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

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Decision

Matter of: Harris Corporation

File: B-299864; B-299864.2 B-299864.3

Date: September 14, 2007

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Mark D. Colley, Esq., Drew A. Harker, Esq., Paul E. Pompeo, Esq., Patricia L. Stasco, Esq., and Antonella Karlin, Esq., Arnold & Porter, and Charles D. Coleman, Esq., for the Raytheon Company, the intervenor.

Sandra Cain, Esq., Marian Ciborski, Esq., Robert Schlesinger, Esq., and Cheryl Parker, Esq., for the agency.

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

DIGEST

Protest of award of contract under downselect competition for naval satellite communications terminal is denied where agency reasonably determined that testing of awardee's prototype demonstrated that it met nearly all of the hardware and software specification requirements, while protester's prototype failed to satisfy many specification requirements, such that a significant amount of work that had been scheduled for completion in initial development phase had not been accomplished by protester, resulting in a medium to high risk in event of award to protester.

DECISION

Harris Corporation protests the Space and Naval Warfare Systems Command's (SPAWAR) award of contract No. N00039-07-C-0012 to the Raytheon Company, pursuant to a downselect competition under contract No. N00039-04-C-0011, for the Navy Advanced Extremely High Frequency (AEHF) Multiband Terminal (NMT). Harris challenges the evaluation of proposals and resulting source selection.

We deny the protest.

The AEHF NMT is a multiband-capable satellite communications terminal that will be installed on ship, shore, and submarine platforms to provide the capability to

communicate with satellite systems (such as Milstar) using various frequency bands, communications protocols and data rates. The surface ship NMT comprises a below decks Communications Group and a topside Antenna Group that includes two antennas and two radomes. The submarine NMT includes a Communications Group and modifications, as necessary, to the submarine mast antenna and periscope antenna/high power amplifier (HPA) interfaces, provided as government furnished property (GFP). The shore NMT consists of a Communications Group capable of interfacing to the GFP shore Antenna Group, including modifications to the GFP shore Antenna Group, as necessary.

On October 28, 2003, SPAWAR awarded Raytheon and Harris cost-plus-award fee contracts for system design and development of the NMT, with fixed-price, not-to-exceed options for production. Under the initial phase of these contracts, each contractor developed and fabricated four prototypes (two for surface ships, one for submarines and one for shore), which were to undergo a prototype test (PT1) to demonstrate that the prototypes were capable of meeting the requirements in the specifications (including SPAWAR-T-895, Navy Advanced Extremely High Frequency (AEHF) Multiband Terminal (NMT) Specification). The specific subset of requirements to be verified in the PT1 testing, referred to as REQIDs, numbered 388 as listed in Appendix E, Test Matrix, of SPAWAR-T-895. NMT Statement of Work (SOW) § 3.4; Agency Report (AR) at 15. As discussed below, the results of the PT1 testing were crucial to the resulting downselect decision.

On June 22, 2006, SPAWAR issued a downselect contract change package (CCP) that provided for selection on a “best value” basis of a single contractor to continue development, and then undertake production and logistic support, of the NMT terminal. The downselect decision was to be based on four evaluation factors: (1) technical approach (including equally-weighted subfactors for system performance and design; terminal systems engineering; and software development, engineering and technical data/computer software rights); (2) current and past performance (including a subfactor for NMT test results and analysis, and a significantly less important subfactor for current and recent past performance); (3) management approach (including equally weighted subfactors for system effectiveness engineering; production plan; integration and test plan: and risk management plan); and (4) cost/price. Regarding the PT1 testing, the CCP provided that “[t]he Government will evaluate the extent to which the contractor’s NMT PT1 test results satisfy or exceed the requirements in accordance with SPAWAR-T-895, Appendix E PT1 test requirements and as stated in Section H-20(b).” CCP § H.20(c)(5) at H-62. Technical approach and current and past performance were of equal importance and, when combined, were significantly more important than management approach and cost/price, which were of equal importance. All evaluation factors other than cost/price, combined, were significantly more important than cost/price. In addition, the CCP provided that the “evaluation of risk will be an integral part of the evaluation of each applicable factor and subfactor

through the Government’s identification of strengths, weaknesses, deficiencies, omissions, and risks in the contractor’s proposal.” CCP ¶ H-20(c)(5) at H-51.

SPAWAR evaluated the proposals as follows:

	Raytheon	Harris
Technical Approach	Good	Good
System Performance/Design	Good	Good
Terminal Systems Engineering	Good	Satisfactory
Software Development	Good	Good
Current/Recent Past Performance	Good	Marginal
NMT Test Results	Good	Marginal
Current/Recent Past Performance	Good	Good
Management Approach	Good	Good
System Effectiveness Engineering	Good	Satisfactory
Production Plan	Good	Good
Integration and Test Plan	Good	Satisfactory
Risk Management Plan	Good	Good
Evaluated Cost/Price	\$955,383,722	\$779,400,693

Notwithstanding the overall factor ratings, the agency’s Downselect Evaluation Committee (DSEC) reported to the source selection authority (SSA) that Raytheon’s proposal was superior under each of the non-cost/price evaluation factors. The DSEC determined Raytheon’s proposal to be technically superior under the technical approach factor based in part on the fact that: (1) Raytheon [REDACTED] had demonstrated that it had a fully developed Prime Power Interface (PPI) and Power Distribution Unit (PDU), with its power subsystem exceeding the government’s expectations for correcting for power fluctuations and handling momentary power interruptions as a result of power bus transfers on submarine and ship power systems, and (2) Harris was proposing [REDACTED].

The DSEC determined Raytheon’s proposal to be “dominantly” technically superior under the current/recent past performance factor based upon Raytheon’s superior test results in the PT1 tests of the NMT prototypes. While Raytheon was evaluated as verifying in the government-observed PT1 testing that its terminals satisfied 348 of the 361 REQIDs it attempted, or 90 percent of the overall 388 REQIDs specified in SPAWAR-T-895, Appendix E, Harris was evaluated as verifying only 177 of the 238 REQIDs it attempted, or only 46 percent of the overall 388 REQIDs.

More specifically, PT1 testing was intended to verify the terminal’s ability to acquire (establish communications with the satellite), track and communicate with a satellite

under a specified set of conditions, including acquisition of a specified satellite beam in a specified mode, acquisition in spite of specified time and space uncertainty with respect to the location of the satellite at a particular time, and acquisition in spite of specified levels of dynamic ship motion (pitch, roll and heading). AR at 15. While Raytheon's prototype terminals were evaluated as consistently acquiring the satellite faster than required without a failed acquisition attempt for all cases from nominal to worst case, Harris's terminals did not attempt satellite acquisition in all of the required modes and were evaluated in many attempted instances as not meeting the specified acquisition timelines. Raytheon's terminals likewise were evaluated as significantly outperforming Harris's with respect to antenna handover, a critical function for shipboard satellite communications in that, due to antenna locations and ship movement, the terminals must handover uplink and downlink data transfers from one shipboard antenna to another without errors even at extremely high data rates. While Raytheon's terminals were evaluated as surpassing the handover requirements even when using the least robust uplink and downlink communication modes available, Harris's terminals were evaluated as failing to satisfy the handover requirements despite using more robust uplink and downlink communication modes. As for the third fundamental functionality tested, the quality of data communications achieved using digital signal processing, Raytheon's terminals were evaluated as achieving error free communications at lower signal-to-noise ratios than required while using less robust communications modes and without running additional tests. In contrast, Harris's terminals were evaluated as failing to satisfy key requirements with respect to timing and control and the ability to operate with cryptographic communications security equipment, and then satisfying other requirements only on the basis of extended testing rather than at the outset of the testing.

In summary, the agency determined that, while the PT1 testing of Raytheon's terminals "demonstrated that nearly all Phase IA hardware and software objectives were met," the testing of Harris's terminals "show[ed] a significant body of work that was scheduled for completion in Phase IA was not accomplished," resulting in a medium to high risk with respect to Harris's ability to successfully execute the next phase in the program. DSEC Report at 13.

Finally, the DSEC determined Raytheon's proposal to be "slightly" technically superior to Harris's under the less important management approach factor, in part on the basis that, in contrast to the outlook for Raytheon, Harris's inability to meet their PT1 test objectives resulted in high risk that they would be unable to successfully execute the next phase in the program.

In summary, the DSEC determined that Raytheon's proposal offered a technically superior NMT approach with the lowest risk to program performance and schedule, and that this superiority under the more important non-cost/price factors warranted paying the evaluated 22 percent cost/price premium associated with Raytheon's proposal. The SSA subsequently concurred with the DSEC's determination that Raytheon's proposal represented the "best value" and made award to Raytheon.

Upon learning of the resulting award, and after being debriefed by the agency, Harris filed this protest with our Office.

Harris challenges the evaluation on numerous grounds. In reviewing protests against allegedly improper evaluations, it is not our role to reevaluate proposals. Rather, our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the RFP criteria and applicable procurement statutes and regulations. See Rolf Jensen & Assocs., Inc., B-289475.2, B-289475.3, July 1, 2002, 2002 CPD ¶ 110 at 5.

We have considered all of Harris's arguments, and we find that none furnishes a basis to question the award to Raytheon. We discuss the most important challenges below.

UNMET REQIDS

Harris challenges the marginal rating assigned its proposal under the PT1 testing subfactor of the current/recent past performance factor. Again, while Raytheon verified in the government-observed PT1 testing that its terminals satisfied 348 of the 361 REQIDs it attempted, or 90 percent of the overall 388 REQIDs specified in SPAWAR-T-895, Appendix E, Harris was evaluated as verifying only 177 of the 238 REQIDs it attempted, or only 46 percent of the overall 388 REQIDs.

Test Plan Approval

As an initial matter, Harris asserts that, since the government approved its test plan, it should not be penalized for not satisfying those REQIDs for which it did not plan to demonstrate compliance. In this regard, the CCP established three requirements for entry into formal TP1 testing: (1) "approved Test Plans . . . and Test Procedures"; (2) "[t]he contractor shall conduct a Test Readiness Review (TRR) in accordance with the SOW Section 3.1.2.3.7 (CDRL [Contract Data Requirements List] A023) no later than 31 December 2006"; and (3) "[h]ardware and software baselines are placed under configuration control and remain fixed throughout the duration of test." CCP § H.20(b) at H-28 to H-29. In addition, the CCP provided that formal PT1 testing "will start March 1, 2007 and shall conclude on March 31, 2007," although the contractor could request an earlier start. Id.

Harris's reliance upon the government's approval of its test plan is inconsistent with both the terms of the CCP and the agency's position during the procurement. In this regard, NMT SOW § 3.4 established the requirements to be verified in the PT1 testing (that is, the 388 REQIDs listed in Appendix E, Test Matrix, of SPAWAR-T-895), while the CCP provided for the agency to "evaluate the extent to which the contractor's NMT PT1 test results satisfy or exceed the requirements in accordance with SPAWAR-T-895, Appendix E PT1 test requirements and as stated in Section H-20(b)." CCP § H.20(c)(5) at H-62. Thus, the agency was required by the terms of the

competition to consider in the evaluation, the extent to which an offeror failed to verify during PT1 testing one or more REQIDs. Furthermore, the agency's approval of the test plan and procedures made it clear that this did not guarantee that the agency would favorably evaluate the test results, precluding the agency from downgrading Harris for capabilities it did not include in its test plan. Specifically, the agency's December 2006 approval cautioned that:

This approval asserts the contractual requirements to deliver the document have been satisfied. However, our approval does not assert or imply that the documents contents will result in a successful Prototype Test (PT1). The performance of, and associated results of PT1, is solely the responsibility of the contractor.

Letter from Contracting Officer Representative to Harris, Dec. 19, 2006. In addition, the record indicates that the caution in the approval letter that the approval did not guarantee that the contractor's approach would receive a favorable evaluation was reiterated by agency officials during the contract meetings. See Declaration of SPAWAR NMT Assistant Program Manager. We conclude that the evaluation in this area was reasonable.

Test Readiness Review (TRR)

Harris asserts that the offerors were treated unequally with respect to the PT1 testing. In this regard, as noted above, the CCP provided that the "[h]ardware and software baselines are placed under configuration control and remain fixed throughout the duration of test." CCP § H.20(b) at H-29. The record indicates that, pursuant to this provision, the offerors were advised by the agency that while they could revise the hardware and/or software baseline for the terminal and rerun the test, PT1 testing would have to be rerun in its entirety if the hardware and/or software baseline were changed. Declarations of SPAWAR NMT Assistant Program Manager, NMT Deputy Assistant Program Manager, NMT Technical Director, and NMT Vendor Test Lead. (Offerors could also rerun a particular test event without changing the baseline and without rerunning the entire test. First Declaration of NMT Assistant Program Manager.)

Harris claims that, in addition to the above warning that baseline changes would necessitate retesting in its entirety, Raytheon also was advised that a new TRR would not be required in the event of such retesting after a change in baseline.¹

¹ The purpose of a TRR is to coordinate the logistics of the test event and ensure that the test is being conducted with an appropriate system maturity. Agency Second Supplemental Report at 3. The contractor provides an overview of the test conduct, test procedures, and expected test results. In addition, the contractor reviews the

(continued...)

Harris claims that it was not provided with this same additional information. According to Harris, its plans to revise its software baseline were hindered by the fact that, unlike Raytheon, it was not made aware that a new TRR would not be required prior to testing a new terminal baseline.

There is no basis for finding that Harris was deprived of a meaningful opportunity to improve its test results. The record is in dispute as to whether the information regarding a new TRR was provided to Harris. SPAWAR's NMT Deputy Assistant Program Manager states that he advised Harris (as well as Raytheon) during the course of the ongoing meetings under the existing contract that a new, contractual TRR would not be required in the event that testing were rerun after changing the baseline, First and Second Declarations of NMT Deputy Assistant Program Manager, but Harris's Program Manager and Deputy Program Manager state that they were not told this. This dispute notwithstanding, we consider it determinative of this issue that nothing on the face of the CCP indicated that a new, formal contractual TRR would be required in the event that a contractor changed its baseline after the contractual TRR. The CCP not only referred to a single "Test Readiness Review (TRR)," but also specified that this TRR was to occur "no later than 31 December 2006." CCP § H.20(b) at H-28 to H-29. As noted by SPAWAR, since the testing was scheduled to run between March 1 and March 31, 2007, the December 31, 2006 deadline for conducting the formal, contractual TRR is wholly inconsistent with any interpretation that a new formal, contractual TRR would be required in the event that the testing was rerun after modification of the terminal baseline.

Further, the record suggests that Harris understood that a new TRR would not be required. In this regard, in June 2006, when Harris requested "SPAWAR's confirmation of our interpretation of the recently issued contract modification . . . which revised Section H-20 of the contract," its description of its intended testing approach included the clarification that "[a]dditional TRRs are not required if we decide to re-start PT1 testing with a more mature build." Harris Letter to SPAWAR, June 27, 2006. When SPAWAR then asked Harris to redact the proprietary information about its intended testing approach from this request, so that the agency could issue the request and response to both contractors, Harris withdrew the request. We think it is reasonable to assume that, had Harris been in serious doubt in this regard, it would have redacted its request for release to both contractors in order to obtain agency confirmation of its understanding of the CCP. Harris's understanding also appears to be confirmed by the fact that, in its presentation at its subsequent October 2006 Program Management Review (PMR) and December 2006 TRR, Harris anticipated a modification of the software baseline in January-February

(...continued)

results of prior tests and known system deficiencies, and presents a proposed approach to resolve outstanding deficiencies. SOW § 3.1.2.3.7.

2007 without giving any indication that a new formal, contractual TRR would be necessary. PMR at 20-21, 108; TRR at Test Overview and Approach 7.

Moreover, we agree with the agency that it is not apparent why the limited effort involved in a new, revised TRR would have affected Harris's decision whether to modify its baseline. The agency notes in this regard that Harris, which like Raytheon had elected to undertake early testing of its antenna, conducted an antenna TRR in September 2006 which lasted only 30 minutes and was conducted by telephone, while its broader December 2006 TRR consisted of only 66 slides presented over 4 hours. Agency Supplemental Report, Aug. 20, 2007, at 7 n.8. The limited effort likely to be required for a revised TRR appears especially significant in light of the fact that Harris completed its PT1 testing 11 days prior to the deadline, which would have allowed more than sufficient time to conduct a new TRR. AR at 16. Finally, our view is supported by Harris's account, in its August 9, 2007 comments, of how it came to determine its testing plans. According to the protester, prior to the agency's amending the contracts to impose a freeze in the baseline during testing, "Harris's planning for PT1 contemplated substantial ongoing software development" and "several new software builds." Harris Comments, Aug. 9, 2007, at 15. "As a result of the freeze," however, "Harris had to change these plans dramatically and was limited to only one earlier software build." *Id.* Harris's account clearly indicates that it was the requirement to freeze the baseline--and the resulting need to rerun the entire testing in the event that the baseline was modified--and not any perceived need to undertake a new TRR, on which Harris's decision not to modify its baseline was founded. We conclude that Harris was not unfairly deprived of a meaningful opportunity to improve its test results.

Substantial Completion

Harris asserts that the marginal rating assigned its proposal under the TP1 testing subfactor is not consistent with the following facts (according to Harris): its terminals in a number of instances during testing substantially (if not entirely) met the performance requirements; in a number of instances it was the failure of GFP or in the entry of the test parameters, rather than the failure of Harris's terminals, that resulted in the failure of its terminals to fully satisfy the test requirements; in some instances, the agency's interpretation of the test requirements under Appendix E, Test Matrix, of SPAWAR-T-895 was unreasonably demanding; in at least one instance, Harris was held to a stricter standard than was Raytheon; and in some cases where Harris did not demonstrate a capability, the agency should otherwise have been aware (from various contract meetings for example), that Harris nevertheless had developed some or all of the required capability. In summary, Harris maintains that it has developed approximately "90% of the Required Prototype Phase Capability," Harris Comments, July 30, 2007, at 24, such that the marginal rating and the agency's concerns with the risk associated with Harris's development and testing program were not warranted.

We find no basis to question the agency's overall evaluation under the PT1 testing subfactor. As an initial matter, we note that Harris's focus on capabilities it allegedly possesses, but did not clearly demonstrate during PT1 testing, reflects a fundamental misunderstanding of the evaluation scheme set forth in the CCP (and perhaps of Harris's contractual obligations as well). While the CCP generally provided for the contractor to verify performance through several methods, "(e.g., test, demonstration, analysis, inspection, etc.)," CCP § H-20(b) at H-28, the contractor was required in the PT1 testing to "verify a subset of the core terminal requirements as stated in the ELEX-S-488G and SPAWAR-T-895," SOW § 3.4.1, and the agency was required to "evaluate the extent to which the contractor's NMT PT1 test results satisfy or exceed the requirements in accordance with SPAWAR-T-895, Appendix E PT1 test requirements and as stated in Section H-20(b)." CCP § H.20(c)(5) at H-62. This being the case, and given the agency's need to assure that the NMT terminal will reliably and satisfactorily perform even under worst case conditions, we think the agency reasonably focused in its evaluation on those instances where Harris's terminal failed to demonstrate a capability required to be verified under Appendix E, Test Matrix, of SPAWAR-T-895; failed to satisfactorily perform under the totality of worst case conditions specified by Appendix E; or needed repeated tests of the final baseline in order to demonstrate at least one occurrence of performance in full compliance with SPAWAR-T-895 requirements.

Further, given Harris's determination not even to attempt to demonstrate 150 of the 388 REQIDs in Appendix E, Harris's attempt to show that some of the 61 REQIDs it attempted to demonstrate but was evaluated as not fully satisfying either were not its fault or were substantially satisfied, in no way calls into question the reasonableness of the agency's determination of resulting risk if award were made to Harris. Moreover, given Raytheon's "dominantly" superior performance in the PT1 testing, with its terminal having been found to successfully perform 348 of the 388 REQIDs, there is no basis to question the agency's view that the relative maturity of Raytheon's prototypes was a major discriminator favoring Raytheon. We conclude that the evaluation in this area was reasonable.

INTERNATIONAL PARTNER VARIANT

Harris asserts that Raytheon's proposed schedule with respect to the International Partner Variant (IPV) Engineering Design Models (EDM) to be furnished under the contemplated contract failed to meet the required delivery schedule set forth in the CCP. SPAWAR denies that Raytheon's schedule is noncompliant. We find the agency's position to be reasonable.

An IPV EDM is a modified NMT terminal that will be provided to other "International Partner" nations. Of the 37 EDMs to be delivered under the contract, 13 are IPV EDMs. Under contract line item number (CLIN) 0105 in section F of the CCP, the initial 2 EDMs are to be delivered 26 months after exercise of option, with 2 more to

be delivered every month thereafter, until the final IPV EDM is delivered 32 months after option exercise.

In a July 2 supplemental protest, Harris asserts that Raytheon failed to comply with the above schedule for the delivery of the IPV EDMs themselves. Harris bases its assertion on references in Raytheon's Integrated Master Schedule (IMS) which, when viewed in the context of a June 1, 2007 award (option exercise) date, Harris claims indicate delivery of the first IPV EDM would occur approximately 30 months after option exercise and the last IPV EDM a little more than 37 months after option exercise. However, Raytheon's IMS in fact indicated that it was based upon an assumed December 1, 2007 award date, that is, a date 6 months later than Harris's argument assumes. Harris's calculations thus show that Raytheon would deliver the first IPV EDMs not later than 26 months after option exercise and the last to be delivered not later than 32 months after option exercise, in accordance with the CCP schedule. Harris Supplemental Protest, July 2, 2007, at 5-6; Raytheon IMS, lines 3555, 3557, 4048, 4341, 4369.²

Harris further asserts in its July 2 supplemental protest that, because Raytheon proposed to perform design and verification testing (DVT) of the IPV EDMs well after their delivery, with DVT not scheduled by Raytheon to be completed until (by Harris's calculation) 43 months after option exercise, Raytheon's schedule was noncompliant with the requirement for delivery to be completed not later than 32 months after option exercise. Harris Supplemental Protest, July 2, 2007, at 5-6; see CCP § F, CLIN 0105. (In DVT, the contractor conducts environmental qualification of the EDMs, validating any new functionality while ensuring that earlier features perform as expected. By the completion of DVT, the hardware and software under test have been modified, as required, to correct design deficiencies and retested such that the terminal is ready for production at the end of DVT. AR at 91 n.54; SOW § 3.4.2.)

SPAWAR responds, and we agree, that the CCP does not clearly require DVT to be completed before delivery. In this regard, CCP Clause E-5, Inspection and Acceptance--Origin, provides that "[t]he Government will inspect and accept Items . . . 0105 . . . after successful completion of SPAWAR-T-895 Quality Conformance Inspection (QCI) Group A testing in accordance with SPAWAR-T-895." As noted by the agency, the only testing this clause requires with respect to CLIN 0105--the CLIN requiring delivery of the IPV EDMs within 32 months--is QCI testing. SPAWAR-T-895 treats DVT separately from QCI testing; it defines the latter as examination and

² SPAWAR calculates that Raytheon proposed to deliver the First IPV EDM 23 months after option exercise and the last IPV EDM 30 months after option exercise. AR at 91. See also Raytheon Proposal, Management Approach, at III-3-6, which supports SPAWAR's interpretation that the last Raytheon IPV EDM was scheduled for delivery not later than 30 months after award.

testing to prove the workmanship and reveal the omissions and errors of the fabrication process, such as functional and performance tests at a limited number of points, tests which detect deviations from design, tests of adjustment, and tests that detect hidden defects in material. SPAWAR-T-895 §§ 4.1.2, 4.1.3.³ Whatever the rationale for not requiring DVT before delivery of the IPV EDMs, this appears to be consistent with the overall approach to DVT under the CCP. In this regard, we note that Harris does not dispute the agency's position that DVT was not required under the CCP to be conducted before delivery of domestic, non-IPV EDMs, and that in fact Harris itself proposed post-delivery DVT for domestic, non-IPV EDMs. We conclude that the agency reasonably determined Raytheon's schedule regarding the IPV EDMs to be compliant with the CCP.

SOURCE SELECTION

On May 29, 2007, 26 days after he signed the source selection decision (and 2 days prior to the award to Raytheon), the SSA sent an e-mail to the Assistant Secretary of the Navy, Research, Development and Acquisition, in which the SSA briefed the Assistant Secretary on the decision to award to Raytheon. The SSA generally explained that "award to Raytheon is based on the assessment that Raytheon's proposal is technically superior, though higher cost, to Harris's proposal and provides the best value to the Government to complete the remaining contract phases within the program schedule." Email from SSA to Assistant Secretary, May 29, 2009. The SSA specifically cited "three areas of concern" that demonstrated why Raytheon's proposal was the best value, including that: (1) Harris, unlike Raytheon, was proposing a new antenna technology that had not been fully demonstrated during PT1 testing, with the concern focusing on the fact that, if design changes were required, "it would have a significant impact to EDM cost and schedule as well as production pricing"; (2) while Raytheon's PT1 test results indicated that its system has a "very mature hardware and software design," with all critical hardware components developed and tested, Harris's PT1 test results demonstrated an "immature hardware and software design," with a large body of the work scheduled to have been already completed instead postponed to the forthcoming EDM phase; and (3) Harris's contract documentation did not always demonstrate a clear understanding of the anomalies that had been encountered, and indeed, indicated that in many cases the cause of the problems experienced had not even been identified. *Id.* The SSA further explained that, given Harris's inadequate understanding of the anomalies and problems encountered, and the significant body of work scheduled for completion in the EDM phase, "Harris's ability to meet EDM

³ Harris asserts that DVT was separately required under CLIN 0106. This argument is untimely, since it was raised more than 10 days after Harris received a copy of Raytheon's downselect proposal. 4 C.F.R § 21.2(a)(2). Moreover, the relevant provisions do not support Harris's assertion that CLIN 0106 establishes a requirement for DVT prior to delivery of the IPV EDMs.

cost and schedule is adversely impacted. Any required design changes ([engineering change proposals]) would have an impact to production pricing.” Id.

Harris asserts that the SSA’s consideration of potential production pricing increases was improper because Harris (and Raytheon) proposed fixed pricing for the production phase.

The SSA’s actions were unobjectionable. As is evident from the e-mail itself, and as was further explained in a subsequent declaration executed by the SSA during these proceedings, the SSA was of the view that, given the demonstrated immaturity of Harris’s design, it was highly likely that changes to the Harris design (upon which Harris’s production pricing was based) would be necessary. The SSA was concerned that, since the design changes could affect Harris’s production costs, there was some risk of requests for equitable adjustment and other claims from Harris. Declaration of SSA. The SSA’s concern as to the potential consequences of Harris’s demonstrably immature design was both reasonable and consistent with the terms of the CCP, which generally provided for the agency to consider in the evaluation the potential risk–probability of negative consequences--associated with each offeror’s proposed approach. CCP § H-20(c)(3) at H-51.

The protest is denied.

Gary L. Kepplinger
General Counsel