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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Fairchild Space and Defense Corporation

File: B-243716; B-243716.2

Date: August 23, 1991

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Robert D. Wallick, Esq., and Thomas P. Barletta, Esq., Steptoe & Johnson for McDonnell Douglas Missile Systems Company and Matthew S. Simchak, Esq., and Donald P. Arnavas, Esq., Ropes & Gray, for Lockheed Sanders, Inc., interested parties.
Gregory H. Petkoff, Esq., and Edward L. Fitzmaurice, Esq., Department of the Air Force, for the agency.
Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. The General Accounting Office will not disturb an evaluation where the record supports the conclusions reached and the evaluation is consistent with the criteria set forth in the solicitation.

2. In order to conduct meaningful discussions, the agency need not point out that offeror's technically acceptable approach was relatively less desirable than others received.

3. Protester does not have the direct economic interest to be considered an interested party to protest the eligibility of the awardee where the protester would not be next in line for award.

4. There is no requirement for a cost realism analysis before the award of a competitive, fixed-price contract, and there is no legal basis to challenge a below-cost award to a contractor which has been determined responsible by the contracting officer.

DECISION

Fairchild Space and Defense Corporation protests the award of a contract to Lockheed Sanders, Inc. under request for proposals (RFP) No. F19628-90-R-0011, issued by the Department of the Air Force, Electronic Systems Division (ESD), Hanscom Air Force Base, Massachusetts, for the mission support systems (MSS) program.1/ The protester argues that ESD failed to evaluate its proposal fairly and improperly determined the Lockheed proposal to be the most advantageous.

We deny the protests in part and dismiss them in part.

BACKGROUND

The purpose of the MSS program is to provide the aircrews of the Military Airlift Command, the Strategic Air Command, the Tactical Air Forces, and the United States Special Operations Command with an enhanced ground-based mission planning system to improve both peacetime and wartime mission planning.2/ The MSS consists of computer-based tools to help aircrews conduct effective and timely pre-mission planning and post-mission review for combat missions and also for aircrew training exercises.

The RFP, which was issued on September 21, 1990, provided for the award of two separate firm, fixed-price contracts. The total effort was divided into two separate tasks. Task 1 was an upgrade effort designed to satisfy the Air Force's immediate mission support system need by delivering 50 modification kits to the existing MSS II units with an option to deliver up to 190 additional MSS II modification kits. Task 2 called for the development and delivery of three enhanced MSS prototype units and one data base preparation subsystem, with options for up to 405 fully configured MSS production systems, and other logistical support items.

1/ The Air Force made two awards under this RFP. Fairchild also protests the award made to McDonnell Douglas Missile Systems Company. However, Fairchild in its protest raises no specific objections to the evaluation of the McDonnell Douglas proposal. We therefore dismiss this aspect of Fairchild's protest.

2/ Mission planning is the pre-flight preparation by an aircrew before the crew gets into an aircraft for a specific destination.

Under the RFP, one firm was to receive an award for both Task 1 and Task 2, and a second firm was to receive an award for Task 2 only. The firm selected for award of both tasks was to develop and deliver upgrade kits for retrofitting the MSS II systems already in the field within 6 months of award. Concurrent with the Task 1 effort, this firm, along with the other awardee, was required to build, demonstrate, and deliver three enhanced MSS prototype units and one data base preparation subsystem within 15 months of award. At the end of the 15-month period, the Air Force planned to conduct a "fly-off" to determine which of the two MSS systems is the best buy for the government based both on price and compliance with Task 2 technical requirements.

Award was to be made to the offerors who are deemed responsible, who possess the management, financial, technical, and facilities capabilities necessary to fulfill the requirements of the contract and "whose proposal(s) are judged by an integrated assessment of general, . . . and specific criteria listed below to be most advantageous to the [g]overnment, price and other factors considered." The general considerations listed for evaluation were: (1) past and present performance; (2) pre-award surveys and reviews; (3) in-plant assessments, known as "Grey Beard" reviews; and (4) system capability demonstration. The specific criteria were organized into three areas in descending order of importance: (1) technical Task 2; (2) technical Task 1; and (3) Price. The technical tasks areas were to be evaluated for soundness of approach and compliance with the requirements. The RFP provided that the realism of each offeror's proposed price(s) would be evaluated to determine the extent to which each offeror's proposed price(s) and supporting cost data are (1) consistent, (2) indicate a clear understanding of solicitation requirements, and (3) reflect a sound approach to satisfying those requirements.

The RFP provided that although only one of the selected offerors would be awarded the Task 1 effort, the selection of the two offerors would be based upon an integrated assessment of both tasks. Price was to be a factor in determining the two selected offerors. The government reserved the right to award one contract for Tasks 1 and 2 combined, or no contract at all.

Seven proposals were received by the amended November 13, 1990, closing date. Following an initial technical evaluation, three offerors were eliminated from the competitive range. On January 22, 1991, clarification requests (CRs) and deficiency reports (DRs) were issued to the remaining four offerors; responses were received by January 30. The Air Force evaluated these responses and identified outstanding deficiencies or areas which still needed clarification and

subsequently issued points for negotiations to each offeror. Face-to-face negotiations were then held with all offerors in the competitive range from February 14 until February 26. Between February 22 and March 18, the Greybeard executive reviews were performed.3/ In addition to the Greybeard review, the Air Force obtained a pre-award survey of all the offerors in the competitive range and had a performance risk assessment group (PRAG), another independent team, conduct a performance risk assessment of each offeror's past and present performance as it related to the probability of successfully accomplishing the proposed MSS effort. On March 6, amendment No. 0004 changed the Task 1 effort from a basic task to an option due to funding constraints and established additional printer and planning station contract line items in order to have the flexibility to meet user needs for different workstation configurations (i.e., single-, two-, three-, or four-). Best and final offers (BAFOs) were requested by letters dated March 22. All four remaining offerors submitted BAFOs by March 28 as requested. Lockheed's firm, fixed prices were low by a substantial margin under Tasks 1 and 2.

The source selection evaluation board (SSEB) evaluated the BAFOs and on April 3, briefed the source selection advisory council (SSAC). The SSEB concluded that all the offerors met the minimum requirements of the RFP. The Greybeard team and the PRAG also briefed the SSAC on their findings. The Greybeard team found that all the offerors had a clear understanding of the requirements and had the capability to perform the contract. However, as to the contractors' ability to meet the contract schedule, the Greybeard team concluded that all the contractors, except McDonnell Douglas, posed a "high" risk. For McDonnell Douglas, the Greybeard team found a "moderate" risk. As to the PRAG, it reported that there was nothing in the past or present performance records of any of the contractors to preclude an award. The PRAG ranked Lockheed first and McDonnell Douglas second on the basis of past and present performance on similar government contracts. The SSAC concurred in the findings of the SSEB, as well as those of the Greybeard team and the PRAG. On April 5, the SSEB, the Greybeard team, and the PRAG presented their findings to the Source Selection Authority (SSA).

The SSAC, in its final report, concluded that for Task 2, although all the offerors had an acceptable rating, McDonnell Douglas offered a superior and achievable proposal in the design, especially concerning graphics. In contrast, the

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3/ The purpose of the Greybeard review was to assess each offeror's facility through an on-site visit "to determine the offeror's ability to successfully accomplish the MSS upgrade and enhancements for the total program.

design approach proposed by Fairchild, specifically with respect to graphics, was considered a weakness with moderate risk. Also, the SSAC found that both the Lockheed and McDonnell Douglas proposed software design had less risk (from a schedule standpoint) than that being offered from either Fairchild or Martin Marietta. With respect to the management item, the heavy reliance both Fairchild and Martin Marietta placed on their subcontractors, and the management approach that both of these contractors used were considered weaknesses and posed greater risk than the approaches of Lockheed and McDonnell Douglas.

With respect to the Task 1 evaluation, Lockheed was evaluated as exceptional overall and superior to the other offerors. The SSAC found that Lockheed proposed an easy, low risk approach to the MSS II upgrade, while providing some simple, but badly needed improvements to the basic system. According to the evaluators, the result is a faster, more powerful, and easier to use system that can be achieved with an easy to install and maintain upgrade kit. The SSAC determined that each of the other Task 1 technical proposals were weak in some areas. Fairchild and McDonnell Douglas were determined to be unable to achieve the same level of performance as Lockheed.

Under the government realism assessment, all offerors, except Fairchild, were found to have underbid the requirement either with respect to material costs or hours for software development. Lockheed, at the request of the Air Force, verified its proposed equipment prices.

The SSA concluded that, based on an integrated assessment of the technical considerations and evaluated prices, the Lockheed and McDonnell Douglas proposals offered the best value and were the most advantageous to the government. The SSA first selected from the four competing proposals the two most advantageous proposals based on an integrated assessment of the technical and price considerations for Tasks 1 and 2 combined. He selected Lockheed because its overall system design for Task 2 was architecturally sound and its proposal represented less risk overall than either of the nonselected proposals. He determined that Lockheed's proposal for Task 2 exceeded the specification requirements for maintainability and offered two design strengths. As for Lockheed's Task 1 approach, the SSA found that Lockheed's proposed solution met all requirements and proposed to attain desired goals for radar predictions, terrain scene perspectives, and plan views. In addition, the SSA found that the Lockheed Task 1 proposal enhanced the user system interface of the MSS II and, as a result, was rated exceptional with low risk. Furthermore, the SSA noted that Lockheed's proposed Task 1 approach required no new support equipment to maintain the upgraded MSS II units.

Finally, the SSA determined that, besides proposing a lower risk, technically sound approach for both Tasks 1 and 2, Lockheed's evaluated price was fair and reasonable, as well as significantly lower than the other three proposals considered for award.

The SSA also selected the McDonnell Douglas proposal as one of the two most advantageous. The SSA concluded that McDonnell Douglas's overall system design for Task 2 was architecturally sound and represented less overall risk than either of the two nonselected proposals and was, in fact, exceptional in its design approach and operational suitability. With respect to Task 1, the SSA found that McDonnell Douglas more than satisfied the government's requirements. Regarding McDonnell Douglas's evaluated price, the SSA found it to be realistic, fair, and reasonable in the context of its proposal. As to the selection of the McDonnell Douglas proposal over the Fairchild proposal, the SSA pointed out that the Fairchild Task 1 proposal did have a somewhat lower overall risk than McDonnell Douglas's Task 1 proposal; however, he also noted that McDonnell Douglas's evaluated price was significantly lower than Fairchild's. Therefore, he determined that it would be necessary to pay a substantial premium if Fairchild was selected over McDonnell Douglas and that, based on an integrated assessment of Task 1 and 2 technical considerations, the Fairchild proposal simply did not offer sufficient advantages to justify paying the substantial price premium.

Having selected the two most advantageous proposals, the SSA then proceeded to select which of these two proposals should receive award of the Task 1 effort. The SSA determined that the Lockheed Task 1 proposal was the most advantageous to the government from both a technical and price perspective and selected Lockheed to receive award of the Task 1 efforts. On April 11, Lockheed was awarded contract No. F19628-91-C-0040, which included both Task 1 and Task 2, and McDonnell Douglas was awarded contract No. F19628-91-C-0041, which included only the Task 2 effort.

PROTEST

Fairchild protests the award to Lockheed on the following grounds: (1) the Air Force ignored an organizational conflict of interest and permitted Battelle-Columbus to participate in the procurement as a team member of Lockheed; (2) the Air Force risk assessments of the Fairchild and Lockheed proposals are unsupported by the record and are based on a misevaluation of the technical proposals; (3) the Air Force failed to conduct meaningful discussions with Fairchild concerning the alleged design weaknesses and system architecture subcontractor management plan; (4) there was no justification for the Air Force's 300 percent increase in the best estimate quantity

(BEQ) through the issuance of amendment No. 0004, 3 weeks before the due date for BAFOs; and (5) the Air Force failed to consider the cost/price realism factor in selecting the proposals that are most advantageous to the government.

In subsequent correspondence, Fairchild raises an additional protest issue. Fairchild argues that the Air Force failed to conduct meaningful discussions regarding the Air Force's actual requirement for a multi-user computer system and that the Air Force knowingly misled Fairchild with respect to that requirement.4/

TECHNICAL EVALUATION OF FAIRCHILD'S PROPOSAL

Fairchild essentially objects to the Air Force rating its Task 2 proposal a moderate risk for system performance and a high risk concerning the ability of its proposed software effort to meet delivery schedule requirements. These ratings primarily were based on the weaknesses identified in award notice of April 11, 1991. Fairchild specifically challenges the Air Force concern that: (1) the Fairchild co-processor might degrade system response times; (2) the graphics subsystem proposed by Fairchild might require system redesign to resolve potential temperature/humidity/weight problems; (3) Fairchild's cold start operation was an awkward and lengthy procedure; (4) the changes estimated in software effort from initial offer to BAFO reduced confidence in its estimates; (5) Fairchild's software development effort would be large; and (6) program management and process discipline, specifically with respect to subcontractors, posed a risk. Fairchild maintains that the Air Force's evaluation in these areas are incorrect and unreasonable.

The Air Force states that Fairchild's proposal was found to be technically acceptable. However, the Air Force determined that based on these identified weaknesses, Fairchild offered a relatively less desirable approach than either Lockheed or McDonnell Douglas's which merited the risk ratings it received. The Air Force judged Fairchild for Task 2 to have a high risk in terms of schedule and moderate risk to system performance. This resulted in an integrated assessment of high risk for contract completion.

Although Fairchild contends that the weaknesses listed in the agency's April 11 letter were significant, the record shows that Fairchild's proposal was acceptable and that there were

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4/ A protective order was issued in this case and access to evaluation documents and proposals were granted to the attorneys for the protester and interested parties. Access was also granted to a consultant hired by Fairchild.

no actual deficiencies. Rather, Fairchild's proposal, while considered acceptable, was deemed weak relative to the awardees in certain areas. These weaknesses contributed to the high risk rating of Fairchild's proposal, but these relative weaknesses were not considered deficiencies that would render Fairchild's proposal unacceptable.

Initially, the record shows that all offerors were considered acceptable and Lockheed's and McDonnell Douglas's proposals were determined to have presented slightly less risk than Fairchild's. Thus, even assuming that Fairchild's proposal should have received a low risk rating, because the finding of weaknesses was not justified or the weaknesses were easily correctable, Fairchild has established no competitive prejudice since it cannot overcome the significant price difference between it and the other offerors for a proposal which, as stated in the source selection decision, was not considered any more advantageous than the awardees' offers, from a technical and management standpoint.5/

We will examine an agency's technical evaluations to ensure that they are reasonable and consistent with the evaluation criteria. See Wellington Assocs., Inc., B-228168.2, Jan. 26, 1988, 88-1 CPD ¶ 85. The fact the protester disagrees with the agency does not itself render the evaluation unreasonable. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450.

Here, we think that the agency could reasonably view Fairchild's design approach to satisfying certain requirements as less desirable than the other offerors. For example, Fairchild proposed a distributed architecture approach based

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5/ As a reason for concluding that Lockheed had an organizational conflict of interest, Fairchild argues that the difference between the software development proposed by Fairchild and Lockheed was primarily attributable to Lockheed's preaward access to software source code and documentation. The record does not establish that Lockheed's technical cost proposal is based on such access. We note that McDonnell Douglas, which is not alleged to have had any access to this information, proposed approximately the same effort as Lockheed. The agency's cost evaluation showed that Lockheed's software effort was understated by approximately $8-10 million. The understatement of cost does not explain the significant price difference between the offers. Further, although the agency determined that the Lockheed and McDonnell Douglas proposals reflected a clear understanding of the software requirement, nonetheless, the proposals were considered to propose a moderate risk to schedule performance.

on the use of an IBM workstation with the Fairchild co-processor. The graphics system proposed by Fairchild was considered a weakness that resulted in a rating of moderate risk. Fairchild's graphics design changed throughout the negotiation process, with the final proposal reflecting an approach that employed an IBM newly announced graphics card set to be used with the IBM graphics engine. The Air Force considered this approach to be a weakness because whenever the co-processor was involved in manipulating classified data, the memory of the co-processor would have to be written over several times to clear the memory to ensure there was no classified data remaining which could create security problems which would have to be resolved prior to proceeding with further data processing performance. The evaluators concluded that this approach was a more risky and less desirable approach than other proposals because the effort to eliminate any security concerns, while feasible and acceptable, could require additional labor and time not anticipated to avoid delay in processing data and meeting performance schedules.

While Fairchild asserts that its co-processor performs within the RFP response time requirements and provides the user with a product of unsurpassed quality, we do not find the agency determination that Fairchild's approach was a moderate risk in this area compared to other proposals to be unreasonable.

As previously stated, Fairchild added a new IBM graphics card set to its mechanical design in its BAFO. While Fairchild states that there was no effect on the environmental and transportability design as a result of the implementation of the IBM graphics card set, the Air Force determined that in order to meet operating temperature and humidity requirements, Fairchild's approach would likely require an additional design effort, which posed some risk. The evaluators, for example, believed that the weight of the graphics card set could affect the portability of the monitor assembly, which houses the graphics engine.

Fairchild maintains that its proposal was fully responsive to the environmental design and mechanical packaging requirements. Fairchild contends that even if it were required to add an additional fan to the monitor enclosure to satisfy temperature/humidity requirements, this light weight addition to Fairchild's design would not put Fairchild's design beyond the required weight restrictions. We think, however, that the agency could reasonably conclude that even the installation of a fan to satisfy temperature/humidity requirements could have some effect on Fairchild's design and pose some risk to Fairchild's ability to meet the delivery schedule compared to other proposals which offered no potential graphics design issues.

Regarding Fairchild's software effort, the Air Force had two concerns which resulted in a high risk under task 2. First, the Air Force found significant variations in Fairchild's software estimates during the course of the negotiations. For example, Fairchild's initially proposed source lines of code increased almost 2-1/2 times in its initial revised offer. The estimate subsequently decreased significantly, and ultimately in Fairchild's BAFO still remained significantly higher than earlier estimates. These variations reduced the Air Force's confidence in Fairchild's understanding of the effort. Second, Fairchild's approach called for dividing the software development effort between two team members at different locations. The agency was concerned that this approach required a high degree of communications due to the separation which made the development effort more risky than a centralized approach.

Fairchild argues that the agency misevaluated its proposal concerning software effort. Fairchild also argues that, assuming that there is a reasonable basis for the Air Force's schedule risk rating of Fairchild, because of these two weaknesses, the Air Force's reliance on that risk rating as a basis for rating Fairchild's entire Task 2 effort as high risk is not consistent with the evaluation criteria. Fairchild contends that software engineering process and management planning were the least important factors and it was unreasonable for the agency to allow the risk rating of the least important factors to govern the risk rating of the entire proposal.

We think the significant swings in the software estimates, absent a compelling explanation in the proposal, could reasonably justify a high risk rating. Further, we think Fairchild's approach to the software effort similarly could be judged a greater risk than other more centralized approaches. The agency required software delivery in a relatively short period of time, and the software was critical to the program. We think reasonable the agency's concern that Fairchild's approach could affect the software effort and ability to meet the RFP schedule, and could reasonably be seen as a weakness and result in a high risk rating. Either of these concerns legitimately could increase risk of performance, notwithstanding the lower ranking of the management and software engineering compared to other factors.

MEANINGFUL DISCUSSIONS

A contracting agency must conduct discussions with all offerors in the competitive range, advising them of deficiencies in their proposals. Varian Assocs., Inc., B-228545, Feb. 16, 1988, 88-1 CPD ¶ 153. However, agencies are only required to lead offerors into areas of their proposals that

are considered to be deficient. Where a proposal is considered acceptable and within the competitive range, the agency is not obligated to discuss every aspect of the proposal that receives less than the maximum possible score. Id. Likewise, there is no requirement on the part of an agency to identify relative weaknesses in a proposal which is technically acceptable but presents a relatively less desirable approach than others received. See Prison Health Servs., Inc., B-215613.2, Dec. 10, 1984, 84-2 CPD ¶ 643.

Fairchild maintains that to the extent the Air Force is correct regarding the alleged weaknesses, the Air Force failed to conduct meaningful discussions with Fairchild concerning the aspects of its proposal perceived to be a significant design weaknesses.

As previously stated, Fairchild's approach to satisfying some of the agency's requirements were considered relatively weak in comparison to the other offerors' proposed approaches. There is no requirement on the part of an agency to identify relative weaknesses in a proposal which is technically acceptable, but presents a relatively less desirable approach than other proposals received. See Fed. Elec. Int'l, Inc., B-232295.2, Dec. 21, 1988, 88-2 CPD ¶ 610. Here, we think the weaknesses reflected the SSA's comparison of the desirability of offerors' approaches which did not require discussions. In any event, even if we were to agree that these areas were deficiencies, the record shows that the Air Force engaged in several rounds of discussions with all offerors. Our review of the record shows that there were discussions with Fairchild concerning, among other things, system security, mechanical packaging, software development, and cold start. Further, while the agency did not specifically state that Fairchild's software teaming plan was relatively weak, it did question Fairchild about its subcontracting plan during discussions. Thus, the record shows that the agency did discuss the areas of primary weakness and risk and satisfied the requirement for discussions.

COST/PRICE REALISM

Fairchild contends that the Air Force failed to properly consider the cost/price evaluation factor as required by the RFP. Fairchild argues that the SSA's failure to consider cost/price realism and the associated risks of Lockheed's unrealistic estimation of the software development effort and price not only violated the RFP's evaluation criteria but the requirement that responsible procurement officials carefully consider the risks to the government inherent in accepting an unusually low priced offer in the evaluation and selection process.

Where fixed-price contracts are solicited, "cost realism" ordinarily is not considered in the evaluation since a firm, fixed-price contract provides for a definite price and this contract type places upon the contractor the risk and responsibility for all contract costs and resulting profit or loss. Corporate Health Examiners, Inc., B-220399.2, June 16, 1986, 86-1 CPD ¶ 552. However, agencies, in their discretion, may provide for a cost realism analysis in the solicitation of firm, fixed-priced proposals for such purposes as measuring an offeror's understanding of the solicitation requirements. Id.

Here, in accordance with the RFP, the Air Force evaluated the realism of the offerors' proposed prices, which included an evaluation of the extent to which each offeror's proposed price and supporting cost data contained in the cost proposal was consistent with the various elements of the technical proposal, indicated a clear understanding of solicitation requirements, and reflected a sound approach to satisfying those requirements. Supporting cost data which were judged to be unrealistically low and technical risks associated with the offerors' proposal were considered in the government's price realism assessment.

Specifically, the evaluators made an adjustment, for evaluation purposes, in Lockheed's labor hours because Lockheed's software productivity was considered too optimistic. The evaluators also determined that the offeror may have underbid its equipment cost and adjusted upward its material costs significantly. Lockheed was asked to determine if it had made a mistake in its material quote, however, Lockheed verified that there was no error in the proposed material quote. The evaluators still considered their materials cost adjustment as valid.

Lockheed's price remained substantially lower than any other offer. The agency evaluators clearly recognized that Lockheed's price was understated, for example, that Lockleed's proposal was based on optimistic trends in the computer marketplace, absorbing certain management costs and waiving any profit for certain work. We have held that a low, fixed-price offeror cannot be rated lower or downgraded in the price evaluation for source selection by virtue of its low price. Litton Sys., Inc., et al., 63 Comp. Gen. 585 (1984), 84-2 CPD ¶ 317. Here, the technical evaluators specifically found that Lockheed understood the requirement and proposed an approach that provided an acceptable risk of performance, notwithstanding its low proposed price. Further, Lockheed was found to be a responsible firm.

INTERESTED PARTY

Fairchild contends that the Lockheed contract must be terminated and Lockheed and its proposed subcontractor, Battelle Memorial Institute, Columbus, Ohio Division (Battelle-Columbus), must be excluded from any further participation in the competition because of the existence of an organizational conflict of interest. Fairchild alleges that Battelle-Columbus's participation in the MSS procurement creates an organizational conflict of interest based on Battelle-Columbus's organizational relationship with Battelle Pacific Northwest Laboratories, which was itself excluded from the competition because of the existence of a conflict, and Battelle-Columbus's role as a software integrator and configuration manager for MSS II.

Since we have concluded that the Air Force's evaluation of Fairchild's proposal was reasonable, Fairchild is not an interested party to protest the reasonableness of the Air Force determination that there is no organizational conflict of interest concerning Lockheed. The source selection decision shows that McDonnell Douglas's proposal was found more advantageous than Fairchild's offer based on the integrated assessment for Tasks 1 and 2, and that, even though Fairchild's proposal for Task 1 was a somewhat lower overall risk than McDonnell Douglas's Task 1 proposal, Fairchild's proposal did not offer sufficient advantages to warrant paying the substantial price premium associated with Fairchild's offer. Thus, even assuming that Lockheed was ineligible for award, the record shows that McDonnell Douglas would have been next in line for the combined award. Fairchild, thus, lacks the requisite direct and substantial interest with regard to the award to be considered an interested party. See Hawthorne Servs., Inc., B-222436, May 30, 1986, 86-1 CPD ¶ 513.

OTHER ISSUES

First, Fairchild argues that the Air Force failed to conduct meaningful discussions regarding the Air Force's actual requirement for a multi-user configuration and knowingly misled Fairchild with respect to that requirement. Fairchild maintains that the RFP as initially issued specified a multi-user deliverable. That is, the RFP required 300 Enhanced MSS, each configured to provide four workstations for a total of 1200 workstations. Fairchild states that when the Air Force issued amendment No. 0001 on October 17, 1990, it changed the deliverable requirement from a multi-user configuration to 300 "systems configured for a single user." Based on amendment No. 0001, Fairchild states that it changed its existing system design, which was most cost effective for a multi-user deliverable (i.e., a client-server architecture), to a design that was most cost effective for a single-user configuration

(i.e., the distributed architecture), and specifically advised the Air Force that it was proceeding with this design change because of the issuance of amendment No. 0001.6/ Fairchild maintains that ultimately through the issuance of amendment No. 0004, issued 3 weeks before the due date for BAFOs, the Air Force reverted back to a multi-user deliverable. Fairchild argues that this late change in the Air Force's stated requirement severely prejudiced Fairchild's competitive posture because it proceeded with a design that is most cost effective in a single-user configuration and that becomes substantially more costly in a multi-user configuration.

The record establishes that prior to the February 21 face-to-face discussions, Fairchild learned through a point for negotiation that the Air Force was planning to establish some new options for the delivery of additional planning stations for fiscal years 1992-1994 and that the Air Force expected Fairchild to be prepared to discuss any impact which this decision might have on its proposal. At the February 21 meeting, Fairchild told the Air Force that the agency's plan to establish the new options would have a significant impact on Fairchild's proposal and that Fairchild considered this decision to be a change in design from a single-user to a multi-user configuration; as a consequence, Fairchild needed to change its design approach from a distributed to a client-server architecture.7/

The record shows that as early as February 21, Fairchild knew that the Air Force had a requirement for a multi-user configuration and that this requirement was going to have a serious impact on its design approach. We thus, do not find that the Air Force misled Fairchild concerning its needs. Further, to the extent Fairchild believed amendment No. 0004, issued on March 6, requesting quotes on the additional option quantities and confirming the multi-user configuration was prejudicial to its interests, Fairchild should have protested before the due date for BAFO submissions. Fairchild knew of the basis of its protest, at the latest by March 6, when it received the amendment, and its protest was not filed until after award. 56 Reg. Reg. 3,759, (1991) (to be codified at 4 C.F.R. § 21.2 (a)(1)); Helitune, Inc., B-235527, June 23, 1989, 89-1 CPD ¶ 598.

6/ Fairchild was the only competitive range offeror to propose a distributed architecture. The other offerors at all times proposed a client-server architecture notwithstanding the issuance of amendments Nos. 0001 and 0004.

7/ The Air Force insists that the requirement was always for the design of a multi-user configuration.

Fairchild also protests the Air Force's increase in the best estimated quantity in amendment 0004. Fairchild contends that the Air Force had no justification for the increase and that the increase directly affected the price proposals and also affected the offerors' architecture selection.

We find this basis of protest also untimely. When amendment No. 0004 was issued increasing the quantity for evaluation purposes, Fairchild, based on the records of discussions, reasonably was aware of the effect that change would have on its proposed architecture and price, but waited until this protest to object to the increase in quantity. 56 Fed. Reg. 3,759, supra (to be codified at 4 C.F.R. § 21.2(a)(1)).

Finally, Fairchild on July 12, in its comments to the agency report, raised specific objections to the evaluation of Lockheed's proposal and argued that the Lockheed design was not acceptable in several material respects and should have been rated a high risk. Since these specific issues were not raised in the initial protest submission, they must independently satisfy the timeliness requirements. John Short & Assocs., Inc., B-239358, Aug. 23, 1990, 90-2 CPD ¶ 150. Fairchild's protest concerning the alleged deficiencies in the Lockheed proposal is based on the Air Force technical evaluation documents that the protester acknowledges it received on June 10. Fairchild therefore was required to raise these issues by June 24, 10 working days later. 56 Fed. Reg. 3,756, supra (to be codified at 4 C.F.R. § 21.2(a)(2)); See Arthur D. Little, Inc., B-243450.3, June 19, 1991, 91-1 CPD ¶ 583; John Short & Assocs., Inc., B-239358, supra. We note that Fairchild was not required to file its comments to the agency report until July 12, more than 10 working days after June 10, the date the protester initially received the technical evaluation documents. Our sole reason for permitting Fairchild to file comments later than 10 working days was that the firm did not receive the complete report until June 10 and that issues concerning a hearing request had to be resolved. This did not waive the timeliness requirements for filing a protest. Id.

Accordingly, the protests are denied in part and dismissed in part.

James F. Hinchman
General Counsel