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Comptroller General
of the United States
Washington, D.C. 20548

REDACTED VERSION*

Decision

Matter of: Lockheed Aeronautical Systems Co.; Chrysler Technologies Airborne Systems, Inc.; Department of the Air Force--Reconsideration

File: B-252235.4

Date: January 21, 1994

Stuart B. Nibley, Esq., and Mary Baroody Lowe, Esq., Seyfarth, Shaw, Fairweather & Geraldson, for the protester. Stan Hinton, Esq., and Paul W. Searles, Esq., Baker & Botts, for Chrysler Technologies Airborne Systems, Inc., an interested party.
Gregory H. Petkoff, Esq., Department of the Air Force, for the agency.
Catherine E. Pollack, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where request is based on information that was available to, but not proffered by, requester during consideration of the initial protest.

DECISION

Lockheed Aeronautical Systems Company, Chrysler Technologies Airborne Systems, Inc., and the Department of the Air Force request reconsideration of our decision, Lockheed Aeronautical Sys. Co., B-252235.2, Aug. 4, 1993, 93-2 CPD ¶ 80, in which we sustained Lockheed's protest against the award of a contract to Chrysler under request for proposals (RFP) No. F09603-91-R-29604, for replacement of autopilot systems and other items in C-130 and C-141 aircraft.

We deny the requests.

BACKGROUND

The solicitation was for the design, development, integration, testing, and production of modifications to the all weather flight control direction system (AWFCS) and

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*The decision issued on January 21, 1994, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions in text are indicated by "[deleted]."

autopilot system for up to 148 C-141 aircraft, and modifications to the ground collision avoidance system (GCAS) and autopilot system for up to 672 C-130 aircraft. Technical factors were the most important considerations for award; both the cost of acquiring the systems and the 20-year life cycle cost (LCC) also were evaluated. The Air Force awarded the contract to Chrysler based on the firm's perceived [deleted] and [deleted]. Lockheed protested the award, and we sustained the protest, finding that the Air Force's LCC evaluation was improper, and recommended that a new cost evaluation be performed; we denied other protest grounds related to the technical evaluation.

The Air Force and Chrysler challenge our conclusion that Lockheed was prejudiced by the improper cost evaluation, and ask that our decision be reversed accordingly. Lockheed requests that we modify our recommended corrective action to require revision of the RFP prior to a new evaluation, and that we reconsider our denial of one of its technical evaluation challenges.

AIR FORCE'S AND CHRYSLER'S RECONSIDERATION REQUESTS

The RFP required offerors to propose a 20-year LCC using an Air Force-supplied computer program (Program LCC), which calculates LCC based on various data furnished by the offeror. Offerors were required to submit with their proposals the Program LCC output, as well as the supporting data; the RFP specifically stated that the government would verify both the output and the supporting data before calculating an offeror's LCC. In addition, section M of the RFP generally provided for evaluation of the methods, assumptions and estimates underlying the cost proposals. One of these considerations was the expected reliability of the equipment, a key factor in the calculation of LCC. In this connection, the LCC model required offerors to furnish mean time between failures (MTBF) figures for each component. Offerors also were required to guarantee in their technical proposals the reliability of their proposed systems in terms of the mean time between removals (MTBR).[1] The guaranteed MTBR figures for each component were to be set forth on Logistics Factors Commitment Sheets to be

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[1]MTBF is derived by dividing the total functional life of a population of equipment by the total number of equipment failures within the population. MTBR, in contrast, measures the frequency of equipment removals in a population. As a general rule, the MTBR should be shorter than the MTBF since not all removals lead to a diagnosis of equipment failure (in other words, removals generally are more frequent than failures).

submitted with the MTBF figures and other LCC information in the cost proposal.

Chrysler's LCC proposal relied upon MTBF figures that generally were much higher than, and bore no apparent relation to, the MTBR values it guaranteed in its technical proposal. For example, for the C-141, Chrysler's technical proposal guaranteed an overall system MTBR of [deleted] hours, but its proposed LCC was based on an MTBF of [deleted] hours. Chrysler's higher MTBF had the direct effect of lowering its evaluated LCC significantly; Chrysler's LCC totaled $[deleted] million, compared to Lockheed's $[deleted] million LCC.

In sustaining the protest, we agreed with Lockheed's allegation that the agency's LCC evaluation approach precluded an accurate assessment of LCCs. In this regard, the Air Force accepted Chrysler's BAFO LCC proposal--and those of the other offerors as well--without examining the validity of the variables on which the LCCs were based, notwithstanding the RFP provisions to the contrary. For example, the Air Force's evaluation did not take into account the fact that the higher (i.e., lower cost) reliability figures on which Chrysler's anticipated costs were based bore no relation to the far lower figures to which it contractually committed itself in its technical proposal, or to the far lower (higher cost) figures proposed by Lockheed for identical, off-the-shelf equipment. Nor did the evaluation account for the offerors' differing assumptions regarding ambient temperature, which can have a significant effect on reliability. As the LCC proposals were based on the offerors' dramatically different, unevaluated assumptions, the cost figures could neither be meaningfully compared nor assessed for purposes of determining the likely ultimate cost to the government. Stated differently, it was apparent from the record that Chrysler had been permitted, essentially, to "game" its LCC proposal. We concluded that the evaluation therefore was improper. Lockheed Aeronautical Sys. Co., supra. We further concluded that Lockheed was prejudiced by the impropriety, as the record indicated that Lockheed could have been the successful offeror given a proper LCC evaluation and a new cost/technical tradeoff decision. Id.

The Air Force and Chrysler argue that we should reverse our decision because Lockheed was not prejudiced by any impropriety in the LCC evaluation, as it would not have been the successful offeror under a proper evaluation. In this regard, the requesters challenge our adoption of Lockheed's estimate of the amount by which Chrysler's LCC would increase under a proper evaluation ($[deleted] million); the Air Force asserts that a reevaluation of Chrysler's LCC proposal would only increase Chrysler's LCC by $[deleted]

million, [deleted]. The requesters assert that they did not have the opportunity to challenge Lockheed's $[deleted] million estimate previously, as the estimate was raised for the first time in Lockheed's comments on the agency report and our Office did not request any further submissions from either of the other parties.

Under our Bid Protest Regulations, to obtain reconsideration the requesting party must either show that our prior decision contains errors of fact or law, or present information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a) (1993). In order to provide a basis for reconsideration, information not previously considered must have been unavailable to the requesting party when the initial protest was being considered. Ford Contracting Co.--Recon., B-248007.3; B-248007.4, Feb. 2, 1993, 93-1 CPD ¶ 90. A party's failure to make all arguments or to submit all information available during the course of the initial protest undermines the goal of our bid protest forum--to produce fair and equitable decisions based on consideration of all parties' arguments on a fully developed record--and cannot justify reconsideration of our prior decision. Id.

The requesters' allegations that Lockheed was not prejudiced by the improper LCC evaluation are based on information available to them, but not presented or argued, during our consideration of the initial protest. In this regard, Lockheed's comments on the agency report estimated that a proper LCC evaluation of Chrysler's proposal would add an estimated $[delered] million to the firm's LCC; this estimate was based on Lockheed's application of Program LCC to the C-141 portion of Chrysler's LCC proposal and extrapolation of those results to the C-130 portion of the proposal. The Air Force's assertion that a new LCC evaluation would only increase Chrysler's LCC by $[deleted] million is based on a similar Program LCC analysis, but includes an actual computer analysis of Chrysler's C-130 proposal instead of an extrapolation based on the C-141 figures. There is no reason why the parties, particularly the Air Force, could not have made this argument in response to Lockheed's comments while the protest was pending.[2] Our Regulations provide that additional statements may be submitted, if the party concerned requests permission to do so. 4 C.F.R. § 21.3(l). If the Air Force or Chrysler wished to reply to the points raised in the protester's comments, they were free to request leave to respond.

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[2]Similarly, an allegation by Chrysler that equalization of the offerors' assumptions concerning ambient temperature would add only $[deleted] to Chrysler's LCC could have been raised in response to Lockheed's comments.

Neither party made such a request. We therefore will not consider the merits of this argument on reconsideration.[3] See Ford Contracting Co.--Recon., supra.

In any case, in concluding that Lockheed was prejudiced, it was not our intent to quantify precisely the effect of the improper evaluation. Generally, where an agency violates procurement requirements--by performing an improper cost evaluation, for example--we will resolve any doubts concerning the prejudicial effect of the agency's action in favor of the protester; a reasonable possibility of prejudice is a sufficient basis for sustaining a protest. Moon Eng'g Co., Inc.--Recon., B-251698.6, Oct. 19, 1993, 93-2 CPD ¶ 233. When there is no basis upon which to speculate about the results of a proper cost evaluation, or to discern the impact of such an analysis on each firm's chance for award, there is no requirement that a protester show it would necessarily receive award in a reevaluation, or show that the awardee would not. Id.

We concluded in our original decision that, in the absence of the required review of the bases for the offerors' proposed LCCs, Lockheed's estimate of the effect of the improper evaluation--unchallenged at the time by the other parties--presented a reasonable possibility that Lockheed could become the low offeror under a proper LCC evaluation. Nothing in the Air Force's or Chrysler's requests for reconsideration demonstrates any error in that conclusion. The purpose of the government's evaluation of proposed costs is to determine what it would cost each offeror to perform. The Air Force's Program LCC analysis, offered in rebuttal to Lockheed's Program LCC analysis, does not amount to an accurate representation of what the cost differential between the two proposals would be under a proper LCC evaluation. Rather, it merely presents a different estimate of what Chrysler's LCC would be under a new evaluation. In particular, it does not consider any variables impacting LCC other than Chrysler's reliability and temperature figures; more importantly, it does not take Lockheed's proposal into account. The Air Force's estimate thus does not establish that Lockheed was not prejudiced, and therefore is no substitute for the required cost evaluation. See Moon Eng'g Co., Inc.--Recon., supra.

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[3]In addition to arguing that Lockheed was not prejudiced by the improper evaluation, Chrysler contends that the LCC evaluation was consistent with the terms of the RFP. Since Chrysler's request in this regard does no more than repeat prior arguments, we will not address it further here. See R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

LOCKHEED'S RECONSIDERATION REQUEST

Lockheed asks that we modify our recommended corrective action; we recommended that the agency reevaluate the offerors' cost proposals, and that this reevaluation include an examination of the reasonableness of the assumptions upon which offerors' proposed LCCs were based. Lockheed contends that this recommendation is insufficient to ensure a proper reevaluation, essentially because Chrysler's proposal allegedly is too flawed to allow one. Since Chrysler's allegedly ambiguous proposal cannot properly form the basis for an award, Lockheed argues, the agency must conduct discussions with the firm. Accordingly, Lockheed maintains, we should recommend that the agency amend the RFP to clarify the provisions that gave rise to Chrysler's approach in the LCC and reliability warranty areas. We see no need to modify our recommendation. Nothing in that recommendation precludes the agency from conducting discussions if it needs to do so. See Park Sys. Maint., Inc., B-252453.3; B-253373.3, Nov. 4, 1993, 93-2 CPD ¶ ___ (agency reasonably determined under circumstances of procurement that RFP amendment and request for BAFOs was necessary even though GAO recommended only a new evaluation of proposals).

Lockheed also alleges that our decision erroneously denied one of its protest grounds concerning the technical evaluation. The RFP contained a requirement for technical manuals; Lockheed asserted that the RFP required that the manuals be prepared in the "fault isolation decision tree" format and that Chrysler's proposal should have been rejected because it did not offer to prepare the manuals in that format. The record, however, did not establish that the fault isolation decision tree format was an RFP requirement. Lockheed now offers additional information to show that this format was in fact required. We will not reconsider our decision on the basis of this new information, as Lockheed could have presented it while the protest was pending, but did not do so. See Ford Contracting Co.--Recon., supra.[1]

CONCLUSION

As none of the parties has established that our decision was based on any error of fact or law, or presented information

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[1]We note, however, that Chrysler's proposal, while devoid of any references to the fault isolation decision tree format, did state that [deleted]. Thus, even if the required "existing format" is the fault isolation decision tree format, as Lockheed alleges, it appears that Chrysler's proposal meets the requirement.

not previously considered that warrants reversal or modification of our decision, the requests for reconsideration are denied.

Robert P. Murphy
Acting General Counsel