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**Comptroller General
of the United States**

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

Decision

Matter of: Blue Origin, LLC

File: B-408823

Date: December 12, 2013

Kevin C. Dwyer, Esq., Kevin P. Mullen, Esq., and Ethan E. Marsh, Esq., Jenner & Block LLP, for the protester.

Richard J. Vacura, Esq., and Pablo A. Nichols, Esq., Morrison & Foerster LLP, for Space Exploration Technologies Corporation, an intervenor.

Richard J. McCarthy, Esq., Bradley W. Smith, Esq., and Geoffrey Swanson, Esq., National Aeronautics and Space Administration, for the agency.

Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Government Accountability Office has jurisdiction to consider protest challenging terms of solicitation for the award of a lease of federal property where the record shows that the agency will receive benefits--both tangible and intangible--in connection with the award of the lease, such that the agency is, in effect, conducting a procurement for goods and services.

2. Protest that solicitation for the lease of a launch pad at Kennedy Space Center favors a multi-user approach over an exclusive user approach is denied where record shows that solicitation contemplates two possible approaches, but includes no preference for one approach versus another, and merely requires different information depending upon which approach is being offered.

DECISION

Blue Origin, LLC, of Kent, Washington, protests the actions of the National Aeronautics and Space Administration (NASA) in connection with its issuance of announcement for proposals (AFP) No. AFP-KSC-LC39A, for the lease of Launch Complex 39A (LC 39A) at the Kennedy Space Center (KSC). Blue Origin maintains that the agency intends to misapply the terms of the AFP in evaluating proposals and selecting a prospective lessee for the facility.

We deny the protest.

BACKGROUND

LC 39A is an historic launch complex that NASA used throughout the Apollo and Space Shuttle programs. With the conclusion of those programs, NASA determined that presently it has no foreseeable use for LC 39A, and no budget to operate and maintain the facility. The agency has determined that LC 39A potentially could be a useful launch facility for commercial space launch companies that would assume financial and technical responsibility for operation and maintenance of the facility. Accordingly, NASA issued the subject AFP to solicit proposals to enter into an agreement to use the facility for a minimum period of 5 years. AFP at BATES 6. The AFP describes NASA's intended transaction as follows:

NASA intends to establish a Public-Private or Public-Public Venture (PPV) to grant a partner(s) an interest in real property for a specified term through an instrument(s) such as a lease, a use permit, or other form of property out-grant term as authorized by the Commercial Space Launch Act (CSLA) [51 U.S.C. chapter 509 (Supp. IV, 2010)] or the Space Act [51 U.S.C. chapter 201 (Supp. IV, 2010)]. NASA KSC intends to grant the industry partner(s) sufficient rights to occupy, operate, modify and maintain the LC 39A as necessary to support the partner's proposed use.

NASA expects the potential partner(s) to be fully responsible for the operations and maintenance of the facility, to include equipment, at their own expense, for the term of any agreement(s). The agreement(s) will fully define the roles and responsibilities of NASA and the Partner(s).

AFP at BATES 6.

The AFP contemplates two potential arrangements for the use of the launch facility. Under the terms of the AFP, firms are required to stipulate whether their proposed use will be exclusive--that is, only the proposing firm would be able to use LC 39A to launch its space vehicles--or whether they propose to make LC 39A available to multiple users. AFP at BATES 8. The question of an exclusive versus multiple user arrangement is at the heart of Blue Origin's protest.

In response to the AFP, the agency received two timely proposals by the July 5, 2013, deadline for their submission, one from the protester and one from Space Exploration Technologies Corporation (SpaceX). The agency currently is in the process of evaluating those proposals, and has not yet announced any conclusions.

All parties acknowledge, and are aware of, the fact that Blue Origin has proposed a multi-user approach, whereas, SpaceX has proposed an exclusive use approach.¹

After the submission of proposals, Blue Origin filed an agency-level protest with NASA in the wake of certain remarks made by NASA's Administrator. Specifically, by letter dated August 8, Blue Origin protested that the Administrator's remarks demonstrated that NASA intended to evaluate proposals in a manner that was inconsistent with what Blue Origin viewed as the requirements of the AFP. Agency Report (AR) exh. 17, Blue Origin Agency-Level Protest. Blue Origin takes the position (discussed in detail below) that the AFP includes a preference for using LC 39A as a multi-user launch facility. In support of its position, Blue Origin noted that NASA's administrator had remarked publicly that NASA would prefer launch complex 39B (LC 39B, which is adjacent to LC 39A, is essentially a companion launch pad) to be the multi-user launch facility. According to the protester, this demonstrated that the agency would not evaluate proposals in accordance with the terms of the AFP for LC 39A.

By letter dated August 23, NASA denied Blue Origin's protest. AR, exh. 18, NASA Response to Blue Origin Agency-Level Protest.² The agency expressed its view that the AFP did not include a preference for a multi-user approach for LC 39A. NASA further concluded that the comments of the NASA Administrator would have no effect or influence on the selection process for the successful concern under the AFP. Blue Origin filed this protest after its receipt of the agency's letter denying its agency-level protest.

JURISDICTION

As a threshold matter, NASA maintains that our Office lacks jurisdiction to consider Blue Origin's protest. NASA argues that our jurisdiction is confined to protests challenging the award or failure to award a contract for the procurement of goods or services. According to the agency, it is not entering into a contract for the

¹ These differing approaches have been discussed publicly in various news sources. See e.g., <http://www.parabolicarc.com/2013/07/20/nasa-weighs-competing-blue-origin-spacex-proposals-for-pad-39-a/>.

² The agency declined to characterize Blue Origin's August 8 letter as a protest and also declined to characterize its response to the August 8 letter as a response to that protest because of what the agency described as a lack of jurisdictional prerequisites. AR, exh. 18, at BATES 429, 431. We discuss the question of jurisdiction in detail below.

procurement of goods or services, but, rather, it intends to execute a lease by a private concern of federally-owned property.³

Blue Origin contends that, in fact, our Office does have jurisdiction to consider its protest. According to Blue Origin, although the contract is for the lease of LC 39A, it also includes elements of a procurement of goods or services. In this connection, Blue Origin points out that the successful lessee will be required to bear the expense of operating and maintaining LC 39A throughout the term of the lease. Blue Origin argues that, during the lease term, various elements LC 39A will be either maintained in a safe and operable condition or demolished.⁴ Blue Origin maintains that, because NASA requires access to areas in and around LC 39A in connection with the agency's operation of LC 39B,⁵ it will benefit from the lessee's maintenance or demolition of these elements of the launch pad because the areas that NASA will need to access will be rendered safe.⁶ Blue Origin points out as well that, at the conclusion of the lease, LC 39A will revert to NASA in at least a maintained, and potentially an improved, condition. The protester argues that we previously have taken jurisdiction in cases such as this where the contract contemplates a "mixed transaction," that is, one where there are elements of both a sale or lease of government property, and also the procurement of goods and services are involved.

³ Although the AFP anticipates various possible arrangements (" . . . a lease, a use permit, or other form of property out-grant term" AFP at BATES 6), the parties generally have used the term lease to describe the possible transaction here. This decision adopts the parties' terminology.

⁴ LC 39A includes two large steel structures known as the fixed service structure (FSS) and the rotating service structure (RSS). See AR, exh. 8, drawing package, at BATES 36. These large steel structures were designed for use in both launching and servicing the space shuttles.

⁵ The AFP includes a list of facilities located within the LC 39A complex that NASA intends to use in connection with operation of LC 39B, including (1) AC Power, J8-1708 Launch Pad 39A HV; (2) a gaseous nitrogen battery, high pressure storage, pad A&B; and (3) a helium storage battery, high pressure storage, pad A&B. AR, exh. 4, list of NASA maintained systems at LC 39A, at BATES 18.

⁶ Blue Origin also argues that the lessee will provide other benefits to NASA in connection with operating and maintaining LC 39A, including meeting NASA's obligations to provide responses to environmental issues existing as a consequence of past launches at LC 39A, and also preserving various historical artifacts that exist at LC 39A. NASA responds that it has discharged, or will discharge, all of its obligations relating to environmental remediation and historical preservation of LC 39A.

In response to the protester's arguments, NASA asserts that it has no current or future foreseeable need for LC 39A. According to the agency, if it is unable to lease LC 39A, it is prepared to let it "rust to the ground." Agency Motion for Dismissal, Sept. 9, 2013, at 5 n.1. NASA contends that maintenance of the various elements of the LC 39A complex (such as the FSS and RSS) is unnecessary to ensure the safety of its workers. NASA also argues that it has no need for a maintained or improved launch facility. NASA summarizes as follows:

Protester concludes by speculating that there may come a time when the Agency needs LC 39A again--either in support of its commercial crew program or perhaps for a heretofore unthought-of program, highlighting that the Agency "is clearly conscious of this potential benefit, otherwise the AFP would not require a lessee to maintain Launch Complex 39 A." [Citation omitted.] The Agency is insisting that the ultimate operator of LC 39A operate and maintain LC 39A **for the operator's benefit, not the Government's**. Indeed, such an assumption of responsibility is the only thing that makes a lease legally permissible under the auspices of the CSLA [Commercial Space Launch Act]. See generally 51 U.S.C. § 50913 (stipulating that the authority to lease under the CSLA is only available if the government is providing "launch or reentry property of the United States Government that is excess or otherwise is not needed for public use"). The Agency might also have a future requirement for flux capacitors and warp drives. But future requirements, whether ethereal or concrete, real or imagined, are not current bona fide needs. CICA jurisdiction does not attach absent a current requirement necessitating procurement for goods or services.

Agency Legal Memorandum, Oct. 21, 2013, at 8 (emphasis in original).

Under the Competition in Contracting Act of 1984 (CICA), we review protests concerning alleged violations of procurement statutes or regulations by federal agencies in the award or proposed award of contracts for the procurement of goods and services, and solicitations leading to such awards. 31 U.S.C. §§ 3551, 3552 (2006); see also 4 C.F.R. § 21.1(a) (2013). As a general matter, our jurisdiction does not extend to challenges concerning the sale or lease of government property since these activities, by their nature, are not procurements. Meyers Cos., Inc., B-275963 et al., Apr. 23, 1997, 97-1 CPD ¶ 148 at 4 (lease of federal land is not a procurement of property or services encompassed by GAO's bid protest jurisdiction, notwithstanding the lease requirement to erect and maintain fencing).

On the other hand, we have recognized that certain transactions can involve both a sale (or lease) of government property and a procurement of goods or services, and we have taken jurisdiction in these so-called "mixed transaction" cases. For example, in Armed Forces Hospitality, LLC, B-298978.2, B-298978.3, Oct. 1, 2009,

2009 CPD ¶ 192, we took jurisdiction over a protest where the Army sought to obtain renovated or improved transient housing facilities at specified installations. In effect, the transaction contemplated that the Army would transfer ownership of certain physical facilities, and provide a long-term lease of government land, at no cost to the contractor. In return, the contractor would be responsible to construct (or renovate) housing facilities that would be financed, owned, operated and maintained by the contractor at no cost to the government. In that case, we took jurisdiction over the protest because we concluded that the Army obtained a direct benefit from the transaction. Id. at 8.

These “mixed transaction” type cases fall into two broad categories. The first category is those cases where we have taken jurisdiction because the agency receives some direct, but arguably intangible, benefit that aids the agency in the discharge of its mission. For example, we have found that a benefit was conferred to the government through a concession for haircuts for new Air Force recruits (paid for by the recruits), because “the concession agreement is a contract for services under which the [agency] will satisfy its need to obtain initial haircuts for its recruits--which the agency insists is an important aspect of the training experience.” Gino Morena Enters., B-224235, Feb. 5, 1987, 87-1 CPD ¶ 121 at 4. Similarly, we have found that a benefit was conferred on the government through a concession for photocopy services at a U.S. District Court because the use of a concession-type contract aided the court’s mission by reducing its workload and also providing a benefit to the public of more effective access to court records. West Coast Copy, Inc.; Pacific Photocopy & Research Servs., B-254044, B-254044.2, Nov. 16, 1993, 93-2 CPD ¶ 283 at 5-6; see also, New York Tel. Co.; New England Tel. & Tel. Co.; Bell Atlantic Network Servs., Inc., B-236023, B-236097, Nov. 7, 1989, 89-2 CPD ¶ 435 at 2-3 (concession to provide pay phone services to employees and visitors at a General Services Administration facility was subject to GAO protest jurisdiction where the services were intended to satisfy agency mission needs); Armed Forces Hospitality, LLC, supra, (discussed above).⁷

The second category is those cases where a more concrete or tangible benefit is conferred on the agency as part of a mixed transaction. These cases often are hybrid concession type arrangements that require the delivery of goods and/or

⁷ In support of its position, NASA directs our attention to our decision in Rocketplane Kistler, B-310741, Jan. 28, 2008, 2008 CPD ¶ 22. According to the agency, this case stands for the proposition that our Office will not take jurisdiction in cases solely involving an “intangible” benefit to the agency. That decision is inapposite. The case did not involve a question concerning whether the agency was engaged in a “mixed use” transaction, but, rather, whether NASA was permitted to use its special, separate “other transactions” statutory authority rather than conduct a procurement.

services to the government that are of more than a de minimus value. See Shields & Dean Concessions, Inc., B-292901.2, B-292901.3, Feb. 23, 2004, 2004 CPD ¶ 42, recon. denied, B-292901.4, Mar. 19, 2004, 2004 CPD ¶ 71 (concessionaire required to provide maintenance, repair and other services for government facility as well as facility improvement valued at over \$800,000); Starfleet Marine Transp., Inc., B-290181, July 5, 2002, 2002 CPD ¶ 113 (concessionaire for ferryboat services required to provide janitorial services for agency's docks and piers, equip ferries with public address systems for use by park rangers, and provide transportation for rangers).

We conclude that the transaction here falls into both of these categories. First, as noted by the terms of the AFP itself, the contemplated lease transaction will:

[F]urther support NASA in fulfilling its mandate to, "seek and encourage, to the maximum extent possible, the fullest commercial use of space." 51 U.S.C. 20112(a)(4) [(Supp IV, 2010)]. Such use is also authorized under the Commercial Space Launch Act, 51 U.S.C. 50913(a)(1) [(Supp IV, 2010)], which encourages the acquisition by the private sector of launch or reentry property of the U.S. Government that is excess or otherwise not needed for public use.

AFP at BATES 5. Thus, the contemplated transaction will provide a benefit to NASA in the form of directly fulfilling its statutory mandate to seek and encourage the commercial use of space. The intangible benefit of directly assisting NASA in fulfilling its statutory mandate is adequate to confer jurisdiction on our Office. Armed Forces Hospitality, LLC, supra; Gino Morena Enters., supra.

Second, this transaction also confers a concrete benefit on NASA because the successful contractor will be required to operate and maintain LC 39A in some configuration. At a minimum, the successful contractor will be required to maintain the preexisting structures at LC 39A, notably the FSS and the RSS. More practically, since the FSS and RSS were designed specifically as a launch configuration to be used for space shuttle launches, the more likely scenario is that the successful contractor will either modify the FSS and RSS, or alternatively, will demolish the FSS and RSS and construct some other configuration in its place.⁸ In

⁸ We note that LC 39B, the companion launch complex to LC 39A, is being reconfigured by NASA as a "clean" launch pad that does not include any launcher superstructure. LC 39B is described in the Kennedy Space Center Resource Encyclopedia (KSCRE) (which was incorporated in the AFP by reference), as follows:

As of press time, Launch Pad 39B was being reconfigured to support a clean pad concept. This concept will allow rockets to be transported

(continued...)

all of these scenarios, NASA will be left at the conclusion of the lease agreement either with a well-maintained launch complex in its current configuration, or a reconfigured launch complex that will be useful in one manner or another.

In the final analysis, NASA's position essentially amounts to an assertion that it will not be benefitted by the transaction because it has no further use for LC 39A. Notably absent from the agency's position, however, is any explanation for why, if NASA truly has no further use for LC 39A, it simply does not sell it outright, as it is authorized to do under the CSLA. 51 U.S.C. § 50913. Absent such a sale, NASA will be left at the end of the transaction with a launch complex that is at least maintained in its current configuration, and may well be improved by the tenant contractor. Under these circumstances, we conclude that a concrete benefit that is more than de minimus is being conferred on NASA; correspondingly, we find that our Office has jurisdiction to consider Blue Origin's protest because the transaction at issue constitutes a procurement for goods and services by NASA.

PROTEST

As noted above, Blue Origin filed an agency-level protest arguing that the NASA Administrator's remarks (regarding the use of LC 39B as a multi-user facility) demonstrated that NASA intended to evaluate proposals in a manner that was inconsistent with what Blue Origin viewed as the requirements of the AFP. AR, exh. 17, Blue Origin Agency-Level Protest. Blue Origin maintained in its agency-level protest that NASA improperly intended to ignore what it views as the AFP's preference for a multi-user approach. Id. In response to the agency-level protest, NASA concluded, contrary to the position of Blue Origin, that the AFP did not include a preference for a multi-user approach for LC 39A. AR, exh. 18, NASA Response to Blue Origin Agency-Level Protest. After learning of the agency's views, Blue Origin filed the instant protest within 10 days of receiving NASA's response to its agency-level protest.

As an initial matter, we note that this case comes before us in an unusual procedural posture. On the one hand, challenges to the terms of a solicitation, to be timely, must be filed in our Office prior to the deadline for submitting proposals.

(...continued)

to the pad on their own launcher, increasing versatility and flexibility and allowing the center to support multiple types of launch systems.

KSCRE at 273. See [http://tdglobal.ksc.nasa.gov/servlet/sm.web.Fetch/KHB-1863?rhid=1000&did=35173&type=released&rev=\\$latest](http://tdglobal.ksc.nasa.gov/servlet/sm.web.Fetch/KHB-1863?rhid=1000&did=35173&type=released&rev=$latest). Indeed, in the event that a "clean" pad technical approach is implemented by the successful contractor, the facility could be useful to NASA because, as described by the agency itself, such a configuration will increase the versatility and flexibility of the launch complex. Id.

4 C.F.R. § 21.2(a)(1). This case, while apparently presenting a solicitation challenge, does not fall under that timeliness requirement because Blue Origin had no basis, prior to the submission of proposals and the remarks of the NASA administrator, to know that NASA interpreted the AFP in a manner that was inconsistent with Blue Origin's interpretation.⁹

On the other hand, protests that maintain that an agency has evaluated proposals in a manner that is inconsistent with the terms of a solicitation typically are filed after the agency announces its source selection decision, consistent with the requirement that a protest must be filed within 10 days of adverse agency action. 4 C.F.R. § 21.2(a)(2). We typically dismiss as speculative and premature protests alleging that an agency intends to evaluate proposals in a manner inconsistent with the terms of a solicitation that are filed prior to the agency's actual evaluation of proposals. Cryo Tech., B-406003, Jan. 18, 2012, 2012 CPD ¶ 29 at 2 n.1.

Here, Blue Origin filed in our Office within 10 days of being expressly advised by NASA that the agency interpreted the AFP in a manner that was inconsistent with Blue Origin's interpretation. The protest is not speculative or premature, because NASA effectively has announced how it intends to evaluate proposals--that is, in a manner that is inconsistent with Blue Origin's reading of the AFP. The protest also is timely because it was filed within 10 days of Blue Origin being advised--through an adverse ruling on its agency-level protest--of NASA's position regarding its interpretation of the AFP. 4 C.F.R. § 21.2(a)(2). In addition, we conclude that this is the best possible time for our Office to consider the protest. NASA has made clear its intentions regarding how it will evaluate proposals and Blue Origin has made clear its position that it thinks the AFP requires something different in the evaluation of proposals. The most efficient, least intrusive alternative is for our Office to consider the issue now rather than to wait until the acquisition proceeds to a source selection decision.

Turning to the merits of the protest, Blue Origin maintains that the AFP includes a preference favoring a multi-user, rather than exclusive use, approach for LC 39A, but that NASA has made it clear that it does not intend to implement that preference in its evaluation of proposals. In support of its position, Blue Origin directs our attention to two provisions of the AFP. The first provision is included in the instructions to prospective offerors and provides as follows:

Proposers shall stipulate whether they intend to operate LC 39A as an exclusive or multi-user facility. If exclusive use is proposed,

⁹ In effect, the solicitation included a latent ambiguity that was not evident until Blue Origin learned initially of the remarks of the NASA Administrator and, subsequently, the agency made its position known in responding to Blue Origin's agency-level protest.

Proposers shall provide rationale explaining why exclusive use is needed. If a multi-user facility is proposed, the Proposer shall describe its methodology for accommodating and managing multiple users.

AFP at BATES 8. The second provision is included in the AFP's proposal evaluation section and provides as follows:

NASA will evaluate the proposed use of LC 39A (exclusive or multi-use) only in terms of meeting the Government's objective. If a multi-user facility is proposed, NASA will evaluate the proposed methodology for accommodating and managing multiple users. If an exclusive use is proposed, NASA will evaluate the sufficiency of rationale provided as to why exclusive use is needed.

AFP at BATES 11.

According to the protester these two provisions establish a requirement that an offeror proposing exclusive use of LC 39A provide its rationale for why such an arrangement is needed, and also require that NASA evaluate the sufficiency of that rationale. In contrast, according to the protester, offerors proposing a multi-user approach are not required to provide a rationale for their approach, and NASA is not required to evaluate any such underlying rationale.

The protester reasons that, because the AFP requires additional information and analysis with respect to a proposal for an exclusive use approach (what Blue Origin describes as an explanation for the "need" to use the launch pad exclusively), it follows that the AFP includes an inherent preference for a multi-user approach, because such additional information and analysis is not required for the latter approach. According to Blue Origin, an exclusive use approach--and the need therefor--will only be considered under the terms of AFP where there is no acceptable proposal for a multi-user approach; in effect, the protester maintains that the multi-user approach is the "default" approach envisioned by the AFP.

The agency responds that it will not ignore the terms of the AFP because the AFP, on its face, is agnostic regarding an exclusive versus multi-use approach. The agency explains that it is concerned only with achieving the best possible use of LC 39A, consistent with its objective to achieve the fullest commercial use of space. According to the agency, the AFP provisions identified by Blue Origin simply require information--and agency analysis of that information--that would be unique to an exclusive use approach. The agency contends that the AFP was not drafted to give a preference to one approach versus another, but simply seeks information specific to each approach that will enable the agency to assess the comparative merits of those approaches to meeting the government's objective.

We find that the agency's interpretation of its AFP is reasonable. Where a dispute exists as to the meaning of a particular solicitation provision, our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, an interpretation must be consistent with such a reading. Kevcon, Inc., B-406024.3, June 18, 2012, 2012 CPD ¶ 221 at 3. The interpretation that should prevail is the one that gives reasonable meaning to all provisions and does not render any part absurd or create conflicts among the solicitation's provisions. Canupp Trucking, Inc., B-261127, Feb. 15, 1996, 96-1 CPD ¶ 137 at 4.

The AFP includes a declaration of the government's objective in awarding the lease as follows:

NASA will evaluate the Proposer's overall understanding of the objective and the adequacy of the proposed approach to meeting that objective, i.e. the company which has the best demonstrated capability to assume full financial and technical responsibility for operations and maintenance of LC 39A for a term during which the company will make use of LC 39A in a manner that supports the fullest commercial use of space.

AFP at BATES 8. In effect, NASA seeks to determine which offeror demonstrates the best capability to assume responsibility for operating LC 39A in a manner that supports the fullest commercial use of space. In order to assist NASA in making this determination, the AFP elicits different information depending on which approach--multi-user versus exclusive use--is being offered.

In the case of an exclusive use approach, the AFP requires an explanation for why such an approach is necessary. This is a logical inquiry to be made in connection with an exclusive use approach, since such an approach necessarily will preclude other concerns from using the facility during the term of the lease. There could well be a strong case for an exclusive use approach depending upon information relating to variables that is not currently in the record before our Office, but we need not consider that question at this time.¹⁰

The AFP elicits different information from an offeror proposing a multi-user approach; the offeror must provide information relating to its proposed methodology for accommodating and managing multiple users. Like the information elicited from an offeror proposing an exclusive use arrangement, this information is logically related to the proposed approach, because such an approach poses technical

¹⁰ For example, the comparative maturity of one concern's launch vehicle capabilities versus the maturity of another concern's launch vehicle capabilities could positively affect the number of launches possible during the lease term.

challenges not present in an exclusive use setting. As with an exclusive use approach, there could well be a strong case for a multi-user approach depending upon information relating to variables that is not currently in the record before our Office, but we also need not consider that question at this time.¹¹

In the final analysis, we agree with the agency that the AFP contemplates two possible approaches, but includes no preference for one approach versus another. The approaches are different--and require the presentation of different information to substantiate the plan being offered--but there currently is nothing in the record beyond the protester's arguments to show that either approach necessarily is better in terms of meeting the agency's objective of achieving the fullest commercial use of space. Simply stated, that question will be resolved based on the comparative strength of the business cases presented by the offerors. However, the case at hand only concerns whether the agency's interpretation of the AFP is reasonable and, based on our discussion above, we conclude that nothing in the language of the AFP favors one approach over the other.

The protest is denied.

Susan A. Poling
General Counsel

¹¹ For example, a robust demonstration of a concern's capability to manage the logistics and scheduling challenges posed by a multi-user approach also could positively affect the number of launches possible during the lease term.