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Washington, DC 20548

**Comptroller General  
of the United States**

# Decision

## DOCUMENT FOR PUBLIC RELEASE

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**Matter of:** Lockheed Martin Integrated Systems, Inc.--Reconsideration

**File:** B-410189.7

**Date:** August 10, 2017

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## DIGEST

Request for reconsideration is denied where the requesting party has not shown that our decision contains errors of fact or law that warrant reversal or modification of the decision.

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## DECISION

Lockheed Martin Integrated Systems, Inc. (LMIS), of Bethesda, Maryland, requests that we reconsider our decision in Lockheed Martin Integrated Sys., Inc., B-410189.5, B-410189.6, Sept. 27, 2016, 2016 CPD ¶ 273, in which we denied LMIS' protest challenging the Department of the Army, U.S. Army Corps of Engineers' (Corps), decision to exclude from award consideration the firm's proposal under solicitation No. W912DY-13-R-0004, which was issued for management and technical support services. LMIS argues that our decision contained errors of law that warrant reconsideration.

We deny the request for reconsideration.

## BACKGROUND

The request for proposals (RFP), which was issued on December 5, 2013, and limited to offerors holding a General Services Administration (GSA) Alliant Government-Wide Acquisition Contract (GWAC), sought proposals for management and technical support services for the Department of Defense's high performance

computing modernization program. RFP at 1, 8. The solicitation contemplated the issuance of a hybrid task order with fixed-price, cost-reimbursable, and cost-plus-incentive-fee line items, for a base year and four option years. Id. at 8, 156. The estimated value of the task order was \$600 million. Contracting Officer's Statement/Memorandum of Law (COS/MOL) at 1.

Pursuant to the RFP, the task order was to be issued on a best-value basis, considering four evaluation factors: technical capability, past performance, small business participation, and cost/price. RFP at 176. With respect to cost/price, the RFP advised that the Corps would evaluate "all aspects of the price proposal for fairness, reasonableness, and realism," and would determine whether the proposed cost/price was realistic for the work to be performed, reflected a clear understanding of the requirements, and was consistent with the methods of performance described in the proposal. Id. at 179. The RFP further advised that the agency could reject an offer that reflected a "serious lack of cost/price realism." Id.

Several firms, including LMIS and Science Applications International Corporation (SAIC), submitted proposals in response to the RFP. LMIS proposed to use its Information Systems & Global Solutions (IS&GS) line of business as the organization to perform the order. Agency Report (AR), Tab 1, Vol. II, LMIS Cost Proposal, at 119. SAIC proposed to subcontract a portion of the work--13.85 percent of the labor hours--to Leidos, Inc. AR, Tab 6, Vol. II, SAIC Cost Proposal, at 2; Tab 7, Source Selection Evaluation Board (SSEB) Report, at 13.

Following an initial award to SAIC, a subsequent bid protest, and corrective action in response thereto, the agency conducted new rounds of discussions and performed a re-evaluation of revised proposals from December 2015 through June 2016. COS/MOL at 1-2. During this period, as outlined in a January 26, 2016, press release, LMIS entered into a "definitive agreement" to separate its IS&GS business segment--the unit proposed for performance--and combine the business unit with a different corporation, Leidos Holdings, Inc., in a Reverse Morris Trust transaction. AR, Tab 2, LMIS Press Release, Jan. 26, 2016, at 1. The press release stated that the transaction was expected to close in the third or fourth quarter of 2016, which aligned with the base year of the task order. Id. at 2; see RFP at 96-98.

LMIS did not disclose the impending transaction in its final proposal, which was submitted a few months earlier on November 3, 2015, or otherwise advise the agency of the impending transaction. The agency maintained that it first became aware of the transaction through LMIS' January 26, 2016 press release. COS/MOL at 2, 26. Given the information contained in the press release, the agency evaluators attempted to assess the impact of the transaction on LMIS' proposal, notwithstanding the lack of information regarding the transaction in the proposal.

First, in its discussion of proposals under the cost/price factor, the source selection evaluation board highlighted LMIS' January 26 announcement of the separation of LMIS' IS&GS division and noted that the transaction created "an environment of risk for cost and the overall employee compensation plan." AR, Tab 7, SSEB Report, at 16. The SSEB further noted that the transaction could affect LMIS' direct labor rates and indirect rates proposed "since the rates are based on present company history and budget information," and the impact on incumbent employee total compensation was unknown.<sup>1</sup> Id. The SSEB pointed out that LMIS IS&GS would be responsible for 100 percent of the proposed effort and 89 percent of the proposed cost. Id.

Thereafter, the source selection advisory council (SSAC) further considered LMIS' announcement and the impact of the Lockheed/Leidos transaction on the proposals. The SSAC noted that the transaction "potentially introduced a large amount of risk for the procurement," so the council sought additional analyses regarding the effect of the transaction on proposals. AR, Tab 8, SSAC Report, at 3. Based on the findings in these analyses, the SSAC summarized that the Lockheed/Leidos transaction introduced "significant cost uncertainty" to LMIS' proposal with additional costs potentially exceeding \$7 million. Id. at 4; see also AR, Tab 8.1, Analysis of Lockheed/Leidos Transaction Impacts, at 1-5. The SSAC also highlighted that, because of the transaction, indirect wrap rate caps proposed by LMIS could cause financial hardships on Leidos, which could have an impact on fringe benefits and employee compensation, which ultimately could impact employee retention. AR, Tab 8, SSAC Report, at 4. The SSAC concluded that the analyses showed an "unquantifiable cost risk" with respect to LMIS' cost proposal, and that it was "unknown, and unknowable" what impact the new Lockheed/Leidos corporate structure would have on future performance, whether past performance was still a predictor of future performance, and how small businesses would be utilized. Id. Therefore, the SSAC determined that LMIS' proposal should not be considered for award.<sup>2</sup>

Ultimately, the agency selected SAIC for award on June 13, 2016, without consideration of LMIS' proposal in the cost/technical tradeoff. AR, Tab 9, Source Selection Decision Document, at 8, 15. Thereafter, LMIS timely protested to our Office.

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<sup>1</sup> In the price/cost evaluation report accompanying the SSEB report, the agency cost analyst concluded that the impact of the transaction was "not presently quantifiable." AR, Tab 7.1, Price/Cost Evaluation Report, at 11.

<sup>2</sup> The SSAC concluded that the transaction did not materially impact SAIC's proposed costs and that the impact on the firm's proposal was "minimal or none." AR, Tab 8, SSAC Report, at 4.

In its protest, LMIS challenged the exclusion of its proposal from award consideration. LMIS argued that the Corps misinterpreted GAO decisions regarding corporate transactions when it decided to consider the Lockheed/Leidos transaction. LMIS Comments at 21-24. LMIS also protested that the agency's concerns regarding the transaction were unfounded, arguing that the Corps' allegedly mistaken interpretation of the press release led to unreasonable conclusions regarding the impact of the transaction on LMIS' proposal. LMIS Protest at 16-25; LMIS Comments at 24-30. According to LMIS, the Corps should have raised any concerns with LMIS prior to disqualifying the proposal. LMIS Protest at 31-34; LMIS Comments at 30-32, 38-43.

In our decision, we concluded that, based on our decisions involving corporate transactions, it was reasonable for the agency to have considered the transaction and assessed the impact of the transaction on the proposals because the transaction was "imminent and essentially certain." Lockheed Martin Integrated Sys., Inc., B-410189.5, B-410189.6, Sept. 27, 2016, 2016 CPD ¶ 273, at 8-9, citing Nat'l Aeronautics & Space Admin.--Recon., B-408112.3, May 14, 2014, 2014 CPD ¶ 155 at 3. We also found that it was not unreasonable for the agency to rely primarily on information contained in LMIS' press release, without considering other information sources such as Securities and Exchange Commission (SEC) filings or engaging in exchanges with LMIS, particularly in light of the fact that LMIS' proposal made no mention of the transaction. Id. at 9-10, 13. Further, based on our review of the record, we found no merit to LMIS' argument that the Corps actually was able to quantify the impact of the transaction on the protester's proposed costs such that the proposal should have been considered for award, or that the agency's conclusions regarding the impact of the transaction were unreasonable. Id. at 10-13.

## DISCUSSION

LMIS requests that our Office reconsider our decision due to what it considers a series of crucial errors. For instance, LMIS complains that our decision deprives agencies of the discretion not to consider the impact of a planned corporate transaction where there is insufficient information about the transaction to evaluate its impact. Request for Reconsideration at 2. LMIS further argues that our decision applied the incorrect legal standard when reviewing the reasonableness of the agency's conclusions regarding the press release. Id. at 6. In addition, LMIS maintains that our decision failed to fully address its protest allegations regarding the agency's cost realism analysis. Id. at 10. We have reviewed LMIS' request and conclude that it does not provide a basis for us to reconsider our earlier decision.

Under our Bid Protest Regulations, to obtain reconsideration the requesting party must set out factual and legal grounds upon which reversal or modification of the decision is warranted, specifying any errors of law made or information not previously considered. Bid Protest Regulations, 4 C.F.R. § 21.14(a), (c). The

repetition of arguments made during our consideration of the original protest and disagreement with our decision do not meet this standard. *Id.*; Veda, Inc.--Recon., B-278516.3, B-278516.4, July 8, 1998, 98-2 CPD ¶ 12 at 4. Additionally, a party's failure to make all arguments or present all information available during the course of the protest does not warrant reconsideration of our prior decision. Walker Dev. & Trading Grp.--Recon., B-411246.2, Sept. 14, 2015, 2015 CPD ¶ 284 at 2.

First, LMIS maintains that the decision is inconsistent with prior GAO decisions involving an agency's consideration of, or failure to consider, a planned corporate transaction. Specifically, the protester warns that our decision deprives agencies of the discretion to not consider a planned corporate transaction when the agency does not have sufficient meaningful information to assess the transaction's impact on the procurement.

We disagree with LMIS that our decision is inconsistent with prior decisions on the issue. As an initial matter, we reiterate that our protest decisions regarding matters of corporate status and restructuring are highly fact-specific, and turn largely on the individual circumstances of the proposed transactions and timing. IBM U.S. Fed., a division of IBM Corp.; Presidio Networked Solutions, Inc., B-409806 et al., Aug. 15, 2014, 2014 CPD ¶ 241 at 22. Primarily, our decisions on the subject generally focus on whether it was reasonable for an agency to reach conclusions regarding an impending transaction, or to not consider the transaction at all during its evaluation of proposals.

For instance, in Wyle Laboratories, our Office sustained a protest because an agency failed to consider the impact of an impending corporate transaction on the awardee's proposal, where the record reflected that the awardee advised the agency during discussions of the upcoming transaction and the transaction could have had a material effect on performance. Wyle Labs., Inc., B-408112.2, Dec. 27, 2013, 2014 CPD ¶ 16 at 11. On that record, our Office concluded that it was unreasonable for the agency not to have given meaningful consideration to the transaction, which ultimately occurred within days of contract performance. Id., affirmed on reconsideration in Nat'l Aeronautics & Space Admin.--Recon., supra.

Years prior to our decision in Wyle Laboratories, we reached a similar conclusion in AIU North America. There, our Office sustained a protest because the solicitation required that the agency assess offerors' corporate resources and the awardee advised the agency prior to award that it had been acquired by another company, but the agency did not in any way consider or evaluate the firm's corporate resources following the acquisition. AIU N. Am., Inc., B-283743.2, Feb. 16, 2000, 2000 CPD ¶ 39 at 9-10. Thus, where an agency is aware of an impending or already consummated corporate transaction but fails to assess the impact on proposals of the restructuring, the agency runs the risk that its failure to do so will be deemed improper, based, of course, on the unique posture of that procurement and the corporate transaction at issue. See Wyle Labs., Inc., supra; cf. SRA Int'l,

Inc.; NTT DATA Servs. Fed. Gov't, Inc., B-413220.4 et al., May 19, 2017, 2017 CPD ¶ 173 at 27 n.34 (finding unpersuasive a protester's arguments regarding the impact of the Lockheed/Leidos corporate transaction on the procurement where the awardee's quotation discussed the transaction and advised that it would have no impact on performance, the agency contemporaneously acknowledged the transaction, and the protester failed to demonstrate that the awardee would perform materially differently than proposed).

On the other hand, as LMIS points out, we disagreed with a protester that an award was improper where an agency failed to contemporaneously assess the impact of the same Lockheed/Leidos transaction at issue here on the awardee's performance in a different procurement. Veterans Evaluation Servs., Inc., et al., B-412940 et al., July 13, 2016, 2016 CPD ¶ 185 at 10. In that protest, our Office found nothing objectionable with the agency's lack of consideration of the transaction, where the record was unclear regarding precisely which Lockheed elements would be included in the transaction and whether the capabilities of the awardee--a Lockheed subsidiary--would even be affected. Id. Significantly, unlike in Wyle Laboratories, in Veterans Evaluation Services, the record did not show that the agency was aware of the transaction--through either information in the awardee's proposal or from other sources--prior to contract awards such that the agency affirmatively ignored the transaction. See Target Media Mid Atlantic, Inc., B-412468.6, Dec. 6, 2016, 2016 CPD ¶ 358 at 7 (finding unobjectionable an agency's lack of consideration of an awardee's subcontractor's acquisition of another company, where the agency did not know of the acquisition at the time of its cost evaluation and was under no obligation to discover and consider such information as part of its evaluation, and the protester's arguments regarding the impact of the transaction were speculative); cf. VSE Corp.; The Univ of Hawaii--Costs, B-407164.11, B-407164.12, June 23, 2014, 2014 CPD ¶ 202 at 7 (concluding that the agency's failure to consider awardee's corporate reorganization during proposal evaluations was not a clearly meritorious protest ground that warranted the reimbursement of costs).

As highlighted above, our bid protest decisions in this area generally follow an agency's lack of consideration of a corporate transaction--impending or already consummated--and focus on whether such failure to assess the transaction rendered an award improper. The opposite occurred here; the impending Lockheed/Leidos transaction was considered by the Corps. Thus, unlike the circumstances in Wyle Laboratories and Veterans Evaluation Services, here the protest did not turn on whether the agency should have considered the transaction as part of its evaluation, because the agency had already considered it. As we explained in the decision, an agency generally is permitted to consider information outside of the four corners of a proposal during its evaluation of proposals. Lockheed Martin Integrated Sys., Inc., supra, at 8, citing Interfor US, Inc., B-410622, Dec. 30, 2014, 2015 CPD ¶ 19 at 7; see also Park Tower Mgmt. Ltd., B-295589, B-295589.2, Mar. 22, 2005, 2005 CPD ¶ 77 at 6 (agency not bound by the four corners of an offeror's proposal; it may use other information of which it is aware).

Nevertheless, LMIS essentially argues that the agency should not have considered the transaction, and that agencies should have the discretion to, in essence, ignore impending corporate transactions. We disagree with the protester. In this respect, consistent with our decisions in this area, when an agency becomes aware of an impending corporate transaction prior to award--either through information in an offeror's proposal or through other information resources--and such transaction is imminent and essentially certain (or already consummated), an agency should analyze the effect on proposals of the corporate restructuring at issue. See Nat'l Aeronautics & Space Admin.--Recon., supra. Thus, to be clear, key in our analysis on these matters is both whether an agency is aware of a particular transaction, as well as its imminence and certainty.<sup>3</sup>

Here, because the Lockheed/Leidos transaction at issue was not speculative or an uncertain future matter at the time the agency was evaluating proposals, and because the agency learned of the transaction prior to award, we agreed with the Corps that it was reasonable for the agency to assess the impact of the transaction (despite LMIS not discussing the transaction in its proposal). Lockheed Martin Integrated Sys., Inc., supra, at 8. LMIS' position that our Office should have sustained its protest because the agency had the discretion to not consider the Lockheed/Leidos transaction during its evaluation of proposals is flawed.<sup>4</sup>

Next, once it is established that a transaction should be considered by an agency, our Office's inquiry turns to the reasonableness of the agency's assessment of the impact of the transaction, as was the case here, or, when a transaction is not considered by an agency, we assess whether the protester was prejudiced by the agency's failure to analyze the effect of the transaction. In this respect, we agree with the protester that these cases--when an agency fails to consider an impending corporate transaction--ultimately turn on whether an awardee will perform the contract in a manner materially different than proposed due to the corporate restructuring. See Request for Reconsideration at 3, 5, citing Wyle Labs., Inc., supra, at 11. However, we disagree with LMIS that this element should be the initial

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<sup>3</sup> As noted in our decision, indices of whether a transaction is imminent and essentially certain include whether the timing and manner of the spin-off contemplated were within the control of the offeror, and whether the offeror had disclosed detailed plans to the SEC, including an anticipated time frame for closing the transaction. Nat'l Aeronautics & Space Admin.--Recon., supra; see TrailBlazer Health Enters., LLC, B-406175, B-406175.2, Mar. 1, 2012, 2012 CPD ¶ 78 at 18 (denying protest where an agency did not take into account a corporate transaction even though it was aware of the awardee's potential divestiture from its parent company, because the transaction was, at best, only a possibility prior to award).

<sup>4</sup> LMIS points to no precedent where an agency is faulted for merely considering the impact of an impending business transaction on a procurement.

or only inquiry informing whether an agency should even consider a particular business transaction. Thus, LMIS' arguments in this respect do not demonstrate that our original decision was incorrect, or otherwise provide a basis to reconsider the decision.

Next, we turn to the other issues raised by LMIS in its request for reconsideration. These concerns do not meet our Office's standard for reconsideration. In this respect, the protester's request raises arguments that were either previously considered by our Office, should have previously been raised by the protester, or merely express LMIS' disagreement with our decision.

For example, in its request for reconsideration, LMIS contends that the Corps erred in the way that it ultimately considered the Lockheed/Leidos transaction and that the agency misunderstood fundamental aspects of the nature of the planned transaction. Request for Reconsideration at 6. LMIS maintains that this misunderstanding of the transaction drove the evaluation findings that led to LMIS' exclusion from award consideration, and that our decision warrants reversal on this basis.

However, the protest record reflects that these same arguments formed the crux of LMIS' protest. Indeed, LMIS raised these concerns in detail in its comments on the agency's report. Compare LMIS Comments at 24-30 (arguing that the Corps "misunderstood fundamental aspects of the planned . . . transaction") with Request for Reconsideration at 6-10 (same). Given that these arguments were previously raised and had already been considered by our Office, they provide no basis for us to reconsider our decision. In this regard, our process for reconsideration does not afford parties an opportunity to re-litigate a matter or to have previously-made arguments considered anew. As established above, the repetition of arguments fails to provide an adequate basis for reconsideration of our decision. 4 C.F.R. § 21.14(c).

In addition, LMIS contends that our decision afforded too much deference to the agency's assessment of the transaction, which, as noted above, LMIS still maintains was based on inaccurate information. Given that our review of the impact of corporate transactions on procurements is highly fact-specific, LMIS asserts that a higher standard of review was warranted. Request for Reconsideration at 10. We disagree. In this respect, as discussed in our decision, the agency considered the impact of the transaction on LMIS' offer as part of its evaluation of proposals, and our Office reviewed the reasonableness of that evaluation. In our decision, we considered all of the protester's arguments and found nothing objectionable about the agency's characterization of the transaction based on the information gleaned from the press release. Ultimately, LMIS' request in this regard reflects its disagreement with our decision, which does not meet our standard for reconsideration. Dep't of Veterans Affairs--Recon., B-405771.2, Feb. 15, 2012, 2012 CPD ¶ 73 at 3.

Lastly, LMIS objects to the decision's conclusions regarding the agency's cost realism analysis. Request for Reconsideration at 10-13. Once again, these objections primarily reflect the repetition of arguments previously raised and rejected by our Office. More specifically, our Office considered whether the evaluators' cost realism conclusions were reasonably based, and concluded that the agency's "extensive contemporaneous analysis support[ed] the reasonableness of the Corps' conclusions that it could not determine the realism of the protester's costs." Lockheed Martin Integrated Sys., Inc., *supra* at 11. Given the express warning in the RFP that the agency "may reject an offer that reflects a serious lack of cost/price realism," RFP at 172, 179, we found that the agency's decision to do so here was unobjectionable. LMIS' effort to re-argue this protest ground does not demonstrate an error of fact or law that warrants reconsideration of our decision.

The request for reconsideration is denied.

Susan A. Poling  
General Counsel