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# Decision

**Matter of:** Applied Sciences & Information Systems, Inc.

**File:** B-418068; B-418068.2

**Date:** December 26, 2019

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Todd Hicks for CarVaTech USA LLC, the intervenor.  
Major Kathleen O'Hara, Graeme Henderson, Esq., and Ellen Clark, Esq., United States Marine Corps, for the agency.  
Stephanie B. Magnell, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Protest alleging that the solicitation contained a latent ambiguity is dismissed as untimely, where the protester was advised of the agency's interpretation of the solicitation no later than the date the agency report was filed, and the protest ground was filed more than 10 days later. A related protest ground arguing that the agency improperly applied the solicitation's technical evaluation criteria is dismissed, where the protester's challenge to the agency's interpretation of the provision is dismissed as untimely.
  2. Protest arguing that the agency failed to adequately document its technical evaluation is denied, where the evaluation was adequate.
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## DECISION

Applied Sciences & Information Systems, Inc., a small business of Virginia Beach, Virginia, protests the award of a contract to CarVaTech USA LLC, a small business of Virginia Beach, Virginia, under request for quotations (RFQ) No. M67001-19-Q-0016, by the United States Marine Corps, which was issued for web-based recreation permit sales services. The protester contends that the RFQ contained a latent ambiguity that impacted the price it quoted, and that the agency failed to document whether CarVaTech's quotation complied with the requirements of the solicitation.

We deny the protest in part and dismiss the protest in part.

## BACKGROUND

On June 21, 2019, the Marine Corps issued the RFQ as a combined synopsis/solicitation under the commercial item acquisition and simplified acquisition procedures of Federal Acquisition Regulation (FAR) parts 12 and 13. Agency Report, (AR), Tab B, RFQ at 18. The solicitation, which was set-aside for small businesses, sought quotations to provide web-based recreation permit sales services, as specified in the solicitation's performance work statement (PWS). Id. at 3, 18. The RFQ provided for award to the lowest-priced, technically acceptable vendor with relevant and satisfactory past performance, considering the evaluation factors of technical, delivery, past performance, and price. Id. at 18. The solicitation identified a base period of performance of one year, with four 1-year options. Id. at 3.

As relevant to this protest, the PWS contained the following requirement:

The Contractor is required to ensure compliance with the Federal Risk and Authorization Management Program (FedRAMP). FedRAMP is a government-wide program that provides a standardized approach to security assessment, authorization, and continuous monitoring for cloud products and services. Contractor shall provide the Government with proof of its hosting environment's interim ATO [authority to operate], ATO, or active FedRAMP accreditation.

RFQ, PWS § 2.1.4.

The agency received six quotations by the July 22 deadline. Contracting Officer's Statement (COS) at 1.

On July 25, the Marine Corps's first technical evaluator rated CarVaTech's quotation as technically unacceptable under PWS section 2.1.4, noting that there was "[n]o [Marine Corps] ATO information." AR, Tab F, Technical Evaluation 1 at 2. On August 15, this evaluator changed his rating to acceptable, striking through his initial evaluation and appending a note that the "FedRAMP High Provisional ATO [was] received." Id. He also struck out his similar negative comments about the lack of a Marine Corps ATO elsewhere in the evaluation.

On July 30, the agency's second technical evaluator also found CarVaTech's quotation technically unacceptable under PWS section 2.1.4 for lack of evidence of an ATO from the Marine Corps or the Department of Defense. AR, Tab G, Technical Evaluation 2 at 2, 14. However, on August 14, the second technical evaluator changed her evaluation to acceptable, noting that CarVaTech's "system is FedRAMP approved." Id. at 14.

On September 17, the agency selected CarVaTech as the vendor submitting the lowest-priced, technically acceptable quotation. AR, Tab H, Award Decision. This protest followed.

## DISCUSSION

Applied Sciences argues that the solicitation contains a latent ambiguity in the FedRAMP requirements in PWS section 2.1.4, which resulted in an increase in its quoted price. Applied Sciences also asserts that the agency failed to document its conclusion that CarVaTech's quotation was technically acceptable, after initially finding the quotation to be technically unacceptable.<sup>1</sup> The Marine Corps contends that any claim that there was a latent ambiguity is untimely and that its evaluation was adequately documented.

### Interested Party

As an initial matter, on December 5, subsequent to the parties' protest briefing, the agency requested dismissal of the protest on the basis that protester is not an interested party because it did not allege it was next in line for award. Req. for Dismissal, Dec. 5, 2019, at 2. Under our Bid Protest Regulations, a protester must be an interested party, which means that it must have a direct economic interest in the resolution of a protest issue. 4 C.F.R. § 21.0(a).

Here, the record shows that the protester was next in line for award. AR, Tab H, Award Decision at 1; AR, Tab I, Summary of Applied Sciences Debriefing at 1. Furthermore, the Marine Corps advised the protester of this fact in its debriefing and memorialized this communication in a memorandum. AR, Tab I, Summary of Applied Sciences Debriefing at 1 (Question: "Was [Applied Sciences] the next lowest in pricing?" Answer: "Yes, [Applied Sciences] was the next lowest bidder.") Accordingly, we decline to dismiss the protest because we conclude that Applied Sciences has the necessary economic interest to be an interested party and pursue its protest.

### Timeliness

The Marine Corps next argues that Applied Science's claim that the RFQ's FedRAMP provision contained a latent ambiguity should be dismissed as untimely, because it was filed more than 10 days after the protester knew or should have known of the basis for its protest ground. Req. for Dismissal at 2-3 (citing 4 C.F.R. § 21.2(a)(2)). In this regard, Applied Sciences contends that, but for a latent ambiguity in PWS section 2.1.4 regarding FedRAMP compliance, it would have submitted the lowest price. Opp'n to Req. for Dismissal, Dec. 9, 2019, at 2. Specifically, the protester argues that the provision is unclear whether an offeror itself needed to comply with FedRAMP, as the

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<sup>1</sup> The protester withdrew protest grounds alleging that the agency's past performance evaluation of CarVaTech was flawed and that the technical evaluation did not consider CarVaTech's compliance with certain solicitation requirements. Comments & Supp. Protest at 1-2. The protester also withdrew a protest ground asserting that the agency miscalculated CarVaTech's quotation under other criteria. Supp. Comments at 2. While we do not address in detail all of the remaining arguments raised by Applied Sciences, we have reviewed each and conclude that none provides a basis to sustain the protest.

protester understood, or whether only the offeror's hosting environment needed to comply with FedRAMP, per the agency's interpretation. Id. at 6.

Our Bid Protest Regulations contain strict rules for the timely submission of protests that reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without disrupting or delaying the procurement process. Armorworks Enters., LLC, B-400394, B-400394.2, Sept. 23, 2008, 2008 CPD ¶ 176 at 5; see also DCR Servs. & Constr., Inc., B-415565.2, B-415565.3, Feb. 13, 2018, 2018 CPD ¶ 125 at 4. Under these rules, protests other than those alleging improprieties in a solicitation that are apparent prior to closing time for receipt of quotations must be filed within 10 days of when a protester knew or should have known of its protest ground. 4 C.F.R. § 21.2(a)(2).

Applied Sciences first argued that the PWS provision contained a latent ambiguity in its supplemental comments, which were filed on November 25. Protester Supp. Comments at 2. The agency presented its interpretation of RFQ section 2.1.4 on November 1. Memorandum of Law (MOL) at 10-11. The agency wrote:

Protester is correct that "CarVaTech, LLC" is not FedRAMP accredited, but this allegation misinterprets the requirement. The RFQ required that the hosting environment meet FedRAMP or ATO compliance and CarVaTech clearly demonstrated that requirement was met in its quote. Thus, the technical evaluation of CarVaTech's technical specifications was reasonable and this protest should be denied.

Id. at 11.

Applied Sciences asserts that it was not until the agency's November 20 supplemental COS that it learned the agency viewed section 2.1.4 of the PWS as requiring only the offeror's hosting environment to be FedRAMP Compliant. Opp'n to Second Req. for Dismissal at 4-7. The protester thus asserts that its protest ground was timely filed within 10 days of when it knew or should have known of the protest ground. Id.

We conclude that the agency's November 1 description sufficiently identified that the parties interpreted PWS section 2.1.4 differently because it not only clearly described the agency's position, but also highlighted the agency's view that the protest "misinterprets the requirement." MOL at 11. We therefore dismiss as untimely the protest ground that the solicitation contained a latent ambiguity because this claim was filed more than 10 days after the protester knew or should have known of the agency's interpretation.<sup>2</sup> 4 C.F.R. § 21.2(a)(2); Enterprise Servs., LLC, B-414513.2, et al., July 6, 2017, 2017 CPD ¶ 241 at 9 n.6.

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<sup>2</sup> Furthermore, the RFQ required vendors to "to ensure compliance with" FedRAMP. RFQ, PWS § 2.1.4. The RFQ also required vendors to "provide the Government with proof of its hosting environment's interim ATO, ATO, or active FedRAMP accreditation."

## FedRAMP Compliance

Applied Sciences next argues that the agency erred in concluding that CarVaTech complied with the RFQ's FedRAMP requirements. Protest at 17. Specifically, the protester contends that "the stated evaluation criteria [in PWS section 2.1.4] required the Contractor to provide proof of ATO and/or FedRAMP compliance" to the agency and that the Marine Corps failed to identify that CarVaTech, itself, did not have an ATO. Protester's Comments & Supp. Protest at 8.

Because we dismissed above the argument that the solicitation language contained a latent ambiguity about whether the RFQ required vendors, or only hosting environments, to have an ATO and be FedRAMP compliant, there remains no basis for the protester to challenge the agency's interpretation of PWS section 2.1.4 as applied in its evaluation of CarVaTech's quotation. Accordingly, this protest ground lacks a valid basis of protest and is dismissed. 4 C.F.R. § 21.5(f); see also 4H Constr. Corp., B-413558.4, Feb. 8, 2017, 2017 CPD ¶ 54 at 5.

## Inadequate Documentation

Finally, Applied Sciences contends that the Marine Corps failed to adequately document its conclusion that CarVaTech's quotation was technically acceptable, after the Marine Corps' evaluators initially found the quotation to be unacceptable. Protester's Comments & Supp. Protest at 10-14.

The agency asserts that its documentation was adequate and appropriate for this solicitation. Supp. MOL at 6. As to the change in the technical evaluation of CarVaTech's quotation, the agency contends that the evaluators were first "confused" about the solicitation evaluation criteria. Supp. MOL at 3. In this regard, the agency asserts that the initial basis for CarVaTech's rating of unacceptable--lack of an ATO specific to the Marine Corps--"was not a valid reason to eliminate a quote." Id.; see also Supp. COS at 1. As the contracting officer explains:

The oversight was addressed with the evaluator during reevaluation of questions. Because CarVaTech used Microsoft Azure, one of the three accredited hosting environments listed on the FedRAMP website, its quote did not also require an ATO. After receiving this explanation, the evaluator changed that rating to "acceptable."

Supp. COS at 1.

In procurements for commercial items conducted under simplified acquisition procedures, such as this one, limited documentation of the source selection is permissible, as long as the agency provides a sufficient record to show that the source selection was reasonable. FAR § 13.303-5(e). Although we generally give little weight

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Id. To the extent that this language is ambiguous, the ambiguity is patent and must have been challenged prior to the time set for receipt of proposals. 4 C.F.R. § 21.2(a)(1).

to reevaluations and judgments prepared in the heat of the adversarial process, see Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15, post-protest explanations that provide a detailed rationale for an agency's contemporaneous conclusions and simply fill in previously unrecorded details will generally be considered in our review of the rationality of selection decisions, if those explanations are credible and consistent with the contemporaneous record. McLaurin Gen. Maintenance, Inc., B-411443.2, B-411443.3, Jan. 14, 2016, 2016 CPD ¶ 41 at 6.

Here, the contracting officer's explanation is consistent with the contemporaneous record. Furthermore, PWS section 2.1.4 does not contain any requirement that vendors possess an ATO specific to the Marine Corps or to the Department of Defense. On this basis, the evaluators' erroneous initial ratings were not based on the RFQ's stated evaluation criteria. These errors were corrected in the evaluations, and the correction documented, prior to the agency's final evaluation. Accordingly, while the contemporaneous record here may be limited, based on our review of the record and the agency's explanation, it is sufficient to show that the agency's source selection was reasonable. This protest ground is denied. McLaurin Gen. Maintenance, supra, at 6.

The protest is denied in part and dismissed in part.

Thomas H. Armstrong  
General Counsel