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**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Lockheed Martin Aeronautics Company

File: B-298626

Date: November 21, 2006

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DIGEST

1. Agency reasonably concluded that protester's proposal failed to comply with solicitation requirements where solicitation required that certain mandatory capabilities be "embodied" in aircraft and required delivery of first aircraft 12 months after award, but protester's proposal provided that it would not deliver aircraft equipped with the mandatory requirements until more than 4 years after award.
 2. Agency meaningfully advised protester that its proposal failed to comply with solicitation's mandatory requirements when it asked protester how it intended to provide the mandatory requirements by the time of first aircraft delivery.
 3. Agency reasonably limited its evaluation of offerors' production capability to the criterion identified in the solicitation.
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DECISION

Lockheed Martin Aeronautics Company protests the Department of the Army's exclusion of Lockheed Martin's proposal from further consideration under request for proposals (RFP) No. W58RGZ-06-R-0213 to provide the joint cargo aircraft (JCA) to the government. Lockheed maintains that it was improper for the agency to

conclude that Lockheed's proposal failed to comply with certain mandatory solicitation requirements.

We deny the protest.

BACKGROUND

On March 17, 2006, the Army issued solicitation No. W58RGZ-06-R-0213 seeking proposals to provide the JCA¹—that is, to provide a “multi-functional aircraft, able to perform logistical resupply, casualty evacuation, troop movement, airdrop operations, humanitarian assistance, and Homeland Security support,” with a “primary mission . . . to move mission critical/time sensitive cargo to forward tactical units in remote and austere locations and land or take off from short unimproved runways.” Agency Report (AR), Tab B, RFP at 2.² The solicitation further stated that the JCA program “was established to . . . replace the C-26 and C-23 fleet and selected C-12 aircraft beginning in FY [fiscal year] [20]07,” and provided for three 1-year base “ordering periods,” and two 1-year “option ordering periods.” *Id.* at 2, 4.

As amended, the solicitation advised offerors that the first phase in the proposal evaluation process would be an “entry gate” evaluation,³ during which proposals would be evaluated for compliance with certain “minimum performance standards,” which the solicitation further defined as “mandatory capabilities that shall be embodied in the candidate aircraft.”⁴ (Underlining in original.) AR, Tab C, RFP,

¹ In December 2005, the Department of the Army and Department of the Air Force were directed to form a Joint Program Office for the JCA program. Thereafter, a Memorandum of Agreement between the Army and the Air Force was created, stating: “The Army is initially the lead Service for the JCA program.” Protest, Aug. 14, 2006, attach. A, at 1, 4.

² The agency report responding to Lockheed's protest was divided into lettered tabs, with each tab separately paginated using a system commonly referred to as “Bates stamping.” Our citations to particular pages within the agency report refer to the “Bates stamped” page numbers.

³ The solicitation provided for three phases in the evaluation/source selection process: phase I--“Entry Gate Evaluation”; phase II--“Proposal Evaluation”; and phase III--“EUS [Early User Survey].” AR, Tab C, RFP at 72.

⁴ Consistent with these provisions, the solicitation also stated that “[t]he candidate aircraft shall meet all Minimum Performance Standards in order to receive a rating of other than Unsatisfactory during the source selection evaluation.” AR, Tab D, Purchase Description at 1.

at 8-9; Tab D, Purchase Description at 1. Further, offerors were advised that the solicitation's entry gate requirements would be evaluated on a "Go/No Go" basis, and that "[o]fferors failing to meet these Go/No Go requirements will be eliminated from the competition." AR, Tab C, RFP at 8. Finally, the solicitation provided that initial proposals were to be submitted in June 2006, advised offerors that award was intended to be made during fiscal year 2007, and provided that "the first aircraft shall be delivered within 12 months after contract award." AR, Tab B, at 2; Tab C, at 25; Tab E, at 5.

With regard to the entry gate evaluation, the solicitation identified certain aircraft capability requirements to be evaluated, including requirements related to "Communication, Navigation and Surveillance operations in the global Air Traffic Management environment" (CNS/ATM).⁵ AR, Tab C, RFP § M-3, at 73. Among other things, the solicitation provided that the agency's entry gate evaluation would assess each offeror's current capability with regard to the following:

The [JCA] shall have a dual GPS [global positioning system] capability⁶ compliant with [specified standards]. The GPS shall have

⁵ In addition to the aircraft capability requirements, the solicitation established entry gate criteria related to Federal Aviation Administration (FAA) certification and production capability. AR, Tab C, at 72-73.

⁶ GPS is described as "a space-based radio-positioning system consisting of a satellite constellation that provides navigation and timing information to military and civilian users worldwide." Protester's Comments on Agency Report, Sept. 25, 2006, at 25.

Selective Availability Anti-Spoofing Module (SAASM)^[7] and Precise Positioning Service (PPS).^[8]

AR, Tab D, RFP, Purchase Description, ¶ 6.2.1.1.

On or before the June 7 closing date, proposals were submitted by Lockheed, L-3 Communications Integrated Systems, and Raytheon Company.⁹ Lockheed proposed to provide the “short fuselage version” of the C-130J aircraft. Protest, Aug. 14, 2006, at 2.¹⁰ In addressing the entry gate requirement to provide GPS with SAASM, Lockheed stated that this capability would be met through a “Block Upgrade Program” that currently exists as part of a separate contract between Lockheed and the Department of the Air Force.¹¹ AR, Tab H-8, Lockheed Proposal Vol. 3, at 3-203,

⁷ A SAASM module allows military GPS receivers to receive and decrypt GPS coordinates with a high degree of precision, while also guarding against false GPS signals—that is, deliberate attempts to mimic legitimate signals and introduce erroneous time and position information.

⁸ Regarding the requirement that aircraft must be equipped with GPS with SAASM, the agency has provided the following explanation:

The Chairman of the Joint Chiefs of Staff Instructions . . . mandate that any new program or major modification must include having GPS with SAASM as part of the end product after 1 October 2006. . . . Since the [JCA] is primarily a tactical asset designed to operate in remote and austere conditions, robust navigation instruments are critical to the safe operation and mission completion of the aircraft. To procure aircraft without SAASM equipped GPS receivers would not only be violating DoD policy, it would also be a grave disservice to the aircrews and service members who will depend on the sensitive, time critical re-supply capabilities of the [JCA].

AR, Contracting Officer’s Statement, at 13-14 n.4.

⁹ Raytheon submitted two proposals, one of which was subsequently eliminated from consideration.

¹⁰ Lockheed states that its proposal “identified” the 382J (a predecessor aircraft, which the record indicates is FAA certified, from which the C-130J was derived) as its “baseline” aircraft, and that it proposed the C-130J, with modifications, as the aircraft to be delivered under the contract. *Id.* at 18-19.

¹¹ The block upgrade program is part of Air Force contract No. FA8625-04-D-6425, which allows the Air Force to issue delivery orders for upgrades to the C-130J aircraft, including upgrades for CNS/ATM capabilities. Protest at 39. This program is also referenced in the record as the “block mod” or “block mod upgrade” program.

3-207. More specifically, Lockheed stated that it would provide GPS with SAASM capabilities under “Block 8.0” of that Air Force contract—but also stated that “fielding” of the capabilities provided under “Block 8.0”—that is, physical incorporation into the aircraft—would not begin until some time during the year 2012. AR, Tab H-7, Lockheed Proposal Vol. 1, at 1-26; Tab H-8, Lockheed Proposal Vol. 3, at 3-203, 3-207.

In evaluating Lockheed’s initial proposal, the agency was concerned that Lockheed had not offered to meet the solicitation’s mandatory entry gate requirement to provide GPS with SAASM in all delivered aircraft—beginning with the first aircraft to be delivered 12 months after contract award, in 2008.¹² Accordingly, the agency sent an “error, omission and clarification” (EOC) notice to Lockheed,¹³ seeking additional information regarding certain aspects of Lockheed’s proposal, including Lockheed’s proposed approach to meeting the GPS with SAASM requirement. Specifically, the EOC notice questioned Lockheed as follows:

How does [Lockheed] propose to meet the PD paragraph 6.2.1.1 MPS [minimum performance standard] requirement for Global Position System (GPS) Selective Availability Anti-Spoofing Module (SAASM) and Precise Positioning Service (PPS) at the time of first aircraft delivery.

AR, Tab I-4, at 2.

Lockheed responded by confirming that its proposal to provide GPS with SAASM was conditioned upon incorporation of Lockheed’s block upgrade program into the JCA contract, stating:

[I]t is Lockheed Martin’s intent to have contractually satisfied the Selective Availability Anti-Spoofing Module (SAASM) requirement no

¹² Section L of the RFP provided the following estimates regarding the “base quantity” and “additional quantity” of aircraft that are projected to be ordered during each fiscal year under the contract: 2007—3 aircraft (base quantity); 2008—4 aircraft (base quantity); 2009—7 aircraft (base quantity); 2010—8 aircraft (base quantity) 7 aircraft (additional quantity); 2011—11 aircraft (base quantity) 15 aircraft (additional quantity). AR, Tab C, at 25. In total, the solicitation estimated orders for production of 33 “base quantity” aircraft and 22 “additional quantity” aircraft from 2007 through 2011. *Id.*

¹³ The agency similarly sent EOC notices to the other offerors concerning various aspects of their proposals.

later than the scheduled first delivery thru the Joint Program Office's acceptance of the Block Mod program.

AR, Tab I-4, at 4.

However, in pursuing this protest, Lockheed expressly states its understanding that "[t]he qualifying language of 'contractual satisfaction' indicates something less than physical incorporation or implementation [of GPS with SAASM capabilities] in the aircraft."¹⁴ Protester's Comments on Supplemental Agency Report, Oct. 16, 2006, at 28. Further, nothing in Lockheed's response altered the provision in its proposal which provided that the required GPS with SAASM capabilities would be "fielded," or physically incorporated, in the aircraft through "block 8.0" of the Air Force contract, and that this would not occur prior to the year 2012. Accordingly, the agency concluded that Lockheed's proposal offered to provide "something less than physical incorporation or implementation" of GPS with SAASM capabilities in the aircraft delivered under the contract between the time of award and Lockheed's "fielding" of the block 8.0 upgrades in 2012.¹⁵

Based on the provisions of Lockheed's proposal stating that Lockheed would not deliver aircraft equipped with GPS with SAASM until 2012, along with Lockheed's confirmation, in response to the agency's EOC notice, that GPS with SAASM was only proposed in conjunction with the "block upgrade" program, the Army concluded that Lockheed's proposal failed to comply with the solicitation's entry gate requirements, stating:

Since the required GPS with SAASM . . . capability will not be available until after first aircraft delivery (April 2008), the offeror does not

¹⁴ To the extent Lockheed asserts that the solicitation's use of "contractually satisfy" with regard to mandatory requirements permitted offerors to propose to deliver aircraft in which the minimum performance standards are not "embodied"--that is, physically incorporated--in the aircraft, such an interpretation would clearly constitute a patent ambiguity that Lockheed was obligated to protest prior to submitting its proposal. See, e.g., Poly-Pacific Techs., Inc., B-293925.3, May 16, 2005, 2005 CPD ¶ 100 at 3; U.S. Facilities, Inc., B-293029, B-293029.2, Jan. 16, 2004, 2004 CPD ¶ 17 at 10.

¹⁵ As noted above, the solicitation advised offerors that a total "base quantity" of 33 aircraft and a total "additional quantity" of 22 aircraft were projected to be ordered between the time of contract award in 2007, and 2012 when Lockheed will begin "fielding" its block 8.0 upgrades, and that aircraft deliveries are to begin within 12 months after contract award. AR, Tab C, at 25.

provide any evidence of current capability (Reference RFP: M.2.1.3 and L 2.2.3) to meet the CNS/ATM requirement in PD paragraph 6.2.1.1.^{16]}

AR, Tab K-4, Lockheed Evaluation, at 8.¹⁷

The agency subsequently notified Lockheed that its proposal had been eliminated from the competition. This protest followed.

DISCUSSION

Lockheed first protests that exclusion of its proposal was improper because it believes that significant changes will subsequently be made to the solicitation requirements. Lockheed Protest, Aug. 14, 2006, at 12. Referencing various “press reports” and other documents, including the Army’s and Air Force’s Memorandum of Agreement, Lockheed maintains that the JCA program requirements are “evolving” and that the current solicitation “primarily reflects Army needs – and does not yet reflect additional Air Force requirements,”¹⁸ concluding that “[c]hanges to the RFP will have to be made.” Lockheed Protest, Aug. 14, 2006, at 7; Lockheed Comments on AR, Sept. 25, 2006, at 1. With reference to what Lockheed asserts are pending organizational and funding changes, Lockheed maintains that such changes will

¹⁶ As noted above, PD ¶ 6.2.1.1 identified GPS with SAASM as a “minimum performance standard,” and the solicitation unambiguously defined “minimum performance standards” as “[m]andatory capabilities that shall be embodied in the candidate aircraft.” AR, Tab D, PD, at 1, 15.

¹⁷ In addition to the agency’s conclusion that Lockheed would not deliver aircraft equipped with GPS with SAASM before 2012, the agency concluded that Lockheed’s proposal failed to comply with the solicitation’s mandatory entry gate requirements regarding FAA certification, as well as another CNS/ATM requirement that the GPS system “provide a means to perform non-precision and lateral navigation/vertical navigation (LNAV/VNAV) instrument approaches.” AR, Tab K-4, Lockheed Evaluation, at 8. Because the agency reasonably determined that Lockheed’s proposal failed to meet the entry gate requirement regarding GPS with SAASM, our decision here does not discuss the agency’s additional bases for excluding Lockheed’s proposal from the competition.

¹⁸ Lockheed asserts that pending legislation “will direct that management of the JCA program be shifted from the Army to the Air Force.” Protester’s Comments on Agency Report, Sept. 25, 2006, at 1.

require modification of the solicitation to reflect the government's "actual needs."¹⁹ Protester's Comments on Agency Report, Sept. 25, 2006, at 7.

The Army, designated as the "lead Service" in this procurement, responds that, "Solicitation W58RGZ-06-R-0213 is based on the Government's minimum needs at this time," and states that "[t]he basic requirements set forth in the solicitation have not changed." Contracting Officer's Supplemental Statement, Oct. 10, 2006, at 4-5. Further, the contracting officer states that the Army does not anticipate material changes to the solicitation's requirements during the 5-year contract performance period contemplated under this procurement. Id.

Protests that are based on a protester's anticipation of future agency actions, which the protester believes may subsequently provide a basis for protest, are speculative and premature. See, e.g., Saturn Indus.--Recon., B-261954, July 19, 1996, 96-2 CPD ¶ 25 at 5. On this record, and in the face of the Army's affirmative assertion that it does not anticipate material changes during performance of the contract at issue, Lockheed's assertions regarding pending changes to the program and to the solicitation requirements do not provide a basis for protest at this time.

Lockheed next protests that it was unreasonable for the agency to exclude Lockheed's proposal for failing to meet the solicitation's mandatory entry gate requirement to provide GPS with SAASM. We conclude the agency's decision to exclude Lockheed's proposal was proper.

Lockheed first asserts that the solicitation "does not identify a specific time by when this capability [GPS with SAASM] must be obtained or implemented." Lockheed's Comments on Agency Report, Sept. 25, 2006, at 37. Accordingly, Lockheed asserts that its proposal to delay physical incorporation of GPS with SAASM into delivered aircraft until 2012 met the solicitation requirements.²⁰

As discussed above, the solicitation provided that GPS with SAASM is a "minimum performance standard" and unambiguously defines "minimum performance standards" as "[m]andatory capabilities that shall be embodied in the candidate aircraft." (Underlining in original.) AR, Tab D, at 1. Further, the solicitation advised offerors that contract performance is intended to begin in 2007, and directed that "the first aircraft shall be delivered within 12 months after contract award." AR,

¹⁹ We note that, although Lockheed asserts that the current solicitation does not reflect the government's "actual needs," it is not clear from Lockheed's various protest submissions what particular "actual need" the solicitation fails to meet.

²⁰ Throughout its pursuit of this protest, Lockheed has not disputed the agency's conclusion that Lockheed's proposal does not contemplate physical incorporation of GPS with SAASM into delivered aircraft until 2012.

Tab B, at 2; Tab C, at 25; Tab E, at 5. Lockheed effectively argues that the terms of the solicitation permit Lockheed to deliver aircraft in which “minimum performance standards” are not physically incorporated into the aircraft. We believe this is simply not a reasonable reading of the solicitation and, in fact, directly contrary to the solicitation’s explicit requirements.

In reviewing a procuring agency’s evaluation of an offeror’s technical proposal, our role is limited to ensuring that the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. Urban-Meridian Joint Venture, B-287168, B-287168.2, May 7, 2001, 2001 CPD ¶ 91 at 2. Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all its provisions. M & M Ret. Enters., LLC, B-297282, Dec. 15, 2005, 2005 CPD ¶ 224 at 3.

Here, consistent with the discussion above, we believe the solicitation, read as whole, clearly put offerors on notice that GPS with SAASM was a mandatory requirement that must be “embodied”—that is physically incorporated—in all delivered aircraft, and that an offeror’s capability, and commitment, to meet that requirement would be evaluated on a “Go/No Go” basis during the entry gate evaluation. Further, if Lockheed had any genuine doubt regarding the solicitation’s requirements regarding the time for delivery of aircraft that are “embodied” with GPS with SAASM, such doubt was, or reasonably should have been, removed by the agency’s EOC notice which unequivocally advised Lockheed that compliance with the solicitation’s mandatory capabilities, specifically including GPS with SAASM, was required by “first aircraft delivery.” AR, Tab I-4, at 2. Lockheed’s assertion that it properly interpreted the solicitation to require anything other than delivery of aircraft equipped with this specified mandatory capability is not reasonable.²¹

Lockheed also complains that the Army evaluated offerors unequally in determining that L-3 and Raytheon satisfied the entry gate requirement regarding GPS with SAASM because the agency did not perform, in Lockheed’s view, a sufficiently

²¹ Alternatively, and inconsistently, Lockheed argues that the solicitation’s reference to evaluation of an offeror’s “current capability” to meet the mandatory performance standards required the agency to evaluate each offeror’s actual incorporation of the required capability into its proposed aircraft at the time the evaluations were performed and that, therefore, none of the offerors met this requirement. For the reasons discussed above, Lockheed’s assertions in this regard are not reasonable and, as discussed above, based on our reading the solicitation as a whole, we find no basis to question the agency’s determination that the solicitation contemplated assessment of an offeror’s capability, and commitment, to deliver aircraft “embodied” with the required capabilities, beginning at the time of first aircraft delivery.

rigorous assessment of the other offerors' proposals. We reject Lockheed's complaint regarding unequal evaluation of the offerors' proposals based on the following: Lockheed's proposal unambiguously provided that Lockheed would not deliver aircraft equipped with GPS with SAASM until 2012, more than 4 years after first aircraft delivery; in contrast, L-3's and Raytheon's proposals each stated that they would provide aircraft equipped with GPS with SAASM, beginning at the time of first aircraft delivery. In short, L-3's and Raytheon's proposals committed to comply with the mandatory requirement, while Lockheed's proposal did not. On this record, we find no basis for Lockheed to assert that the agency's evaluation of the offerors' proposals to provide GPS with SAASM reflected unequal treatment.

Next, Lockheed protests that the agency failed to meaningfully advise Lockheed regarding the agency's concerns that Lockheed's proposal failed to comply with the mandatory entry gate requirement to provide GPS with SAASM in delivered aircraft.

Here, as noted above, the agency specifically questioned Lockheed with regard to how Lockheed intended to meet the mandatory solicitation requirement to provide GPS with SAASM "at the time of first aircraft delivery."²² AR, Tab I-4, at 2. That is, the agency directly questioned Lockheed regarding the specific basis on which Lockheed's proposal was subsequently rejected. Accordingly, Lockheed's assertion that the agency failed to meaningfully advise Lockheed of the agency's concerns in this regard is contrary to the record.

Finally, Lockheed asserts that the Army should have rejected L-3's and Raytheon's proposals for failing to meet the solicitation's entry gate requirements regarding production capability. In this regard, the solicitation established the following entry gate requirement:

The offeror shall provide evidence of a current operational production facility with the existing capacity to produce eleven [JCA] per year as described in the production requirements in Performance Work Statement (PWS), Paragraph 3.1.2 and subparagraphs.

AR, Tab C, at 8.

²² We note that, while the agency characterizes its EOC notices as "clarifications," Lockheed maintains that they constituted "discussions." Contracting Officer's Statement, Aug. 21, 2006, at 19; Protester's Comments on Supplemental Agency Report, Oct. 16, 2006, at 33-35. We need not resolve this matter since, even assuming, as we do for purposes of considering this issue, that the agency's EOC notices constituted discussions, we reject Lockheed's assertion that the discussions with Lockheed were not meaningful.

Lockheed protests, that in addition to an assessment of an offeror's "existing capacity to produce eleven [JCA] per year," the agency was obligated to also consider whether an offeror's production capacity would subsequently be "available for the JCA." Protester's Comments on Agency Report, Sept. 25, 2006, at 31. In short, Lockheed asserts that the agency was required--as part of the entry gate evaluation--to determine whether the offerors' future commitments to other customers would conflict with its commitment to produce the JCA. Very simply, this is not what the solicitation's entry gate criterion contemplated. Rather, an offeror's demonstration of a sufficiently large existing capability to produce eleven JCA per year was all that the solicitation required in this phase of the evaluation process, and was all that the agency properly assessed.²³ Accordingly, Lockheed's assertion that the agency should have considered additional unstated evaluation criteria in performing the entry gate evaluation is without merit.

The protest is denied.²⁴

Gary L. Kepplinger
General Counsel

²³ The Army agrees that, during the subsequent evaluation process, it will be necessary to further assess the availability of the offerors' existing production capability.

²⁴ In pursuing this protest, Lockheed has raised various other issues including, for example, the assertion that elimination of Lockheed's proposal was inappropriate because it failed to reflect consideration of all the solicitation's stated evaluation factors. We have considered all of Lockheed's assertions and find no basis for sustaining its protest.