

MUST YOUR PROPOSAL STATE YOUR INTENT TO COMPLY WITH EVERY PERFORMANCE WORK STATEMENT SECTION?

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Assuming that the Solicitation does not require that your proposal explicitly state your compliance with each and every Performance Work Statement (“PWS”) requirement, and your proposal does not take exception to any PWS requirement, is this sufficient to commit your offer to compliance? The Government Accountability Office (“GAO”) says that it is, in *Deque Systems, Inc.*, B-420969, Nov. 21, 2022.

Deque protested an award to its competitor Iron Arch, made by the Department of Veterans Affairs (“VA”) for accessibility compliance software services.

Deque protested four specific aspects of the Agency’s evaluation of Iron Arch’s proposal that the GAO denied, finding no merit in them:

- (1) A requirement that the Section 508 compliance tool be available 24/7 to all users;
- (2) A statement in Iron Arch’s proposal that its tool would be configured during deployment; to comply with certain PWS requirements;
- (3) Certain adjectival ratings; and
- (4) The agency’s evaluation of past performance

There was one other issue, which this blog addresses, and it was whether or not Iron Arch’s proposal complied with certain technical requirements in the PWS, that Iron Arch’s proposal did not explicitly commit to meeting. These requirements included reporting metrics to two decimal placing and restoring compromised data from backups within two days. Deque’s proposal had considered all of the 91 PWS requirements in section 5.3 (the protested section) to be material, and asserted that Iron Arch’s failure to mention each requirement should have caused the agency to view Iron Arch’s proposal as noncompliant.

The agency noted that the RFP did not require that offerors list each of these 91 PWS requirements in their proposal and confirm their intent to comply. Rather, the RFP required offerors to describe their “approach to provide” a tool that meets these requirements. GAO stated that [w]here a proposal does not affirmatively demonstrate compliance with each and every requirement of the solicitation, but also does not take exception to any of these requirements, an agency may reasonably determine that a proposal demonstrates an adequate understanding of, and approach to, the agency’s needs.” GAO concluded that where a solicitation required offerors to explain their approach to meeting solicitation requirements the offeror need not affirmatively certify an intent to comply with each and every requirement, particularly where nothing on the face of the offeror’s proposal suggests an intent not to comply.

Based on this, GAO concluded that VA’s evaluation of Iron Arch’s proposal was reasonable and the GAO denied all of the grounds of protest.

Takeaway. Unless a solicitation requires you to list every PWS requirement and affirmatively state your intent to comply with it, you may merely indicate your intent to be in compliance with all of them, and never state that you will fail to comply with any requirement. If the solicitation wants your proposal to include a *specific statements of intention to comply* with one or more of the PWS requirements, then your proposal must address them and affirmatively state your intent to comply with whatever the solicitation requires.

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