



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Aero Simulation, Inc.

File: B-424444.2

Date: October 5, 2026

Jacob D. Noe, Esq., Tariq Abdel-Wakil, Esq., J. Bradley Reaves, Esq., and Kenneth M. Hyde, Esq., Reaves GovCon Group, for the protester.
Isabelle P. Cutting, Esq., and Colonel Justin A. Silverman, Department of the Air Force, for the agency.
Suresh S. Boodram, Esq., and Evan D. Wesser, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration of our decision dismissing a protest as presenting an untimely challenge to the terms of a solicitation is denied where the request does not establish that our prior decision contains material errors of fact or law.

DECISION

Aero Simulation, Inc. (ASI), of Tampa, Florida, requests reconsideration of our decision in *Aero Simulation, Inc.*, B-424444, July 31, 2026, dismissing its protest challenging the Department of the Air Force's decision to exclude ASI's proposal from further consideration under Fair Opportunity Proposal Request (FOPR) No. FA8621-26-R-B004 for training systems program support services. We previously dismissed the underlying protest where we concluded that ASI effectively raised an untimely challenge to the FOPR's experience evaluation criteria. On reconsideration, the requester alleges that our Office erred in dismissing its protest as untimely because the protest was not a challenge to the terms of the solicitation, but rather was a challenge to the agency's evaluation. ASI also alleges that we incorrectly found that it had prior knowledge of the agency's evaluation interpretation prior to proposal submission and evaluation.

We deny the request for reconsideration because it fails to demonstrate any material factual or legal errors with respect to the underlying decision dismissing ASI's protest.

To obtain reconsideration under our Bid Protest Regulations, the requesting party must set out the factual and legal grounds upon which reversal or modification of the decision is deemed warranted, specifying any errors of law made or information not

previously considered. 4 C.F.R. § 21.14(a). The repetition of arguments made during our consideration of the original protest and disagreement with our decision do not meet this standard. 4 C.F.R. § 21.14(c); *Epsilon Sys. Solutions, Inc.--Recon.*, B-414410.3, Sept. 20, 2017, at 3; *Veda, Inc.--Recon.*, B-278516.3, B-278516.4, July 8, 1998, at 4. GAO will summarily dismiss any request for reconsideration that fails to state a valid basis for reconsideration. 4 C.F.R. § 21.14(c).

As noted above, our Office dismissed ASI's underlying protest pursuant to 4 C.F.R. § 21.2(a)(1) for failing to protest the terms of a solicitation before the submission date for proposals. *Aero Simulation, Inc.*, B-424444, July 31, 2026, at 7. As addressed in our prior decision, as part of corrective action taken in response to an earlier protest, the agency issued a sources sought notice that included a questionnaire to interested firms; the questionnaire asked firms to describe their prior corporate experience with configuration changes on full flight simulators (FFSs), and specifically identify "the maximum number of Engineering Change Proposals [ECPs] executed on [FFSs] under a single contract[.]" noting that an FFS "must be a six-axis motion simulator." *Id.* at 2 (quotations omitted). The agency subsequently issued a draft FOPR that again included "6-axis motion" as a requirement for demonstrating relevant corporate experience with respect FFSs. *Id.* at 3.

The requester submitted a question to the agency about the FFS requirement included in the draft FOPR, asking whether the agency would consider previous experience with a weapon systems trainer systems integration lab (SIL) where "the SIL's motion legs had . . . been removed" so that the device "has no physical motion components," yet "it has had the majority of the other motion components and software." *Id.* (quotations omitted). ASI expressed its view that the SIL should be evaluated as meeting the ECP requirement, but asked that, if the agency's interpretation differed, that the agency consider amending the solicitation so that the experience would be deemed relevant. *Id.* The agency subsequently declined to respond to ASI's question. *Id.*

The subsequently issued FOPR included a two-step procurement; relevant here, under step 1, the agency was to evaluate proposals under the technical factor, designated as the "[t]echnical [g]ate," that consisted of two subfactors: 1) government-furnished property management experience; and 2) ECP experience. *Id.* at 4. Offerors not selected as the most advantageous to the government under the technical gate factor were to be eliminated from further consideration. *Id.* In order to receive a confidence rating above low confidence under the ECP experience subfactor, an offeror (or its teaming partner) had to demonstrate corporate experience executing ECPS "on at least five [FFSs] of the same device type." *Id.* (quotation omitted).

In response to the ECP requirement, ASI submitted a contract reference that purportedly included five FFSs, a number that included its SIL experience as one of the five FFSs. *Id.* The agency subsequently asked ASI to explain, given the stationary base of the SIL, how that device met the solicitation's definition of an FFS. *Id.* ASI contended that the stationary base was "immaterial," and did not impact "the SIL's classification or design" as an FFS, and that the SIL "has had these motion actuator

[legs] and is ready to have them reinstalled as needed.” *Id.* (quotations omitted). The agency subsequently rated ASI as “low confidence” under the ECP experience factor because the ECP experience “d[id] not meet the definition of an FFS” because it “did not have 6-axis motion capability at the time of the ECP’s submitted to demonstrate FFS ECP experience.” *Id.* (quotation omitted).

In its protest, ASI challenged the agency’s exclusion of its proposal, arguing that the Air Force applied an unstated evaluation criterion in evaluating ECP experience. Specifically, the protester alleged that the FOPR did not include the “temporal and operational requirement” of an FFS relied upon by the agency, meaning the FOPR did not impose a requirement that “a simulator qualifies as an FFS only if six-axis motion hardware was physically installed and operational at the precise time each ECP was executed.” *Id.* at 4-5 (quotation omitted). In the alternative, ASI alleged that the solicitation was latently ambiguous regarding the definition of an FFS. *Id.*

The agency requested dismissal of the protest as raising an untimely challenge to the terms of the solicitation. In this regard, the agency noted that ASI specifically sought clarification regarding the agency’s interpretation of the FFS requirement during the sources sought process, and, despite this uncertainty, ASI failed to timely protest the terms of the solicitation. *Id.* at 5.

As addressed in our decision, we found that the FOPR was unambiguous as to what qualified as an FFS, namely that the FFS had to be a 6-axis motion simulator. *Id.* at 6. We also found the protester’s interpretation of the FOPR as to what could qualify as an FFS--namely a device with no or otherwise inactivated physical motion components--to be unreasonable and contrary to the plain terms of the solicitation. *Id.* at 7. To support this point, our decision raised how the protester requested clarification from the agency on its interpretation, received no clarification, and still relied on its own interpretation at its own risk. *Id.* We therefore found ASI’s post-award protest to constitute an untimely challenge to the terms of the FOPR. *Id.*

ASI advances two principal arguments in requesting that we reconsider our decision dismissing its protest. First, the requester argues that our decision unreasonably misconstrued its argument. ASI again asserts that its protest did not challenge the FOPR’s FFS requirements, but, rather, challenges the agency’s unreasonable interpretation of the requirement as requiring that a historical ECP experience must possess the FOPR’s required characteristics for the purpose of the agency’s evaluation. Req. for Reconsideration at 2. To this effect, the requester argues that the FOPR contains no “temporal requirement,” namely that the solicitation did not require the FFS to have 6-axis motion capabilities at the time of an ECP, and, thus, the protester’s exclusion from consideration because of its failure to meet the agency’s “temporal requirement” was an unreasonable application of an unstated evaluation criterion. *Id.* at 3. Under this understanding of the protester’s argument, ASI’s protest would not be an untimely challenge to the terms of the solicitation, but rather a timely challenge of an unstated evaluation criterion. *Id.* at 3. The protester secondarily argues that our Office

erred in finding that the protester had constructive knowledge of the agency's interpretation prior to the due date of proposals.¹ *Id.* at 3-5.

The protester's arguments, which we previously considered and rejected in our prior decision dismissing its underlying protest, are unpersuasive and misunderstand our decision. ASI's argument relies on the fact that the FOPR does not explicitly state that an experience qualifies as an FFS for the purpose of ECP experience only if six-axis motion capability was physically installed and operational at the time the offeror performed the ECP. *Id.* at 3. However, as our Office has consistently held, an interpretation is only reasonable when it is consistent with the solicitation read as a whole. *Quantum Ventura, Inc.*, B-423603, July 23, 2025, at 6. Here, our decision found that the FOPR defined an FFS as including, in part, six-axis motion. *Aero Simulation, supra*, at 6. We also found that the FOPR stated that, to satisfy the ECP requirement, offerors were required to demonstrate experience executing ECPs on FFSs. *Id.* Accordingly, the protester's fifth ECP did not involve the use of six-axis motion, and therefore, did not qualify as an FFS for the purpose of satisfying the FOPR requirement. A protester's interpretation of a solicitation is not reasonable when it contradicts the terms of the solicitation when read as a whole. *See Quantum Ventura, supra*, at 6 (finding no ambiguity in an agency announcement where the protester's interpretation failed to read the agency's cost volume template as a whole); *Systems Implementers, Inc.; Transcend Tech. Sys., LLC*, B-418963.5 *et al.*, June 1, 2022, at 9 (concluding agency rating was reasonable where protester's interpretation failed to read the solicitation as a whole). We find no basis to reconsider our ruling on this matter.

ASI also contends that our decision characterizes "ASI's unanswered request for clarification as proof that ASI knew the Agency would apply the precise temporal limitation that ultimately became the basis for ASI's exclusion." Req. for Reconsideration at 4. This assertion is factually incorrect. Our decision does not assert that the protester had knowledge of the agency's interpretation because of the agency's response to the protester's request for clarification. Instead, our decision states that the agency's response clearly declined to express any view on ASI's request for clarification

¹ The protester also complains that our Office unreasonably resolved the parties' disputed interpretation of the solicitation at the request for dismissal stage, as opposed to fully developing the question on the merits. However, in the analogous context of contract interpretation, federal courts have recognized that questions of contract interpretation are generally questions of law ripe for consideration prior to the merits stage. *See, e.g., Premier Office Complex of Parma, LLC v. United States*, 916 F.3d 1006, 1011 (Fed. Cir. 2019) ("Contract interpretation is a question of law generally amenable to summary judgment."); *Bell/Heery v. United States*, 739 F.3d 1324, 1330 (Fed. Cir. 2014) ("[C]ontract interpretation is a matter of law and thus may be addressed by the Court in resolving a motion to dismiss.") (*quoting S. Cal. Edison v. United States*, 58 Fed. Cl. 313, 321 (2003)). As addressed in our prior decision and herein, we find the solicitation's requirements were unambiguous and, therefore, properly could be addressed prior to resolving the case on the merits.

on whether the agency accepted the protester's interpretation of the solicitation's requirements. *Aero Simulation, supra* at 7. Indeed, the protester specifically sought the agency's assent to its interpretation or, if the agency did not agree, asked the agency to amend the solicitation to specifically adopt the protester's potentially conflicting interpretation. The protester clearly did not know whether the agency shared the protester's interpretation and the protester, therefore proceeded in the competition at its own risk. Our Office has consistently held that when an agency fails to satisfactorily resolve a firm's questions, a firm is required to raise its concerns prior to the next closing date. See *International Bus. Machines Corp.*, B-417596.10, Mar. 17, 2021, at 15 (dismissing challenge to the adequacy of agency's responses to protester's questions where protester elected to compete notwithstanding the agency's responses); *Strategic Mgmt. Solutions, LLC*, B-416598.3, B-416598.4, Dec. 17, 2019, at 15-16 (same). Thus, our decision correctly explained that the protester was uncertain as to the agency's intended interpretation of what qualified as an FFS, sought clarification from the agency, and the agency declined to express a view as to the protester's own interpretation. Where the protester was aware that the agency declined to validate the protester's interpretation, it was incumbent on the protester to have challenged the uncertainty prior to the due date for proposals.

The request for reconsideration is denied.

Edda Emmanuelli Perez
General Counsel