Agreed Redacted Version

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**
**BID PROTEST**

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| **ACCELGOV, LLC,**<br>*Plaintiff,*<br>v.<br>**UNITED STATES,**<br>*Defendant.* | Case No. ________________<br>Judge ___________________<br> |

## COMPLAINT

Plaintiff AccelGov, LLC makes the following bid protest against Defendant the United States of America:

### Nature of the Action

1. This protest involves Solicitation No. HT001522R0030 (the "Solicitation), issued by the Defense Health Agency (the "Agency"). AccelGov protests the Agency's decision not to award a contract to AccelGov.

### Jurisdiction

2. This Court has subject matter jurisdiction under the Tucker Act, as amended by the Administrative Dispute Resolution Act of 1996. *See* 28 U.S.C. § 1491(b)(1).

### The Parties

3. AccelGov is an SBA approved, mentor-protégé joint venture between Agovx LLC and 22nd Century Technologies, Inc.

4. Defendant the United States of America, for all purposes relevant hereto, acted by and through the Agency, which is headquartered in Washington, D.C.

**Background**

**The Procurement**

5. The Solicitation was a small business set aside issued under FAR Part 15.

6. Under the Solicitation, the Agency intended to award "multiple basic IDIQ contracts." Indeed, the Agency's stated goal was to "establish a pool of qualified sources—i.e., Geographic Service Providers (GSPs)—to provide the Military Health System (MHS) with IT support as described in the [PWS]." The Agency intends to limit future awards for services within the PWS's scope to IDIQ holders.

7. The awarded IDIQs will have a ten-year maximum ordering period, with a ceiling value of $2.4 billion.

8. The PWS describes the scope of the IDIQ and all future task orders. It says that the contractors will "provide all personnel, supplies, transportation, supervision, and non-personal services necessary to perform standardized Information Technology (IT) services as defined in the [PWS]."

9. From there, the PWS defines nine basic scope areas, under which the awardees will provide "robust IT support at MTFs and OLBs."[1] The PWS "scope areas" are:

- Scope Area 1: IT Service Desk.

[1] Per the Solicitation, a "MTF" is a Medical Treatment Facility. And an "OLB" is Other Lines of Business.

- Scope Area 2: Database, Application, and Web Development.
- Scope Area 3: Identity Management and Desktop Support.
- Scope Area 4: Data Center Operations.
- Scope Area 5: Information Assurance.
- Scope Area 6: Network Operations.
- Scope Area 7: Telecommunications.
- Scope Area 8: Clinical Informatics.
- Scope Area 9: Information Business Operations.

**The Solicitation's Instructions**

10. The Agency told bidders to submit their proposals in five volumes, Volume I – Administrative, Volume II - Support Qualifications, Volume III - Scope Area Qualifications, Volume IV - Geographic Breadth Qualifications, Volume V - Performance Validation. For Volumes 1-IV, bidders had to submit reference projects using the Agency's "GSP Technical Qualification Worksheet." The Worksheet had bidders identify projects in the various areas and provide "evidence" to substantiate prior work. According to the Solicitation, "evidence" was

> Information sufficient to support the reasonable belief that a particular act has occurred and directly links to the entity for which a qualification is being identified. For Support Area, Scope Area, and Geographic Breadth Qualifications, the following are examples of evidence which may be sufficient: referenced project or contract award or execution document, including its Statement of Work (SOW)/PWS that cross references with Contract Line Item Numbers (CLINs). For Performance Validation a Contractor Performance Assessment Report (CPAR) or Past Performance Questionnaire is considered evidence.

11. Volume I was for administrative matters, such as updated representations and certifications, subcontractor agreements, OCI mitigation plans, and the like.

12. In Volume II, bidders had to address Support Areas 1-4. Support Area 1 was "Performance as a Prime Contractor Managing Multiple Subcontractors." The Agency wanted to see up to two referenced projects, from the small business prime, JV member, or first-tier small business subcontractors. The Agency said it would accept evidence of "(1) referenced project as a Prime contractor with two (2) or more subcontractors simultaneously, or up to two (2) referenced projects as a Prime contractor each with one (1) or more subcontractors performing simultaneously."

13. Support Area 2 was for a "Supplier Performance Risk System." There, the Agency required an "[a]ssessment for the Prime or joint venture, or an assessment for each individual member of the joint venture demonstrating compliance with DFARS clause 252.204-7012, which implements NIST SP 800-171." The Agency said it would only accept a screen shot from the [Supplier Performance Risk System or "SPRS"] indicating the assessment has been submitted.

14. Support Area 3 dealt with "Competitively Awarded Order(s) under a Multiple Award Contract for DoD IT Services." There, the Agency required evidence of

> • Up to two (2) recent, referenced projects.
>
> • Referenced project(s) shall be for competitively awarded orders against Multiple Award Contract(s), and be for any DoD IT Services.
>
> • At least one referenced project shall come from the small business prime, Joint Venture member, or small business first-tier subcontractor.
>
> • The referenced projects shall collectively have an obligated or funded value exceeding $30 million total or $10 million in any one year

15. Support Area 4 was "Facility Clearance." There, the Agency wanted evidence in the form of

• A certification for the Prime or Joint Venture, or a certification for each individual member of the Joint Venture.

• The certification(s) shall indicate a Secret or higher facility clearance level and state the following:

- o [Offeror name] certifies it currently possesses an active DoD facility clearance at the [level] and is in good standing with the Defense Counterintelligence and Security Agency (DCSA).

• Contact information of company Facility Security Officer (FSO) to include:

- o Name.
- o Title.
- o Phone number.
- o Email address.
- o Physical address.

• Contact information of Government Industrial Security Representative (ISR) to include:

- o Name.
- o Title.
- o Phone number.
- o Email address.
- o Physical address.

16. Volume III dealt with "Scope Area Qualifications." There, bidders had to address Scope Areas 1-7. The Agency decided not to assess Scope Areas 8 and 9 to determine technical acceptability.

17. For Scope Areas 1, 2 and 5, the Agency wanted at least one, but no more than two, recent[2] projects to substantiate qualifications. The Agency spelled out the type of evidence it wanted to see

[2] "Recent" meant a "project or contract with any contract performance having occurred within the three (3) years prior to the closing date of this [S]olicitation."

**• Scope Area 1: IT Service Desk**

o Manage tickets (e.g., incidents, cases, and requests, in an integrated enterprise level help desk).

o Answers IT support calls and responds to questions.

o Contains Local site knowledge bases.

o Trains help desk staff.

o Management of service catalog entries.

o Direct calls that do not belong to the site back to the correct site, queue, or enterprise help desk or both.

o Manage the IT Help Desk queue and complete work orders.

o Support local assets, new technology acquisition, and life cycle management, including inventory management and disposal IAW customer requirements, or supporting agency guidance for desktops, laptops, tablets, printers and other IT hardware.

**• Scope Area 2: Database, Application, and Web Development**

o Maintain Databases to meet the Service Levels Agreements (SLA) or Operational Level Agreements (OLA) and other performance standards, to maximize efficiency, and minimize outages.

o Create and maintain website or applications using platforms including each of the following: SharePoint, ASP, .NET, and JAVA platforms, and while doing so, follow process definition, certification, validation and verification, architecture and reengineering, scripting, security and configuration management.

o Apply, implement, document and gain approval for application Security Technical Implementation Guidelines (STIGs).

o Support the entire Software Development Life Cycle (SDLC), e.g., process definition, requirements, management, project planning, quality assurance, metrics, testing, certification, validation and verification, architecture and reengineering, security and configuration management.

o Have working knowledge of the software development methodologies, including the use of any of the following: Agile, sprints, or stories.

**• Scope Area 5: Information Assurance**

o Information Assurance compliance, documentation, authorization, certification, validation, verification, assessment, testing, evaluation IAW the DoD Risk Management Framework (RMF) guidelines, and HIPAA laws in order to obtain an Authorization to Operate (ATO).

> o Apply DISA Security Technical Implementation Guideline (STIG) and Security Requirements Guides (SRGs) against the site assets and document STIG / Security Requirements Guide SRG compliance.
>
> o Update and document customer enclave artifacts in Enterprise Mission Assurance Support Service (eMASS).
>
> o Conduct Cybersecurity threat monitoring, risk identification, incident mitigation, and administration.

18. Scope Area 3 was "Identity Management and Desktop Support." There, the Agency required at least one, but no more than three "recent referenced projects" for Scope Area 3 qualifications. The Agency said it would accept evidence of

> o Active Directory (AD) management, including hosting services, sustainment, and management of the costumer associated AD Organizational Units (OU), user accounts, and systems.
>
> o Manage, monitor, patch, upgrade, and ensure Information Assurance Vulnerability Assessment (IAVA) compliance of hardware site AD domain controllers as well as other AD associated resources and hardware using, including each of the following: Microsoft Endpoint Configuration Manager (MECM), Splunk, and Tanium.

19. Scope Area 4 covered "Data Center Operations," and required at least one, but no more than three, "recent referenced projects" with evidence of

> o On-site Data Center/server room storage, back-up and data restoration, recovery, capacity planning, utilization monitoring, performance monitoring, disruptions, changes, service-level compliance, operational improvement, service reports, annual planning, annual evaluations, life cycle management, and physical security control.
>
> o Monitoring the data center environment, e.g., HVAC system, fires suppression, uninterrupted power supply, generator, security access control.

20. Scope Area 6 was "Network Operations." Again, the Agency wanted between one and three recent references and evidence of these qualifications:

o Install, relocate, configure, update, test, or manage network devices (e.g., routers, switches).

o Create, maintain and manage Virtual Local Area Networks (VLANs)

o Assist with the establishment and implementation of network policies, procedures and standards to include network security.

o Collect and report network performance measurement information, (e.g., LAN, circuit bandwidth).

o Develop, plan, and maintain network topology documentation.

21. Lastly, Scope Area 7 involved "Telecommunications" and required between one and three recent references with evidence of qualifications showing the bidder could

o Operate and maintain site telecommunications systems (e.g., PBX, voicemail, VOIP, automated call distribution (ACD)), including any of the following activities: additions, moves, and changes.

o Support installs, moves, changes, or operation of telecommunication devices, including any of the following: video teleconference systems, telephones, handsets, headsets, and analog lines.

22. Next came Volume IV, where the Agency wanted to examine bidders' "Geographic Breadth Qualifications." For this, the Agency wanted up to two recent projects for each Geographic Area.

23. Geographic Area 1 was "OCONUS, plus SOFA and/or DOCPER System." Bidders were allowed between one and two references, with evidence of

o Services performed relate to at least one (1) of the GSP Scope Areas, as described in the GSP PWS.

o Services were performed in one (1) or more of the following countries: Germany, Spain, Italy, United Kingdom, Turkey, Japan (including Okinawa Islands), or Korea.

o Services performed included experience staffing personnel in a country where SOFA status was granted and/or personnel processed through the DOCPER system.

24. For the "Northwest" Geographic Area 2, the Agency again asked for up to two recent references and this type of evidence

o Services performed relate to at least one (1) of the GSP Scope Areas, as described in the GSP PWS.

o Services were performed in at least two (2) of the following states: Alaska, Hawaii, Washington, Oregon, Idaho, Montana, Wyoming, Utah, Colorado, Kansas, Nebraska, South Dakota, or North Dakota.

25. The "National Capital Region" was Geographic Area 3. Bidders needed up to two recent references and evidence of

o Services performed relate to at least one (1) of the GSP Scope Areas, as described in the GSP PWS.

o Services were performed in at least two (2) of the following areas:

- the District of Columbia,
- Montgomery, Prince Georges, Anne Arundel, Frederick, or Charles counties in Maryland, and/or
- Arlington, Fairfax, Loudon, Prince William, or King George counties in Virginia.

26. Geographic Area 4 was the "Southwest." The maximum two recent references had to include evidence of

o Services performed relate to at least one (1) of the GSP Scope Areas, as described in the GSP PWS.

o Services were performed in at least two (2) of the following states: California, Nevada, Arizona, New Mexico, Texas, or Oklahoma. 1.7.10.5.

27. Geographic Area 5 focused on the "Northeast." Bidders' one or two recent references had to include evidence of

o Services performed relate to at least one (1) of the GSP Scope Areas, as described in the GSP PWS.

o Services were performed in at least two (2) of the following states: Minnesota, Wisconsin, Iowa, Illinois, Missouri, Indiana, Michigan, Ohio, Kentucky, West Virginia, Virginia, Pennsylvania, Maryland, Delaware, New Jersey, Rhode Island, Connecticut, Massachusetts, New York, Vermont, New Hampshire, or Maine.

28. The last Geographic Area was number 6 for the "Southeast." Bidders had to submit up to two recent references and evidence of

o Services performed relate to at least one (1) of the GSP Scope Areas, as described in the GSP PWS.

o Services were performed in at least two (2) of the following states: Arkansas, Louisiana, Mississippi, Tennessee, Alabama, Georgia, South Carolina, North Carolina, or Florida.

29. Volume V was where bidders provided "Performance Validation." There, the Agencies wanted the most recent CPARS for each referenced project in Volume III, or a Past Performance Questionnaire if CPARS were not available. All CPARS had to show at least Satisfactory performance.

**Evaluation Criteria and Award Basis**

30. The Agency said it would evaluate proposals on an "Acceptable/Unacceptable basis only." The Agency planned to evaluate acceptability by reviewing all Support Qualifications, Scope Area Qualifications, Geographic Breadth Qualifications and Performance Validation—Volumes II-V.

31. The Agency said it would evaluate to determine whether the bidder provided evidence that is "accurate, complete, and complies with the proposal submission instructions." Once a bidder cleared that hurdle, the Agency would consider "whether the information demonstrates acceptable experience related to each respective qualification area."

32. The Agency warned that any proposal deemed "materially incomplete or unacceptable in any technical qualifications criterion" would be ineligible for award. The Agency also stated that an Unacceptable rating would follow if it could not substantiate a bidder's evidence, or if no evidence was submitted.

33. The Agency said it would not evaluate price when making award.

**AccelGov's Evaluation**

34. AccelGov and 38 other bidders submitted proposals. On July 3, the Agency told AccelGov that its proposal was not Technically Acceptable. Only six of the 39 bidders, or a mere 15%, qualified for award. Those lucky few were NetCentric Technology, LLC, A1 FedImpact, LLC, DecisiveInstincts, LLC, Eagle Integrated Services, LLC, ITC-DE, LLC and BEAT LLC.

35. The Agency said that AccelGov was Technically Acceptable for

The only issue was with AccelGov's

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36. The Agency gave AccelGov this information about its supposed shortcomings

37. In every other [redacted] AccelGov was Technical Acceptable.

**Count I – The Agency Acted Unreasonably and Unlawfully Failed to Obtain a Certificate of Competency from the SBA Before Deeming AccelGov's Proposal Technically Unacceptable Based on Past Performance Information**

38. AccelGov adopts all the allegations in the preceding paragraphs and incorporates them herein by this reference.

39. "Where traditional responsibility factors are employed as technical evaluation criteria and the evaluation renders an offeror's proposal flatly ineligible for award, the agency has effectively made a determination that the small business offeror is not a responsible contractor capable of performing the solicitation requirements." *Lawson Env't Servs., LLC v. United States*, 126 Fed. Cl. 233, 245 (2016), aff'd, 678 F. App'x 1026 (Fed. Cir. 2017) (quoting *Optimization Consulting, Inc. v. United States*, 115 Fed. Cl. 78, 100 (2013)). When that happens, the government "must refer the matter of the firm's responsibility to SBA for a Certificate of Competency determination." *Id.*

40. Past performance is generally a responsibility matter, particularly where there is no comparative evaluation. *See*, *e.g.*, *Phil Howry Co*., B-291402.3, Feb. 6, 2003, 2003 CPD ¶ 33; *Frontier Sys. Integrators, LLC*, B-298872.3, Feb. 28, 2007, 2007 CPD ¶ 46, p. *5 ("Our Office has long held that pass/fail evaluations of capability issues, such as past performance, are tantamount to responsibility determinations, with the result that a rating of "unacceptable" in these areas is the same as a determination of nonresponsibility.")

41. Here, there was no comparative evaluation. Every bidder deemed Technically Acceptable got an award. The Agency deemed AccelGov Technically Unacceptable solely on its review of AccelGov's past performance. By doing so, the Agency essentially deemed AccelGov non-responsible and had to refer the matter to SBA for a Certificate of Competency determination before eliminating AccelGov from the competition.

42. Particularly given that this was a small business set aside competition, AccelGov reasonably expected that SBA would refer all supposedly Unacceptable bidders to SBA before eliminating them. However, the Agency chose not to do so, at least not for AccelGov. Thus, the Agency acted arbitrarily and unlawfully.

43. It is obvious that the Agency prejudiced AccelGov. The only problem the Agency identified was that AccelGov supposedly did not prove that its [REDACTED] For that reason, the Agency could not conclude that AccelGov had the necessary qualifications. But had the Agency referred the question to SBA, the Certificate of Competency determination would have revealed otherwise. And AccelGov would have received a contract.

**Count II – The Agency Unreasonably Evaluated AccelGov's Proposal**

44. AccelGov adopts all the allegations in the preceding paragraphs and incorporates them herein by this reference.

45. The Agency said it would evaluate bidders' Geographical Area Qualifications using the information on the Agency's Worksheet. The Worksheet did not require bidders to input the dates of performance. Moreover, the Solicitation required evidence of qualifications and not specific evidence of recency.

46. All of AccelGov's references in question for [REDACTED] [REDACTED]. AccelGov submitted sufficient evidence to allow the Agency to make that determination, either from the contracts themselves or the CPARS information in AccelGov's Volume V. For example, the Agency took issue with [REDACTED] submitted as a reference for [REDACTED]. The Agency said that AccelGov failed to provide evidence [REDACTED] [REDACTED].

47. Appendix A includes one of the documents AccelGov included in its Volume V—a CPARS report on the same [REDACTED] contract. As you would expect, the CPARS report references the same contract number as the [REDACTED] contract at issue, and reflects the government's assessment of the work [REDACTED] [REDACTED] [REDACTED].

48. The Agency could and should have relied on AccelGov's (at least implied) representation that the contracts it submitted as references [redacted] *See, e.g.*, *Dolphin Park TT, LLC v. United States*, 162 Fed. Cl. 248, 259 (2022) (without evidence to the contrary, the government reasonably relied on bidders' representations of compliance). But even if it decided to rigidly hold bidders to their "burden of proof," AccelGov met its burden. It was arbitrary and irrational for the Agency to find AccelGov Technically Unacceptable.

49. Moreover, because this was a past performance evaluation, the "close at hand" doctrine applies to the Agency's evaluation. Under that doctrine, the government has a "duty" to "consider relevant information in its possession notwithstanding whether it was actually submitted by an offeror or whether the agency has sought similar information for other offerors." *Coastal Environmental Grp., v. United States*, --- Fed. Cl. ---, 2023 WL 1794581, *14 (Jan. 19, 2023). Here, the Agency knew exactly which contracts AccelGov relied on for its [redacted]. It admittedly had enough information to establish the type, and location of the work involved in all its references. It had CPARS information in Volume V. The only thing the Agency even contends it lacked was [redacted].

50. Even if the information showing [redacted] was not in AccelGov's proposal (it was), that information was readily available to the Agency in the CPARS system. The Agency did not have to go blindly searching for records. It knew exactly which CPARS records it needed to [redacted]. It was unreasonable for the Agency not to consider "close at hand" information such as the actual CPARs in Volume V or the CPARS system and, instead, find AccelGov Technically Unacceptable.

51. Again, the prejudice is clear. Had the Agency considered the information AccelGov presented, or looked for performance dates in the CPARS system, it would have found AccelGov Technically Acceptable and awarded AccelGov a contract.

**Count III – The Agency Abused its Discretion by not Entering into Discussions**

52. AccelGov adopts the allegations in the preceding paragraphs and incorporates them herein by this reference.

53. The Solicitation said that the Agency intended to "evaluate proposals and select awardees without discussions," but reserved the right to "seek information through clarifications or discussions" if necessary.

54. The Agency is subject to the DFARS. *See* 48 C.F.R. § 202.101 ("Departments and agencies, as used in DFARS, means . . . the Defense Health Agency. . ..."). DFARS 215.306(c)(1) says that "for acquisitions with an estimated value of $100 million or more, contracting officers should conduct discussions." 48 C.F.R. § 215.306(c); *see also IAP Worldwide Servs., Inc. v. United States*, 159 Fed. Cl. 265, 307-09 (2022). That regulation creates a presumption in favor of discussions where the acquisition is expected to be at least $100 million. *Id.* This acquisition has an estimated ceiling value of $2.4 billion. Thus, the Agency had to engage in discussions or provide a reasonable basis for declining to do so.

55. The Solicitation promised award to all qualifying bidders, with no limitation on the number of awards. Despite that, the contracting officer decided not to engage in discussions because it "could well result in ultimately awarding contracts far in excess of the [Agency's]

maximum requirement of 10 contractors." The SSA concurred with that finding because holding discussions might result in more awardees than the Agency wanted.

56. In other words, the Agency decided not to hold discussions for the express purpose of artificially constraining the number of awardees, despite the Solicitation's clear requirement to award to "each and all qualifying Offerors." Imposing phantom award restrictions, contrary to the Solicitation's terms, is not a reasonable basis for declining to hold discussions. That is particularly true where 85% of the bidders were deemed Technically Unacceptable. The decision not to enter into discussions was arbitrary and unlawful.

57. The decision obviously prejudiced AccelGov. Had the Agency conducted discussions, AccelGov would have had the chance to point the Agency to the information in its proposal that satisfied the Solicitation's requirements. Or, if necessary, provide [redacted] the Agency said it needed to confirm [redacted]. Then, AccelGov would have been Technically Acceptable and received an award.

**Count IV – The Agency Unreasonably Conducted its Evaluation to Impose [redacted]**

58. AccelGov adopts the allegations in the preceding paragraphs and incorporates them herein by this reference.

59. As mentioned above, the Solicitation said there was no limit to the number of awards and, in fact, every qualifying offeror would receive an award.

60. As Count III explains, the Agency unreasonably decided not to hold discussions because it wanted to hold the number of awardees to ten or fewer.

61. The *Twombly / Iqbal* pleading standard applies at the U.S. Court of Federal Claims. *See Vanquish Worldwide, LLC v. United States*, 147 Fed. Cl. 390, 399 (2020). However, as (now) Chief Judge Kaplan noted, "a party need only plead 'facts to state a claim to relief that is plausible on its face,' and the alleged facts must be sufficient to nudge 'claims across the line from conceivable to plausible.'" *Id*. (quoting *TrinCo Inv. Co. v. United States*, 722 F.3d 1375, 1380 (Fed. Cir. 2013) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L.Ed.2d 929 (2007)). Chief Judge Kaplan also explained that the Federal Circuit approves "information and belief" allegations where 'when essential information lies uniquely within another party's control,' at least 'if the pleading sets forth the specific facts upon which the belief is reasonably based.'" *Id*. (quoting *Exergen Corp. v. Wal-Mart Stores, Inc.*, 575 F.3d 1312, 1330 (Fed. Cir. 2009)).

62. "It is hornbook law that agencies must evaluate proposals and make awards based on the criteria stated in the solicitation" and "may not rely upon undisclosed evaluation criteria in evaluating proposals." *Newimar S.A. v. United States*, 160 Fed. Cl. 97, 128 (2022) (quoting *Banknote Corp. of Am. v. United States*, 56 Fed. Cl. 377, 386 (2003), aff'd, 365 F.3d 1345 (Fed. Cir. 2004)). Here, the Solicitation promised that every qualified bidder would receive an award. Upon information and belief, based on the Agency's justification for foregoing discussions, it appears that the Agency evaluated bidders in a manner designed to eliminate as many as possible. And it succeeded in eliminating 33 of 39 bidders as Technically Unacceptable. By imposing a phantom limitation on awards, and evaluating proposals in a manner designed to hew to that unstated limitation, the Agency unlawfully imposed unstated criteria. *See id.*; *see also* 48 C.F.R. § 15.305(a)("An agency shall evaluate competitive proposals and then assess their relative qualities solely on the factors and subfactors specified in the solicitation.")

63. This approach prejudiced AccelGov. The information the Agency says AccelGov failed to provide is in AccelGov's proposal. Had the Agency conducted a proper evaluation, instead of [redacted] it would have seen and credited AccelGov's evidence showing [redacted] [redacted]. That would have favorably resolved the issues that lead to the Technically Unacceptable finding in the first place, and AccelGov would have received an award.

**Count V – The Agency's Award Decision Was Unreasonable**

64. AccelGov adopts all the allegations in the preceding paragraphs and incorporates them herein by this reference.

65. FAR 15.308 requires the SSA to conduct an independent assessment before making an award decision. Here, the SSA relied on the evaluation that improperly found AccelGov Technically Unacceptable.

66. Had the SSA reviewed AccelGov's proposal, he would have seen that its evidence substantiated its [redacted]. He would have reversed the Technical Unacceptable rating AccelGov received for supposedly failing to provide evidence it provided. And he would have made award to AccelGov in addition to the other bidders. But because the SSA allowed the underlying evaluation errors to infect his selection decision, that decision is itself irrational.

67. Further, the SSA should have overridden the contracting officer's decision to forego discussions in [redacted], contrary to the



[redacted]

Solicitation. So the SSA compounded the contracting officer's error instead of remedying it. That was unreasonable.

68. Had the SSA conducted an independent assessment and acted reasonably, he would have changed AccelGov's rating to Technically Acceptable and awarded it a contract. The failure to do so was plainly prejudicial.

**Prayer for Relief**

WHEREFORE, AccelGov requests that this Court:

A. Enter a preliminary injunction,[3] enjoining the Agency from competing task orders amongst the awardees pending the outcome of this protest;

B. Declare that the Agency acted arbitrarily and unlawfully by deeming AccelGov Technically Unacceptable without first requesting a Certificate of Competency from SBA;

C. Declare that the Agency unreasonably evaluated AccelGov's references [REDACTED] [REDACTED];

D. Permanently enjoin the Agency from proceeding to compete task orders amongst the IDIQ contract holders based on the current evaluations;

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[3] AccelGov's counsel has been in touch with Mr. Doug Mickle, and understand that there is already a stay in place due to other GAO and agency-level protests. Further, assuming the parties can present a proposed schedule to the Court that resolves this protest in a timely manner, AccelGov understands that the stay will continue pending resolution of this protest. For this reason, AccelGov has not filed a motion for preliminary injunction with this complaint. But AccelGov may do so in the future in the (seemingly unlikely) event that the parties are unable to agree to a proposed schedule that the Court approves. We always appreciate Mr. Mickle and the government's cooperation on these stay issues.

E. Require the Agency to reevaluate AccelGov's proposal reasonably and seek a Certificate of Competency if it still determines AccelGov to be Technically Unacceptable; and

F. Award AccelGov such other and further relief as this Court may deem just and proper, including, without limitation, bid and proposal costs.

Dated: July 13, 2023

Respectfully submitted,

/s/ W. Brad English
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**Certificate of Service**

I hereby certify that on July 13, 2023, I caused copies of the foregoing to be served by electronic mail upon the following:

U.S. Department of Justice
Commercial Litigation Branch
National Courts Section
P.O. Box 480
Ben Franklin Station
Washington, D.C. 20044

/s/ W. Brad English
W. Brad English