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Decision

Matter of: L-3 Communications Corporation, BT Fuze Products Division

File: B-299227; B-299227.2

Date: March 14, 2007

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Maj. Walter R. Dukes, and John D. Gates, Esq., Department of the Army, for the agency.

Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In a negotiated procurement which provides for award on the basis of a cost/technical tradeoff, a protest challenging the agency's evaluation and source selection decision is denied, where the record establishes the reasonableness of the the agency's judgment that the awardee's superior approach, understanding, and level of expertise outweighed the protester's price advantage.

DECISION

L-3 Communications Corporation, BT Fuze Products Division, protests the award of a contract to SNC Technologies, Inc., via Canadian Commerical Corporation, under request for proposals (RFP) No. W52P1J-05-R-0137, issued by the Department of the Army for M314A3 illuminating cartridges.¹ L-3 challenges the agency's evaluation of proposals, conduct of discussions, and source selection decision.

We deny the protests.

¹ SNC is a Canadian firm. Awards to Canadian firms are generally made through the Canadian Commercial Corporation. See Department of Defense Federal Acquisition Regulation Supplement (DFARS) § 225.870-1(c).

The M314A3 cartridge is a 105-millimeter (mm), visible light, battlefield illumination cartridge intended for signaling or illuminating a designated area.

The M314A3 projectile is [a] hollow steel forging with a streamlined ogive,² a gilding metal rotating band, and a pinned base plug. The unfuzed projectile (C541) is assembled with a closing plug screwed into the nose for shipping and storage. The projectile cavity contains an expelling charge, illuminating canister, and parachute assembly. The complete projectile assembly is free fitted to a cartridge case. The cartridge case contains a percussion primer assembly and seven individually bagged and numbered propelling charge increments.

Agency Report (AR), Tab 3, Source Selection Evaluation Plan, at 1. The solicitation was restricted to domestic and Canadian sources within the national technology and industrial base.³

The RFP provided for the award of a fixed-price contract for M314A3 cartridges for a base and 4 option years. The base-year requirement was for a two-phased, pre-production optimization effort; under phase one, the contractor would address manufacturing process definition, procedures, and control, and under phase two would provide 890 first article test (FAT) cartridges. RFP § B, at 5; Statement of Work at 17. For each of the option years, offerors were required to provide fixed-unit-prices for a range of cartridges up to a maximum quantity of 31,216 cartridges per option year. RFP amend. 3, at 3.

The RFP provided for award on the basis of a cost/technical tradeoff and identified the following evaluation factors and subfactors:

1. Technical/management factor⁴
 - a. Process optimization/FAT
 - b. Essential processes, procedures, skills (EPPS)

² In this context, an “ogive” refers to the tapered top of the projectile, to which the fuze is fitted. Hearing Transcript (Tr.) at 15-16.

³ The components of the M314A3 are not commercially available because of the unique technology and specialized skills required for manufacturing, inspecting and testing the items. AR, Tab 3, Source Selection Evaluation Plan, at 1.

⁴ The first two subfactors of the technical/management factor were of equal importance and each were said to be more important than the third factor, which in turn was slightly more important than the fourth subfactor, which was slightly more important than the fifth subfactor.

- c. Integrated master plan/delivery schedule
 - d. System integration/program management
 - e. Quality
2. Past performance factor
 - a. On-time delivery
 - b. Quality
3. Financial capability factor
4. Price factor
5. Small business utilization factor

The technical/management factor was stated to be more important than the past performance factor or the financial capability factor, and the past performance and financial capability factors were stated to be equally important and to be each slightly more important than the price factor. The price factor was stated to be significantly more important than the small business utilization factor. Offerors were informed that all non-price factors, when combined, were significantly more important than the price factor. RFP § M, at 68-70.

The RFP provided for both written proposals and oral presentations, and included detailed proposal preparation instructions. Offerors were informed that they would address the technical/management factor only through the oral presentation, for which offerors were allowed to provide charts and slides.⁵ As part of the oral presentation for the process optimization/FAT subfactor, offerors were to describe, among other things, their assessment of the processes that they considered high risk and to describe a plan which optimizes these processes through mitigation, design of experiments (DOE), and analysis. RFP § L, at 64. In this regard, the RFP informed offerors that their understanding of how these critical processes could affect ballistic performance would be evaluated under this subfactor. RFP § M, at 68. For the EPPS subfactor, offerors were to address in the oral presentation

the essential processes (including key manufacturing processes), skills, knowledge, and availability of the offeror[']s, subcontractor[']s, or partner[']s, if applicable, facilities and labor force to include, but not limited to, management, quality engineering, and production.

⁵ The RFP also informed offerors that the oral presentation would not constitute discussions and that therefore the agency would not inform offerors of strengths, deficiencies or weaknesses in their proposals during the oral presentation. RFP § L, at 63.

RFP § L, at 64. Offerors were informed that under the EPPS subfactor the agency would evaluate the offeror’s “essential skills and knowledge.” RFP § M, at 69. With respect to the integrated master plan/delivery schedule subfactor, the RFP required that offerors demonstrate their ability to meet the required delivery schedule.

The Army received three proposals in response to the RFP, including those of L-3 and SNC (the incumbent contractor). Following oral presentations, the agency included the proposals of L-3 and SNC in the competitive range and conducted written discussions with those two firms.⁶ Revised proposals were evaluated as follows:

	L-3	SNC
Technical/management	Fair	Excellent
Past performance	Adequate/Moderate Risk	Adequate/Moderate Risk
Financial capability	Low Risk	Low Risk
Small business utilization	Excellent	Excellent
Price	#[Deleted]	\$69,999,085

Contracting Officer’s Statement at 4.

L-3’s “fair” evaluation rating under the technical/management factor primarily reflected the agency’s judgment that, although L-3’s proposal presented a number of strengths, it included several significant weaknesses that posed schedule and performance risks.⁷ In particular, the agency found that L-3’s discussion of the likely causes of illuminating cartridge or “candle” failure,⁸ and plan to use push-out testing to assess consolidation quality demonstrated a lack of knowledge and understanding, and reflected significant dependence upon a major subcontractor--Crane Army Ammunition Activity⁹--for expertise. In this regard, the agency noted

⁶ The proposal of the third firm was rejected as technically unacceptable.

⁷ A “fair” rating under the technical/management factor was defined by the RFP as meeting “the minimal expectations for manufacture of a complex ballistic munition, such as the M314A3” and that the offeror’s approach “does not provide a comprehensive understanding,” such that “[s]ome doubt exists that the offeror will be successful on this contract.” RFP § M, at 71.

⁸ The illuminating cartridge is a pyrotechnic device, which is also referred to as the “candle.” Tr. at 17-19. With respect to production of the candle, “consolidation” refers to the process of mixing the illuminant and pressing and binding the illuminant together. Tr. at 36-37.

⁹ Both SNC and L-3 proposed Crane as their candle subcontractor.

that x-ray testing, and not push-out testing, was the appropriate testing methodology to inspect consolidation quality for cracks and voids. The Army also found that, although the use of “crush testing”¹⁰ was incorporated in the SOW as a method of assuring composition quality, this method was not addressed in L-3’s proposal. In addition, the agency found that L-3’s proposed introduction of an o-ring and discussion of the fiberboard-lined configuration for the candle also indicated L-3’s lack of knowledge and understanding, and the firm’s significant reliance upon its candle subcontractor. In short, the agency was concerned that L-3 lacked its own core competency and understanding, and was overly dependent upon Crane for expertise. AR, Tab 10, Source Selection Decision Document (SSDD), at 7-10.

The agency was also concerned that L-3 had not demonstrated that it could satisfy the contract’s base year delivery schedule for FAT cartridges because L-3 had indicated that the contract schedule could only be satisfied by completing the optimization of candle illumination and procurement of specialized equipment prior to contract award, and L-3 had not provided sufficient details that indicated that these pre-award steps would be completed prior to award. In addition, L-3 did not address the schedule of the subcontractor that L-3 proposed for the forged projectile bodies. Id. at 10-11.

L-3’s “adequate/moderate risk” rating for the past performance factor reflected the agency’s conclusion that, although L-3 had not previously produced any of the components of the M314A3 cartridge, it had experience as a systems integrator overseeing the ordering, delivery and quality of similar items. The agency found, however, that L-3 and some of its proposed subcontractors “have some history of untimely deliveries due to contractor fault” that caused some doubt that L-3 could timely perform the contract. In addition, the agency noted that the Army had experienced quality problems with L-3’s proposed candle subcontractor (Crane) under the prior contract. Id. at 15-17.

SNC’s “excellent” evaluation rating under the technical/management factor reflected the agency’s judgment that SNC’s proposal contained a number of strengths and no deficiencies or weaknesses. In particular, the agency found that SNC had demonstrated the firm’s expertise and capability to meet the government’s requirements. In addition, the agency found that SNC had presented a detailed and realistic schedule to satisfy the key program milestones. Id. at 3-5.

SNC’s “adequate/moderate risk” rating for the past performance factor reflected the agency’s judgment that, although SNC had generally demonstrated a history of quality products delivered on-time or ahead of schedule, SNC had quality and delivery issues on the prior contract for the M314A3 cartridge. Id. at 14. These

¹⁰ “Crush testing” is used to evaluate the strength of the illuminant composition. Tr. at 41.

quality and delivery problems concerned the candle produced by its subcontractor, Crane. The agency disagreed with SNC's contention that the firm's problems with the candle were the result of a defective government technical data package (TDP). Id. at 17. In this regard, the agency states that, although the TDP was not "perfect, it is adequate." Agency's Post-Hearing Comments at 7.

The source selection authority (SSA) concluded from his review that SNC's higher-rated proposal offered the best value to the government despite L-3's \$[Deleted] price advantage. In this regard, the SSA stated that SNC had demonstrated its capability to successfully perform the contract and that L-3 had not. Specifically, the SSA noted that L-3 had failed to demonstrate the technical competence and planning necessary to successfully perform and to demonstrate that the firm would "have the essential equipment, processes and procedures in place in such a time so as to be able to perform in accordance with the contract requirements." AR, Tab 10, SSDD, at 23. Award was made to SNC, and, after a debriefing, these protests followed.

L-3 complains that the Army misevaluated L-3's proposal under all of the evaluation factors. In reviewing protests of alleged improper evaluations and source selection decisions, it is not our role to reevaluate proposals. Rather, we will examine the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. See Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. A protester's mere disagreement with the agency's judgment does not establish that an evaluation was unreasonable. UNICCO Gov't Servs., Inc., B-277658, Nov. 7, 1997, 97-2 CPD ¶ 134 at 7.

L-3 argues that the agency improperly downgraded the firm's proposal under the technical/management factor for failing to discuss x-ray testing of the candle, even though such testing was not required by the RFP and SNC also did not discuss the use of x-ray testing.

The Army agrees that the RFP did not require offerors to discuss x-ray testing, and that, in fact, SNC did not discuss x-ray testing of the candle and was not downgraded for failing to do so. See Tr. at 39-40. The Army states, however, that it was not L-3's failure to discuss x-ray testing that resulted in the assessment of a deficiency in L-3's proposal under the process optimization/FAT subfactor. Rather, the agency's evaluation concern was that during discussions L-3 stated that it would evaluate the consolidation quality of the candle and search for cracks and voids in the illuminant through the use of a push-out test, but the push-out test was not the appropriate test for inspecting for cracks and voids.¹¹ The agency notes in this regard that, to

¹¹ The RFP does not require offerors to address cracks and voids in the illuminant. Tr. at 66.

examine the interior of the illuminant for cracks and voids, as suggested by L-3, x-ray testing would be necessary, and that L-3's discussion of push-out testing for this purpose demonstrated the firm's lack of understanding and expertise. See Tr. at 38 (“[t]o my knowledge, [x-ray testing is] the only way that you would be able to see a crack or void.”)

L-3 responds that it did not propose the use of push-out testing to assess cracks and voids in the illuminant, but only proposed this test to assess adherence of the fiberboard liner to the canister.¹² See Protester's Post-Hearing Comments at 16. In addition, L-3 argues, citing its response in discussions, that it discussed other methods for ensuring proper consolidation that demonstrated its experience and understanding. Id. at 16-17, citing AR, Tab 7.1, L-3's Discussion Response, at 3-4.

We find from our review of the record that it was reasonable for the Army to conclude that L-3 had proposed the use of push-out testing to assess cracks and voids in the illuminant and that this indicated a lack of expertise and understanding on L-3's part.¹³ Specifically, in its discussion questions, the Army informed L-3 that it had not addressed critical parameters and process inspections; that L-3 had provided no detail concerning how particle size distribution, mixing techniques, material preparation and cure time would be evaluated; and that L-3 had not described the difficulties involved in controlling the manufacturing process for the candle.¹⁴ In response, L-3 stated

[Crane] has found that particle size distribution (magnesium and NaO₃ [sodium trioxide]) and mixing technique are critical for a consistent illuminating candle. Consolidation (pressing) method and parameters are also critical to candle performance. Repeatable consolidation forces of hydraulic press, ram speed and dwell time (5 seconds) are . . . controlled. Consolidation punch surface

¹² The Army apparently agrees that push-out testing is appropriate to assess fiberboard adherence to the canister.

¹³ L-3 has not rebutted, and apparently agrees with, the Army's view that the push-out test is not an appropriate test to inspect for cracks and voids in the illuminant.

¹⁴ L-3 also complains that the agency assessed a weakness in its proposal for failing to discuss particle size, distribution, mixing techniques, material preparation, and cure time, where L-3 had addressed this in response to discussions. The record shows, however, that this was only assessed as a weakness in the agency's evaluation of L-3's initial technical proposal. The Army found that L-3 adequately addressed this particular concern during discussions, and this was not identified as a weakness or deficiency in the agency's final evaluation or source selection. See Agency's Supplemental Legal Memorandum at 10; Tr. at 29.

finishes, clearance with canister and geometry of pressing services have been developed and are controlled to ensure superior candle performance. Control of these consolidation parameters ensures uniform density, free of crack and voids and no surface discontinuities between pressed increments and canister. Push out force testing is used to evaluate adherence to canister, which is an indicator of candle consolidation quality.

AR, Tab 7.1, L-3's Discussion Response, at 3.

We think that the Army could reasonably conclude from the foregoing that L-3 had proposed to use push-out testing in part to assess candle consolidation quality, which, as L-3 indicated in its quote above, would include assuring an illuminant "free of cracks and voids." At best, viewing L-3's response in the light most favorable to the protester, L-3's response was ambiguous with respect to whether L-3 believed that the push-out test would assess whether the illuminant was free of cracks and voids. It is an offeror's obligation to submit an adequately written proposal, see United Defense LP, B-286925.3 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 19, and where, as here, an offeror introduces an ambiguity in its proposal after discussions, we will not object to the agency's reasonable interpretation of the proposal. See Marylou's Transp. Serv., B-261695, Sept. 28, 1995, 95-2 CPD ¶ 154 at 3.

With respect to L-3's argument that other parts of its response during discussions indicated the firm's understanding and expertise with respect to ensuring consolidation quality, we agree that L-3 provided additional information concerning controlling particle size, mixing technique, and material preparation processes. This, however, does not demonstrate that the Army was unreasonably concerned with L-3's apparent inappropriate use of push-out testing to assess cracks and voids in the illuminant, particularly where the agency found that other aspects of L-3's proposal indicated a lack of understanding and expertise.¹⁵ To the extent that L-3 is arguing that this additional information overcomes the agency's concerns with the firm's understanding and expertise, this is nothing more than mere disagreement with the agency's judgment that does not establish that the evaluation was unreasonable. See UNICCO Gov't Servs., Inc., supra.

¹⁵ L-3 does not address the Army's concern that the use of crush testing was incorporated in the statement of work as a method of ensuring consistent strength of the illuminating and first fire compositions, but that L-3 did not discuss crush testing in its discussion response. See AR, Tab 8, Final L-3 Technical/Management Evaluation, at 1; Tab 10, SSDD, at 8. SNC, on the other hand, provided significant information in its proposal concerning the crush test. See SNC's Technical/Management Slides at 29-32.

We also do not find that the Army treated L-3 and SNC disparately, although SNC's proposal was not downgraded where SNC also did not discuss x-ray testing and had proposed push-out testing. As discussed above, the record supports the agency's explanation that L-3 was not downgraded for failing to propose the use of x-ray testing, see Tr. at 39, 42 (solicitation did not require the use or discussion of x-ray testing, and the evaluators did not anticipate that offerors would discuss x-ray testing), but for proposing the apparent use of an inappropriate test (push-out testing) to inspect for cracks and voids where the appropriate test to perform such an inspection was x-ray testing, which to the agency evidenced a lack of expertise and understanding. SNC's proposal, on the other hand, did not propose the use of push-out testing to inspect for cracks and voids, but only for verifying "base plate crimping resistance"--an apparently appropriate object of this test.¹⁶ See SNC's Technical/Management Slides at 89. In short, SNC's proposal did not exhibit the same deficiency that was associated with L-3's discussion of push-out testing, and therefore the agency's evaluation in this regard did not reflect disparate treatment.

L-3 also objects to the Army's assessment of a deficiency in the firm's proposal under the technical/management factor with respect to L-3's "proposal" to introduce an o-ring at the base of the projectile body to reduce candle break-up and malfunction. L-3 argues that it only "proposed investigating the addition of an o-ring as a means of achieving better performance." Protest at 5 (emphasis in original).

The Army explains that, in its initial proposal, L-3 discussed providing a base plug seal (which the agency states is an o-ring) as a redundant safety measure to assure that excess gasses would not get into the projectile; this was viewed as neither a strength nor a weakness because it addressed a "problem" that the agency had never experienced with this cartridge. Agency's Post-Hearing Comments, Supplemental Legal Memorandum, at 5, citing Tr. at 69-70. However, in response to discussions, wherein L-3 was informed that "[p]otential failure modes such as candle drop out, streamers, non-ignition were not addressed," AR, Tab 6, Discussion Letter to L-3, at 1, L-3 stated that it would "consider o-ring seal at base plug/body interface" to address "excessive pressurization of canister exterior surface," which L-3 identified as a "speculative" cause of early candle burnout. AR, Tab 7.1, L-3's Discussion Response, at 6. In this regard, L-3 stated that it "believes a redundant gas seal . . . to restrict inbore propellant gases from entering the projectile body is beneficial in

¹⁶ L-3 also objects that SNC did not discuss inspecting for cracks and voids in the candle. However, as noted above, the solicitation did not require offerors to address inspecting for cracks and voids in the illuminant. The agency does not view cracks and voids in the illuminant as a problem because the required minimum burn time for the candle could be achieved even where there were cracks and voids. See Tr. at 66-67 (there is "no evidence that [cracks and voids] affected any performance in the past.")

optimizing candle performance.” Id. at 4. The agency’s technical evaluators did not believe inserting an o-ring into the cartridge design would have any impact on candle burn time, but viewed L-3’s assertions regarding the o-ring as indicating a lack of understanding and technical competency with respect to the functioning of the cartridge. See Contracting Officer’s Statement at 9-10; Tr. at 70-72.

L-3 has not shown that the agency’s conclusion that L-3’s suggestion or proposal to investigate the possibility of introducing the o-ring at the base of the projectile to control pressure on the exterior of the surface of the candle demonstrated a lack of understanding on L-3’s part, was unreasonable.¹⁷ For purposes of assessing L-3’s understanding, we do not find any meaningful difference in whether L-3 proposed the addition of the o-ring or only proposed investigating the addition of the o-ring.

L-3 also complains that the Army unreasonably downgraded the firm’s proposal to have its candle subcontractor, Crane, provide a fiberboard-lined candle configuration, where SNC also proposed to use Crane and to similarly provide a fiberboard-lined candle.

The Army responds that neither L-3’s nor SNC’s proposal was downgraded for proposing a fiberboard-lined candle. Rather, the agency states that the deficiency assessed in L-3’s proposal with respect to the fiberboard liner reflected the agency’s concern that L-3’s discussion response indicated the firm’s lack of understanding and an undue dependence upon Crane, its candle subcontractor.¹⁸ Agency’s Supplemental Legal Memorandum at 4.

¹⁷ In its post-hearing comments, L-3, for the first time, questioned the agency’s determination that L-3 had proposed the o-ring as a solution to addressing short burn times. This late argument not only appears to be inconsistent with L-3’s proposal, see AR, Tab 7.1, L-3 Discussion Response, at 6, but was untimely raised under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (2006), given that L-3 was informed of the agency’s determination in this regard in its debriefing, but did not raise this argument in its initial protest. See Protest, exh. 1, L-3 Debriefing, at 10th unmarked page.

¹⁸ L-3 disputes the Army’s statement that the firm’s proposal was not downgraded for offering a fiberboard-lined candle configuration, and contends that the Army’s arguments and the hearing testimony are inconsistent with the contemporaneous record. Contrary to L-3’s arguments, however, we find that the contemporaneous record supports the Army’s contention that L-3’s proposal was downgraded because the firm’s discussion demonstrated a lack of understanding and undue reliance upon its candle subcontractor, and was not downgraded merely because the firm proposed a fiberboard-lined candle. In this regard, the SSA found:

As the System Contractor, [L-3 is] allowing their subcontractor [Crane] to make a decision on the design configuration without any
(continued...)

L-3 initially proposed to investigate both fiberboard-lined and epoxy-lined candle configurations.¹⁹ Because L-3's proposed candle subcontractor did not have the equipment or facilities necessary to provide epoxy-lined candles, the Army asked L-3 to address its proposed liner configuration and identify required equipment and facilities.²⁰ In response, L-3 informed the Army that

[Crane] strongly recommends the fiberboard liner design . . . over the 3-part epoxy liner design. This design has not only proven successful in numerous other illuminating rounds (60, 81 & 120mm mortar rounds, 155mm artillery round & Navy 5" round) but it also requires less equipment, less ingredients, and is much less operator dependent.

AR, Tab 7.1, L-3's Discussion Response, at 33.

(...continued)

contribution from or recommendations of their own. Their apparent significant level of dependence on [Crane] coupled with the fact that there was no indication that they contributed any technical input to their response demonstrates a lack of core competency in the manufacturing of illuminating candles and raises concern whether L-3 can provide the proper oversight of their subcontractor.

AR, Tab 10, SSDD, at 10.

L-3 also asserts that at least one evaluator accepted L-3's discussion response concerning the proposal of epoxy-lined and fiberboard-lined configurations, and assessed no weakness or deficiency in his final evaluation of L-3's proposal in this respect. Protester's Supplemental Comments at 18-19. We find no merit to this argument, given that the final evaluation reflected the consensus judgment of the evaluators and was accepted by the SSA. See Tr. at 25, 106-08.

¹⁹ The fiberboard or epoxy liner discussed here sits inside the steel canister housing the candle, and is between the wall of the candle canister and the illuminant composition. Tr. at 21.

²⁰ L-3's initial proposal to investigate both fiberboard-lined and epoxy-lined configurations for the candle was assessed by the agency as a proposal strength under the process optimization/FAT subfactor. See AR, Tab 10, SSDD, at 7. The agency noted, however, that L-3 apparently did not understand that its proposed candle subcontractor currently lacked the equipment and facilities necessary to produce the epoxy-lined candle configuration; this was assessed as weakness/deficiency under the EPPS subfactor. See AR, Tab 8.13, Initial Evaluation of L-3 Proposal under EPPS Subfactor; Tab 10, SSDD, at 9.

This response, the Army found, demonstrated that L-3 did not have any core competency with respect to producing the fiberboard-lined candle, and that L-3 completely relied upon its candle subcontractor's expertise. In this regard, the Army noted that L-3's response failed to recognize that the munitions identified in L-3's discussion response, with the exception of the 155mm artillery round, were dissimilar to the M314A3 cartridge, having "different operating parameters tha[n] the fiberboard liner [we'll] see in gun launch and functioning of [the M314A3] cartridge"; nor did L-3 indicate that it was aware that, at the time of the firm's discussion response, the fiberboard-lined configuration for the 155mm projectile had not been qualified. Tr. at 34-35; see Tr. at 118 (As compared to the cartridge being procured here, "the mortar rounds see a much different ballistic environment, the velocity is not as extreme in the mortar rounds, the spin is not as extreme in the mortar rounds. Thus, when the parachute deploys, the yanking, whatever, it is not as violent.") In sum, L-3's discussion responses simply failed to demonstrate to the Army that, apart from the expertise provided by its candle subcontractor, L-3 had any level of expertise or core competency that would allow it to manage its candle subcontractor's performance.²¹

L-3 argues, however, that it was reasonable for the firm, as the prime contractor, to rely upon the expertise of its candle subcontractor, and that SNC similarly relied upon the expertise of Crane in providing the fiberboard-lined candle. In this regard, L-3 cites SNC's response in discussions, which attached a memorandum from Crane explaining that Crane had tested the use of a epoxy liner in the 81mm and 120mm mortar munitions and in the preliminary testing of the 155mm artillery munition, and found that these munitions failed ballistic testing; based upon these tests, Crane "offered and SNC accepted [the fiberboard-lined] design for the 105mm program." See AR, Tab 7.2, SNC Discussion Response, attach., Crane Memorandum, Sept. 12, 2006, at 1.

Although we agree with L-3 that it is not unreasonable, per se, for a prime contractor to rely upon the expertise of its subcontractor, we also do not find that it was unreasonable for the Army to be concerned, consistent with the RFP evaluation criteria, with whether a prospective prime contractor had a sufficient core competency to allow that contractor to manage its subcontractor's performance. In this regard, the RFP provided that the agency would evaluate the offeror's "essential skills and knowledge" under the EPPS subfactor. RFP § M, at 69. Moreover, we

²¹ L-3 also argues that it proposed the use of a third firm to conduct DOEs with respect to understanding "candle cause and effect," and that this indicates that L-3 was not unduly relying upon Crane's expertise. Protester's Comments at 19, citing L-3 Technical/Management Slides, pt.1, at 9. This, however, does not demonstrate that the Army was unreasonably concerned that L-3 lacked its own expertise and knowledge to manage its candle subcontractor.

agree that the hearing testimony supports the Army's view that each offeror's "process controls would require [Crane] to tailor its use of fiberboard liners to the specific prime contractor." See Agency's Post-Hearing Comments, Supplemental Legal Memorandum, at 6. Specifically, one of the agency's technical evaluators (a mechanical engineer from the Army's Picatinny Arsenal in New Jersey, who was the agency's project officer for the M314A3 cartridge) testified that the fiberboard liner is a critical component of the cartridge, and that it was the prime contractor's responsibility to inform the candle subcontractor of the critical dimensions for the fiberboard liner and to decide on necessary inspections and testing for the fiberboard liner. Tr. at 32-33. He also testified that, because the TDP for this cartridge was "marginal" and had a fairly large "tolerance band" for satisfying TDP requirements, it was essential that the prime contractor have an understanding of the processes involved in producing the candle, so that the prime contractor could control proposed design changes and resolve any performance issues. Tr. at 72-73.

Unlike L-3's proposal, the Army found that SNC's proposal demonstrated the firm's complete and comprehensive understanding of the M314A3 cartridge. Compare AR, Tab 9, Initial Technical/Management Evaluation of SNC's Initial Proposal, at 1 ("SNC has identified all necessary resources along with a detailed approach to performing the effort" and "SNC's approach is realistic, achievable and supportable."), with Tab 8.11, Technical/Management Evaluation of L-3's Initial Proposal, at 1 ("L-3's approach[,] although minimally adequate, does not provide a comprehensive technical understanding of the issues involved" and L-3 did not "demonstrate a level of understanding of the candle's critical processes/parameters and how they must be controlled to assure optimum performance.") Thus, while both firms proposed to use Crane to provide fiberboard-lined candles, the record shows that the Army reasonably found that SNC provided a more detailed discussion of the candle in its technical proposal that demonstrated the firm's own expertise and competency, and ability to manage its candle subcontractor's performance. See SNC's Technical/Management Oral Presentation Slides at 18-32. L-3's discussion of the candle and Crane was more general. See L-3's Technical/Management Oral Presentation Slides at 61-65.

In sum, we find no basis in this record to conclude that the Army unreasonably concluded that L-3 had failed to demonstrate its own expertise and core competency for this RFP work, but that SNC had demonstrated its own capabilities to manage the work.

L-3 also complains that the agency treated L-3 and SNC disparately under the integrated master plan/delivery schedule subfactor of the technical/management factor where the agency evaluated L-3's proposal as "fair" because L-3 had not updated its proposed schedule to reflect a later award date, whereas SNC's proposal was evaluated as excellent under this subfactor, even though it did not update its proposed schedule. See Protester's Supplemental Comments at 11.

We do not agree with L-3 that the difference in the firms' ratings under the integrated master plan/delivery schedule subfactor was based upon the agency's assessment that L-3 had not updated its proposed schedule to reflect a later award date. Rather, the evaluation record and source selection decision show that L-3's "fair" rating for this subfactor reflected the evaluators' and SSA's judgment that L-3 had failed to provide quotes or other information from its propellants or cartridge case subcontractors or address the schedule of its forged projectile body subcontractor to demonstrate that these subcontractor could meet L-3's proposed schedule. In addition, L-3's rating reflected the evaluators' and SSA's concern that L-3's master schedule was premised upon completing optimization of the candle and procurement of specialized load, assembly and packing (LAP) equipment prior to award, and that L-3 had provided no information "as to the progress of the illuminating candle optimization or what steps in the LAP equipment procurement effort were completed." AR, Tab 10, SSDD, at 10-11. Based on this record, we find that the agency reasonably concluded that L-3 presented a "high" risk that it could not accomplish the process optimization effort within 12 months. See id.; Tab 8, Final L-3 Technical/Management Evaluation, at 3-4; Tr. at 89-91, 119-20.

On the other hand, SNC's "excellent" rating under the integrated master plan/delivery schedule subfactor reflected the evaluators' and SSA's judgment that SNC had provided a complete and comprehensive proposal that demonstrated a realistic and detailed schedule, supported by all necessary subcontractors, facilities and equipment. In addition, the agency found that SNC had [Deleted] with ballistic test facilities, test laboratories, and key suppliers and that this provided schedule risk mitigation. See AR, Tab 9.4, SNC's Integrated Master Plan/Delivery Schedule Evaluation; Tab 10, SSDD, at 4-5. In this regard, the SSA testified that, unlike L-3's proposed schedule, SNC's schedule was based upon tasks and milestones that began at the time of award and appeared technically reasonable. Tr. at 120.

In short, we find reasonable the agency's evaluation of L-3's and SNC's proposals under the integrated master plan/delivery schedule subfactor.

L-3 also contends that the agency unreasonably did not consider under the technical/management evaluation factor that SNC had an approximately [Deleted] percent failure rate under the prior contract and that SNC attributed its performance problems to the government-provided TDP, a contention which the agency rejected in its evaluation.²² The Army responds that SNC's performance

²² SNC's oral presentation slides indicate that SNC produced 82,743 cartridges in 17 lots under the prior contracts, but that [Deleted] lots failed ballistic lot acceptance testing, but were accepted by the agency after granting waivers. Most of the deficiencies were associated with short candle burn times. SNC's Technical/Management Oral Presentation Slides at 15; see also AR, Tab 9.10, SNC's Past Performance Quality Subfactor Evaluation, at 1.

problems under the prior contract and the contention that these problems were due to the TDP were addressed in the agency's past performance evaluation and ultimately considered by the SSA in his selection decision, and did not have to be considered in the technical/management proposal evaluation.

We agree with the Army that SNC's past performance problems and contention that these problems were due to the TDP were properly considered by the agency in the evaluation and source selection decision. Specifically, SNC's performance problems under the prior contract were considered under both past performance subfactors--on-time delivery and quality--and resulted in SNC's proposal being evaluated as "adequate" with "moderate risk." See AR, Tab 9.7, SNC's Past Performance Evaluation. In this regard, the agency noted under the quality subfactor that

SNC thoroughly detailed the extensive investigations taken during the previous contract. A number of variables were addressed and many reasonable actions were taken by SNC, additionally extensive efforts by the Government Technical Community were extended to resolve these issues. Not relieving SNC of any of the end item accountability as a System's Contractor, but this evaluation indicates during this previous contract a large amount [of] resources were expended by SNC to implement corrective actions. There does seem to be increased risk associated with the production of M314A3 Illumination Candle. The knowledge SNC and the Government has gained during the last contract should be seen as a mitigating factor, but SNC's previous failures have indicated an uncomfortable level of risk.

AR, Tab 9.10, SNC's Past Performance Quality Subfactor Evaluation, at 1. In making his selection decision, the SSA was specifically aware of both SNC's prior performance problems and contention that these problems were due to the TDP, and decided that SNC presented some delivery and performance risk. See AR, Tab 10, Source Selection Decision, at 13-14, 17.

We do not agree with L-3 that the agency was also required to downgrade SNC's proposal under the technical/management factor for these prior failures and its contentions regarding the TDP, particularly where the agency itself was of the view that the TDP was in fact "marginal" and provided contractors with a certain amount of discretion with respect to producing the candle. See Tr. at 49-51. Thus, given SNC's otherwise excellent technical/management proposal and the SSA's knowledge and consideration of SNC's position regarding the TDP, the agency's decision to not specifically consider SNC's TDP position in the evaluation of the firm's technical/management proposal was unobjectionable.

L-3 also complains that while the agency downplayed SNC's past performance problems under the prior contract, it unduly and incorrectly emphasized L-3's past

performance issues. With respect to L-3's past performance evaluation, the agency noted, among other things, late delivery performance problems with L-3's proposed parachute assembly subcontractor and projectile metal parts subcontractor and quality concerns with its candle subcontractor and parachute assembly subcontractor. L-3 does not contend that its subcontractors did not have these evaluated performance problems, but only argues that the Army did not provide enough credit for the fact that its proposed parachute assembly subcontractor and projectile metal parts subcontractor had corrected their late delivery problems. However, the record shows that the Army did credit L-3's proposed parachute assembly subcontractor with correcting its delivery problems; there is no evidence in the record, however, that L-3's proposed projectile metal parts subcontractor had corrected its delivery problems. See AR, Tab 8.8, L-3's Past Performance Evaluation, at 1-2; see also Tab 10, SSDD, at 15-17.

With respect to L-3's argument that SNC's past performance should have been more severely downgraded than L-3's due to SNC's and Crane's performance problems under the prior contract, the SSA ultimately concluded with respect to SNC's and L-3's past performance that, although each firm had "encountered problems in the past, whether it is attributable to their performance or that of a subcontractor, there is no evidence that they did not take adequate action to quickly correct the problem."²³ AR, Tab 10, SSDD, at 22. L-3's arguments disputing this conclusion represent nothing more than mere disagreement with the agency's evaluation judgment.

L-3 also complains that the Army, as part of its technical/management evaluation of SNC's proposal, failed to assess any risk associated with SNC's proposal to provide a [Deleted], given the issues that arose concerning the [Deleted] under the prior contract.²⁴ The Army assessed SNC's proposed [Deleted] as a strength in the agency's technical/management evaluation of SNC's proposal. AR, Tab 9, SNC Technical/Management Evaluation, at 2. L-3 objects, however, on the basis that one of the agency's past performance evaluators found that SNC was contending that the [Deleted] was the root cause of candle short burn time failure on the cartridges under the prior contract.²⁵ According to this evaluator:

[Short burn time], [SNC] now claim[s], was due to [Deleted]. This was caused by the [Deleted]. SNC Mitigation now to eliminate [short burn time] is to [Deleted]. . [.] Amazing!!!

²³ As noted above, both L-3 and SNC proposed Crane as their candle subcontractor.

²⁴ [Deleted].

²⁵ The cartridge was required to provide "effective illumination for 55 seconds." RFP § E, at 25.

Bottom line: My [past performance] evaluation [of adequate/moderate risk] remains the same as before. SNC's late deliveries were attributed exclusively to LAT [lot acceptance testing] failures. It is obvious to me that SNC is dedicated to resolving the [short burn time] failure mode. But, it is also obvious that passed FMEA [failure mode and effects analysis], DOE's, and RCA [root cause analysis] in correcting the LAT failure were not successful. The jury remains out if the [Deleted] [now proposed by SNC] will be any more successful than their prior revelations.

AR, Tab 9.14, Past Performance Evaluator's Memorandum to the SSA.

We find no basis from our review of the record to conclude that the Army's evaluation of SNC's proposed [Deleted] was unreasonable. As is documented by the past performance evaluator's memorandum to the SSA, the agency appropriately considered SNC's performance problems associated with the [Deleted] that the firm redesigned in the prior contract. The strength that was assessed in SNC's technical/management proposal was not for the [Deleted] used in the prior contract, but was for a proposed "unique" [Deleted] to resolve the primary issue of short burn times:

[Deleted].

AR, Tab 9, SNC Technical/Management Evaluation, at 2. At best, the past performance evaluator's memorandum could be read as questioning the likelihood that SNC's [Deleted] will perform better than the one that the firm had previously provided;²⁶ this, however, does not demonstrate that the technical evaluators unreasonably determined that SNC's proposal of a "unique" process optimization approach, which included a [Deleted], was a strength.

L-3 raises a number of other challenges to the agency's evaluation of L-3's and SNC's proposals, arguing that the Army treated the firms disparately under the technical/management, financial capability, and small business utilization factors, and "double counted" strengths in SNC's proposal and weaknesses in L-3's proposal. Although not all of L-3's numerous arguments are discussed in this decision, we have considered all of the parties' arguments and find from our review of the record that L-3's additional arguments provide no basis to object to the agency's evaluation and source selection.

For example, L-3 complains that the Army assessed as a strength in SNC's proposal, under the process optimization/FAT subfactor, the firm's brainstorming with its

²⁶ The agency's states, without rebuttal, that the past performance evaluator's area of expertise was not technical. See Agency's Post-Hearing Comments at 2.

candle subcontractor, where L-3 also reported in its proposal that it brainstormed with a subcontractor but this was not assessed as a proposal strength. See Protester's Supplemental Comments at 12. However, the agency reasonably explains that SNC's brainstorming was done with its candle subcontractor²⁷ and was part of an elaborate DOE with a "comprehensive analysis of the different variables," while L-3's brainstorming was not done with its candle subcontractor and was part of a "limited and elementary" DOE.²⁸ See Tr. at 88-89.

As another example, L-3 complains that the Army failed to evaluate the sale of SNC to a third-party in its evaluation of the firm's proposal under the technical/management and financial capability factors. With respect to the technical/management factor, L-3 speculates that the sale of SNC may impact the retention of SNC management and key personnel. With respect to the financial capability factor, both L-3's and SNC's proposals were evaluated as being "low risk," but L-3 argues that the proposed sale of SNC should have resulted in a higher risk rating. As reported by SNC's proposal, the sale of SNC stock to a third-party, although approved by SNC's parent corporation at the time of proposal submission, was not final at the time of the agency's evaluation and source selection. SNC Financial Capability Proposal, annex A, SNC-Lavalin Annual Report, at 25. Under the circumstances, we do not think the agency was required to assess the technical impact of a proposed sale of the SNC corporate entity where the sale had not yet been approved and completed. Further, with respect to the financial capability factor, we note that the Canadian government guarantees all commitments, obligations and covenants of the Canadian Commercial Corporation. See DFARS § 225.870-1(a).

L-3 finally protests that the Army failed to conduct meaningful discussions with it concerning the firm's failure to discuss x-ray testing or crush-testing, the proposal of an o-ring, and the firm's schedule.²⁹

In negotiated procurements, whenever discussions are conducted by an agency, the discussions are required to be meaningful, equitable, and not misleading. The

²⁷ The candle is the source of most of the performance problems with the M314A3 cartridge. Tr. at 89.

²⁸ The agency also states that L-3 failed to share the brainstorming information it obtained regarding candle performance with its candle subcontractor.

²⁹ In its comments on the agency report, L-3 argued that the agency failed to provide the firm with meaningful discussions with respect to agency's negative past performance evaluation of some of L-3's subcontractors. This protest allegation is untimely, given that L-3 learned the basis of this allegation in its debriefing and did not raise this ground of protest in its initial protest. 4 C.F.R. § 21.2(a)(2).

Communities Group, B-283147, Oct. 12, 1999, 99-2 CPD ¶ 101 at 4. To satisfy the requirement for meaningful discussions, the agency need only lead an offeror into the areas of its proposal requiring amplification or revision; all-encompassing discussions are not required, nor is the agency obligated to “spoon-feed” an offeror as to each and every item that could be revised to improve its proposal. See Arctic Slope World Servs., Inc., B-284481, B-284481.2, Apr. 27, 2000, 2000 CPD ¶ 75 at 8-9; The Communities Group, *supra*. This is particularly true where, as here, one aspect of the evaluation is to test the offeror’s technical understanding. See TRI-COR Indus., B-259034.2, Mar. 14, 1995, 95-1 CPD ¶ 143 at 5-6.

We find that the Army conducted meaningful discussions with L-3 concerning its proposal. With respect to the agency’s concerns that L-3 did not discuss crush-testing and that L-3 had not proposed a realistic schedule that would satisfy the contract requirements, the Army’s discussion questions should have reasonably led L-3 into those areas of its proposal. Specifically, the Army informed L-3 that its “DOE was limited in scope” and that “[c]ritical parameters and critical process inspections were not addressed.” With respect to its proposed schedule, L-3 was informed that its “[p]roposed schedule for Phase I Optimization exceeds the required 12 months.” See AR, Tab 6, Army Discussion Questions to L-3, at 1-2.

With respect to the Army’s evaluated concerns with L-3’s offer to investigate providing an o-ring and its failure to identify x-ray testing as the appropriate test to assess cracks and voids in the illuminant, these were deficiencies that arose from L-3’s response to the agency’s discussion questions. An agency is not obligated to re-open discussions where an offeror introduces something in response to discussions that the agency views as a deficiency or weakness. See Cube-All Star Servs. Joint Venture, B-291903, Apr. 30, 2003, 2003 CPD ¶ 145 at 10-11.

In conclusion, we find reasonable the Army’s documented judgment that SNC’s proposal offered a superior approach and demonstrated the firm’s technical understanding and expertise, while L-3’s proposal had not demonstrated a similar level of expertise and understanding, which posed schedule and performance issues, and that the selection of SNC’s higher-priced, higher-rated proposal was reasonable and consistent with the solicitation’s evaluation scheme.

We deny the protests.

Gary L. Kepplinger
General Counsel