agency's judgment is not sufficient to establish that an agency acted unreasonably. Trofholz Tech., Inc., B-404101, Jan. 5, 2011, 2011 CPD ¶ 144 at 3-4.

### Compliance with Specification 8.04

As noted above, specification 8.04 requires that the generators used to power the combat operations center systems must operate at no more than 90 percent of their rated maximum load, while operating all proposed equipment at a steady state. RFP amend. 12, SSS, at 22. In its FPR, General Dynamics advised that the steady-state power consumption of its equipment would be between 20,252 and 20,453 watts (depending upon the hardware baseline). See AR, Tab 45, General Dynamics FPR, at A-28. Despite these intended operating levels, the company proposed using the existing power generator, which has a rated maximum load of only 20,000 watts.<sup>11</sup>

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<sup>11</sup> Curiously, General Dynamics argues that the specification did not require that proposed generators must operate below 18,000 watts (90 percent of 20,000 watts). See General Dynamics Comments at 26. We disagree. The specification provided that an offeror's proposed generator must operate at no more than 90 percent of its  
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General Dynamics nevertheless argues that its revised proposal satisfies specification 8.04 because it informed the agency, citing the 2006 Spiral I test report, that the existing power generators could be retested and rerated for a higher maximum load. See General Dynamics Comments at 27. In this regard, General Dynamics complains that the agency ignored the Spiral I test results, in which the observed maximum power output of the existing generator reached over 24,800 watts for a three-hour period. See AR, Tab 45, General Dynamics FPR, at A-27; General Dynamics Post-Hearing Comments at 16. General Dynamics also contends that the Marine Corps failed to consider the protester's offer to provide a different alternator that would achieve greater generator performance. See General Dynamics Post-Hearing Comments at 17-18.

Based on our review of the record, we find that the Marine Corps reasonably concluded that General Dynamics's proposal did not satisfy specification 8.04.<sup>12</sup> General Dynamics proposed to use existing generators that currently have a rated maximum load of 20,000 watts. In this regard, offerors were informed of the generators' rated maximum load in the RFP, and General Dynamics was again informed of this fact during discussions.<sup>13</sup> See RFP, Exhib. 13, Good to Know Charts, at 2; AR, Tab 27, General Dynamics Discussion Issues, at 17 (BATES).<sup>14</sup> As a result, General Dynamics's decision to propose equipment with a steady-state power consumption of between 20,252 and 20,453 watts meant that the generators would operate above 90 percent of the rated maximum load.

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rated maximum load. Here, General Dynamics proposed the existing generators that had a rated maximum load of 20,000 watts; 90 percent of that rated load is 18,000 watts.

<sup>12</sup> General Dynamics also contends that, for various reasons, the problems the Marine Corps identified with respect to General Dynamics's proposed generator solution merit a DNCMR and not a deficiency, and thus do not render General Dynamics's proposal unawardable. See General Dynamics Post-Hearing Comments at 15. We need not address these additional arguments, given that we find the Marine Corps' assignment of a deficiency to be reasonable.

<sup>13</sup> On this point, the TERP chair testified in the hearing that the requirement in specification 8.04 "goes to safety and durability of the system. It accounts for spikes in power draw, and the ability of the generator to last, to maintain a level of operational availability." Tr. at 24-25.

<sup>14</sup> Where page numbers were otherwise unavailable, our citation to page numbers refers to the BATES numbers in the agency report.

We also do not agree with General Dynamics's contention that it was unreasonable of the Marine Corps not to accept the protester's proposal to increase the rated maximum load of the existing generators. The TERP concluded that this approach did not satisfy specification 8.04. See AR, Tab 29, Final TERP Report, at 68. In this regard, the lead engineer on the TERP recognized that it might be possible to raise the rated maximum load of the existing generators, but testified that running a generator at higher outputs for an extended period can result in greater wear and tear of the generator, and require earlier replacement as well as increased fuel consumption. See Tr. at 173, 174. Although General Dynamics complains that the agency did not adequately consider the 2006 Spiral I test report in considering protester's proposed retesting and rerating of the generator, General Dynamics has not pointed to any other evidence or testing, in its proposal or otherwise, that demonstrates that the existing generators can be rerated such that General Dynamics's proposed equipment will satisfy specification 8.04--and, in our view, the 2006 Spiral I test report alone, is not sufficient to require the Marine Corps to reach the conclusion the protester urges. In sum, while General Dynamics disagrees with the agency's technical judgment, that disagreement does not show that the agency acted unreasonably. See Trofholz Tech., Inc., supra.

General Dynamics also complains that the Marine Corps failed to evaluate its proposal to provide a different alternator that would allow its proposed equipment to satisfy specification 8.04. The agency responds that it considered the protester's offer to change the alternator to be an alternate approach, which was not permitted by the RFP. Agency's Post-Hearing Comments at 4. The Marine Corps also states that, even if it had considered this offer, General Dynamics's FPR contained too little information concerning the type of alternator that would be proposed for the agency to be able to evaluate the merits of the approach. Id. On this issue, we have considered all of General Dynamics's arguments to the contrary, and find no basis to conclude that the agency's evaluation was unreasonable.<sup>15</sup>

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<sup>15</sup> For example, in response to discussions concerning specification 8.04, General Dynamics proposed a modification kit containing "an updated name plate with a new rating, an updated [technical data package], and updated training and logistics documentation as required." See AR, Tab 45, General Dynamics FPR, at A-27. The modification kit was not described as including an alternator. Rather, General Dynamics's FPR proposed a larger alternator as a risk mitigation measure and referred to the FPR's risk register for more details. Id. However, neither the risk register nor the bill of materials provides any detail from which the TERP could evaluate the merits of an alternator. See id. at A-10/11, A-79. In this regard, it is an offeror's responsibility to submit an adequately written proposal that demonstrates the merits of its approach; an offeror runs the risk of having its proposal downgraded or rejected if the proposal is inadequately written. Trofholz Tech., Inc., supra, at 4-5.

Finally, General Dynamics also argues that the agency unreasonably found its proposal unacceptable because the CO in his testimony did not appear to understand the basis for the deficiency assigned by the TERP with respect to specification 8.04. See General Dynamics Post-Hearing Comments at 15. As noted above, however, the record establishes, as the TERP and CO found, that General Dynamics's proposal did not satisfy specification 8.04. To the extent that the CO's judgment was based upon the technical judgments of the TERP in this regard, we have long found that selection officials are permitted to rely upon the technical advice provided by evaluators. See Pan Am World Serv., Inc., et al., B-231840 et al., Nov. 7, 1988, 88-2 CPD ¶ 446 at 22; see also FAR § 15.308 (source selection official may use reports and analyses prepared by others in making selection decision).

### Common Hardware Baseline

General Dynamics also complains that the Marine Corps placed undue emphasis on meeting the common hardware baseline objective at the expense of low cost, and did not convey that emphasis in the solicitation.<sup>16</sup> General Dynamics Post-Hearing Comments at 12-13. The record is unclear as to what weight the agency placed on achieving a common hardware baseline. Compare Tr. at 544 (TERP lead engineer testified that "not having a single common hardware baseline, though ideal, was not detrimental") with Tr. at 969 (the CO testified that "the number one goal was to move toward a single configuration"). Nevertheless, we need not resolve this issue, because the record does not show that the protester was prejudiced even if it was misled as to the weight that a common hardware baseline would receive. Competitive prejudice is an essential element of a viable protest; where no prejudice is shown or otherwise evident, our Office will not sustain a protest, even if a deficiency in the procurement is evident. Moon Eng'g Co., Inc., B-256079, May 5, 1994, 94-1 CPD ¶ 296 at 4.

Here, General Dynamics generally contends that it would have submitted "a fundamentally different proposal" had the Marine Corps properly conveyed the importance of achieving a common hardware baseline. See General Dynamics Post-Hearing Comments at 13-14. General Dynamics, however, has not submitted

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<sup>16</sup> In this regard, the agency's discussions with General Dynamics identified multiple DNCMRs related to the issue of a common hardware baseline. For example, General Dynamics was informed that its "system design approach does not achieve a common hardware baseline as defined in the [statement of objectives]" with regard to its initial offer to upgrade the secure internet protocol router network but not upgrade the non-classified internet protocol router network. See AR, Tab 28, General Dynamics Discussion Issues, at 19-20 (BATES). General Dynamics also was informed that its offer to replace two of five laptop variants, which, while simplifying configuration, did not achieve a common baseline. Id. at 32 (BATES).

evidence or arguments to show that it would have proposed a solution that would satisfy specification 8.04. That is, while General Dynamics argues that it would have proposed replacing equipment that would reduce power consumption, it does not state that it would propose a new generator, nor does it specify how it would reduce power consumption to a level that would allow the existing generator to meet specification 8.04. A general assertion that the protester would have changed its proposal in some unspecified way does not satisfy the protester's obligation to show a reasonable possibility that it was competitively prejudiced. See e.g., CETENAGROUP, B-310797, B-310979.3, Feb. 14, 2008, 2008 CPD ¶ 53 at 5 (general assertion that proposed price would have been lowered by unspecified amount insufficient to show prejudice).

### Disparate Treatment

General Dynamics also complains that the Marine Corps treated it and iGov disparately by rating General Dynamics's proposal marginal under some subfactors, while rating iGov's proposal acceptable or outstanding even though DNCMRs were found in its proposal under the same subfactors. Supp. Protest at 3. More specifically, under the integrated master schedule subfactor, the TERP assigned the proposals of General Dynamics and iGov each one DNCMR, but rated General Dynamics as marginal and iGov as acceptable under the subfactor. General Dynamics contends that if the Marine Corps had evaluated the proposals equitably, it would have either found both proposals marginal under this subfactor and conducted further discussions, or the Marine Corps would have rated both proposals acceptable. General Dynamics's Supp. Comments at 6.

The record does not show that the Marine Corps treated the two firms disparately. During the hearing, the TERP lead engineer explained the rationale for General Dynamics's marginal rating under the integrated master schedule subfactor. He explained that, although the protester's schedule and critical path analysis were compliant with the SOO objective with respect to technical reviews, the proposal provided too few days for review by the government's in-service engineering activity. See Tr. at 796-99. The TERP concluded that this was likely to cause significant disruption of schedule or degradation of performance. AR, Tab 29, Final TERP Report, at 89.

In contrast, the TERP chair explained that iGov's proposal, which received an acceptable rating under this subfactor, was assigned a DNCMR under the same subfactor because the TERP was unclear as to what role, if any, the government's in-service engineering activity would play during testing. Tr. at 872. The TERP concluded that this lack of clarity would not have a major impact on the program because the government program office would participate in the testing, regardless of the presence of the government's in-service engineering activity. Tr. at 873-75.

Given differences in the reasons DMCRs were issued to the parties under this subfactor, we find no basis to conclude that the firms were treated disparately or that iGov's proposal should have been found marginal or unacceptable under this subfactor. Moreover, even if we agreed with General Dynamics that its proposal could have been found acceptable under this subfactor, the protester would still not be eligible for award because its proposal was reasonably found to be unacceptable for its failure to comply with specification 8.04.

### Selection Decision

General Dynamics raises multiple arguments with respect to the CO's source selection decision, none of which we find have merit. For example, General Dynamics argues that the Marine Corps disregarded General Dynamics's price advantage in determining that iGov's proposal reflected the best value to the government. Supp. Protest at 5. Although General Dynamics contends that the Marine Corps conducted a price/technical tradeoff, iGov's proposal was the only one found to be acceptable, and therefore a price/technical tradeoff was not required or performed. See AR, Tab 30, Source Selection Decision, at 10; Tr. at 932.

General Dynamics also contends that the Marine Corps did not evaluate the reasonableness of iGov's price. Supp. Protest at 7. To the extent that General Dynamics compares iGov's price to its own lower offered price, we find the argument unpersuasive because iGov's price is based on a different technical solution than that offered by General Dynamics. Here, the CO compared the prices proposed by each offeror, noting that iGov's proposed price was 30 percent higher than that proposed by the third offeror, and almost three times higher than that proposed by General Dynamics. See AR, Tab 30, Source Selection Decision, at 39. The Marine Corps also reviewed prices listed on the General Services Administration's Federal Supply Schedule for parts and labor, and concluded that iGov's price was reasonable.<sup>17</sup> Id. Although General Dynamics disagrees with the

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<sup>17</sup> General Dynamics raises other arguments concerning the Marine Corps' price analysis with regard to its own proposal; however, as General Dynamics's proposal was reasonably rejected as unacceptable, we need not reach those issues.

agency's judgment, it has not shown that the Marine Corps unreasonably determined that iGov's price was reasonable.

The protest is denied.

Lynn H. Gibson  
General Counsel