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Decision

Matter of: Lockheed Martin Systems Integration-Owego; Sikorsky Aircraft Company

File: B-299145.5; B-299145.6

Date: August 30, 2007

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David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is sustained where agency amended solicitation after prior sustained protest to eliminate consideration of the unique aspects of the proposed helicopters (including maintenance requirements) in calculating certain aspects of the evaluated Most Probable Life Cycle Cost, substituting a subjective consideration of potential maintenance efficiencies for the prior direct impact upon evaluated cost, but nevertheless precluded offerors from generally revising their proposals; it is fundamental that, where an agency revises the criteria against which offers are to be evaluated or otherwise materially changes the solicitation's evaluation scheme, offerors must be given a reasonable opportunity to respond to the revised criteria or evaluation scheme.

DECISION

Lockheed Martin Systems Integration-Owego (LMSI) and Sikorsky Aircraft Company protest the corrective action undertaken by the Department of the Air Force in

response to our decision, Sikorsky Aircraft Co.; Lockheed Martin Sys. Integration-Owego, B-299145 et al., Feb. 26, 2007, 2007 CPD ¶ 45, in which we sustained the protests of LMSI and Sikorsky against the Air Force's award of a contract to The Boeing Company under request for proposals (RFP) No. FA8629-06-R-2350, for the Combat Search and Rescue Replacement Vehicle (CSAR-X).¹ We sustained the protests on the basis that the Air Force's evaluation of operations and support (O&S) costs was inconsistent with the evaluation methodology set forth in the solicitation. We recommended that the Air Force amend the solicitation to clarify its intent with respect to the evaluation of O&S costs, reopen discussions with offerors consistent with our decision, and then request revised proposals. LMSI and Sikorsky principally allege that, although the amendment to the solicitation issued by the agency in response to our decision materially altered the stated evaluation methodology, it limits the extent to which offerors are permitted to revise their proposals; the protesters maintain that, given the change in the evaluation methodology, the limitation on revisions is unreasonable.

We sustain the protests.

INITIAL DECISION

The solicitation provided for award, on a "best value" basis, of a contract for the development, demonstration, and production of the CSAR-X aircraft, which is intended to replace the HH-60 helicopter, the agency's current combat search and rescue aircraft. Boeing responded to the solicitation by proposing the twin-rotor HH-47 helicopter, LMSI proposed the single-rotor US101 helicopter, and Sikorsky proposed the single-rotor S-92 helicopter. Based on the evaluation of final proposal revisions (FPR), the source selection authority (SSA) determined that Boeing's proposal represented the best value.

The ensuing award to Boeing was challenged in protests filed in our Office by LMSI and Sikorsky. We sustained the protests, finding that the Air Force's evaluation of O&S costs was inconsistent with the RFP. In this regard, the solicitation provided that, for evaluation purposes, cost/price would be calculated on the basis of the Most Probable Life Cycle Cost (MPLCC) for the aircraft through fiscal year 2029, including (among other costs) O&S costs. Offerors were to provide detailed information on their O&S costs for their proposed aircraft in several categories. The costs under three O&S categories--Unit Mission Personnel, Training Munitions, and Indirect Support--were to be calculated by the agency. During the evaluation, in calculating

¹ See also Sikorsky Aircraft Co.; Lockheed Martin Sys. Integration-Owego--Request for Reconsideration, B-299145.4, Mar. 29, 2007, 2007 CPD ¶ 78, in which we found that additional protest grounds regarding areas other than the operations and support evaluation were without merit.

Unit Mission Personnel and Indirect Support costs, the agency used the same estimated cost for all proposals, irrespective of the aircraft offered. In their protests, Sikorsky and LMSI argued, among other things, that the agency's methodology in this regard unreasonably failed to account for the reduced maintenance required by their generally newer design, smaller helicopters and was inconsistent with the RFP.

We agreed with the protesters that the RFP, read as a whole, provided that, in calculating the Unit Mission Personnel and Indirect Support costs, the agency would take into account the unique aspects of the proposed aircraft (including maintenance requirements), as identified in the required information submitted by the offerors. This conclusion was based in part on a statement in the RFP that it was the agency's intent to "capture all relevant CSAR-X Operating and Support (O&S) costs." We further agreed that the agency's methodology for calculating O&S costs did not reasonably account for each offeror's unique technical approach, including very different proposed helicopters; instead, the agency's calculation applied to all offerors reflected the staffing and maintenance concepts for the current HH-60 helicopter (the Manpower Estimate Report (MER) staffing), which, we recognized, has very high maintenance requirements. We sustained the protests "on the basis that the Air Force, by ignoring differences among the proposed aircraft that could have a material impact on likely O&S costs, departed from its stated evaluation approach." Decision at 11. We recommended that the Air Force amend the solicitation to clarify its intent with respect to the evaluation of O&S costs, reopen discussions consistent with our conclusions, and request revised proposals. Id.

AMENDMENT 4

Changed Evaluation Methodology

Amendment 4, issued in response to our decision, and questions and answers subsequently published by the agency, made a number of changes to, and established new ground rules regarding, the evaluation of O&S costs. First, of particular importance here, while the amended solicitation continued to include O&S costs as part of the MPLCC, it altered the language of the RFP statement (noted above) that it was the agency's intent to "capture all relevant CSAR-X Operating and Support (O&S) costs." The amendment deleted the "all relevant" language and provided that Unit Mission Personnel and Indirect Support costs would be based on the March 2006 MER, and "shall not be adjusted based on proposed platform." Amended RFP § M.13.2. Instead, the amended RFP provides for offerors to enter the maintenance tasks for their proposed aircraft in RFP attachment 23, addendum 1, the "primary purpose" of which is "to capture potential CSAR-X Maintenance Manpower." Attach. 23, add. 1. Offerors are generally directed to "document the level of required support and maintenance manpower required based on the unique efficiencies/effectiveness, and Reliability/Maintainability characteristics of their proposed CSAR-X aircraft within the structure of the Air Force's maintenance [Concept of Operations] as described" in attachment 23. Attach. 23 at 1. Offerors

are specifically instructed to identify in attachment 23, addendum 1: the maintenance tasks and associated maintenance tasks required for the proposed aircraft; how often the task must be performed, specifying the MTBF for unscheduled tasks and Inspection/Servicing Intervals for scheduled tasks; the Air Force Specialty Codes (AFSC), that is, job categories, required to perform the task; the minimum crew size required to perform each task; and how long it takes to perform each task. Attach. 23; Attach. 23, add. 1.

The attachment also sets forth the “groundrules and assumptions” governing the calculation of the potential maintenance requirements associated with each proposed aircraft. For example, the attachment 23 calculation of maintenance crew cost is to be based upon a steady state, full-time maintenance staff defined by the maximum maintenance staffing in each AFSC required to perform the most labor intensive maintenance task. Thus, according to the attachment:

The maintenance task which requires the most personnel in that AFSC becomes the minimum required for that AFSC per shift. For example, if there is an AFSC that has 20 maintenance tasks and 19 maintenance tasks require two specialists and the remaining one maintenance task requires 3 specialists, the 3 specialists establishes the minimum required personnel for that AFSC per shift.

Attach. 23 at 2. In addition, the attachment includes the following “groundrules and assumptions” governing the calculation of maintenance crew cost : (1) a permanent 2-shift operation, 7 days per week, to represent “wartime” staffing, which effectively doubles the maintenance requirement calculated above; (2) “[m]aintenance manpower levels remain constant whether deployed or at home station”; (3) cross-utilization training between AFSCs will not be considered for purposes of determining required maintenance staffing (such that personnel in one AFSC who are not required to perform on a full-time basis maintenance requiring that AFSC will not be considered available to perform maintenance requiring a different AFSC); and (4) the maintenance cost calculation will be based upon whole staffing numbers, with any proposed fractional staffing requirements (based, for example, upon an infrequently required repair) rounded up to next highest whole staffing number. Attach. 23 at 2, 4; Agency Response to Questions, May 29, 2007, Questions Regarding Attach. 23, Nos. 4, 20.

Following calculation of the “potential maintenance manpower efficiencies” for offerors “based on the unique aspects of their CSAR-X aircraft as submitted in the [FPR] dated 18 Sep[tember] 06,” in accordance with attachment 23, the agency will calculate a “maintenance manpower baseline cost,” with

[t]he difference between the platform unique total adjusted maintenance manpower cost and the Government maintenance manpower baseline cost [to] be evaluated separately from the

[MPLCC], presented to the SSA, and considered in making the best value award decision.

RFP § M.13.9. The Unit Mission Personnel and Indirect Support component of the MPLCC calculation, separate from this “maintenance manpower baseline cost,” will be based upon the (HH-60 derived) MER staffing, without adjustment for the offerors’ proposed aircraft.

The amendment directs offerors to submit only the information requested in connection with attachment 23, and warns that the “Government will not consider any additional information submitted by the offerors in response to Amendment 4 relating to the Mission Capability, Proposal Risk, Past Performance, or any other portion of the Price/Cost Factors.” RFP §§ L.1.2, M.13.2. Finally, the amended solicitation provides that, by responding to the amendment, offerors “are hereby agreeing to accept a contract award . . . based on their [FPR] submissions of 18 Sep[tember] 2006 as supplemented in strict accordance with” the amendment 04 requirement for attachment 23 information. RFP § L.1.2.

The protesters assert that the evaluation scheme changes implemented by amendment 4 are significant and will affect their overall approach to preparing their proposals. They conclude that offerors should be permitted to submit unlimited proposal revisions.

The details of implementing recommendations of our Office are within the sound discretion and judgment of the contracting agency. Partnership for Response and Recovery, B-298443.4, Dec. 18, 2006, 2006 CPD ¶ 3 at 3. An agency’s discretion in the area of corrective action extends to deciding the scope of proposal revisions, and there are circumstances where an agency reasonably may decide to limit the revisions offerors may make to their proposals. See, e.g., Computer Assocs. Int’l, B-292077.2, Sept. 4, 2003, 2003 CPD ¶ 157 at 5. However, where, as here, an agency amends a solicitation and permits offerors to revise their proposals in response, we think that offerors should be permitted to revise any aspect of their proposals, including those that were not the subject of the amendment, unless the agency offers evidence that the amendment could not reasonably have any effect on other aspects of proposals, or that allowing such revisions would have a detrimental impact on the competitive process. Cooperativa Muratori Riuniti, B-294980.5, July 27, 2005, 2005 CPD ¶ 144 at 7. Unlike in prior cases where we found that agencies could limit the extent to which proposals may be revised, see, e.g., Rel-Tek Sys. & Design, Inc.-Modification of Remedy, B-280463.7, July 1, 1999, 99-2 CPD ¶ 1 at 3, the agency has not made such a showing here.

As discussed, we found that, under the original methodology, the Unit Mission Personnel and Indirect Support costs were to be calculated taking into account the unique aspects of the proposed aircraft (including maintenance requirements), and were to be included in the MPLCC calculation. Thus, this calculation would have a

direct impact on offerors' evaluated costs. The amendment eliminates consideration of the unique aspects of the proposed aircraft (including maintenance requirements) in calculating the Unit Mission Personnel and Indirect Support costs included in the MPLCC, and substitutes a calculation of the potential maintenance efficiencies associated with a particular aircraft, which will be "evaluated separately from the [MPLCC]" and "presented to" the SSA for him to "consider[]" in making the best value award decision." RFP § M.13.9. Thus, under the amendment, these cost calculations no longer will have a direct impact on offerors' evaluated costs; rather, they will be considered by the SSA in essentially a subjective manner.

The protesters maintain that, under the new evaluation methodology, they would consider materially altering their proposal approach to enhance the competitiveness of the proposals in other areas if given the opportunity to do so. LMSI Protest at 22, exh. E; Sikorsky Protest at 38. For example, Lockheed Martin states that had it known when preparing its proposal that the agency would evaluate proposals in a manner likely to reduce its competitive advantage arising from the fact that its aircraft is easier to maintain, it would have [REDACTED]. LMSI Protest at 22, exh. E. Likewise, Sikorsky has indicated that had it known when preparing its proposal that the agency would evaluate proposals in a manner likely to reduce Sikorsky's significant maintenance-related competitive advantage, [REDACTED]. Sikorsky Comments, July 3, 2007, at 62. The Air Force has offered no persuasive response to these assertions. On this record, we conclude that this change in the evaluation methodology is material in that it could have affected the manner in which offerors prepared their proposals well beyond the O&S cost calculation, including such areas as technical approach, schedule, and pricing.

It is fundamental that, where an agency materially changes the solicitation's evaluation scheme, offerors must be given a reasonable opportunity to respond to the revised scheme; otherwise, the statutory requirement to notify offerors of the criteria upon which their offers will be evaluated is meaningless. Dept. of Commerce--Request for Modification of Recommendation, B-283137.7, Feb.14, 2000, 2000 CPD ¶ 27 at 3. In these circumstances, we conclude that the Air Force, having materially altered the methodology for evaluating O&S costs, was therefore required to permit offerors to revise both the cost/price and non-cost/price aspects of their proposals in response to the new evaluation scheme.²

² The protesters further point to a number of purportedly significant changes in the circumstances of the procurement occurring in the months after the submission of FPRs in September 2006, which they maintain require that offerors be afforded an opportunity to revise their proposals. However, since we have no reason to believe on this record that amendment 4 does not represent the Air Force's desired acquisition approach, and given our conclusion above that amendment 4 materially changed the stated evaluation methodology such as to require affording offerors an opportunity to fully revise their proposals, we need not determine whether

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Groundrules and Assumptions

The protesters assert that the “groundrules and assumptions” that will govern the calculations under attachment 23 which will be furnished to the SSA for consideration as part of his source selection decision, overestimate required maintenance, and thereby tend to minimize the differences in required maintenance staffing among different aircraft. The protesters conclude that the “groundrules and assumptions” are improper because they are not reasonably calculated to evaluate the actual O&S costs of each aircraft. According to the protesters, the agency’s methodology of basing its calculation of potential maintenance efficiencies on the maximum staffing required under each evaluated AFSC at any one time, and disregarding normal maintenance requirements, as well as the failure to consider such factors as potential cross-utilization training, fails to reasonably account for the times when aircraft maintenance requires fewer of a particular AFSC than are available, thus freeing the surplus available staffing to perform other militarily useful work. In this regard, they note that the SSA, an Air Force lieutenant general, testified during the hearing in this matter that a maintainer who was not otherwise performing his assigned maintenance task would be performing other military duties. Transcript at 111.

Thus, this dispute essentially reflects two approaches to accounting for the potential maintenance efficiencies, and thus the potential cost risk, associated with the unique maintenance requirements of the proposed aircraft. The agency seeks to evaluate the maintenance requirements of each aircraft for purposes of assessing cost risk based upon the maximum number of maintenance staff required at any one time, irrespective of whether the aircraft is deployed or at a home station, whether during wartime or otherwise. In contrast, the protesters, who assume that maintenance staff can be cross-trained and otherwise profitably employed when not performing their normal maintenance duties, maintain that the focus instead should be on the total number of maintenance staff hours required for each aircraft.

Cost or price to the government must be included in every RFP as an evaluation factor, and agencies must consider cost or price to the government in evaluating competitive proposals. 10 U.S.C. § 2305(a)(3)(A)(ii) (2000). It is up to the agency to decide upon the appropriate method for evaluation of cost or price in a given procurement, although the agency must use an evaluation method that provides a basis for a reasonable assessment of the cost of performance under the competing proposals. S.J. Thomas Co., Inc., B-283192, Oct. 20, 1999, 99-2 CPD ¶ 73 at 3. Here, given the uncertainties necessarily attendant upon attempting to evaluate the O&S

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reopening also was required on account of other material changes in the circumstances of the procurement.

costs through fiscal year 2039 of new, modified versions of existing aircraft, and the agency's stated need to staff its CSAR-X squadrons to support a maximum, wartime level of operations, we cannot conclude that it was unreasonable for the agency to focus upon the maximum potential maintenance requirements of each proposed aircraft when assessing maintenance-related cost risk.³ In summary, having considered all of the protesters' arguments in this regard, we find the agency's methodology for evaluating O&S costs to be unobjectionable.

RECOMMENDATION

We sustain the protests on the basis that, in light of the material change in the Air Force's evaluation methodology, amendment 4 unreasonably limits proposal revisions to those related to O&S costs. Accordingly, we recommend that the Air Force permit offerors to revise both the cost/price and non-cost/price aspects of their proposals in response to the new evaluation scheme. We recognize that this represents a significant change in the Air Force's intended conduct of this procurement as reflected in amendment 4, and that the result could delay the acquisition. Nonetheless, in view of the fact that the record shows that the Air Force's change to its evaluation methodology could have affected the manner in which offerors prepared their proposals well beyond the O&S cost calculation, offerors should have the opportunity to revise their proposals in response. If the evaluation of revised proposals results in a determination that Boeing's proposal no longer represents the best value to the government, the agency should terminate its contract. We also recommend that LMSI and Sikorsky be reimbursed the costs of filing and pursuing their protests, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). In accordance with 4 C.F.R. § 21.8(f)(1), the protesters' certified claims

³ The protesters also assert that the agency's methodology for evaluating O&S costs improperly fails to fully account for likely fuel costs in that it: (1) does not consider the likely increase in the number of flying hours during wartime, which the protesters maintain is inconsistent with the fact that the MER, from which the number of Unit Mission Personnel is derived, and the agency's groundrules for calculating potential maintenance efficiencies, were both based upon the staffing required for a wartime level of operations; and (2) assumes as the cost of fuel the price paid by the Defense Energy Support Center, without consideration for the much higher fully burdened cost of fuel (including the cost of transportation, storage, etc.). As noted by the agency, since the agency's approach in this regard was apparent from the September 15, 2005 CSAR-X System Requirements Document (SRD) included in the solicitation, which specified a single, 50-hour per month utilization rate, SRD § 3.1.4.1.2, from the groundrules set forth in the original attachment 13, and from the agency's actual prior O&S cost evaluation in this procurement, MPLCC_CSAR O&S Reports for Lockheed and Sikorsky, these protest bases are untimely. 4 C.F.R. § 21.2(a) (2007).

for such costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision.

The protests are sustained.

Gary L. Kepplinger
General Counsel