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**Comptroller General
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**United States General Accounting Office
Washington, DC 20548**

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Decision

Matter of: Firearms Training Systems, Inc.

File: B-292819.2; B-292819.3; B-292819.4

Date: April 26, 2004

James H. Roberts, III, Esq., Van Scoyoc Kelly, for the protester.
Michael A. Hordell, Esq., Laura L. Hoffman, Esq., Jennifer W. Persico, Esq., and Charles H. Carpenter, Esq., Pepper Hamilton, for Advanced Interactive Systems, Inc., an intervenor.
Clarence D. Long, III, Esq., and Robert M. Allen, Esq., Department of the Air Force, and Thedlus L. Thompson, Esq., General Services Administration, for the agencies.
Sharon L. Larkin, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester's challenge to a task order placed against a Federal Supply Schedule on the grounds that it includes items not on the awardee's schedule is denied, where the record shows that the agency conducted a full and open competition; to the extent that the agency failed to comply with the requirements of Federal Acquisition Regulation § 8.401(d), such violations did not prejudice the protester.
2. Protest that the agency violated Federal Acquisition Regulation Part 12 because the awardee's weapons simulator and its components were not commercial items is denied, where the record shows that both are commercial items; absent a solicitation provision or some indication that proposed items are not commercial, an agency is not required to formally evaluate and document whether proposed items are in fact commercial items when using commercial items procedures.
3. Protester's challenge to the agency's finding that its proposed weapons simulator was technically unacceptable because the proposal failed to satisfy a ballistics validation requirement is denied, where the agency repeatedly requested ballistics data for the simulator, much of which was not provided; the protester's corresponding challenge to the agency's finding that the awardee's proposed weapons simulator complied with the solicitation's technical requirements is denied where the record supports the agency's conclusions, and the protester has not shown that the agency's interpretations of the solicitation or awardee's proposal were unreasonable.

DECISION

Firearms Training Systems, Inc. (FATS) protests the award of a task order to Advanced Interactive Systems, Inc. (AIS) under request for quotations (RFQ) No. F44650-03-T-0020, issued by the Department of the Air Force for weapons simulators. FATS challenges the Air Force's evaluation of FATS's and AIS's proposals and placement of the task order under AIS's General Services Administration's (GSA) Federal Supply Schedule (FSS) contract.

We deny the protests.

BACKGROUND

The Air Force issued this RFQ to procure weapons simulators for use at Air Combat Command bases when live range firing is not possible.¹ Although the agency used an RFQ to procure this requirement, the RFQ announces, and the agency conducted, a full and open competition. For example, the RFQ solicits both FSS and non-FSS vendors, and seeks "proposals" in response to detailed solicitation requirements. The RFQ also sets forth evaluation criteria, stating that award will be made on a best-value basis; for offers not submitted under GSA schedules, the agency will evaluate whether proposals meet the listed specifications (*i.e.*, technical acceptability), price, and delivery. RFQ amend. 11. Because the record throughout refers to "offerors" and "proposals," we use that nomenclature in this decision.

The Air Force uses weapons simulators like those sought here to conduct three types of weapons training: marksmanship, collective, and judgmental. These protests concern, in large part, the Air Force's requirements for simulators to provide marksmanship training for M16A2 rifles (hereafter referred to as M16 rifles), M4 carbine rifles, and M9 pistols. In marksmanship training, trainees shoot a "course of fire"² at targets in order to qualify for firing a particular type of weapon.³ Before

¹ The RFQ was issued as a combined solicitation/synopsis after the Air Force conducted market research and concluded that weapons simulators were commercial items. During market research, among other things, the Air Force reviewed product literature and website information from FATS and AIS, talked with company representatives about their respective systems' capabilities, and considered purchases by other agencies and customers. The commercial item determination was made based on an evaluation of the system as a whole, and not based on the evaluation of its individual components or RFQ line items. Hearing Transcript (Tr.) at 509-27, 536-39, 542.

² A "course of fire" means a specified number of rounds fired at a fixed number of targets, located at a set distance, over a specified amount of time. Tr. at 112. Each weapon type (*e.g.*, pistols, rifles) has its own course of fire.

turning to the specific requirements in the RFQ for these simulators, we set forth below additional background about Air Force weapons training relevant to the issues here.

Marksmanship Weapons Training

The conduct of marksmanship training is governed by Air Force Instruction (AFI) 36-2226 and Air Force Manual (AFM) 36-2227 (hereafter referred to as AFI-6 and AFM-7). AFI-6, which incorporates by reference AFM-7 and requires that they be used together, outlines the basic requirements for the Air Force's weapons training program; AFM-7 more specifically establishes individual weapons qualification requirements. Tr. at 406-08. These documents, read together, describe marksmanship training requirements for pistols (the M9, for example), and for rifles (the M16 and M4 carbine, for example). The documents recognize that marksmanship training requirements for pistols and rifles are different. For example, pistol and rifle training use different courses of fire involving different range appearances, target distances, and orders of fire.⁴ E.g., AFM-7, Figs. 1.1 and 2.1; AFI-6 §§ 2.2-2.4.

AFI-6 articulates a strong preference for conducting marksmanship training using real ranges and "live-fire" situations. It provides that simulators may be used for weapons qualifications only when problems exist that close the range, or when there is a shortage of ammunition that precludes live-fire training. AFI-6, Tables 2.1-2.3. When simulators are used in lieu of real ranges, they are to "[p]erform in all respects like the actual weapon. The intent of the simulator is to allow realistic training" AFI-6 § 2.12.10.1.

Live-fire marksmanship training is conducted in "lockstep" and according to weapon type. That is, individuals firing rifles (e.g., the M16 or M4 carbine) will fire a phase or order of fire on a rifle range laid out with targets set at appropriate distances for rifles. When all individuals have successfully completed a phase or order of fire, they proceed together in a group to the next phase or order. If one person needs to repeat a training segment (e.g., because he or she failed to hit a satisfactory number of targets), the remaining shooters will "step back" and wait as a group until the

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³ Collective training teaches individuals how to fire a mixture of weapons as a team or group. Judgmental training involves "shoot/don't shoot" scenarios, where individuals are required to make judgments as to whether firing a weapon is appropriate. Tr. at 110-12.

⁴ An "order of fire" refers to the training sequence conducted under a course of fire. An order of fire is conducted in phases. See, e.g., AFM-7, Figs. 1.1. and 2.1.

individual has successfully completed his or her firing and all are qualified to proceed. Tr. at 341-42, 413-14.

Likewise, individuals firing pistols (e.g., the M9) will proceed in lockstep, but on a pistol range laid out with targets set at appropriate distances for pistols. The Air Force does not conduct marksmanship training for pistols and rifles simultaneously, since the target distances and courses of fire for rifles and pistols differ, and because additional Air Force instructors and resources would be required to monitor training. Tr. at 425-27. However, any type of rifle can be used on a rifle range, and any type of pistol can be used on a pistol range. For this reason, the Air Force qualifies the M16 and M4 carbine rifles simultaneously on one range, and qualifies the M9 pistols separately on another range; the agency does not qualify the M9 together with the M16/M4 carbine on a single range or at the same time. Tr. at 402.

The Solicitation's Requirements

The RFQ identifies 14 line items: a basic 5-lane system, plus accompanying weapons, courses of fire, video accessories, training courses, and shipping. The RFQ contemplates that two 5-lane systems will be connected with a "10-lane network branching kit" to create a 10-lane system that will permit individuals to fire at video targets, or using video scenarios, as opposed to firing on an actual range. RFQ amend. 11, Description and § 1. The lanes permit individuals to complete their training requirements in marksmanship, collective, or judgmental modes. As provided in the RFQ, simulator training is to occur with three weapon types: M9 pistols, M16 rifles, and M4 carbine rifles. RFQ amend. 11, § 2.1.

Because live ammunition cannot be used with the simulators, the awardee is required to provide 150 each of the three weapon types (M16, M4 carbine, and M9) that can be plugged into the system and fired in the simulated environment. RFQ amend. 11, Description. The RFQ provides that these weapons "must perform in all respects like actual weapons." The RFQ includes additional specifications, which the solicitation states are necessary "[t]o meet the need of the command and AFI 36-2226 requirements." RFQ amend. 11, § 1. Three specifications relevant here are:

2.3. Weapons and systems used to control weapons must use accurate and validated ballistics for each type of weapon. Ballistic data must have been previously validated by another federal agency . . .⁵

⁵ The RFQ also contains ballistic "validation requirements" that discuss ballistic effects (e.g., trajectory paths, wind effects, and projectile flights) and identifies the ballistic data to be used in calculations. This data is to include such things as "ballistic air density, ballistic air temperature, ballistic range wind, ballistic vertical wind, ballistic cross wind, altitude of the meteorological datum plane, grid

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2.6. When a weapon becomes unserviceable, to minimize training interruption the immediate availability of replacement weapons (within 24 hours) from the vendor is mandatory.

3.10. System must allow for different weapons to be fired simultaneously off the same system during marksmanship, collective, or judgmental training sessions. System must also be capable of allowing single weapons to be fired without affecting the course of fire or scenario of other students. This is needed when a single shooter must re-fire a phase or order of fire.

RFQ amend. 11, §§ 2.3, 2.6, 3.10.

Evaluation of Proposals

FATS and AIS submitted proposals in response to the RFQ under their respective GSA Schedule 69 contracts for training aids and devices.⁶ FATS proposed to provide the “FATS 300D” simulator, which permits each lane to be independently programmed to fire either a pistol or rifle course of fire in marksmanship mode, irrespective of the other lanes.⁷ Each lane displays a screen separate from the other lanes, and displays the particular range that corresponds to the course of fire and weapon type assigned to the lane. FATS refers to this as “lane isolation.” Thus, under the FATS system, lane one can be programmed to fire pistols, lane two programmed for rifles, lane three for pistols, etc., in any order desired. Tr. at 356; FATS Comments (Mar. 1, 2004), exh. 1, “Explanations and examples,” at 8-9.

AIS proposed to provide the “EST 2000” simulator. This simulator does not allow for “lane isolation” (as that term is used by FATS) in the marksmanship mode of training. Rather, each 5-lane system, in the marksmanship mode, is typically programmed for either a pistol or rifle course of fire. All lanes in the 5-lane system view a single video screen displaying the range corresponding to the course of fire and weapon type (pistol or rifle) assigned. However, when two of these 5-lane

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declination, non-standard meteorological data, thrust facts, base burn time, weight of projectile, twist of rifling, diameter of projectile, center of gravity of projectile, and axial moment of inertia.” In addition, the RFQ provides requirements for small arms trajectories and validation. RFQ amend. 11, § 2.3.

⁶ A third offeror submitted a proposal but was ultimately found to be technically unacceptable.

⁷ Both the FATS and AIS simulators permit the simultaneous firing of rifles and pistols in various lanes during collective and judgmental modes. Because this is not at issue in these protests, we do not discuss this capability further.

systems are connected together, as is contemplated by the RFQ, one 5-lane system can be programmed to fire pistols and the other can be programmed to fire rifles. Thus, under the AIS system, lanes 1-5 can be programmed to fire pistols (and not rifles), but lanes 6-10 can be programmed to fire rifles (and not pistols), or vice versa.⁸ Tr. at 464, 500-01; see also 352-53 (testimony of FATS's Director of Training and Technology Integration).

Both FATS and AIS included in their proposal a matrix identifying the numbered technical specifications set forth in the RFQ, and a statement describing their offer in response to each requirement. In addition, the offerors submitted fixed-price proposals for each of the 14 line items. FATS priced its initial proposal at [REDACTED]; AIS priced its initial proposal at [REDACTED]. Included in AIS's price were a number of "value added items," including additional years of warranty support and marksmanship courses of fire. AIS also offered to provide "an additional stock of each type [of] weapons to meet a repair turn around time of 24 hours." AR, Tab 16, AIS Cover Letter to AIS Initial Proposal (Sept. 29, 2003).

The Air Force evaluated the proposals against the RFQ's technical requirements, including those quoted above, and issued to each offeror "Evaluation Notices" (EN) describing proposal deficiencies and areas requiring clarification. For example, both offerors received ENs asking them to identify which of their proposed line items were not on their FSS contracts. FATS identified five items that were not on its schedule: rifle and pistol courses of fire, a 1-day operator course, collective and judgmental "authoring" courses, a "shoot back cannon," and freight and shipping. AR, Tab 8, FATS EN Response (undated), at 1-2. AIS identified six items not on its FSS, but identified them as "incidental commercial item[s]"; these items are: rifle and pistol courses of fire, a 1-day operator course, collective and judgmental "authoring" courses, digital video camera accessories, a branching kit, and freight and shipping. AR, Tab 12, AIS EN Response (undated), at 2-3.

Where the Air Force had additional questions, it issued a second round of ENs and held telephonic discussions with offerors to obtain further information. For example, during the first round of ENs issued, the Air Force informed FATS that its

⁸ AIS asserts that different weapon types could be assigned to a lane using the system's "scenario editor"—that is, a pistol could be assigned to lane one, a rifle to lane two, etc.—but the 5-lane system, as it is currently used, is programmed with only one course of fire (either pistol or rifle). Tr. at 498-99. If a pistol were assigned to a rifle course of fire (or vice versa), this would create a "flag" or warning because the weapon type does not correspond to the selected course of fire. The Air Force instructor can override this warning, thus permitting the individual to fire the weapon on the wrong course of fire (for example, the instructor could allow a pistol to be fired on a rifle course of fire), but the results could not be used to qualify as training on the weapon. Tr. at 180-82, 463-65.

proposal did not comply with the requirements for ballistics validation set forth in section 2.3 of the RFQ. Specifically, the EN stated:

Your submission states [that FATS's] weapons “. . . use accurate and validated ballistics for each type of weapon”⁹, however, your proposal does not provide any information that shows the demonstrated system[s] ballistics effects (i.e. ballistic air density, range wind, weight of projectile, etc.) or documented ballistics validation. Please provide [a] detailed breakdown of how the FATS [system] compensates for these ballistics effects and please provide a copy of the validated ballistic data.

AR, Tab 7, FATS EN (Nov. 24, 2003), at 1. In response, FATS did not provide the requested information, but stated that:

FATS has previously delivered to the [United States] Army, [United States] Navy, [United States Air Force] and [United States Marine Corps (USMC)], as well as numerous international military organizations. In all cases the ballistics incorporated were accepted as accurate and appropriate for each simulated weapons system.

AR, Tab 8, FATS EN Response (Dec. 1, 2003), at 2. The Air Force found this response inadequate and sent another EN to FATS stating:

System must use accurate and validated ballistics for each type of weapon. To meet solicitation specification requirements, ballistics data from a previously validated federal agency must be submitted.

AR, Tab 7, FATS EN (Dec. 4, 2003), at 1. A few days after sending this EN, the Air Force evaluators also contacted FATS by telephone to discuss this requirement, at which time FATS directed the agency to contact the USMC to obtain the data.

A series of e-mails between the Air Force and the USMC followed, where the Air Force repeatedly requested ballistics data for the M16, M4 carbine, and M9 weapons. AR, Tab 8, E-Mail Communications Between Air Force and USMC (Dec. 12-18, 2003). During the course of these communications, the USMC provided the Air Force a report stating that these “weapon[s] and ammunition types have been test[ed] and validated.” AR, Tab 8, USMC E-Mail Ballistics Report (Dec. 12, 2003), at 2. However, this report included ballistics performance data for only the M9 pistols, and not the M16 or M4 carbine rifles. The Air Force requested that the USMC provide the

⁹ This was the only statement in FATS's proposal concerning compliance with section 2.3 of the RFQ.

ballistics firing data for the M16 and M4 carbine, but the USMC did not provide this information at any time during the evaluation.¹⁰

On the same day it received the USMC report, the Air Force requested final proposal revisions (FPR) from the offerors. In the request for FPR sent to FATS, the Air Force again advised FATS that its proposal was technically unacceptable under the ballistics validation criteria and asked it to submit ballistics validation data. AR, Tab 13, Request for FPR (Dec. 12, 2003). In its FPR, FATS included the ballistics validation report previously provided by the USMC, but did not provide any additional information demonstrating ballistics performance for the M16 or M4 carbine.

Based on the lack of ballistics data for the M16 and M4 carbine rifles, the contracting officer (who was the source selection official) determined that FATS's proposal was technically unacceptable under section 2.3 of the RFQ. His determination was based, in large part, on the recommendation of the technical evaluator who had evaluated proposals and held discussions with FATS and the USMC. The contracting officer noted that although the information provided by FATS and the USMC asserted compliance with USMC ballistics standards, the Air Force did not know what those USMC standards were. He also found significant the fact that the Air Force technical evaluator "could not in good conscience" recommend to him that FATS's proposal satisfied the Air Force's requirements, given the lack of ballistics data for two of the three weapons required by the RFQ. Contracting Officer's Statement (Feb. 11, 2004) at 6; AR, Tab 14, Proposal Analysis Report, at 4. In contrast, the contracting officer found that AIS's proposal complied with each of the technical requirements of the RFQ. AR, Tab 14, Proposal Analysis Report, at 4.

The contracting officer also determined that the price of each offeror's proposal was fair and reasonable, based on a comparison of offerors' bottom line pricing with each other and with the government estimate. In this regard, FATS's FPR was priced at \$3,498,397, and AIS's FPR was priced at \$3,498,147.¹¹ Based on the fact that AIS's proposal was the only technically acceptable offer, and was also the lowest in price, the contracting officer selected AIS for award. AR, Tab 14, Proposal Analysis Report, at 3-4. To implement the award, the contracting officer issued a task order under AIS's GSA schedule on December 31, 2003, and these protests followed.

¹⁰ The USMC ultimately provided the information 8 days after contract award.

¹¹ To reduce its price, AIS eliminated a number of the earlier proposed "value added items" from its FPR, including the additional years of warranty and additional marksmanship courses. Its FPR stated, however, that it "will still try to keep an additional stock of each type [of] weapons to meet a repair turn around time of 24-48 hours." AR, Tab 17, Cover Letter to AIS FPR (Dec. 17, 2003).

DISCUSSION

FATS raises several protest issues in each of two general areas. First, FATS complains that the Air Force failed to comply with certain requirements of the Federal Acquisition Regulation (FAR) applicable to FSS contracts and the purchase of commercial items. In this regard, FATS argues that the agency: (1) violated the rules in FAR Subpart 8.4 regarding the purchase of items not included on a vendor's FSS contract; (2) included items on its order that do not qualify as commercial items; and (3) had an insufficient basis for concluding that the procurement here involved commercial items. Second, FATS challenges several of the agency's evaluation conclusions about the compliance of its system, and the awardee's system, with the requirements of the solicitation.

Compliance with Applicable FAR Requirements

FATS first argues that the task order award here is improper because not all of the line items purchased are available on AIS's FSS contract, and because the Air Force did not follow the procedures of FAR § 8.401(d) regarding the ordering of items not included on a vendor's FSS contract. In response, the Air Force explains that this competition was not limited to FSS contract holders, but was instead a full and open competition among both FSS and non-FSS vendors.

As an initial matter, FATS correctly points out that an agency may not use FSS procedures to purchase items that are not listed on a vendor's GSA schedule without conducting a competition for those non-schedule items. Symplicity Corp., B-291902, Apr. 29, 2003, 2003 CPD ¶ 89 at 4; OMNIPLEX World Servs. Corp., B-291105, Nov. 6, 2002, 2002 CPD ¶ 199 at 4-5. To implement these rules, FAR § 8.401(d) provides:

For administrative convenience, an ordering office contracting officer may add items not on the [FSS] (also referred to as open market items) to . . . an individual [FSS] task or delivery order only if--

- (1) All applicable acquisition regulations pertaining to the purchase of the items not on the [FSS] have been followed (e.g., publicizing (Part 5), competitive requirements (Part 6), acquisition of commercial items (Part 12), contracting methods (Parts 13, 14, and 15), and small business programs (Part 19));
- (2) The ordering office contracting officer has determined the price for the items not on the [FSS] is fair and reasonable;
- (3) The items are clearly labeled on the order as items not on the [FSS]; and
- (4) All clauses applicable to items not on the FSS are included in the order.

In our view, this procurement cannot properly be termed an “FSS buy,” and thus the FSS procedures regarding the purchase of open market items have no application here. As described above, this procurement was conducted using full and open competition. Using a task order against the awardee’s FSS contract to implement the selection decision at the end of the competition is a matter of administrative convenience; it does not convert this procurement to an FSS buy, or raise the kinds of concerns normally associated with including open market items in an FSS purchase. See, e.g., Pyxis Corp., B-282469, B-282469.2, July 15, 1999, 99-2 CPD ¶ 18 at 3. The remaining requirements of FAR § 8.401(d) are administrative matters of little concern in this environment.

In any event, the Air Force asserts, and the record confirms, that the agency’s actions here met each of the requirements of paragraph (1) of FAR § 8.401(d). These include: conducting market research and determining that the acquisition should be conducted as a simplified acquisition for commercial items; issuing a combined solicitation/synopsis for a “full and open competition” to publicize the requirement in accordance with FAR Parts 5 and 6; conducting a competition using the acquisition procedures of FAR Part 12 (commercial items) and Part 13 (simplified acquisitions), while using the competitive procedures of FAR Part 15 as a guide (such as in the conduct of discussions); and considering small business participation in accordance with FAR Part 19. Tr. at 32-34. The Air Force also asserts that it determined that price was fair and reasonable, which satisfies the requirement of paragraph (2) of the regulation.¹² Tr. at 34-35.

To the extent that the task order does not identify which of the line items are not on AIS’s FSS, and does not separately identify the commercial item clauses applicable to those non-FSS items, these matters are administrative in nature only and provide no rights to FATS because they have no bearing on the evaluation or award decision. FATS cannot reasonably claim to be prejudiced by any alleged administrative errors in this regard. Tr. at 36, 44-45.

FATS next complains that the Air Force “violated the provisions of FAR Part 12 by awarding an order to AIS that included items that do not qualify as commercial

¹² In its post-hearing comments, FATS for the first time challenges the Air Force’s determination of “fair and reasonable” pricing under FAR § 8.401(d)(2), contending that the agency failed to perform a reasonable line-item-by-line-item price comparison. This protest issue is untimely. Our Bid Protest Regulations require that protest issues concerning other than solicitation improprieties be raised within 10 days of when the basis for protest becomes known. 4 C.F.R. § 21.2(a)(2) (2004). FATS’s ground of protest is based on information provided in the agency report (namely, the offerors’ proposed pricing) produced on February 20, and hearing testimony obtained on March 16. Its post-hearing comments were not filed until March 29, which is more than 10 days after either event.

items.”¹³ Protest (B-292819.2) at 8. Specifically, it contends that the six non-FSS items included in the Air Force task order are not commercial items because they do not appear on AIS’s FSS. However, we find nothing in the record to support this argument. As the record shows, two of the line items (digital video accessories and a “branching kit”¹⁴) are being purchased by AIS commercially from another vendor and provided to the Air Force with this requirement. Tr. at 559-60. Another line item (pistol and rifle courses of fire) is merely software that, according to the Air Force, “could be sold commercially.” Tr. at 545. The remaining two line items are for various training courses or for freight and shipping, neither of which FATS has shown to be non-commercial. Moreover, all six of the line items are identified in FATS’s proposal as FSS items (and thus have been determined by GSA to be commercial items), or as non-FSS items that FATS itself asserts are commercial items. Tr. at 527, 531-32. FATS has not explained how the very same line items can be commercial when it offers them, but are not commercial when AIS does.¹⁵

FATS also complains that the EST 2000, as a whole, cannot be considered a commercial item, because the system is allegedly “under development.” In this regard, FATS points to an isolated statement in AIS’s proposal discussing “future enhancements” and argues that this shows that AIS’s system is only “in the research and development stage.” FATS Post-Hearing Comments at 16-17. However, we find this argument strained. The record shows that AIS has an established simulator that is currently being used by other agencies and entities and is offered for sale commercially; FATS’s own witness admits to firing on a currently fielded AIS simulator.¹⁶ Tr. at 224, 350, 556. In our view, AIS’s discussion of future enhancements to certain simulator features (which enhancements the Air Force is

¹³ As defined by the FAR, a commercial item is “[a]ny item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes,” and has been sold, leased or licensed (or offered for sale, lease, or license) to the general public. FAR § 2.101.

¹⁴ The branching kit consists of various cable, battery, and video components. AR, Tab 16, AIS Initial Proposal, at 3.

¹⁵ To the extent that FATS argues that AIS has not “fielded” a system incorporating all 14 of the line items, the record does not support this allegation.

¹⁶ FATS argues that AIS’s currently fielded simulator is not compliant with certain RFQ specifications and that the changes necessary to render the system compliant destroy the commercial nature of the simulator. FATS Response to Motion for Summary Judgment (Feb. 2, 2004), at 7. However, the record does not demonstrate that there are any appreciable differences between the AIS simulator currently fielded and that proposed for the Air Force. In any event, as discussed below, we find that the Air Force reasonably concluded that AIS’s simulator complies with each of the challenged RFQ requirements based on the system’s current capabilities.

not purchasing) does not alter the commercial nature of AIS's simulator, and thus we find no merit to FATS's argument.

Finally, FATS complains that the Air Force's commercial item determination was insufficient insofar as it was based solely on its market research; the Air Force admittedly did not perform any further analysis during the course of the evaluation. However, as the Air Force argues, and we agree, absent a solicitation provision or some indication that the proposed items are not commercial, there is no requirement that an agency formally evaluate or document whether an offered item is a commercial item when using the commercial item procedures of FAR Part 12. NABCO, Inc., B-293027, B-293027.2, Jan. 15, 2004, 2004 CPD ¶ 15 at 4. Given that nothing in AIS's proposal suggested to the Air Force that the offered simulator was not a commercial item, Tr. at 546-47, and the record otherwise demonstrates that AIS's simulator (and its non-FSS components) are commercial items, we cannot find the agency's actions objectionable in this regard.

Evaluation Challenges

We turn next to FATS's numerous challenges to the evaluation of its and AIS's proposals. In reviewing a protest against a procuring agency's evaluation, our role is limited to ensuring that the evaluation was reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. Planned Sys. Int'l, Inc., B-292319.3 et al., Oct. 30, 2003, 2003 CPD ¶ 198 at 3. We have reviewed the record here and find all of FATS's arguments to be without merit; an analysis of most of these challenges is set forth below.

FATS first contends that the Air Force unreasonably determined that its proposal was technically unacceptable under section 2.3 of the RFQ because the proposal did not contain ballistics data for the M16 or M4 carbine rifles. FATS argues that the Air Force is using ballistics data as an unstated (and unnecessary) evaluation criterion, because the RFQ required only that "[b]allistic data must have been previously validated by another federal agency." RFQ amend. 11, § 2.3. Since the USMC (and FATS) indicated that the weapons had been validated, FATS argues, its proposal should have been found technically compliant, regardless of the omitted data.

In evaluating a proposal, an agency properly may take into account specific, albeit not expressly identified, matters that are logically encompassed by or related to the stated evaluation criteria. Independence Constr., Inc., B-292052, May 19, 2003, 2003 CPD ¶ 105 at 4. We think that the ballistics data sought here is encompassed within the stated requirement for ballistics validation, particularly since the RFQ describes detailed validation requirements. Also, given that the RFQ specifies that simulator weapons must perform like actual weapons, we cannot agree with FATS's underlying assertion that this data is unnecessary. In any event, during discussions (both telephonic and through ENs), the Air Force advised FATS that ballistics data was required, and requested that FATS provide the data in its FPR. Given the agency's

numerous attempts to obtain this information from both FATS and the USMC, and FATS's failure to provide the data, we see nothing unreasonable in the Air Force's conclusions that FATS's proposal was technically unacceptable under section 2.3. See Network Eng'g, Inc., B-292996, Jan. 7, 2004, 2004 CPD ¶ 23 at 4.

FATS next complains that AIS's proposal should have been found technically unacceptable under section 3.10 of the RFQ.¹⁷ This specification consists of two requirements: (1) the system must "allow for different weapons to be fired simultaneously off the same system during marksmanship . . . training sessions," and (2) the system must "be capable of allowing single weapons to be fired without affecting the course of fire or scenario of other students." RFQ amend. 11, § 3.10.

With respect to the requirement for simultaneously firing multiple weapons, FATS contends that AIS's simulator is noncompliant because, in the marksmanship mode, AIS's simulator does not provide "lane isolation" in each 5-lane segment (as FATS's simulator does). That is, the AIS simulator cannot be programmed to qualify a pistol in one lane and a rifle in the next; all five lanes must fire either rifles or pistols.

We do not agree with FATS that "lane isolation" is necessary to meet the requirement of section 3.10. The RFQ neither contains the term "lane isolation," nor describes this feature as a simulator requirement. All that is required is that the simulator allow multiple weapon types to be fired at the same time. The record shows that the AIS 10-lane simulator, purchased here, consists of two 5-lane segments, each of which can be programmed independently. Thus, one 5-lane segment can be programmed to fire rifles, and the other programmed to fire pistols. Tr. at 464, 477. This means that both pistols and rifles can be fired simultaneously. In our view, the Air Force reasonably concluded that this approach satisfies the requirements of the RFQ.¹⁸

¹⁷ FATS also alleges that offerors were treated unequally. It complains that although the Air Force carefully scrutinized FATS's proposal for compliance with section 2.3 and demanded information demonstrating compliance with the requirement, the agency did not similarly scrutinize AIS's proposal for compliance with section 3.10 or require information (such as a demonstration) to show compliance. However, as the Air Force explains, it did not have cause to doubt AIS's compliance or to make further inquiries of AIS, as it did with FATS. Tr. at 186-87, 448-49. We have reviewed the record and find no evidence of unequal treatment in this regard.

¹⁸ In addition, the Air Force explains that the requirement for "different weapons types" to be fired simultaneously refers only to different rifle types--the M16 and M4 carbine--and does not require that pistols be fired together with rifles. That is because, consistent with AFI-6, AFM-7, and live-fire training requirements, rifle training and pistol training (in the marksmanship modes) are conducted separately. The RFQ requirement, the Air Force states, is intended only so that the Air Force can train multiple rifle types on a rifle range in a "realistic" environment consistent with
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With respect to FATS's claim that AIS's simulator does not permit individuals to re-shoot their weapons without affecting the course of fire of other students, we again see nothing unreasonable in the Air Force's conclusions. The AIS system requires all students to move in lockstep through marksmanship training; when one student has to re-fire his or her weapon, the other four lanes in that 5-lane segment must be disabled, or the remedial student must be moved to another 5-lane segment or simulator. Tr. at 469-72. FATS contends that the course of fire of the non-firing students is affected because these students cannot proceed with weapons training during the time a remedial shooter is re-firing his or her weapon.

The Air Force explains that with older simulators, when one shooter required remedial training, all other shooters in the lanes would also have to repeat their courses of fire because the data for the successful shooters could not be saved. Air Force officials testified that Section 3.10 was drafted to address this problem so that successful shooters do not have to repeat their weapons training. Tr. at 444, 585. The Air Force argues that so long as the simulator can store the data for each individual shooter, a student's course of fire is not affected. With the stored data, the remedial student can return at a later time to re-fire his or her weapon, or the other successful students can "step back" and wait until the remedial shooter completes his or her retraining. (This, the Air Force argues, is consistent with the lockstep approach it uses in live-fire training.¹⁹) In either case, successful students do not need to repeat a course of fire--in that regard, their courses of fire are not affected. Tr. at 583-85, 588, 593-94.

Based on this interpretation, the Air Force found that AIS's system complies with the requirement. Tr. at 586. With AIS's simulator, data is stored on floppy disks that can

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the guidelines set forth in AFI-6 and AFM-7. It is not intended to require that pistols and rifles be fired at the same time in marksmanship mode; this would not be "realistic" and would be inconsistent with AFI-6 and AFM-7. The record shows, and FATS does not dispute, that AIS's simulator permits the simultaneous firing of both rifle types (the M16 and M4 carbine) on a simulated rifle range.

¹⁹ Although FATS argues that the Air Force's marksmanship training requirements, and in particular those set forth in AFI-6 and AFM-7, were not disclosed to offerors, we do not find these to be unstated criteria. The RFQ expressly references AFI-6, which repeatedly cites to AFM-7 and states that the two must be used together, and further provides that the solicitation's requirements (including those in section 3.10) are to meet both the needs of the Air Force and the requirements of AFI-6. RFQ amend. 11, Overview. FATS's Director of Training and Technology Integration, who was involved in proposal preparation, also acknowledges that he is familiar with these documents and with Air Force training requirements. Tr. at 335-36, 339, 341-42.

be removed to allow a remedial student to move to a different lane or system, and can be retained so that successful shooters do not need to repeat their training when a fellow student requires remedial training. Tr. at 470-72. As such, the Air Force argues, data concerning the courses of fire is not affected when remedial training is required.

We find the Air Force's interpretation of the solicitation (and its evaluation of AIS's proposal) to be reasonable. The RFQ, in our view, does not require that students be permitted to physically proceed through the various courses of fire at different paces, as advocated by FATS. Rather, the RFQ was reasonably interpreted in a manner consistent with the Air Force's training requirements, which were referenced in the solicitation. Although FATS would propose a more restrictive interpretation of these requirements, it has not shown the Air Force's view to be unreasonable, and the record otherwise confirms that AIS's proposal satisfies the requirement as discussed above.

FATS next complains that AIS's proposal does not comply with the requirement to provide "immediate availability of replacement weapons (within 24 hours)." RFQ amend. 11, § 2.6. In this regard, AIS's initial proposal contained a matrix responding to each RFQ requirement. With regard to section 2.6, AIS's matrix stated:

AIS will retain additional weapons as a rotating stock of ready spare weapons for shipment upon notification of a down weapon. AIS will ship the replacement weapon allowing the using command to ship the down weapon in the same shipping container back to the weapon depot. All shipments will be made within 24 hours.

AR, Tab 16, AIS Initial Proposal, at 5 (emphasis added). In addition, AIS offered a number of "value added items." In this regard, it stated, "We will keep an additional stock of each type [of] weapons to meet a repair turn around time of 24 hours." AR, Tab 16, Cover Letter to AIS Initial Proposal (Sept. 29, 2003) (emphasis added).

In its FPR, AIS submitted a new price quote (but not a new matrix) and a cover letter eliminating its "value added items." However, the letter stated, "We will still try to keep an additional stock of each type [of] weapons to meet a repair turn around time of 24-48 hours." AR, Tab 17, Cover Letter to AIS FPR (Dec. 17, 2003) (emphasis added).

FATS argues that the FPR cover letter referencing a turn around time of 24-48 hours does not meet the requirement of section 2.6 because weapons will not be replaced within 24 hours, as initially promised. In response, AIS contends that its proposal offered both repair and replacement, and that the promise to repair a weapon was a "value added item" that was eliminated without altering promises to comply with section 2.6. AIS Post-Hearing Comments at 20-21; see also Contracting Officer's Statement (Mar. 1, 2004) at 1. AIS asserts that it always intended to replace weapons

within 24 hours, and that its FPR meant that when the Air Force sent back a damaged weapon, AIS would then try to repair that weapon within 24-48 hours. Tr. at 561-64.

We do not agree with FATS that AIS's statements in its FPR constitute clear evidence that AIS took exception to the requirement; in fact, AIS asserts that it did not take exception and intended at all times to comply. Tr. at 561, 564, 571. Nor do we agree with FATS's contention that the Air Force witness during our hearing confirmed this basis of the protest.²⁰ In our view, the only reasonable interpretation of the words "repair" and "replacement" are that these terms refer to different proposal features, as explained by AIS. The cover letters refer to weapons "repair" as a value-added item; treating this term synonymously to an RFQ requirement for "replacement" renders meaningless AIS's discussion of value-added items. Therefore, the record here does not support a finding that AIS's proposal is technically unacceptable under section 2.6 of the RFQ, and we deny FATS's protest on this ground.²¹

The protests are denied.

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General Counsel

²⁰ Although FATS argues that the testimony of the Air Force technical evaluator shows that the agency did not perceive a difference between the terms "repair" and "replacement," this testimony cannot be reconciled with the clear meaning of AIS's proposal, which states that certain items (e.g., repair) are offered to add additional value, not to meet the underlying requirements addressed elsewhere in the proposal. We also note that the technical evaluator testified that he considered AIS's proposal to be compliant with section 2.6 because he understood from both cover letters and the matrix that AIS would, at all times, ship a replacement weapon within 24 hours, while he recognized that the weapon might not be received for 48 hours depending on the courier or mail service used. He explained that he concluded that shipping within 24 hours made the item "available" and thus satisfied the 24-hour availability requirement of the RFQ. Tr. at 67-80, 89.

²¹ Finally, FATS complains that the Air Force should not have selected AIS for award because the price reductions in AIS's FPR were "conditional," "qualified," and "not unequivocal." Protest (B-292819.3) at 3-4. FATS also argues that the agency should have upwardly adjusted AIS's FPR pricing. We have reviewed the record and find no merit to this protest ground.

