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

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Decision

Matter of: MD Helicopters, Inc.; AgustaWestland, Inc.

File: B-298502; B-298502.2; B-298502.3; B-298502.4; B-298502.5

Date: October 23, 2006

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DIGEST

1. In a best value negotiated procurement for Light Utility Helicopters, protest of a lower technically rated, higher-priced offeror is denied, where the detailed evaluation record evidences that the evaluators performed a comprehensive and thorough evaluation of each offeror's proposal and reasonably determined that the protester's proposal was technically inferior and did not provide the best value to the government.

2. In a best value negotiated procurement for Light Utility Helicopters, protest of a higher technically rated, higher-priced offeror is denied, where the source selection authority considered the significant strengths and weaknesses of each offeror's proposal, and reasonably determined that the protester's higher technically rated proposal was not worth the additional \$800 million over the awardee's \$3.9 billion proposal.

DECISION

MD Helicopters, Inc. (MDHI) and AgustaWestland, Inc. (AWI) protest the award of a contract to EADS North America Defense Company (EADS), issued by the

Department of the Army under request for proposals No. W58RGZ05-05-R-0519 for Light Utility Helicopters (LUH).

We deny the protests.

I. BACKGROUND

The Army currently uses a mix of rotary wing aircraft to accomplish administrative and logistical missions and to support the Army National Guard. In some instances, these aircraft have reached their serviceable life; in other instances, the aircraft are much more capable than is required for the role and thus are more expensive to operate and maintain. The LUH is intended to replace these helicopters by providing reliable and sustainable general and administrative support in non-hostile, non-combat environments at reduced acquisition and operating costs. The missions of the LUH are primarily light general support (including aerial transport of personnel, supplies, and maintenance support), General Force Medical Evacuation (MEDEVAC), reconnaissance, and test and training support. RFP, Statement of Work (SOW) ¶¶ 1.1, 1.2. To facilitate a “rapid path” to fielding the LUH, the agency sought a Federal Aviation Administration (FAA) certified, commercially available aircraft to satisfy the LUH requirement, and to rely on contractor logistics support (CLS). RFP § A, ¶ 3.

A. The Solicitation

The RFP contemplated the purchase of an estimated 352 aircraft over a 10-year contract period, with an initial estimate of 16 aircraft to be purchased during the base year and additional aircraft to be purchased through subsequent option years.¹ In addition to the aircraft, the RFP provided for the purchase of hardware and support, such as MEDEVAC B kits, hoist B kits, CLS, training, contractor field teams, engineering services, and other supporting hardware and services during the course of the contract. RFP § A, ¶ 1; § B; amend. 11, Pricing Template. Prices were to be proposed on a fixed-price per unit basis over a projected 10-year period, with cost-reimbursable items for travel, material, and transportation.² RFP § B.

¹ The RFP provided for a base year with ten 1-year options. The first option period coincided with the base year. RFP § B; amend. 11, Pricing Template.

² Operations and support (O&S) (including CLS) and fuel prices were provided by offerors for a 10-year period, but, according to the solicitation, were projected out to a 20-year period through a fixed escalation factor that the agency applied to all offers. Agency Report (AR), DVD Tab 37, Price Negotiation Memorandum, at 12-13; RFP § L-23, ¶ 2.3.3; § M-6, ¶ 2.2.2; amend. 11, Pricing Template.

The RFP provided for a “best value” evaluation of FAA certification (which was evaluated as a “go/no go” criteria) and five other evaluation factors: price, technical, producibility/management (P/M), logistics, and past performance. Price was stated to be more important than technical, technical more important than P/M, and price and technical combined were significantly more important than P/M, logistics, and past performance. P/M and logistics were stated to be of equal importance and each was more important than past performance. RFP § M-6, ¶ 2.0. The solicitation also provided that risk would be considered in the evaluation of “each factor, subfactor, and element.” Id. ¶ 1.3.

The RFP advised offerors that, under the technical factor, proposals “will be evaluated to determine the degree of confidence that the Offeror[']s proposed aircraft will be operationally effective and suitable for the LUH[']s intended mission roles.” The technical factor contained three equally rated subfactors: avionics/electronics, aircraft performance, and physical characteristics. Each of these subfactors contained a number of “elements,” which correlated to various threshold requirements set forth in the SOW.³ The aviation/electronics subfactor contained six elements (listed in descending order of importance): **communication/navigation suite**, systems operability, image intensification compatibility, intercommunications system, electromagnetic vulnerability, and cockpit voice recorder/flight data recorder (CVR/FDR). The aircraft performance subfactor contained 10 elements (listed in descending order of importance): **performance**, endurance, internal/external load, autorotation, operational range, handling qualities, cruise airspeed, fuel compatibility, operational environment, and startup timeline. The physical characteristics subfactor contained 12 elements (listed in descending order of importance): **cabin size, force protection, survivability**, hoist, wire strike protection, system growth potential, nuclear biological and chemical contamination survivability, open port and pressure refueling, human factors engineering, transportability, fire suppression bucket, and crew equipment stowage. Id. ¶ 2.3.

The elements identified above in bold type represent the five mandatory elements identified in the RFP; that is, proposals had to show that the proposed aircraft would meet these mandatory requirements no later than the scheduled first delivery of aircraft to be eligible for award. Id. All other elements were considered to be “tradable.” With tradable elements, a proposal could still be eligible for award if it failed to meet the minimum threshold requirements for the tradable elements; the agency considered the relative importance of the tradable elements under the RFP’s evaluation scheme and the risk to the mission of an offeror failing to meet the requirements in evaluating a proposal’s strengths and weaknesses. GAO Hearing

³ The SOW set forth “threshold” requirements for various attributes and capabilities of the desired aircraft, including those that were evaluated as elements under the technical factor.

Transcript (Tr.) at 169-71; Contracting Officer's Statement in Response to MDHI Protest (Aug. 18, 2006) at 22-23. The RFP also advised that the agency "may more favorably consider proposed solutions that exceed SOW requirements for all technical elements except for electromagnetic vulnerability, [CVR/FDR], autorotation, open port and pressure refuel, and fire suppression bucket"; for these excepted elements, the RFP stated that the agency would only evaluate whether the proposed solutions met the SOW requirements. RFP § M-6, ¶ 2.3.

For the P/M factor, the RFP listed two subfactors (in descending order of importance): producibility/manufacturing (P/Mfg) and management. The P/Mfg subfactor did not contain elements, but provided for the evaluation of production rate capacity, which included the evaluation of production rate capability (including integrated master schedule, facilities/tooling, process validation, manpower, vendor base, and production certification), government acceptance, and storage and unit flyaway. This subfactor also included the evaluation of "risk and realism" of the offeror's proposed delivery schedule. RFP § M-6, ¶ 2.4.1. The management subfactor of the P/M factor contained seven elements (listed in descending order of importance): program management approach, configuration management approach, quality management approach, system safety approach, performance specification and configuration list, subcontracting plan/small business utilization approach, and system engineering approach. Id. ¶ 2.4.2

The logistics factor of the RFP identified four subfactors: logistics support approach; reliability, availability, and maintainability (RAM); training approach; and other logistics support approaches. The logistics support approach subfactor was stated to be significantly more important than the next two subfactors--RAM and training approach--which were stated to be of equal importance and, combined, were more important than the fourth subfactor, other logistics support approaches. Id. ¶ 2.5.

The RFP provided that past performance would be evaluated based on the offerors' and their major subcontractors' performance "as it relates to the probability of successful accomplishment of the LUH requirement." The RFP further stated that the agency would evaluate performance during the 3 years preceding the solicitation, considering information obtained from the proposals, various government databases, customer survey questionnaires, and other sources. Id. ¶ 2.6.

The price factor contained two subfactors--total production price and total O&S price--which were to be added together to derive the overall total price. Id. ¶ 2.2.a. The RFP stated that an offeror's proposed price would not be given an evaluation rating, but would be evaluated for "its aggregate total price, its reasonableness in relation to the effort proposed, and any perceived unbalanced pricing." Id. ¶ 2.2.b.

The RFP required offerors to provide their pricing for applicable items identified in section B of the solicitation by completing a mandatory "pricing template." Detailed

information about completing the pricing template was provided in section L of the solicitation. RFP § L-23, ¶ 2. The template was essentially a series of spreadsheets wherein offerors would insert their fixed unit prices for the various contract line item numbers (CLINs) in applicable cells, and the template would calculate the projected price over the 10-year contract period for the various pricing components (or over a 20-year period in the case of O&S and fuel costs). The template specified estimated unit quantities and flight hours, and included probabilities, weighting factors, and escalation factors (where applicable) that offerors could not change so that each offeror would be evaluated on an “equitable basis.” Contracting Officer’s Statement in Response to MDHI Protest (Aug. 18, 2006) at 10-12. The only “variable” was the unit prices that each offeror entered into the template. *Id.* at 10.

For O&S costs, which mostly consisted of CLS, the RFP provided two “scenarios” under which O&S pricing would be computed. For each scenario, the RFP stated that the government would use the “weighted average price per year” for each of the CLS CLINs pertaining to that scenario. This weighted average price was to be computed in each scenario by applying a probability factor (which was specified in the pricing template) to each range of hours and rates for that CLIN in the stated year. The weighted average price for each year was to be multiplied by 50 percent and the results summed to give the total proposed O&S price.⁴ The RFP provided that CLS and fuel prices would be projected to 20 years by averaging the offeror’s proposed price for years 8, 9, and 10, and applying an escalation factor of 2.1 percent per year to the average cost. *Id.* at 11; RFP § M-6, ¶ 2.2.2.

B. Evaluation

Five offerors responded to the RFP and were invited to make a limited presentation of their proposals to the agency in advance of the initial evaluation. After the presentations, the agency conducted an initial evaluation to determine if proposals met the go/no go criteria for FAA certification and the five mandatory technical requirements. The agency eliminated one offeror’s proposal from the competitive range.

For the four offerors that remained in the competitive range (including MDHI, AWI, and EADS), the agency allowed a “source selection performance demonstration” (SSPD) of each offeror’s aircraft. The SSPD, as provided for in the RFP, was intended to verify whether the demonstrated aircraft differed from the offeror’s proposed aircraft. RFP § M-6, ¶ 1.2. During the SSPD (which consisted approximately of a 4-hour block of time, Tr. at 408), the agency tested the aircraft against several of the performance and configuration requirements set forth in the SOW that corresponded to technical elements evaluated under the RFP. The SSPD

⁴ The 50 percent multiplier was specified in the RFP to eliminate an overstatement in O&S prices as a result of the overlap in services between the two scenarios.

was intended to verify and finalize the evaluation, but was not given a separate rating. RFP § M-6, ¶ 1.2. The agency completed its initial evaluation and held discussions with the four offerors remaining in the competitive range, which included the issuance of “Errors, Omissions, and Clarifications,” as well as additional written and face-to-face discussions.⁵

After discussions were completed and the offerors submitted their final proposal revisions (FPR), the agency conducted its final evaluation. The evaluation (both initial and final) was conducted using a database system, whereby each evaluator entered his or her ratings and comments for each proposal under element, subfactor, and factor headings; these ratings and comments were “rolled up” into an overall element, subfactor, and factor rating assessment. Factor, subfactor, and element “leads” were appointed to ensure that the evaluation was conducted in accordance with the RFP and to perform the “roll up” of ratings. The factor leads reported the evaluation results to a source selection evaluation board (SSEB), which was appointed to review proposals, issue the evaluation report⁶, and provide briefings and consultations to the source selection advisory council (SSAC)⁷ and source selection authority (SSA). Advisors were also appointed to assist with the evaluation, including representatives of the FAA to assist with FAA certification issues. The advisors, evaluators, factor leads, SSEB, and SSAC included members that were experienced aviators or experts in their field of evaluation; the SSAC also included two members that were “users” of the aircraft. Tr. at 38, 189-92, 194, 205, 212, 241-42, 276, 283. The SSA did not have aviation experience, but had “responsibilities that covered all of the Army’s programs, including Army aviation,” and testified that he sufficiently understood the LUH mission and the statement of work as it related to the mission. Tr. at 11, 44.

After reviewing and considering the technical reports and evaluator comments, the SSEB assigned adjectival and risk ratings to each proposal under each of the factors, subfactors, and elements identified in the solicitation. With regard to the technical elements generally, a proposal was rated “satisfactory” if it met the “threshold”

⁵ During discussions, the agency also updated the pricing template and revised its CLS pricing evaluation as described above. These updates were published in amendments 10 and 11 to the RFP. Further discussions were held to explain the pricing template. Contracting Officer’s Statement in Response to MDHI Protest (Aug. 18, 2006) at 15-16.

⁶ The SSEB report was over a thousand pages long and consisted of factor, subfactor, and element roll-ups, as well as the underlying evaluator comments. AR, DVD Tabs 16, 25, and 34, SSEB Final Reports for MDHI, AWI, and EADS.

⁷ The SSAC was appointed to perform a comparative analysis of the evaluation results and to assist the SSA.

requirement for the element as stated in the SOW; a proposal received a rating of “good” if it exceeded the threshold requirement, and a rating of “excellent” if it exceeded the threshold requirement by a specified “objective” amount. The objective amounts, which the agency refers to as “stretch goals,” Tr. at 199, were not set forth in the RFP, but were defined in the source selection plan (SSP) (an internal agency document). Agency Hearing Book, exh. W, SSP, append. B, exh. 1, Merit Rating System for Technical Factor. These “objectives” represented the amounts in excess of the requirements that the agency considered would benefit the mission and thus were deserving of the highest adjectival rating. Tr. at 208, 254-55. According to the agency, far exceeding the objective for an element was of diminishing value to the mission and was considered in terms of the increased cost to the agency associated with exceeding the objective. Tr. at 121-22, 208, 247, 254-55. A proposal received a rating of “marginal” or “unsatisfactory” for an element if it did not meet the threshold requirement.⁸ Agency Hearing Book, exh. C, SSA Final Briefing, Slide 8; exh. W, SSP, append. B, exh. 1, Merit Rating System for Technical Factor.

Risk ratings of “low,” “moderate,” and “high” also were assigned to proposals under each of the factors, subfactors, and elements. These ratings were defined as follows:

Low Risk: Has little potential to cause disruption of schedule, increase in price, or degradation of performance. Development/integration and FAA certification of modifications proposed or offered to an existing FAA certified helicopter model submitted for evaluation in SSPD, would likely cause no adverse impact to delivery. Normal contractor effort and normal Government monitoring will probably minimize any difficulties.

Moderate Risk: Can potentially cause some disruption of schedule, increase in price, or degradation of performance. Development/integration and FAA certification of modifications proposed or offered to an existing FAA certified helicopter model submitted for evaluation in SSPD, would likely cause some adverse impact to delivery. Special contractor emphasis and close Government monitoring will probably minimize difficulties.

High Risk: Likely to cause significant disruption of schedule, increase in price, or degradation of performance. Development/integration and FAA certification of modifications proposed or offered to an existing FAA certified helicopter model submitted for evaluation in SSPD,

⁸ Ratings were more specifically defined in the SSP for each of the elements evaluated, taking into account the specific attributes being evaluated under that element. Agency Hearing Book, exh. W, SSP, append. B, exh. 1, Merit Rating System for Technical Factor. The general scheme, however, is reflected above.

would likely cause significant adverse impact to delivery. Risk may be unacceptable even with special contractor emphasis and close Government monitoring

Agency Hearing Book, exh. W, SSP, at 62-63; id., exh. C, SSA Final Briefing, Slide 9.

Adjectival and risk ratings were assessed in this manner for both the initial and final evaluation, and detailed briefings were provided to the SSAC and SSA.⁹ At the final briefing, the factor leads and SSEB made presentations to the SSAC and SSA to explain the proposal ratings (both adjectival and risk) for each offeror’s proposal under the various factors, subfactors, and elements. These individuals highlighted for the SSA the significant differences between proposals, discussed the value of aircraft attributes in terms of the LUH mission requirements, and responded to questions from the SSAC and SSA. Tr. at 17-20, 241, 244. A comprehensive series of power point slides was provided to the SSA summarizing the evaluation. As reported to the SSA in these slides, the final factor and subfactor evaluation ratings, as relevant here, were as follows:

		MDHI	EADS	AWI
Price		\$4,251,356,442 Moderate Risk	\$3,880,000,723 Low Risk	\$4,747,162,454 Low Risk
	Total Production Price	[REDACTED]	[REDACTED]	[REDACTED]
	Total O&S Price ¹⁰	[REDACTED]	[REDACTED]	[REDACTED]
Technical		Marginal/High	Satisfactory/Low	Good/Low
	Avionics/Electronics	Satisfactory	Satisfactory	Satisfactory
	Aircraft Performance	Marginal	Satisfactory	Excellent
	Physical Characteristics	Satisfactory	Satisfactory	Good
Producibility/Management		Marginal/ High	Good/Low	Good/Low
	Producibility/Manufacturing	Marginal	Good	Good
	Management	Marginal	Satisfactory	Satisfactory
Logistics		Satisfactory/Low	Satisfactory/Low	Satisfactory/Low
	Logistics Support Approach	Satisfactory	Satisfactory	Satisfactory
	RAM	Marginal	Satisfactory	Good
	Training Approach	Good	Good	Good
	Other Support Approach	Satisfactory	Satisfactory	Satisfactory
Past Performance		Moderate	Low	Low

Agency Hearing Book, exh. C, SSA Final Briefing, Slides 38, 43, 47-49, 57, 62, 67-68,

⁹ Additional briefings were held with the SSA throughout the procurement to discuss the source selection plan, the LUH mission requirements, and to otherwise keep the SSA apprised of the evaluation. Tr. at 249-53.

¹⁰ The prices reflected in the above table for the total O&S price subfactor include CLS pricing, fuel costs, and cost-reimbursable items of travel, materials, and transportation. AR, DVD Tab 37, Price Negotiation Memorandum, at 13.

75, 80, 85-86, 91; Agency Report (AR), DVD Tab 37, Price Negotiation Memorandum, at 13. The technical element ratings for each of the technical subfactors were reported as follows:

	MDHI	EADS	AWI
Avionics/Electronics Subfactor	Satisfactory	Satisfactory	Satisfactory
Communication & Navigation Suite*	Good	Satisfactory	Satisfactory
Systems Operability	Satisfactory	Satisfactory	Satisfactory
Image Intensification Compatibility	Satisfactory	Good	Good
Intercommunications System	Good	Satisfactory	Good
Electromagnetic Vulnerability	Satisfactory	Satisfactory	Satisfactory
CVR/FDR	Unsatisfactory	Unsatisfactory	Satisfactory
Aircraft Performance Subfactor	Marginal	Satisfactory	Excellent
Performance*	Satisfactory	Excellent**	Excellent
Endurance	Unsatisfactory	Satisfactory	Excellent
Internal/External Loads	Unsatisfactory	Unsatisfactory	Good
Autorotation	Satisfactory	Satisfactory	Satisfactory
Operational Range	Satisfactory	Excellent**	Excellent
Handling Qualities	Satisfactory	Satisfactory	Good
Cruise Airspeed	Unsatisfactory	Good**	Excellent
Fuel Compatibility	Good	Good	Good
Operational Environment	Unsatisfactory	Unsatisfactory	Unsatisfactory
Startup Timeline	Unsatisfactory	Unsatisfactory	Unsatisfactory
Physical Characteristics Subfactor	Satisfactory	Satisfactory	Good
Cabin Size*	Satisfactory	Excellent	Excellent
Force Protection*	Excellent**	Good**	Excellent
Survivability*	Satisfactory	Good	Good
Hoist	Satisfactory	Satisfactory	Satisfactory
Wire Strike Protection	Good	Satisfactory	Satisfactory
System Growth Potential	Unsatisfactory	Excellent**	Excellent
Nuclear Biological and Chemical Contamination Survivability	Satisfactory	Satisfactory	Satisfactory
Open Port and Pressure Refueling	Marginal	Marginal	Satisfactory
Human Factors Engineering	Good	Satisfactory	Satisfactory
Transportability	Satisfactory	Satisfactory	Satisfactory
Fire Suppression Bucket	Satisfactory	Satisfactory	Satisfactory
Crew Equipment Stowage	Satisfactory	Satisfactory	Good

Id., Slides 33-35, 53-55, 71-73.

The elements in the chart with a single asterisk (*) reflect the five mandatory elements; the other listed elements were tradable. The elements in the chart with double asterisks (**) reflect areas where the offeror's performance specification (which was required to be provided with the proposal) identified a lower performance capability than that reflected in the offeror's technical volume. Where the agency could ascertain from the technical volume, configuration list, SSPD, and other evaluation information that the aircraft would meet the higher performance attribute (as stated in the technical volume rather than the performance specification), the agency assigned the higher rating to the offeror's proposal. Contracting Officer's Statement in Response to AWI Protest (Aug. 31, 2006) at 3-4, 6; Tr. at 33, 144-45. The SSEB identified these areas to the SSA in the final evaluation briefing. Agency Hearing Book, exh. C, SSA Final Briefing, Slides 54-55; exh. D, Aircraft Characteristics Chart; Tr. at 286-87.

The P/M element ratings were reported as follows:

		MDHI	EADS	AWI
Producibility/Manufacturing (P/Mfg)		Marginal	Good	Good
Management		Marginal	Satisfactory	Satisfactory
	Program Management Approach	Satisfactory	Satisfactory	Satisfactory
	Configuration Management Approach	Unsatisfactory	Satisfactory	Satisfactory
	Quality Management Approach	Satisfactory	Satisfactory	Satisfactory
	System Safety Approach	Marginal	Satisfactory	Good
	Performance Specification & Configuration List	Marginal	Satisfactory	Marginal
	Subcontracting Plan/Small Business Utilization	Satisfactory	Satisfactory	Satisfactory
	Systems Engineering Approach	Satisfactory	Good	Good

Id., Slides 41-42, 60-61,78-79.

In addition to the briefing slides, the SSA was also provided with a detailed chart (prepared by the SSAC) that identified the SOW’s threshold requirements for each of the technical elements and each offeror’s proposed capability with regard to that element, as a means of comparing the offeror’s proposals to each other and to the SOW requirement. For example, under the endurance element, the threshold requirement was listed as “2.8 hours + 30 minute reserve” and the capability of the three proposals at issue in this protest were identified to be “1.9 [hours] + 30 [minutes]” for MDHI, “2.8 [hours] + 30 [minutes]” for EADS, and “3.64 [hours] + 30 [minutes]” for AWI. Agency Hearing Book, exh. D, Aircraft Characteristics Chart. Areas where an offeror’s proposal did not meet the capability were identified in red. The SSA was also provided with summary charts identifying key characteristics, or aircraft attributes, of each proposal and a list of airframe features. Id. The purpose of the charts was “to get a look behind the colors of all the different elements of what the SSA would be seeing.” Tr. at 194.

During the final briefing, the SSA “went through this chart meticulously to find out if there was value in those attributes above and beyond what’s listed on the chart.” Tr. at 119; see Tr. at 29. Where the SSA had questions about an aircraft’s capabilities or the value of the attributes in terms of the mission, he consulted the experts—that is, the “users,” factor leads, SSEB, and SSAC.¹¹ Tr. at 18, 27, 181. The factor leads also raised areas of concern with the SSA. Tr. at 244. At the conclusion of the

¹¹ For example, the SSA asked a number of questions about internal/external load, systems growth potential, and open port and pressure refueling (tradable elements where EADS’s aircraft was rated less than satisfactory) to make sure that EADS’s aircraft would nevertheless adequately meet the mission needs of the LUH users; the SSA found no basis not to select EADS’s proposal for award. Tr. at 25, 27, 79, 82, 87.

briefing, the SSA felt that he had a sufficient understanding of the offerors' proposals in terms of the LUH mission profile, and that he possessed adequate information to make an informed best-value decision. Tr. at 37-38.

C. Source Selection Decision

Based on the information provided to him and relying on the expertise of the factor leads, SSEB, SSAC, and aircraft "users," the SSA selected EADS for award.

With regard to MDHI's proposal, the SSA concurred that the proposed aircraft deserved only a marginal rating under the technical factor because it exceeded only two of the five required elements, exceeded threshold requirements for only four tradable elements, and did not meet threshold requirements for eight other tradable elements. The SSA also concurred that MDHI's proposal presented high risk under this factor because of "five incomplete FAA certifications and inadequate information to support proposed certification by first delivery," and because the proposal lacked information regarding radio certification. In addition, the SSA noted technical risk in MDHI's small cabin size, since it appeared that medical equipment stowage could interfere with litter loading. AR, DVD Tab 8, Source Selection Decision Document (SSDD), ¶ 10.

The SSA concurred with the marginal and high risk rating assessed to MDHI's proposal under the P/M factor, in part, because MDHI had not produced significant quantities of its aircraft since 2001, and because its proposed manufacturing plan and integrated master schedule were inconsistent and did not support the proposed production schedule. MDHI, like all the offerors, received a satisfactory and low risk rating under the logistics factor. Id.

The SSA also concurred with the moderate risk rating assessed to MDHI's proposal under the past performance factor. In the SSDD, the SSA discussed MDHI's past problems with financial and cost management that led to difficulties in meeting delivery schedules and problems with vendors, but also recognized that Patriarch Partners, LLC had acquired a controlling interest in MDHI in July 2005, and that this led to financial and management improvements.¹² The SSA specifically noted recent improvements with vendor relationships and customer service, but found that the lack of a strong vendor base provided moderate risk to successful completion of the LUH requirements. Id.

In sum, the SSA found MDHI's proposal did not present the "best value" to the government. Id.

¹² Patriarch manages the funds that hold majority ownership of MDHI. AR (Aug. 20, 2006), exh. G, Letter from MDHI to Army (Mar. 31, 2006) at 2, 10.

With regard to EADS's and AWI's proposals, the SSA noted that both were "mature, proven manufacturers, offering aircraft currently in production and providing convincing production planning information supporting their ability to produce aircraft at the rates desired by the Government." Id. ¶ 12. The SSA found little distinction between the proposals under the P/M factor; both received good ratings.¹³ As he noted, both offerors proposed to transfer production from Europe to the United States and presented "viable plans for these transfers and evidence of comparable experience in establishing new production lines" and, thus, both proposals were rated low risk under the P/M factor. Id.

The SSA found that the primary areas of distinction between AWI's and EADS's proposals were under the technical factor. Id. ¶ 15. Under this factor, the SSA recognized that AWI's proposal was superior to EADS's--EADS's proposal received a satisfactory rating whereas AWI's proposal received a good rating; both received a rating of low risk. The technical superiority of AWI's proposal was primarily due to the fact that the firm "is offering a larger aircraft that meets or exceeds more of the attribute thresholds than the aircraft offered by EADS." Id. ¶ 12. The SSA noted that both offers exceeded four of the five required elements, identified the elements in which AWI's proposal was rated superior to EADS's, and discussed the elements in which EADS's proposal did not meet the threshold requirements. The SSDD reflected that the SSA "considered the relative importance of these elements and whether or not the additional capability that [AWI's] aircraft would provide to the Army and the Army National Guard (ARNG) [was] worth the additional cost of this aircraft," and that he determined that "the additional capability of [AWI's] aircraft was not worth the additional approximately \$800 million in price."¹⁴ Id. ¶ 13.

In discussing some of the technical elements in the SSDD, specifically the elements where AWI's proposal was rated superior to EADS's,¹⁵ the SSA stated that he did "not see [a] significant benefit to the Government in paying a significantly higher price for an aircraft that exceeds these attributes over an aircraft that meets them." Id. ¶ 14.

¹³ Both proposals also received the same ratings under the logistics and past performance factors.

¹⁴ With regard to EADS's and AWI's proposed pricing, the SSA recognized that AWI offered a lower CLS price (approximately [REDACTED] lower) over the evaluated 20 years, and that the acquisition price for the aircraft was approximately [REDACTED] higher, which averaged to be approximately [REDACTED] more per aircraft. The SSA also recognized that AWI proposed higher prices for [REDACTED]. AR, DVD Tab 8, SSDD, ¶ 13.

¹⁵ The SSA identified these elements as intercommunications system, endurance, handling qualities, crew equipment, cruise airspeed, and force protection. AR, DVD Tab 8, SSDD, ¶ 14.

The SSA also considered the mission impact of three tradable elements where EADS failed to meet the requirements—CVR/FDR, internal/external load, and open port and pressure refueling. The SSA noted that the mission impact for failing to meet the CVR/FDR requirement was low because this was a future requirement and a “safety investigation issue (post accident),” not a “mission impact issue.” Id. The SSA also found that EADS’s failure to meet the internal/external load and open port and pressure refueling elements “would not hinder the ability of the EADS aircraft to perform the LUH mission.” Id.

The SSA concluded:

The technical differences between the [AWI and EADS] aircraft provide no convincing argument that purchasing the [AWI] aircraft at the significantly higher price would offer significantly greater benefit to the Army for the intended light utility mission than the lower priced, but technically satisfactory, aircraft offered by EADS.

Id. ¶ 15. The SSA selected EADS for award of the contract and these protests followed.

II. ANALYSIS

Both AWI and MDHI raise numerous challenges to the evaluation conducted under each of the evaluation factors and to the source selection decision. MDHI asserts that its proposal was rated too low under each of the factors, and AWI asserts that EADS’s proposal was rated too high or that AWI’s proposal was not rated high enough in comparison to EADS’s. AWI asserts that its and EADS’s proposals were rated unequally under the technical and P/M factors, specifically complaining about the evaluation of many of the technical factor elements. Both offerors challenge the agency’s assessment of EADS’s price. The protesters generally complain that the agency failed to follow the evaluation criteria, or miscalculated proposals against those criteria, and that the SSA’s source selection decision was flawed.

In reviewing protests against allegedly improper evaluations and source selection decisions, 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. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. A protester’s mere disagreement with the agency’s judgment does not establish that an evaluation was unreasonable. UNICCO Gov’t Servs., Inc., B-277658, Nov. 7, 1997, 97-2 CPD ¶ 134 at 7.

Based on our review of the extensive record provided in this case,¹⁶ we find that the agency's evaluation and source selection decision were reasonable. Although we have considered all of the protesters' numerous arguments, we discuss only some significant or representative examples below.

A. Technical Factor

1. AWI's Protest Grounds

AWI asserts that the agency overrated EADS's proposal under eight technical elements (performance, endurance, operational range, cruise airspeed, cabin size, systems growth potential, force protection, and human factor engineering),¹⁷ and treated AWI's and EADS's proposals unequally under four elements (performance, operational range, cabin size, and system growth potential) where the proposals both received excellent ratings, even though AWI assertedly offered superior capability.¹⁸ AWI's Comments (Sept. 6, 2006) at 48-65; AWI's Post-Hearing Comments at 38-46. AWI complains that the ratings assessed do not give proper "credit" to its "vastly superior technical solution."¹⁹ AWI's Comments (Aug. 31, 2006) at 24.

¹⁶ In addition to the detailed, voluminous record provided by the agency, the parties submitted numerous rounds of briefs discussing the protest issues. Our Office conducted a hearing, where we took the testimony of five witnesses, including the SSA and a member of the SSAC, who was the LUH project manager and an aviation expert and had extensive knowledge and expertise concerning the areas evaluated in the offerors' proposals, the LUH mission requirements, and the statement of work. The protesters and intervenor also employed experts to assist with the litigation and to present arguments in this protest. We have considered all of this information in rendering our decision.

¹⁷ AWI initially protested the evaluation of many more of the technical elements, but either withdrew its protest grounds or failed to rebut the agency's explanation of the evaluation. AWI also withdrew its protest ground that EADS's proposal did not meet the minimum requirements for the required elements of cabin size and force protection. Nevertheless, we have reviewed the evaluation of all of the elements and find it to be reasonable.

¹⁸ AWI similarly argues that its and EADS's proposals were treated unequally in the evaluation of endurance, internal/external load, cruise speed, and crew equipment. However, AWI's proposal received ratings superior to EADS's under each of these elements. This demonstrates that AWI's superiority under these elements was in fact recognized. Our review of the record shows the evaluation ratings of these elements to be fair and not unequal.

¹⁹ AWI also asserts that the agency "normalized" or "trivialized" AWI's technical superiority under nine technical elements (intercommunications system, endurance, (continued...)

With regard to the protester's challenges to the evaluation ratings in general, it is well established that ratings, be they numerical, adjectival or color, are merely guides for intelligent decision-making in the procurement process. Where the evaluation and source selection decision reasonably address the underlying bases for the ratings, including advantages and disadvantages associated with the specific content of competing proposals, in a manner that is fair and equitable and consistent with the terms of the solicitation, the protester's disagreement over the actual adjectival or color ratings is essentially inconsequential, in that it does not affect the reasonableness of the judgments made in the source selection decision. Cherry Road Techs.; Electronic Data Sys. Corp., B-296915 et al., Oct. 24, 2005, 2005 CPD ¶ 197 at 12-13.

As indicated above, the Army provided a voluminous and detailed record of its evaluation and source selection decision. As illustrated through the examples discussed below, this extensive analysis shows that the agency evaluated the relative merits of each aspect of the proposals, including essentially all of the examples cited by AWI, and assessed ratings in a fair and equitable manner, consistent with both the RFP and the rating definitions set forth in the SSP.²⁰ That is, consistent with section M-6, ¶ 2.3, the record confirms that the agency evaluated the technical attributes and capabilities of each offeror's aircraft in terms of whether the aircraft was "suitable for the LUH[']s intended mission roles." In applying the adjectival rating definitions, the agency similarly considered not only whether threshold requirements were met,

(...continued)

handling qualities, crew equipment stowage, cruise airspeed, force protection, CVR/FDR, internal/external load, and open port and pressure refueling). AWI's Post-Hearing Comments at 15-20. However, the record shows that the proposal superiority of AWI to EADS under these elements was recognized through the higher adjectival ratings that AWI's proposal received for each of the elements. Based on our review, we find no error in the evaluation of these elements, and we find that AWI's superiority was accounted for in the source selection.

²⁰ AWI protests that the ratings definitions stated in the SSP (specifically, the "objectives" or "stretch goals" associated with excellent ratings for each of the technical factor elements) constituted unstated criteria and established ceilings upon which AWI was not given credit for exceeding. AWI's Post-Hearing Comments at 46-48. We first note that agencies are not required to announce their rating definitions in the solicitation. D.N. Amer., Inc., B-292557, Sept. 25, 2003, 2003 CPD ¶ 188 at 6 n.6. In this case, the "objectives" articulated in the SSP for each of the evaluation elements under the technical factor bear a rational relationship to the RFP's announced evaluation criteria that proposals would be considered for suitability to the LUH mission. See RFP § M-6, ¶ 2.3. The record shows that the agency reasonably evaluated proposals consistent with the RFP and without establishing arbitrary "ceilings" as AWI suggests.

but also the extent to which capability above the SOW's stated threshold requirements would provide value to the LUH mission. The record shows that when an offeror's proposal reached the objective, or "stretch goal," the agency gave the proposal the highest possible rating.

The RFP did not require that proposals be given favorable consideration for each and every element exceeded, or suggest that the value to the agency of exceeding a requirement was limitless. In fact, the RFP identified five elements where proposals would not be given any favorable credit for exceeding the requirement and, as to the other elements, the RFP stated only that the agency "may" (not shall) more favorably consider proposed solutions that exceed the SOW. RFP § M-6, ¶ 2.3. This permissive language recognizes that each element was to be considered in terms of its suitability for the LUH mission. Id.

AWI's arguments essentially are that its aircraft can fly farther, faster, and can carry more people and more weight than EADS's aircraft; that this extra capability is "essential to mission success"; and that its proposal should have been recognized more favorably as a result. See, e.g., AWI's Comments (Sept. 6, 2006) at 65. During the hearing, as each of the elements was discussed, the witnesses repeatedly explained that the agency gave AWI's proposal "credit" for its superior capability, but found that this capability (which the agency acknowledged exceeded the "stretch goals" for several technical elements and was superior to the capability offered by EADS for several elements) did not justify paying an additional \$800 million because it did not provide significant additional value to the mission. As the agency witnesses explained in detail, larger efforts--such as the Hurricane Katrina response--would be accomplished by larger, heavier, faster aircraft such as the Blackhawk or Chinook. While the LUH could play a role in Katrina-type responses by providing a smaller, cheaper aircraft to provide "light general support" to near-range areas during disaster recovery missions (see SOW ¶ 1.2.), the agency did not intend that longer or larger rescue missions be performed by the LUH; rather, these longer, larger missions would continue to be performed by larger, more expensive aircraft with the suitable capabilities. Tr. at 31-32, 44-48, 201-03, 208, 246; Contracting Officer's Statement in Response to AWI Protest (Sept. 6, 2006) at 13. The intended goal of the RFP was to replace only the larger aircraft that are currently performing smaller missions because these larger aircraft have too much capability for the smaller missions and are thus more expensive to operate. SOW ¶ 1.2; Tr. at 114.

In sum, although AWI complains that it was not given "enough" credit for its superior capability, we find that the agency appropriately recognized and gave "credit" to the proposal in accordance with the RFP, and that these capabilities were appropriately taken into consideration in the best-value analysis. Based on the agency's reasonable discussion and assessment of relative advantages and disadvantages associated with the specific content of proposals, we find that AWI's disagreements with the actual ratings to be inconsequential, given that they do not affect the reasonableness of the judgments made in the source selection decision. See Cherry

Road Techs.; Electronic Data Sys. Corp., supra, at 12. We discuss several examples below.

a. Performance

With regard to the evaluation of the performance element, under which both AWI's and EADS's proposals were rated excellent, AWI asserts that proposals were rated unfairly and unequally and that EADS's proposal was overrated. The SOW threshold requirement for performance provided that

The LUH shall be able to hover out of ground effect (HOGE) under sea level standard day conditions (0' PA, 59°F) environment while in the MEDEVAC mission configuration with an internal mission load [of 1,304 pounds] . . .

SOW, annex A, ¶ A.2.2.1. The rating definitions for this element, as set forth in the SSP, provided that a proposal would receive a "satisfactory" rating for meeting this requirement, a "good" rating if the aircraft could HOGE with a load of greater than 1,484 pounds at the stated conditions, and an "excellent" rating if the aircraft could HOGE with a load of greater than 1,664 pounds at the stated conditions.²¹ Agency Hearing Book, exh. W, SSP, at 44. EADS exceeded the threshold by 477 pounds (the aircraft could load 1,781 pounds) and AWI exceeded the threshold by 1,511 pounds (the aircraft could load 2,815 pounds). Agency Hearing Book, exh. D, Aircraft Characteristics. Both proposals received excellent ratings for exceeding the objective.

In considering the value of AWI's superior proposal, the SSAC representative explained that capability above the "stretch goal" here "was not that important . . . [i]n terms of the LUH mission" because heavier load missions were not within the typical LUH mission profile and would be handled by other aircraft available to the Army. Tr. at 200-01. Thus, he concluded that the additional load that AWI's aircraft could carry was not worth the significantly higher price. Tr. at 113-16, 200, 234-35. The SSA was made aware of this difference in aircraft characteristics and concurred with the assessment of value. Agency Hearing Book, exh. D, Aircraft Characteristics; Tr. at 111-16. Based on our review, we find these conclusions to be fair and reasonable.

b. Operational Range

AWI also asserts that proposals were rated unfairly and unequally and that EADS's proposal was overrated under the operational range element, under which both

²¹ The excellent rating represented the agency's "objective," or "stretch goal," for this element.

proposals received excellent ratings. The SOW threshold for this element provided that the “LUH should have an operational range of a minimum of 217 Nautical Miles.” SOW, annex A, ¶ A.2.2.5. The rating definitions provided that a proposal would receive a “satisfactory” rating if the aircraft’s range capability was “217 through [less than] 239 nautical miles,” a “good” rating if the range capability was “239 through [less than] 261 nautical miles,” and an “excellent” rating if the range capability was “more than 261 nautical miles.” Agency Hearing Book, exh. W, SSP, at 46. EADS’s aircraft was evaluated as achieving a range of 303 nautical miles whereas AWI’s aircraft was evaluated as achieving a range of 460 nautical miles. Agency Hearing Book, exh. D, Aircraft Characteristics. Since both proposals exceeded the threshold by the “objective” or “stretch goal” amounts, both reasonably received an excellent rating.

In considering the value of AWI’s superior proposal, the SSAC representative explained that LUH missions are typically point-to-point missions that occur at close range, and that the LUH would not be expected to fly at long ranges. Since distances above the 261 nautical mile objective were not likely to be traveled in LUH missions, the additional distance that the AWI helicopter could travel (199 additional nautical miles) was not seen as having significant value to the agency. Tr. at 202-03, 263-65. Here too, the SSA was aware of the differences between the aircraft and concurred with the evaluators’ assessment of the value of AWI’s superiority under this element. Agency Hearing Book, exh. D, Aircraft Characteristics; Tr. at 117, 123. Based on our review, we find the agency’s conclusions reasonable and fair.

c. Cabin Size

AWI also asserts that the proposals were rated unfairly and unequally and that EADS’s proposal was overrated under the cabin size element, under which both proposals were rated excellent. The cabin size requirement is defined in two operational scenarios: standard mission configuration and MEDEVAC. Under the standard mission configuration, the threshold requirement was for the aircraft to hold six passenger seats and restraint systems. SOW, annex. A, ¶¶ A.1.1, A.2.3.1.2. The threshold requirement for the MEDEVAC requirement was for the aircraft to have sufficient space to accommodate two NATO standard litters. *Id.* ¶ A.2.3.1.1. The rating definitions provided that a proposal would receive a “satisfactory” rating if it met the threshold requirements, and a “good” rating if it met the requirements and “either accommodates an additional NATO standard litter (total of three) or seats seven when not in the MEDEVAC configuration.” A proposal would receive a rating of “excellent,” if it met the requirements and “either accommodates two or more additional NATO standard litters (total of four or more) or seats eight or more when not in the MEDEVAC configuration.” Agency Hearing Book, exh. W, SSP, at 49.

EADS’s cabin could accommodate 9 seats or two litters; AWI’s cabin could accommodate 12 seats or two litters. Agency Hearing Book, exh. D, Aircraft

Characteristics. Both EADS's and AWI's proposals were reasonably given an excellent rating for exceeding the objective.

Here, again, the agency recognized the differences in cabin size, but determined that the extra size available in AWI's aircraft did not provide a significant value to the agency to justify award at the higher price. As the SSAC representative explained, the LUH mission requirements were to carry two MEDEVAC patients, a medical attendant, and the aircraft crew--this would be four to six persons. Offering 9 seats (like EADS) or 12 seats (like AWI) was still far in excess of what the Army expected would be necessary to perform LUH missions. Tr. at 214-15. The LUH mission was not to perform large scale rescue operations, where a larger cabin size might be important. Tr. at 215. Considering the LUH mission, the evaluators determined that the extra capacity offered by the AWI aircraft provided little value to the agency. Tr. at 214-15; Contracting Officer's Statement in Response to AWI Protest (Sept. 6, 2006) at 6-7. We find this conclusion, and the ratings assigned, to be fair and reasonable.

d. Endurance

AWI asserts that EADS's proposal, which was rated satisfactory, was overrated under the endurance element. The SOW provided that

The LUH should have an endurance capability of at least 2.8 hours of operation (plus 30-minutes of fuel reserve) without refueling or the use of auxiliary fuel. This attribute must be attainable in the standard mission configuration . . . The endurance scenario is described as:
(a) Two minutes of engine warm-up at Maximum Continuous Power (MCP); (b) Flight of 2.8 hours consisting of (i) a takeoff at sea level and climb to 4,000 feet, (ii) cruise for best endurance power setting/speed, and (iii) a descent to landing.

SOW, annex. A, ¶ A.2.2.2. The rating definitions for endurance provided that a proposal would receive a "satisfactory" rating for meeting this requirement, a "good" rating for having an endurance capability of "more than 3.5 [hours] through [less than] 3.8 hours" in the stated operational conditions, and an "excellent" rating for having an endurance capability of "[greater than or equal to] 3.8 hours." Agency Hearing Book, exh. W, SSP, at 44-45. EADS's aircraft was found to have "2.8 [hours] + 30 [minutes]" of endurance capability and was rated satisfactory, while AWI's aircraft was found to have "3.64 [hours] + 30 [minutes]" of endurance capability and was rated excellent.²² Agency Hearing Book, exh. D, Aircraft Characteristics.

²² The record does not explain why AWI's proposal received an excellent rating under this element, given that the aircraft apparently did not meet the 3.8-hour objective requirement necessary to receive an excellent rating.

As the record shows, AWI's proposal received a higher rating than did EADS's under this element in recognition of the superior capability of AWI's aircraft. In terms of value to the agency, the SSA noted that

from a mission standpoint and talking to some pilots, nobody barely uses the 2.8 [hours] . . . So 2.8 [hours] is really overkill when it comes to actually conducting the mission. So 3.6 [hours] would be something that we would probably never get to or never have to use or take advantage of.

Tr. at 69; see Tr. at 217-19. Given the RFP's description of the LUH mission to provide "light general support" and other services (SOW ¶ 1.2) that, according to the agency, will not likely require a flight time of longer than 2.8 hours, we find no error in the agency's determination that the additional value offered by AWI's aircraft was not significant.

AWI asserts, however, that EADS's aircraft does not meet the tradable endurance threshold requirement and should not have been rated satisfactory. In the initial evaluation, the SSEB gave EADS's proposal a "marginal" rating under this element because EADS's aircraft was found to be 7.5 minutes short of meeting the endurance requirement. In this regard, the SSEB noted that when sufficient fuel was loaded into the aircraft for EADS to both perform the pre-flight warm-up and to fly 2.8 hours (plus 30 minutes of fuel reserve), the total weight of EADS aircraft exceeded its "maximum takeoff weight" (MTOW).²³ Because an aircraft is not permitted to fly when its weight exceeds its MTOW, the SSEB concluded that EADS would have to reduce its fuel weight, meaning that with less fuel the aircraft could not fly as long. AWI Hearing Book, exh. 11, SSEB Initial Report, EADS's Endurance Element Rollup, at 17.

This issue was raised with EADS during discussions. AR, DVD Tab 29.1, EADS's EOC No. 38. In response, EADS made a few small equipment changes to its aircraft that slightly reduced its MTOW, and quoted in its FPR a statement from the FAA that

Under the conditions you describe (aircraft will not be lift-off until the total mass is equal to/less than the certified maximum take-off mass), it would be permissible to perform engine start-up and system/preflight checks at a higher mass. I concur with your assessment of the [Federal Aviation Regulation Part] 29 requirements for maximum weight, as it applies to [EADS's proposed aircraft].

²³ The MTOW is the maximum weight, as certified by the FAA, that an aircraft can weigh when it lifts off from the ground.

EADS's Comments in Response to AWI Protest (Aug. 31, 2006), exh. 4, EADS FPR, Technical Volume, at III-50. Based in part on this FAA statement, the agency agreed that EADS could load its aircraft with fuel in excess of its MTOW to perform its on-the-ground warm-up, so long as this excess fuel was burned off before takeoff.²⁴ When considered in this manner, the fuel available at takeoff was sufficient to meet the endurance requirement and EADS's proposal rating was changed to satisfactory. Id., exh. 6, SSEB Final Report, EADS Technical Evaluator Comments, at 12; AWI Hearing Book, exh. 15, SSEB Final Report, EADS Endurance Element Rollup, at 17.

AWI complains that the agency "waived" a requirement of the solicitation by allowing EADS to burn off warm-up fuel on the ground prior to take off in order to satisfy the endurance element. It argues that the plain meaning of the "endurance scenario" in the SOW is that the MTOW must be calculated to include both the 2.8 flight hours (plus 30 minutes of fuel reserve) and 2 minutes of engine warm-up at MCP. (MCP is the maximum power an aircraft can achieve.) According to AWI, if warm-up is performed at MCP, the aircraft will necessarily become airborne, so the weight of the warm-up fuel must be included in computing the MTOW that will be used in determining whether the aircraft meets the endurance requirement. Declaration of AWI's Expert (Aug. 31, 2006) ¶¶ 9-10.

The agency explains that warm-up is never conducted at MCP; to do so may result in an aircraft becoming airborne before the aviator could conduct the necessary on-the-ground pre-flight checks, which would be unsafe. Declaration of Performance Subfactor Lead (Sept. 15, 2006) ¶ 3. According to the performance subfactor lead, the warm-up scenario, specifically the reference to 2 minutes at MCP, is merely an "analytical tool" that provides a "standardized method for analysis/planning purposes to estimate how much fuel would be burned during the normal time that the aircraft spends on the ground, prior to takeoff, while the pilots execute all of the preflight checks." Id. The subfactor lead notes that nothing in the RFP even speaks to, much less prohibits, warm-up fuel being burned off before takeoff. Id. ¶ 5.

We agree with the agency's interpretation of the solicitation and the application of warm-up fuel to the evaluation of EADS's endurance capability. The plain language

²⁴ AWI contends that the agency did not have a reasonable basis for relying on the FAA statement quoted in EADS proposal and that the agency should have considered the lack of formal FAA "certification" as a risk in EADS proposal. AWI's Post-Hearing Comments at 35-37. However, AWI has not demonstrated that FAA certification on this point was required or that the agency's reliance on the FAA statement, which is consistent with common aviation practice, was unreasonable. Furthermore, the FAA representatives on the evaluation teams, who were tasked with identifying FAA certification issues, did not identify this as an area of concern. Tr. at 475.

of the SOW, in our view, is only that the offeror's LUH must have an "endurance capability of at least 2.8 hours (plus 30-minutes of fuel reserve)." This capability requirement does not prohibit warm-up fuel, as mentioned in the endurance scenario, from being burned off on the ground prior to takeoff. To conclude otherwise would be to require an aircraft to perform its warm-up while in the air, which would be at odds with the normal practice of pilots performing pre-flight checks on the ground before liftoff. The more reasonable interpretation of the SOW, in our view, is that the endurance scenario is a guide for estimating how much fuel will be burned off during warm-up and, while the aircraft must have the capacity to hold this extra fuel, it may be burned off prior to takeoff in order to not exceed the MTOW at lift-off.

The agency witnesses and an aviation expert have explained that it is common practice to use a "standard metric" to estimate warm-up fuel, and that most aircraft load extra fuel into their aircraft to burn off during warm-up. Tr. at 225, 300; Declaration of Performance Subfactor Lead (Sept. 15, 2006), ¶¶ 3, 5. Indeed, as noted by EADS, AWI's flight manual recognizes the propriety of filling the fuel tank beyond the MTOW in recognition that the excess fuel will be burned prior to takeoff. See EADS's Comments in Response to AWI Protest (Aug. 31, 2006) at 21; exh. 16, AWI Rotorcraft Flight Manual, at 1-2. Furthermore, the FAA statement to EADS appears to concur that this is an acceptable practice. Based on this record, we find that the agency reasonably concluded that EADS's aircraft met the endurance requirement.²⁵

e. Performance Specification

AWI (and MDHI) complain that EADS's proposal was rated too high under the performance, operational range, cruise airspeed, force protection, and system growth potential elements. Under these elements, EADS's technical proposal described capabilities that exceeded the SOW requirements, although the proposal's performance specification only represented that EADS's aircraft would meet the SOW requirements for these elements. The agency evaluated the proposal using the higher capabilities offered in the technical volume, rather than the lower capabilities offered in the performance specification. The protesters contend that EADS's proposal should have been given the lower ratings associated with the performance specification.

²⁵ AWI also argues that offerors were treated unequally under this scenario because EADS was allowed to "exclude" warm-up fuel from the applicable calculations and the other offerors were not. However, as the agency explains, the warm-up fuel was accounted for in evaluating every offeror's endurance calculations. Tr. at 442; Declaration of Performance Subfactor Lead (Sept. 15, 2006) ¶ 4.

The RFP required, among other things, that offerors include in their proposals a “performance specification” and a “configuration list,” which together were to be evaluated as an element under the management subfactor of the P/M factor. Section L of the solicitation provided that the performance specification “shall be based on the attributes delineated in Annex A [of the SOW] and shall replace Annex A upon contract award.” RFP § L-23, ¶ 2.5.2.5; *see id.* § C-1 (performance specification and configuration list “will be incorporated into the contract as one of the pertinent attachments”). Although EADS’s performance specification recited the Annex A requirements for the elements in question, the firm’s technical volume, configuration list, and the performance of its aircraft during the SSPD all demonstrated to the agency that the offered aircraft exceeded these attributes. Contracting Officer’s Statement in Response to AWI Protest (Aug. 31, 2006) at 3-4, 6. Since the entirety of the proposal was incorporated into the contract (not just the performance specification),²⁶ the agency concluded that EADS would be bound to the higher performance offered in its proposal and therefore evaluated the proposal using the higher attributes. Tr. at 147-48.

The crux of AWI’s argument is that because the performance specification takes precedence over the other areas of the proposal, it therefore should have been controlling in the evaluation. We disagree. The order of precedence clause included in the RFP provided that

In the event of a conflict between the Statement of Work (SOW) and the contractor[']s proposed approach (having been incorporated as a part of the contract), performance of the requirement(s) in the SOW shall have ultimate priority. However, the contractor is not relieved of fulfilling its obligation and adhering to the incorporated approach unless such adherence would result in the failure to accomplish a requirement of the SOW. . .

RFP § H-4 (emphasis added). Thus, since the contract incorporates EADS’s proposal, we think that EADS has agreed to be bound to perform at the higher levels promised in the proposal, even though its performance specification recited the lower levels stated in the SOW.

AWI also argues that the disparity between the performance specification and technical proposal poses performance risk. In this regard, the agency recognized that there could be some contract risk if EADS were to assert that it was only bound by the performance specification, but found this risk to be low. Since the technical

²⁶ Because the agency incorporated EADS’s entire proposal into the contract, not just the performance specification, thereby binding EADS to perform in accordance with all aspects of its proposal, AWI’s argument that the technical proposal is only “non-binding” “marketing materials” and “fluffery” is unpersuasive.

proposal had been incorporated into the contract, and since EADS's FAA certification was based on the higher capabilities described in the proposal and not the lower performing capabilities outlined in the performance specification, the agency believed that the risk of EADS providing a lower performing aircraft was low. Contracting Officer's Statement in Response to AWI Protest (Aug. 31, 2006) at 6-8. The SSA was briefed on the disparities between the proposal and performance specification, as well as the accompanying proposal risk, and concurred with the evaluators' conclusions. Agency Hearing Book, exh. C, SSA Final Briefing Slides 54, 55; exh. D, Aircraft Characteristics Chart; Tr. at 165-67, 286-87. Based on our review, we find no error in the agency's evaluation.

f. Technical Risk

AWI also asserts that EADS's aircraft poses technical risk that was not reflected in the agency's low risk rating. It asserts that EADS's aircraft failed to meet the internal/external load requirement and other "important attributes" (discussed below) that will cause "degraded performance," that the EADS's aircraft is "old" and is based on 35-year old legacy technology, and that the aircraft has recently crashed twice. AWI Protest (July 24, 2006) at 69-70.

As noted by AWI, EADS failed to meet the threshold requirements for internal/external load, CVR/FDR, operational environment, and startup timeline.²⁷ All four of these elements were "tradable" elements, meaning that a proposal could still be considered for award if rated unsatisfactory under the elements. We note that CVR/FDR, operational environment, and startup timeline were the least important elements under two of the technical subfactors, which was consistent with the agency's view of the relative lack of importance of these elements in terms of the mission. For example, the SSA viewed CVR/FDR (which is what laymen refer to as the "black box" or recorder) as a "future requirement" with no mission impact; its purpose is only to record data for post-accident investigations. Tr. at 78; AR, DVD Tab 8, SSDD, ¶ 14.

With regard to the internal/external load element, where AWI received a good rating in contrast to EADS's unacceptable rating, the SOW required that the proposed aircraft have the capability to HOGE "in a high/hot (4,000' pressure altitude/95° Fahrenheit) environment" with an internal mission load of 1,250 pounds and an external mission load of 2,200 pounds. SOW, annex. A, ¶¶ A.2.2.3.1, A.2.2.3.2. The agency notes that all offerors' aircraft, with the exception of AWI's significantly larger aircraft, failed this attribute.²⁸ The SSA determined (after consulting with the

²⁷ AWI's proposal was similarly rated unsatisfactory under the operational environment and startup timeline elements.

²⁸ Although EADS's aircraft has an internal or external load capability of 1,107 pounds, AWI's aircraft has a capability of 2,442 pounds. AR, DVD Tab 8, SSDD, ¶ 14.

“users”) that EADS’s failure to meet the internal/external load requirement had only a “low” mission impact on the agency. Tr. at 78-82, 177. As the SSA discussed in his SSDD:

Lesser or greater internal/external load capabilities have relatively little impact on any of the[] core missions, e.g. either [AWI’s or EADS’s] aircraft is fully capable of meeting MEDEVAC mission requirements (2 litter patients and crew members), and lifting and hoisting of injured/rescued personnel is well within the capability of either aircraft. General support missions will make tradeoffs between fuel and cargo, so the mission impact of not meeting the internal/external load attribute is low.

AR, DVD Tab 8, SSDD, ¶ 14. While the additional capability of AWI’s aircraft under this element was recognized by the SSA as a “desirable attribute,” the SSA determined that the fact that EADS “does not meet [this] tradable attribute[] would not hinder the ability of the EADS aircraft to perform the LUH mission.” Id. Moreover, it was found that the extra weight and distance that AWI’s aircraft could travel did not provide significant value to the agency in terms of the mission intended for LUH aircraft. Contracting Officer’s Statement in Response to AWI Protest (Aug. 18, 2006) at 46-47; Tr. at 213-14.

In sum, we find no error in the agency’s evaluation of technical risk based on EADS’s unsatisfactory ratings for these tradable elements, or in the evaluation of AWI’s superiority under these elements, given that the impact to the mission was reasonably determined to be low.

We also find no merit to AWI’s argument that the age of EADS’s aircraft poses increased risk to performance. As explained by the intervenor, the aircraft offered by EADS (the EC/UH-145) is the marketing name for the BK 117 C2,

which is the latest in the line of the BK 117 aircraft. Although the history of the BK 117 dates back 27 years, the aircraft has evolved and modernized to meet current regulations and incorporate the latest technologies. The UH-145 has been available in the US commercial market for only 3 years. EADS delivered [the] first UH-145 in France in 2002. While the UH-145 has its roots in the BK 117, its front end comprises new avionics and composites, as well as new blades. . . [T]he UH-145 is a modern aircraft, with a state-of-the-art hingeless main rotor system, lightweight and crashworthy composite airframe, advanced avionics and a low-workload integrated cockpit.

EADS’s Comments in Response to AWI Protest (Aug. 31, 2006) at 26-27. AWI has not provided any probative evidence showing that EADS’s aircraft is “old” or based on

legacy technology that poses a risk to aircraft performance as claimed.²⁹

With regard to EADS's aircraft crash history, AWI cites to a media report that the EADS helicopter crashed on two occasions in the Pyrenees in France. This information did not come to the agency's attention until June 21, 2006, after receipt of FPRs. The government conducted an investigation, and an internal review was performed by the LUH project manager. Shortly after the article was published, an announcement was made by French aviation officials withdrawing plans to impose restrictions, because the crashes were found to have been caused by the "extreme conditions involved in alpine search and rescue" and not due to problems with the EADS aircraft. Declaration of LUH Project Manager (Aug. 18, 2006) ¶ 2. As part of its investigation, the agency queried the FAA regarding these incidents and found that the FAA was not aware of any restrictions or limitations currently or previously placed on this aircraft. *Id.*; Contracting Officer's Statement in Response to AWI Protest (Aug. 18, 2006) at 54. In light of the agency's thorough investigation, and the findings that the crashes were due to weather conditions and not aircraft malfunction, we find no basis to challenge the agency's conclusion that the EADS's aircraft presented low technical risk.

2. MDHI's Protest Grounds

MDHI primarily challenges the evaluation of its own proposal under the technical factor, where MDHI received a marginal and high risk rating, contending that the rating does not accurately reflect the merits of MDHI's proposal. It asserts that the assessment of "deficiencies" under tradable requirements deviates from the RFP evaluation scheme, because it rendered MDHI's proposal ineligible for award and treated non-mandatory elements as "mission essential mandatory requirements." MDHI's Comments (Aug. 31, 2006) at 17-18. Seemingly inconsistent with that argument, MDHI also contends that the rating assessments do not take into account "mission criticality" of any of the failed attributes. MDHI's Comments (Sept. 6, 2006) at 2. MDHI also complains that its proposal deficiencies were considered more significant than the same deficiencies in EADS's proposal, thus demonstrating unequal treatment.

With regard to MDHI's general complaint about the use of the term "deficiency," the record shows that the agency explained to offerors how proposals would be evaluated and how the agency would use the term "deficiency" in the evaluation. As offerors were advised, deficiencies would be assessed for failing to meet a requirement, but a deficiency under a "mandatory" requirement would preclude award, whereas a deficiency under a "tradable" requirement would not. AR

²⁹ For the same reasons, we find no merit to AWT's contentions that the age of EADS's aircraft also should have resulted in lower adjectival and higher risk ratings under the P/M and logistics evaluation factors.

(Aug. 20, 2006), exh. L, MDHI Discussion Slides, at 9. As indicated above, under the tradable elements, a deficiency, or “[f]ailure to meet a threshold requirement[,] . . . was captured in the adjectival rating for that element, considered in the subfactor rollup, and ultimately considered in the best value decision.” Contracting Officer’s Statement in Response to MDHI Protest (Aug. 31, 2006) at 6. The use of the term “deficiency” was applied in the same manner to all offeror’s proposals, as were the rating definitions set forth in the SSP.³⁰

Consistent with these definitions, MDHI’s technical proposal received a satisfactory or better rating under each of the five mandatory requirements; seven unsatisfactory ratings under the tradable technical elements of CVR/FDR, endurance, internal/external load, cruise airspeed, operational environment, startup timeline, and system growth potential; and a marginal rating for the open port and pressure refueling tradable element. In contrast, EADS’s and AWI’s proposals received fewer unsatisfactory ratings, and higher ratings under many of the elements, including a number of excellent ratings. Therefore, the overall technical rating of MDHI’s proposal was significantly inferior to the ratings of both EADS’s and AWI’s proposals. The record shows that the SSA properly took into account the significance of these ratings in terms of their impact on the suitability of MDHI’s aircraft for the LUH mission, and reasonably considered this information in concluding that MDHI’s technically inferior proposal with a price that was \$400 million higher than EADS’s price did not offer the best value to the government. AR, DVD Tab 8, SSDD, ¶ 4.

Although MDHI challenges the assessment of specific deficiencies, weaknesses, and ratings under several of the technical elements, we have reviewed the record and find that the agency properly evaluated MDHI’s proposal in accordance with the RFP in a fair and reasonable manner. Contrary to MDHI’s complaints, the record is replete with evidence that the agency took into account “mission criticality” or utility when assessing evaluation ratings. We also find no merit to MDHI’s contention that the agency was too harsh in its criticisms of MDHI’s proposal, or that there was unequal treatment, in the evaluation of various elements of the technical factor. We discuss a few representative examples of MDHI’s challenges to the evaluation below.

³⁰ MDHI also complains that the use of the term “deficiency” for evaluating tradable elements violates the Federal Acquisition Regulation (FAR) because the FAR specifically notes that deficiencies refer to “material failures,” which render a proposal unacceptable and thus ineligible for award. See FAR § 15.001. Clearly, the agency intended a generic use of the word deficiency here.

a. Internal/External Load

MDHI contends that its proposal was misevaluated under the internal/external load element. As indicated above, the SOW required that the proposed aircraft have the capability to HOGE with an internal mission load of 1,250 pounds and an external mission load of 2,200 pounds. SOW, annex. A, ¶¶ A.2.2.3.1, A.2.2.3.2. MDHI's proposed aircraft had an internal and external load of 942 pounds,³¹ and EADS's aircraft had an internal and external load of 1,107 pounds. Agency Hearing Book, exh. D, Aircraft Characteristics Chart. Thus, both MDHI's and EADS's proposals were rated unsatisfactory for the internal/external load element. However, MDHI's proposal received a marginal rating for the performance subfactor (under which internal/external load was evaluated), while EADS's proposal received a satisfactory rating. Agency Hearing Book, exh. C, SSA Final Briefing, Slides 34, 54.

MDHI complains that the agency gave too much weight to the internal/external load failure in evaluating MDHI's proposal in contrast to EADS's proposal, considering that the agency found the failure not to be mission critical for EADS. However, as the record shows, MDHI's lower performance subfactor rating (and overall technical factor rating) was not due to a difference in treatment of the proposals under the internal/external load element. Rather, MDHI's lower rating was due to the fact that MDHI's proposal also received four additional unsatisfactory ratings (two more than EADS), and was rated inferior to EADS's proposal under four of the ten elements that were evaluated under this subfactor. While it is true that mission suitability was expressly discussed in the SSDD as to why EADS's unacceptable rating for this tradable element was not critical, AR, DVD Tab 8, SSDD, ¶ 14, this discussion only addressed EADS's proposal because EADS was in line for award and MDHI's significantly inferior and higher-priced proposal was not.

b. Open Port and Pressure Refueling

MDHI complains that its proposal was unfairly evaluated under the open port and pressure refueling element. The SOW required that "[t]he LUH should be capable of being refueled using standard commercial pressure systems" and that the "LUH should also be capable of being refueled using open port refuel systems." SOW, annex. A, ¶ A.2.3.8. The SSP provided that a proposal would receive a "marginal" rating if the aircraft could be refueled by either commercial pressure systems or open port refuel systems. Agency Hearing exh. W, SSP, at 52. Neither MDHI's nor

³¹ Although MDHI asserted that its aircraft could achieve a higher internal load of 1,019 pounds and a higher external load of 1,419 pounds, the agency found that this greater load capability could only be achieved by reducing both the endurance fuel capability and altitude/temperature conditions specified in the SOW. Contracting Officer's Statement in Response to MDHI Protest (Aug. 18, 2006) at 24.

EADS's aircraft could be refueled using an open port system, so both proposals were rated "marginal" for this element.

Again, MDHI asserts that the agency was willing to tradeoff this requirement only for EADS and not MDHI, thus treating the requirement as mission critical only for MDHI's aircraft. MDHI's Comments (Sept. 8, 2006) at 7. However, the record does not support MDHI's contention. In fact, both proposals received a "satisfactory" rating under the physical characteristics subfactor (under which this element was evaluated) based upon a reasonable roll-up of the ratings of all of the elements, and there is no evidence that the agency considered the mission criticality of these offerors' failures to meet this requirement differently. Although here, too, mission criticality was discussed in the SSDD with regard to EADS's unacceptable rating for this tradable element,³² but was not discussed with regard MDHI's unacceptable rating, AR, DVD Tab 8, SSDD, ¶ 14, this discussion only addressed EADS's proposal because EADS was in line for award and MDHI's significantly inferior and higher-priced proposal was not.

c. CVR/FDR

MDHI contends that its proposal was misevaluated under the CVR/FDR element. The SOW required that "[t]he LUH should have a digital [CVR] and digital [FDR] that satisfies the requirement of Title 14 CFR Part 27 . . . and/or Part 29" SOW, annex A, ¶ A.2.1.6. Both MDHI's and EADS's proposals were rated unsatisfactory under the CVR/FDR element because neither offeror included with its aircraft a compliant CVR/FDR.

MDHI argues that its proposal was superior to EADS's proposal under this element because MDHI's aircraft assertedly provided some limited data recording capability and EADS's aircraft did not. However, the agency advised MDHI during discussions that this approach did not meet the SOW requirements and MDHI elected not to make any changes in its FPR. AR (Aug. 20, 2006), exh. N, MDHI Discussions Recap, at 6. In contrast, as MDHI admits, EADS offered to provide a CVR/FDR that met the requirements of the SOW as a separately priced option to the contract. MDHI's Comments (Aug. 31, 2006) at 18. Thus, while neither firm met the requirement of this element as part of its base contract, EADS at least provided an option that met the requirement. However, the agency reasonably rated both proposals unsatisfactory for not meeting the requirement as part of the base contract.

³² The SSA found that EADS's failure under the open port and pressure refueling element caused "moderate" "mission impact" that ultimately did not affect the source selection in view of the other factors involved in the decision. AR, DVD Tab 8, SSDD, ¶ 14. As he stated in the SSDD, EADS's failure to meet this tradable attribute "would not hinder the ability of the EADS aircraft to perform the LUH mission." Id.

MDHI again complains that the agency found EADS's failure to provide a CVR/FDR to have a low mission impact, but did not make a similar finding with regard to MDHI. Contrary to MDHI's argument, the record does not show that MDHI's failure under this element was a significant reason why it received an overall marginal technical rating. Both MDHI's and EADS's proposals received acceptable ratings under the avionics/electronics subfactor despite the unacceptable rating under the CVR/FDR element, and while the SSDD discussed mission criticality only in connection with EADS's proposal for this element, AR, DVD Tab 6, SSDD, ¶ 14, this discussion occurred because EADS, and not MDHI, was in line for award.

d. Technical Risk

MDHI challenges the agency's rating of MDHI's proposal as "high" risk under the technical factor. It complains that the agency's risk assessment is "based on wholly insubstantial or trivial grounds" and that the agency failed to consider MDHI's risk mitigation strategies. MDHI Protest (July 14, 2006) at 15.

As the agency explains, MDHI's risk rating was due to a number of issues, none of which singularly drove the high risk rating, but all of which, when combined, posed a significant risk to performance. Contracting Officer's Statement in Response to MDHI Protest (Aug. 18, 2006) at 29-32; Contracting Officer's Statement in Response to MDHI Protest (Aug. 31, 2006) at 6. For example, the agency found, among other things, that MDHI's aircraft lacked five FAA certifications,³³ its radios were not certified, the antenna configuration was not specified, there existed image intensification compatibility issues, and there were concerns whether the aircraft cabin size was sufficient to stow both medical equipment and the patient litter. Agency Hearing Book, exh. C, SSA Final Briefing, Slide 36; Contracting Officer's Statement in Response to MDHI Protest (Aug. 18, 2006) at 29-32. MDHI disagrees with the agency's assessment that any or all of these issues posed technical risk. For example, MDHI asserts that its proposal was unfairly "downgraded" for lacking FAA certifications, while EADS's proposal was not similarly criticized. However, the record shows meaningful differences between the two proposals in this respect. Whereas MDHI lacked five FAA certifications, EADS lacked only two, and EADS had provided the agency with detailed plans and schedules for these certifications that demonstrated to the agency that EADS would be able to obtain the certifications by the first aircraft delivery date, as was required by the RFP. See MDHI's Comments (Sept. 8, 2006), exh. 5, SSEB Final Report, EADS Technical Factor Rollup, at 2. In contrast, the agency, in consultation with the FAA advisor on the SSEB,

³³ The five missing certifications for MDHI's proposal were: "dual pilot [Instrument Flight Rules], Chelton [Electronic Flight Instrument System]," "cruise airspeed at 6,500 pounds," "dual pivoting litter lift system," "engine inlet barrier filter," and "pressure refuel capability." Agency Hearing Book, exh. C, SSA Final Briefing, Slide 36.

concluded that the larger number of certification issues pending for MDHI's aircraft posed a risk that MDHI would be unable to obtain all of the certifications by first delivery. Contracting Officer's Statement in Response to MDHI Protest (Aug. 18, 2006) at 30. Although MDHI now claims it is "on the verge of certification" and that "all that was required was submittal to the FAA," MDHI Protest (July 14, 2006) at 16, the FAA certification issue was raised with MDHI during discussions and MDHI did not respond in a way that alleviated the agency's concern. See Contracting Officer's Statement in Response to MDHI Protest (Aug. 18, 2006) at 30-31. Based on this record, we find that the agency's concern of increased risk because of the lack of five FAA certifications was reasonable and did not represent unfair or unequal evaluation.

MDHI also challenges the agency's assessment of risk with regard to the image intensification compatibility element, contending that it adequately mitigated the risk in its FPR. The SOW for the image intensification compatibility element required that "[t]he LUH aircraft, cabin, and cockpit lighting and displays/consoles should be Class A compatible with image intensification devices and systems (Night Vision Goggles)." SOW, annex. A, ¶ A.2.1.3. During the SSPD, the agency identified several issues of compatibility and raised these with MDHI during discussions. Although the agency reports that MDHI responded in its FPR that it could "apply fixes and deliver a [Night Vision Goggle] compatible aircraft for production," the agency found that MDHI did not provide sufficient information to demonstrate that the firm could achieve the required compatibility by first production. AR (Aug. 31, 2006), exh. F, SSEB Final Report, MDHI Avionics/Electronics Subfactor Rollup, at 2. Therefore, after considering MDHI's FPR response, the agency determined that "it is likely that some impact to program schedule will occur" to resolve the compatibility issues.³⁴ Id.; exh. G, MDHI Image Intensification Capability Element Rollup, at 1. Based on our review of the record, we find the agency's judgment reasonable.

In sum, the record shows that the agency reasonably evaluated the myriad of issues that collectively resulted in MDHI's "high" risk rating. Although MDHI disagrees with this assessment, it has not shown it to be unreasonable.

³⁴ MDHI also asserts that the risk assessment is inconsistent with the "satisfactory" rating that MDHI's proposal received under the image intensification compatibility tradable element. The agency explains that while MDHI's proposed "fixes" could result in compatibility (and thus the proposal was rated satisfactory), there was some risk that compatibility would not be achieved by first delivery. Contracting Officer's Statement in Response to MDHI Protest (Aug. 31, 2006) at 6-7; Contracting Officer's Statement in Response to MDHI Protest (Aug. 18, 2006) at 31. We find no error, or inconsistency, in this reasoning.

B. P/M Factor

Under the P/M factor, the agency rated AWI's and EADS's proposals as good with low risk, and MDHI's proposal as marginal with high risk. The protesters complain that their proposals were rated too low and that EADS's proposal was rated too high.³⁵

As noted above, the RFP provided that P/M would be evaluated under two subfactors. The P/Mfg subfactor was to be evaluated for the "extent to which the proposed approach demonstrates an adequate and reasonable methodology for achieving the production rate capacity." RFP § M-6, ¶ 2.4.1. Elements within the management subfactor were to be evaluated on the basis of "thoroughness, completeness, and adequacy." RFP § M-6, ¶¶ 2.4.2.1-2.4.2.4.

Based on his review, the SSA found AWI's and EADS's proposals to be "fairly comparable" under the P/M subfactor. Tr. at 130. Both proposals offered a number of strengths that provided similar benefits to the agency. For example, both were found to be "mature, proven manufacturer(s)," to have had similar production rates, and to have currently manufactured aircraft overseas. Both proposed to transfer production to a United States facility--AWI to an established facility in Texas and EADS to a facility in Mississippi. Agency Hearing Book, exh. C, SSA Final Briefing, Slides 59, 77. The agency found that both transfers provided some, albeit low, risk to the agency. *Id.*, Slides 62, 80; Contracting Officer's Statement (Aug. 18, 2006) at 20, 55. There were some differences in noted strengths and risks, including slight differences in the risk associated with transferring facilities. In total, however, the SSA determined these differences to be "a wash." Tr. at 137-38; *see* Tr. at 282, 289.

With regard to MDHI's proposal, the agency was concerned that MDHI would only be able to meet the government's minimum quantities, that its production plan and integrated master schedule were inconsistent and did not support the proposal's proposed schedule, and that its performance specification and configuration list were incomplete. The agency noted that MDHI had not had significant production flow since 2001 and that it had only produced on average two aircraft per year from 2003 to 2005. The agency also found risks and weaknesses associated with MDHI's vendor base, manpower and assembly line issues, and incomplete and inconsistent production plan. Agency Hearing Book, exh. C, SSA Final Briefing, Slides 39-40.

³⁵ AWI initially also protested the evaluation of its and EADS's proposals under the logistics factor. It abandoned these arguments when it failed to respond to the agency report, which fully addressed these issues. Knowledge Connections, Inc., B-297986, May 18, 2006, 2006 CPD ¶ 85 at 2 n.2. In any event, we have reviewed the evaluation of this factor, and find it to be reasonable and in accordance with the RFP.

The SSA recognized many of these risks and weaknesses in his source selection decision. AR, DVD Tab 8, SSDD, ¶ 10.

Although the protesters complain that the evaluation was unreasonable, based on our review of the record, we find that the agency performed a thorough and fair evaluation of proposals under the P/M factor, and drew reasonable conclusions about the offerors' approaches. We discuss a few of the protesters' specific challenges below.

1. AWI's Protest Grounds

AWI asserts that its proposal was not given enough credit for numerous asserted strengths under the P/Mfg and the manufacturing subfactors of the P/M factor. AWI Protest (July 24, 2006) at 36-43. The record shows that many of the strengths that AWI contends were ignored were in fact expressly recognized in the evaluation. For example, the final briefing to the SSA specifically notes as strengths AWI's established Texas facility, its available manpower, and the firm's integrated master schedule management approach, all of which AWI complains were ignored or not sufficiently credited. Agency Hearing Book, exh. C, SSA Final Briefing, Slides 76-77. With regard to other asserted strengths, the agency responded with reasonable explanations as to why those features either contributed to the proposal's low risk rating, or why the features did not provide sufficient benefits to justify a higher adjectival rating. See, e.g., Contracting Officer's Statement in Response to AWI Protest (Aug. 18, 2006) at 19-28.

For example, with regard to the configuration management approach element of the management subfactor (for which AWI's proposal was rated "satisfactory"), AWI asserts that its proposal deserved an "excellent" rating because it included a [REDACTED] to review change requests. As the agency points out, however, this was only one consideration within the element. Other considerations included the evaluation of MEDEVAC kits, hoist kits, painting and marking, and unique identification. Since AWI only met the requirements for these and the other areas considered under the element, and did not exceed them, we find reasonable the agency's view that the proposal deserved a rating of satisfactory and not excellent. Id. at 25-26.

AWI also complains that EADS's facility transfer is far more risky than AWI's, and that EADS's proposal should have been penalized for weaknesses and risk associated with its facilities, manpower, and vendor base. AWI Protest (July 24, 2006) at 70-74. AWI contends that, unlike AWI, which has an established facility and experienced personnel already located in Texas, EADS must construct its facility in Mississippi, hire personnel, and obtain United States vendors, so that the transfer of operations poses greater risk.

However, as the agency explains, EADS proposed to accomplish the transfer with a 3-phase plan that included establishing a “duplicate” production line, so that if EADS ran into any problems with the transfer, it could still continue with 100 percent of the production from its German facilities. EADS also provided a detailed plan and schedule for transferring the facility and increasing manpower. Contracting Officer’s Statement in Response to AWI Protest (Aug. 18, 2006) at 58-59. In addition, EADS’s proposal identified numerous successful production transfers similar to the one proposed for the LUH, which the agency found also helped to minimize the risk. AWI’s Comments (Aug. 31, 2006), exh. 19, SSEB Final Report, EADS P/M Factor Rollup, at 1. EADS also proposed to establish United States vendors as “second sources . . . to augment EADS’[s] current vendor base.” Contracting Officer’s Statement in Response to AWI Protest (Aug. 18, 2006) at 56. Thus, while the agency recognized EADS’s facility transfer posed some risk under the P/M factor, it reasonably concluded the risk to be low.

In comparison, AWI also proposed to transfer facilities. Although its Texas facility was already established (and was credited as a strength), the proposal presented similar risks to EADS’s in the transfer of the production line to the facility. In this regard, the agency noted that AWI still had to increase manpower, add new United States vendors, and construct a new storage and flyaway hangar for the aircraft. *Id.* at 22. It also had to duplicate the “tooling and processes” of its Italian facility at the Texas facility. AR, DVD Tab 25.4, SSEB Final Report, AWI P/M Factor Rollup, at 1. Like EADS, the agency noted that AWI had facilities that could remain as back-up sources for the LUH aircraft. *Id.* The agency found that both firms relied on overseas vendors, but unlike EADS, AWI did not offer to include qualifying United States vendors as second sources; without backup sources, AWI’s proposal could, in the long term, potentially cause greater risk than EADS’s in this regard. Contracting Officer’s Statement in Response to AWI Protest (Sept. 6, 2006) at 8; EADS’s Comments in Response to AWI Protest (Aug. 31, 2006) at 31-32. All issues considered, however, the agency reasonably determined that the risk associated with facility transfer was not a significant discriminator between these two proposals. Tr. at 137-39, 282.

AWI complains that several other strengths associated with its proposal, or risks and weaknesses associated with EADS’s proposal, were ignored by the agency in the evaluation of the P/M factor, which led to an unequal evaluation of EADS’s and AWI’s proposals. These asserted discriminators include parts obsolescence, “Class I” changes, changes in vendors resulting from facility transfers, conflicts between EADS’s performance specification and its technical proposal, and AWI’s asserted strengths for purchase orders and a “unique modular design.” AWI’s Comments (Sept. 6, 2006) at 66-68. AWI asserts that the evaluation was flawed because these issues were not brought to the SSA’s attention. While it is true that each and every proposal feature (or asserted strength) was not discussed with the SSA, the record shows that the agency highlighted the most significant proposal features and discriminators to enable the SSA to make a reasoned, informed

decision. As illustrated by the following examples, we find the evaluation of these issues to be reasonable.

As discussed above, the evaluation of the offerors' facility transfers, vendor changes, and EADS's performance specification were conducted reasonably and fairly, and the results were accurately reported to the SSA. See Agency Hearing Book, exh. C, SSA Final Briefing, Slides 59, 77; exh. D, Aircraft Characteristics. The fact that AWI stated in its proposal that it had already issued purchase orders to buy components for 120 aircraft was reasonably characterized by the SSA as a "so-what?" (meaning that this was not a significant discriminator to the agency). Tr. at 140. In this regard, the agency found that AWI's proposal did not indicate what parts were purchased, Contracting Officer's Statement in Response to AWI's Protest (Aug. 18, 2006) at 21, and AWI has not shown that this resulted in a significant benefit to the agency. AWI's modular design was considered and balanced against other weaknesses and risks in AWI's proposal. See Contracting Officer's Statement in Response to AWI Protest (Sept. 6, 2006) at 13-14.

With regard to parts obsolescence and "Class 1" changes, AWI's complaint is that EADS's proposal reflects "vagueness" in who will be responsible for the costs of training and costs associated with certain types of changes, and that EADS proposes to resolve these issues through equitable adjustments during the performance of the contract. AWI's Comments (Aug. 31, 2006) at 36. In its evaluation of EADS's proposal, the agency identified this as a risk to performance, but determined that the risk was low. Id., exh. 11, SSEB Final Report, EADS P/M Factor Rollup, at 1. AWI complains that its proposal should have been rated superior to EADS's proposal because it did not contain similar risks. The record does not support AWI's arguments. EADS's equitable adjustment clause states:

If a design change, supplier change, or an alternative change in technology [occurs], the US Army and EADS-NA Defense may jointly evaluate opportunities for equitably sharing cost and schedule impact.

EADS's Comments in Response to AWI Protest (Sept. 9, 2006), exh. 5, EADS FPR, P/M Approach, at IV-118d. Whether an equitable adjustment is permitted is left to the discretion of the contracting officer. Id.; Tr. at 278. Under EADS's approach, equitable adjustments may occur with "Class I" changes, but "Class II changes not directed by the Government will not be considered as basis of equitable adjustment." AR, DVD Tab 33.4, EADS FPR, P/M Approach, at IV-113. Given the contracting officer's discretion whether to agree to an equitable adjustment, we have no basis to question the agency's evaluation of EADS's approach as low risk. Moreover, AWI similarly proposed that it would propose an "Engineering Change Proposal" to equitably share the costs with the government if there were any changes to the initial hardware configuration over the aircraft's life cycle. Second Declaration of EADS's Cost Expert, exh. 21, AWI FPR, P/M Approach, at 5. Our review of the record shows little difference between the two proposal approaches in this regard.

In sum, AWI has not shown that its and EADS's proposals were unreasonably evaluated under the P/M factor.

2. MDHI's Protest Grounds

MDHI challenges the numerous weaknesses identified in the evaluation relating to both its adjectival and risk rating under the P/M factor. It asserts that some are addressed in its proposal or were mitigated by the infusion of capital and takeover by Patriarch; that others were only a "mere formality" or "de minimus"; and that the P/M factor evaluation record is inaccurate, inconsistent, and incomplete.³⁶ MDHI's Comments (Aug. 31, 2006) at 21-22; MDHI's Comments (Sept. 6, 2006) at 5-7.

The agency has responded to each of the challenged areas, reasonably explaining why MDHI's proposal was assessed weaknesses or posed risks to performance under the P/M factor. Many of these explanations were not rebutted by the protester, and we find the unrebutted record sufficient to demonstrate the reasonableness of the agency's conclusions. MDHI's arguments with regard to the remaining issues reflect only its disagreement with the agency, and, based on our review, we find the agency's evaluation of this factor unobjectionable.

For example, our review of the record shows that the agency reasonably found weaknesses and risk associated with MDHI's production rate capacity, which caused the agency to question whether the firm could provide more than the minimum government quantities. The agency found that MDHI's asserted production rate capacity was not supported by other areas of the firm's proposal, such as its discussions of facilities and tooling, process validation, manpower, and the firm's vendor base. The integrated master schedule was found to be only "minimally supported" and inaccurate. The agency was further concerned about MDHI's "low production rate history," and the firm's lack of experience in managing a program of the magnitude and complexity of the LUH. The agency reasonably determined that, if MDHI were to receive award, it would have to engage in a "significant ramp-up" and increase its manpower 150 percent above its current level. The agency also noted that MDHI was still in the process of bringing back vendors who had not been paid under MDHI's prior management, but had no plans to qualify "second sources" as back-up to these "single source" vendors to ensure against an interruption in the parts supply. The agency also found that MDHI's proposal talked about manufacturing parts "in-house," but provided no plan or time-frame to accomplish

³⁶ For example, MDHI complains that the evaluation was "incomplete" in that some element reports for the P/Mfg subfactor were left blank in the SSEB report. The agency explains that this is because there were no formal "elements" identified in the RFP for this subfactor. The blank reports were a function of the database used to create the SSEB report, and not the result of an incomplete evaluation. Contracting Officer's Statement in Response to MDHI Protest (Aug. 31, 2006) at 10.

this, and the firm did not discuss the associated risks and potential impacts to parts availability. All of these issues reasonably and substantially contributed to MDHI's marginal and high risk rating under the P/M factor. AR, DVD Tab 16.4, SSEB Final Report, MDHI P/M Factor Rollup, at 1-2; see Contracting Officer's Statement in Response to MDHI Protest (Aug. 18, 2006) at 32-40.

MDHI asserts that it addressed many of these issues in its FPR and in a March 31, 2006 letter in response to discussions, but the agency reasonably found that the firm did not adequately respond to the agency's concerns. For example, while MDHI argues that new management addressed the vendor payment issues, the agency found that the vendor base was still in the process of being re-established, and since the vendors were all single sources, schedule delays could occur if there were problems with any of the vendors. AR DVD Tab 16.4, SSEB Final Report, MDHI P/M Factor Rollup, at 2. Thus, the agency considered MDHI's response, but reasonably found that there were still issues that presented risk. AR, DVD Tab 8, SSDD, ¶ 10.

MDHI also complains that some criticisms involving missing proposal information amount to "mere formality" and elevate "form over substance." MDHI's Comments (Aug. 31, 2006) at 22. For example, it contends that the agency unreasonably assessed weaknesses for MDHI's failure to identify sole sources with unique production processes, and for MDHI's failure to show that its performance specification met the requirements of the SOW. We find that not only was this information required by the RFP, but also the failure to provide this information could reasonably be found to result in risk to performance. Parts with unique production sources could result in schedule delays if production problems occur with the source; knowing which vendors have unique production sources allows the agency to identify which parts are flight critical and which would pose a "much more serious problem" if the source "were to go out of business or stop production of that item." Contracting Officer's Statement in Response to MDHI Protest (Sept. 6, 2006) at 11; Contracting Officer's Statement in Response to MDHI Protest (Aug. 18, 2006) at 35. Although MDHI generally asserted in its proposal that it "will meet all system attributes of the SOW Annex A," AR, DVD Tab 15.4, MDHI FPR, P/M Approach, at 97, this general statement could reasonably leave doubt in the agency's mind whether MDHI would in fact meet the requirements, especially given all of the other informational deficiencies and inconsistencies in MDHI's proposal.³⁷ Contracting Officer's Statement in Response to MDHI Protest (Aug. 18, 2006) at 37; AR, DVD Tab 16.4, SSEB Final Report, MDHI P/M Factor Rollup, at 1; Agency Hearing Book, exh. C, SSA Final Briefing, Slides 39-40.

³⁷ To the extent that MDHI complains that its performance specification was evaluated differently than EADS's, we note that EADS addressed each of the SOW requirements in its performance specification, while MDHI addressed only those requirements it would not meet.

MDHI also complains that there are “inherent inconsistencies” in the evaluation. MDHI’s Comments (Sept. 6, 2006) at 6. For example, with regard to the evaluation of obsolescence, the agency found that

MDHI outlined an adequate obsolescence plan. However, since their aircraft was designed in 1994, they state that they do not anticipate any obsolescence issues for the LUH program. There is a risk that MDHI is not giving obsolescence the requisite level of attention.

AR, DVD Tab 16.4, SSEB Final Report, MDHI P/M Factor Rollup, at 2. MDHI complains that the high risk rating is inconsistent with the finding that the plan was “adequate” and is also inconsistent with the low risk rating given to EADS, especially given the “age” of EADS’s aircraft and the weaknesses the agency found with regard to EADS’s proposed obsolescence mitigation approach.³⁸ We think that the agency’s concern was reasonable that MDHI’s proposal may have posed a greater risk than the problems found in EADS’s proposal. Based on this record, the agency reasonably could find that MDHI’s failure to give the requisite level of attention to obsolescence carries far more risk than the problems found in EADS’s proposal. In any case, as noted above, obsolescence mitigation was just one of many areas of concern that led to MDHI’s high risk rating for this factor. MDHI’s proposal included a number of other risks that were not present in EADS’s proposal and which reasonably contributed to the “aggregate” risk rating of high. Contracting Officer’s Statement in Response to MDHI Protest (Aug. 31, 2006) at 12. Based on our review, we find no inconsistency in this evaluation.

In sum, we find no error in the agency’s evaluation of proposals under the P/M factor.³⁹

³⁸ These weaknesses involved the proposed equitable adjustment for certain changes and some “vagueness” in the discussion of cost sharing, discussed previously.

³⁹ MDHI complains that EADS’s proposal was misvaluated under the P/M factor in other ways. It contends that EADS’s proposal presented high risk because: (1) EADS owns 80 percent of Airbus, a company that has a history of design problems and cost and schedule overruns; (2) EADS is facing a “demand of several billion dollars” from another company for the 20 percent of Airbus that EADS does not own; and (3) as a German-French conglomerate, EADS’s management is “complex” in that it combines duplicative leadership from both its German and French components. MDHI Protest (July 14, 2006) at 26-27. However, MDHI does not explain how any of this information will impact the schedule or performance under this contract, or how the information relates to the RFP’s evaluation criteria. In this regard, the record evidences that Airbus has no role in the performance of the LUH contract. MDHI also contends that high risk is associated with EADS’s proposal due to the firm’s plan to transfer its facilities from Germany to Mississippi, and because of the two crash incidents that occurred in France. However, as we
(continued...)

C. Past Performance Factor

MDHI contends that the agency inconsistently and unfairly evaluated MDHI's and EADS's proposals under the past performance factor. The past performance evaluation was performed by the performance risk assessment group (PRAG) in accordance with the requirements of the RFP. As noted above, the RFP stated that the past performance of each offeror and its major subcontractors would be evaluated during the 3 years preceding the solicitation for schedule, quality of performance, business relations and customer satisfaction, and financial/cost management. RFP § M-6, ¶¶ 2.6.2, 2.6.4.

With regard to EADS, the PRAG noted that the firm had proposed its UH-145 aircraft, which had been in production for the commercial market as the BK 117 since 2001, and that EADS had produced approximately 83 aircraft in 5 years. The PRAG considered 33 relevant contracts and 36 customer responses for EADS's major subcontractors. While the PRAG noted that EADS did not cite any relevant contracts or provide customer surveys for EADS's work as a prime contractor (all of the past performance was from EADS's proposed subcontractors), it did not find this problematic since EADS was proposed to perform only 1 percent of the work, and that work was in "program management and contract management oversight." The PRAG found that the "vast amount of experience in producing, training, sustaining and maintaining helicopters to perform the remaining 99% of the LUH requirement" was to be performed by EADS's subcontractors. AR, DVD Tab. 34.5, SSEB Final Report, EADS Performance Risk Assessment, at 16.

EADS's performance history revealed mostly "very positive" comments and many "exceptional" ratings. One negative comment revealed a concern about translation errors in training manuals, but EADS's plan to correct this error, in the minds of the PRAG, "mitigated" this concern. The PRAG considered the risks associated with EADS's proposed transfer of its facilities from Germany to Mississippi, and found that the risk was low, in part because EADS had successfully transferred production from one country to another "multiple times." *Id.* at 16-17. The PRAG also considered data received from the Defense Contract Audit Agency (DCAA), which demonstrated that EADS was "capable of producing a quality product, meeting the negotiated schedules and doing both within the negotiated cost." *Id.* at 17.

Based on its evaluation, the PRAG found no weaknesses and two strengths in the experience of EADS's subcontractor team and in the firm's "solid financial position and capability to perform the LUH requirement." *Id.* The PRAG rated EADS's proposal as "low" risk under the past performance factor.

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discussed above, the agency thoroughly evaluated these issues and reasonably found them to present low risk to performance.

MDHI complains the EADS's proposal was undeserving of a low risk rating. MDHI argues that the facility transfer, the training manual translation errors, and a concern about parts availability that EADS's addressed during discussions, pose higher risk than was noted by the PRAG or reported to the SSA. However, as noted above, the agency fully considered these issues, including EADS's discussion responses, and, in our view, reasonably determined that the risk to EADS's performance was low.

MDHI nevertheless asserts that the lack of past performance information from EADS itself should have resulted in a "neutral" rating at best, or a "moderate" or "high" rating, given that EADS is performing only 1 percent of the work. Again, we find that this issue was fully considered, and that the agency reasonably concluded that since EADS's subcontractors were performing essentially all of the aircraft production, manufacturing, and training work, their past performance was most relevant and demonstrated that the EADS team would successfully perform this contract.

With regard to MDHI, the PRAG noted that the firm had proposed its MD Explorer aircraft, which had been in the commercial marketplace since 1995. MDHI had produced approximately 100 aircraft in the past 11 years. The PRAG considered 15 relevant contracts and 30 customer surveys received for MDHI and its major subcontractors. The PRAG's research revealed a history of numerous financial and performance problems prior to MDHI's acquisition by Patriarch. The PRAG also noted improvement that occurred after the takeover, but found that not all of the problems had been resolved:

The majority and controlling interest of MDHI was acquired by Patriarch . . . in July 2005. Prior to this acquisition, MDHI was on the verge of bankruptcy, delinquent on all debt and delinquent on a very high percentage of spare parts and service orders, both Government and commercial. Additionally, they had lost most of their vendor base, had numerous vacant top level management positions and had lost significant market share and customer acceptance. All of this was due to lack of financial capital and ineffective management by previous ownership. Since being acquired by Patriarch, MDHI has shown much improvement from July 2005 to the present in their management team, financial capability, supply chain/vendor base, aircraft production, and spare parts supply. They are still in the process, however, of rebuilding their supply chain for production and spare parts supply. While they show an upward trend in meeting delivery schedules for spare parts support, they are currently still missing deliveries on spare parts orders. This company is basically operating as a new startup company with the exception of having an established product fleet of 3,500 aircraft to support and maintain.

AR, DVD Tab 16.5, SSEB Final Report, MDHI Performance Risk Assessment, at 9.

The PRAG found two strengths in MDHI's past performance, relating to a "robust quality inspection program" and the "informative and very well organized" past performance proposal. The PRAG did not find any weaknesses, but noted several "concerns" that contributed to the moderate risk rating. These concerns related to credit terms with MDHI's major suppliers, that delivery schedules were still delinquent on some vendor contracts, and that MDHI was still "basically operating as a 'new start-up' company trying to reestablish their supply chain and reignite their production line." *Id.* at 12. Concluding that a low risk rating was inappropriate because "more time is needed to completely recover from the repercussions of financial distress this company has experienced over the past three years," *id.* at 13, the PRAG rated MDHI's proposal "moderate" risk under the past performance factor.

MDHI asserts that the PRAG's evaluation of its proposal improperly emphasized MDHI's performance problems prior to the Patriarch acquisition, and did not adequately take into account MDHI's discussion responses, which explained how the Patriarch takeover addressed these issues. However, the RFP specifically provided that performance history for the 3 years preceding the solicitation would be evaluated, and the pre-Patriarch performance occurred within that 3-year timeframe. The evaluation shows that the agency fully considered the improvement to MDHI's performance since Patriarch took over the management of MDHI and provided financial support. However, the agency also noted that some vendor issues remained. Although MDHI complains that the characterization of its company as a "new start-up" company is unfair, given that MDHI is, in many ways, starting over with new management and with rebuilding relationships with its vendors, we find this assessment on balance to be reasonable.

In sum, based on our review of the record, we find that the agency's evaluation of past performance was reasonable.⁴⁰

⁴⁰ MDHI also protests the reasonableness of the agency's responsibility determination of EADS. It contends that the agency "ignored material evidence demonstrating EADS'[s] non-responsibility," citing to post-award media reports that two executives of EADS and Airbus were "ouste[d]" over allegations of insider trading and that a class action lawsuit has been filed by EADS's shareholders in the Netherlands alleging claims of insider trading. MDHI Protest (Aug. 14, 2006) at 21. Our Office does not review affirmative determinations of responsibility, except where the protest alleges that definitive responsibility criteria in the RFP have not been met or identifies evidence "raising serious concerns that, in reaching a particular responsibility determination, the contracting officer unreasonably failed to consider available relevant information." Bid Protest Regulations, 4 C.F.R. § 21.5(c) (2006). The contracting officer states that she had seen a news article reporting allegations of insider trading prior to award, but did not consider the news media to be "reliable data" and considered the allegations to be just that, allegations that had not yet been proven. Contracting Officer's Statement in Response to MDHI Protest (Aug. 18,

(continued...)

D. Price Factor

Both AWI and MDHI protest the evaluation of EADS's price. They complain that the record does not explain the "drastic" reduction in EADS's proposed price from initial to final proposal, and that EADS's final price, especially its proposed CLS price, is "unbalanced" because it is unreasonably low. They assert that the agency failed to perform a proper "reasonableness" or "realism" analysis, or a proper risk assessment of EADS's price. MDHI also challenges the evaluation of its own price proposal.

The agency correctly explains that, with the exception of a small component of the effort that was cost-reimbursable, the vast majority of the work (including CLS) was fixed-price and, as such, a realism analysis was not required in the absence of a solicitation provision requiring such an analysis. See Mantech Sec. Tech. Corp., B-297133.3, Apr. 24, 2006, 2006 CPD ¶ 77 at 9. Furthermore, the purpose of a "reasonableness" analysis is to ensure that prices are not unreasonably high, as opposed to unreasonably low, Cherry Road Techs.; Electronic Data Sys. Corp., supra, at 18, and the protesters complain only that EADS's price is too low.

The 132-page Price Negotiation Memorandum (and additional eight attachments to that document), the 39-page price analysis report, the SSEB price factor summary reports, and supporting documents show that the agency conducted a detailed, thorough analysis of each offeror's proposed price, including the overall price and the price for each of the following components: production, CLS, training, cost-reimbursable items, fuel, and other services. The agency fully analyzed each firm's pricing template and discussed the basis for each firm's proposed price, noting strengths and weaknesses and risks of the pricing approach. The agency noted changes from initial to final pricing, and discussed such things as proposed inflation factors and economic price adjustment (EPA) clauses, where made applicable by the offeror's proposal. The findings of the price evaluation team were reported to the SSA during the SSA's final briefing. We find this analysis to sufficiently support the agency's conclusion that EADS's FPR price was fair and reasonable.

The offerors' initial and final prices were as follows:

	Initial Total	Final Total	Initial CLS (PY1-PY-20)	Final CLS (PY1-PY-20)	Initial Production	Final Production
EADS	[REDACTED]	\$3,880,000,723	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
AWI	[REDACTED]	\$4,747,162,454	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
MDHI	[REDACTED]	\$4,251,356,442	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

(...continued)

2006) at 42. MDHI has not met its burden of showing that the contracting officer unreasonably failed to consider this information.

AR, DVD Tab 37, Price Negotiation Memorandum, at 12-13; AWT's Comments (Sept. 6, 2006) at 39, 41. As can be noted from this table, all offerors made adjustments to their FPR pricing.

MDHI increased its price after discussions in response to the agency's concern about MDHI's profitability. During discussions, MDHI admitted that its initial pricing was too low because it was based on "old prices" and a "flawed bid strategy." AR (Aug. 20, 2006), exh. G, Letter from MDHI to Army dated March 31, 2006, at 13.

AWI reduced its overall, CLS, and production prices; but its overall price remained higher than EADS. AWI's higher overall price was caused by [REDACTED].

EADS similarly reduced its overall, CLS, and production prices, although the largest reduction occurred under CLS. EADS explained that the significant reduction in its CLS pricing was primarily due to clarifications and changes in the RFP regarding the evaluation of CLS pricing,⁴¹ as well as staffing and other changes to its proposal.⁴² Declaration of EADS's Cost Expert (Sept. 5, 2006), ¶¶ 10-18. The agency found that EADS had adequately explained and supported this price reduction, and that EADS's final CLS pricing, which was in line with the other offerors and higher than AWT's, was reasonable. Contracting Officer's Statement in Response to AWI Protest (Aug. 31, 2006) at 26.

The protesters argue that EADS did not sufficiently explain its CLS price reduction, and that the "drastic" drop in CLS price should have triggered the agency to request additional explanation for the price reduction, or led the agency to conclude that EADS's proposal presented performance or schedule risk. However, based on EADS's documentation of its CLS approach and pricing methodologies, which we conclude the agency reasonably found adequate, the agency had no reason to further question EADS's regarding its CLS pricing. *Id.* at 25. Given that EADS's CLS pricing was in line with the other offerors and was higher than AWT's, we have no reason to conclude that EADS's CLS pricing is unreasonably low, unbalanced, or poses a risk to performance. Similarly, we find that the record sufficiently explains the basis for EADS's price reductions in areas of its proposal other than CLS, and that the agency's evaluation of those areas was reasonable as well.

⁴¹ Amendment 10 informed offerors that two CLS scenarios would be evaluated, considering 50-percent totals from each scenario.

⁴² MDHI asserts that EADS's staffing reductions are offset by other staffing increases, but the protester has provided no evidence to suggest that these staffing increases were not also reflected in EADS's pricing.

1. AWI's Remaining Price Protest Grounds

AWI raises a number of other challenges to EADS's low risk assessment under the price factor. AWI Protest (Aug. 14, 2006) at 38-43. Although we discuss only a few of the issues below, we have reviewed all of AWI's arguments and find them to be without merit.⁴³

For example, AWI asserts that the equitable adjustments that EADS proposed in response to "Class I" changes and replacing obsolete parts adds risk to schedule and performance because they are not permitted by the RFP. In this regard, AWI argues that the RFP required that pricing for CLS support "shall be inclusive of all effort necessary to ensure continued support in the event of parts obsolescence." RFP § H-2, ¶ 2(i). However, as discussed above, EADS's proposal for sharing costs was left to the discretion of the contracting officer whether to accept or reject, and therefore did not violate the RFP. We note that AWI's proposal, too, contained proposals for cost sharing similar to EADS and did not violate the RFP. In any event, the record shows that the agency considered the risk of EADS's obsolescence approach in the price analysis and reasonably found the risk to be low. As the agency explains, this type of cost sharing approach is "not uncommon" and, given that the LUH parts are used also on other EADS's aircraft, "the commercial market will likely incur part of the non-recurring expense associated with finding/developing a replacement part." AR, DVD Tab 37, Price Negotiation Memorandum, at 81. Also contributing to the low risk rating was the fact that the EADS aircraft is a "relatively new product line and changes in core technologies or suppliers [are] not anticipated within this 10 year contract." AR, DVD Tab 34.1, SSEB Final Report, EADS Price Factor Summary, at 5. AWI disagrees with this analysis, but has not shown it to be unreasonable.

AWI also contends that EADS's approach of amortizing [REDACTED] of its non-recurring costs relating to its facility transfer and certain non-recurring CLS-related costs over 352 aircraft (the maximum quantity under the contract) poses "significant financial risk to EADS, which will translate into schedule and performance risk" if the agency fails to purchase the maximum number of aircraft. AWI Protest (Aug. 14, 2006) at 40-41. However, given that EADS is a very large, financially sound company, we fail to see how amortizing this relatively small amount over a \$3.9 billion contract poses "significant financial risk" as alleged.

⁴³ AWI asserts that EADS's proposal has a provision containing a minimum guarantee, which AWI argues contradicts section H-6 of the RFP. This protest ground, raised for the first time in AWI's September 6, 2006 comments, is untimely because it was not raised within 10 days of receipt of the record that provided the basis for protest. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2).

In sum, based on our review of the record, we find no basis to sustain any of the protest grounds raised by AWI regarding the evaluation of the price factor.

2. MDHI's Remaining Price Protest Grounds

MDHI also protests the evaluation of its proposal under the price factor. It asserts that it was misled during discussions to believe that its financial models would be accepted "in lieu of" the pricing template; that the agency either misinterpreted or failed to evaluate the financial models submitted with MDHI's FPR; and that the pricing template "double counted" escalation and certain probabilities, thus overstating MDHI's price by approximately \$800 million. Declaration of MDHI's Acting Chief Executive Officer (Sept. 8, 2006) ¶ 2; MDHI's Comments (Aug. 31, 2006) at 8-10.

MDHI's contention that it was misled was based on its face-to-face discussions with the agency regarding its price. In these discussions, there was "extensive discussion on the methodology that MDHI had used in pricing both the aircraft and the CLS," and the agency "expressed concern that there were many unknowns involved in MDHI's priced offer." Contracting Officer's Statement in Response to MDHI Protest (Aug. 18, 2006) at 8. During these discussions, MDHI provided "example financial models" (which MDHI asserts were "newly designed") to illustrate how it developed its pricing. Declaration of MDHI's Chief Executive Officer (Aug. 30, 2006), ¶¶ 8, 9. At the conclusion of these discussions, the agency encouraged MDHI to provide supporting information (including the financial models) with its FPR to explain its pricing. Contracting Officer's Statement in Response to MDHI Protest (Aug. 18, 2006) at 9. MDHI included with its FPR actual financial models along with the pricing template and section B pricing required by the RFP. The summary sheet for the pricing template was missing from the FPR, so the agency requested, and MDHI provided, the summary sheet after the closing date for receipt of FPRs. Id. at 13.

The record does not support MDHI's contention that it was misled during discussions to believe that its financial models would be accepted "in lieu of" the pricing template. Such oral advice clearly would be inconsistent with the RFP requirement that offerors must submit their prices in the pricing template included in the RFP. RFP § L-23, ¶ 2.3.1(c); § A, Narrative at 8. In fact, although the agency admits it "encouraged" the protester to submit its financial models to "substantiate its proposed prices," the agency denies telling MDHI that these models would be accepted "in lieu" of the pricing template required by the RFP. Contracting Officer's Statement in Response to MDHI Protest (Aug. 18, 2006) at 14.

The conclusion that MDHI was not misled is supported by the fact that nothing in MDHI's FPR states, or even suggests, that the firm's financial models were to be substituted for the pricing templates; in numerous passages, MDHI makes clear that the pricing template included the firm's proposed prices for evaluation. For example, MDHI's FPR states:

- All requested information is included in the Pricing Template (Attachment 4) and in Section B (Attachment 5). AR, DVD Tab 15.1, MDHI, Business and Pricing Volume, § 2.3.1.c.
- All prices, quantity ranges, associated prices within the confine of that range and maximum quantity limitations are identified in the Pricing Template. Id. § 2.3.1.g.
- Aircraft pricing is presented in the Pricing Template (Attachment 4). . . . In the spirit of transparency, MDHI has attached its bottom up pricing model (Attachment 3, Unit Cost Build). Id. § 2.3.2.b
- The Pricing Template delineates the composite prices per flying hour [and] pricing for [CLS], Over and Above Depot Maintenance, Contractor Field Teams and Procedural Trainer Support. Id. § 2.3.2.d.
- The Pricing Template contains a forecast for pricing potential years eleven through twenty utilizing the RFP's model. Id. § 2.3.3.a.

See also Contracting Officer's Statement in Response to MDHI Protest (Aug. 18, 2006) at 14-15.

With regard to MDHI's claim that the pricing template inflated its price, MDHI contends that because its unit prices for CLS already included escalation and the agency's stated probabilities, the pricing template "double counted" these costs when the template used the unit prices to calculate price. However, we note that it was MDHI's sole responsibility to insert the appropriate unit prices into the template. It was evident from the template where probabilities and escalation would be applied,⁴⁴ and if those elements needed to be removed from the unit prices, then it was MDHI's duty, not the agency's, to remove them before MDHI inserted the unit prices into the template.⁴⁵ In fact, in its initial protest, MDHI admits that the unit prices that it inserted in the pricing template were incorrect because of an error of MDHI, not the agency:

⁴⁴ The pricing instructions and the discussions that the agency held with the offerors explained how escalation and probabilities would be applied. Contracting Officer's Statement in Response to MDHI Protest (Aug. 18, 2006) at 16.

⁴⁵ With regard to escalation, the pricing template did not include escalation for program years 1 through 10, and MDHI's CLS unit prices for years 11 through 20 were "deflated to 2006 dollars." Declaration of EADS's Cost Expert (Aug. 31, 2006), ¶¶ 68-70.

Under severe time constraints, persons who had not built the models pulled highlighted Target Prices without recognition that high hours for each of the three ranges were locked into the Pricing Template with the probabilities to also be calculated in the Pricing Template. As such, not the Target Prices, but the Best Prices would have to be taken to represent the high end hours and/or weighted average probabilities removed from the CLS Pricing Model.

MDHI's Protest (July 14, 2006) at 7. In other words, according to MDHI, its own employee(s) failed to recognize that the firm's unit prices also contained the probabilities and escalation and inserted the wrong prices in the pricing template for CLS pricing.

We do not agree with MDHI that the agency should have known that the CLS unit prices in the template were in error. The financial models are very complex and even with MDHI's explanation during this protest (through declarations and attachments and illustrations), it is not entirely clear how the agency should have been able to identify the asserted errors. As MDHI now explains, the agency would have had to engage in a series of calculations to "extrapolate" what MDHI intended to be its CLS unit prices. Declaration of MDHI's Acting Chief Executive Officer (Aug. 30, 2006), ¶¶ 11, 17, exh. 1. However, no clear instructions for this exercise were provided to the agency with MDHI's FPR, and nothing in the FPR put the agency on notice that such a difficult analysis needed to be done.⁴⁶ In fact, nothing in the FPR identified to the agency that MDHI was offering rates different from those placed by MDHI in the appropriate fields in the pricing template. Contracting Officer's Statement in Response to MDHI Protest (Aug. 18, 2006) at 15. As EADS's cost expert convincingly explains, MDHI's unit prices and escalation can all be linked (without any apparent inconsistencies) from MDHI's financial models, to the pricing template, and to MDHI's section B through manual entries of MDHI, and thus the computations complained of appear to be the result of MDHI's actions and not the result of any error in the pricing template or action of the agency. See Declaration of EADS's Cost Expert (Aug. 31, 2006).

MDHI also asserts that the agency unfairly assessed risk under the price factor relating to its CLS pricing. As the agency explains, it found risk because "MDHI proposed a constant, flat rate for CLS for all Program Years" and the rates did not fluctuate as flight hours increased. AR, DVD Tab 16.1, SSEB Final Report, MDHI

⁴⁶ While MDHI asserts that its explanations of the financial models during discussions should have made it clear to the agency how to calculate MDHI's price, the models used during discussions (which were introduced for the first time at that meeting) were only "examples" and "newly designed" and did not contain the variables that were added into the models submitted with MDHI's FPR. See Declaration of MDHI's Acting Chief Executive Officer (Aug. 30, 2006), ¶¶ 8, 9, 15.

Price Factor Summary, at 5. The agency expected to see variations in CLS rates from year to year, “most likely higher rates in the early years and a downward trend as fixed costs were spread over larger numbers of flying hours and the offeror became more efficient in providing CLS support.” Contracting Officer’s Statement in Response to MDHI Protest (Aug. 18, 2006) at 19. MDHI’s “flat rate” approach suggested to the evaluators that the firm may not be accounting for all of the RFP requirements, which could potentially result in “upward price risk.” AR, DVD Tab 16.1, SSEB Price Factor Evaluation Report (June 2006) at 14-15. The agency found that, based on the firm’s financial models, MDHI’s utilization of this “flat rate” approach would mean that MDHI would not make a profit on CLS until the sixth program year and would have to obtain financing to sustain CLS until that time. AR, DVD Tab 37, Price Negotiation Memorandum, at 47. Although MDHI asserts that its financial models fully support its flat rate approach, MDHI has not shown that its approach is without risk.⁴⁷

MDHI similarly challenges the agency’s finding of price risk associated with the firm’s proposed EPA clause. The evaluation documents state that MDHI’s clause was missing a “Labor or composite Labor/Material index,” and that the clause contained “floor and ceiling limitations of 2% (up or down)” that were “significantly” lower than the firm’s initial proposal (which included a 5-percent limitation). AR, DVD Tab 16.1, SSEB Final Report, MDHI Price Factor Summary, at 5. This lower ceiling, the agency concluded, “will result in an increased likelihood [that] the EPA clause will be exercised, increasing the price the Government will pay.” AR, DVD Tab 37, Price Negotiation Memorandum, at 47. Although MDHI contends that the “missing” labor index information is contained in its FPR and financial models, this argument has no bearing on the agency’s primary concern, which was MDHI’s “significantly” lower limitation. Therefore, while MDHI may be correct that its proposal contained the required labor index information, it does not appear that this was a significant driver in the assessment of risk under this factor.⁴⁸

⁴⁷ MDHI asserts that the agency should have reopened discussions to raise its concerns about MDHI’s flat rate approach and to alert the firm of the “discrepancies” between the pricing template and its financial models. MDHI’s Comments (Sept. 8, 2006) at 11; MDHI’s Comments (Aug. 31, 2006) at 11-12. However, these issues were first introduced by MDHI in its FPR, and there is no duty to reopen discussions to address these matters. *ITT Fed. Sys. Int’l Corp.*, B-285176.4, B-285176.5, Jan. 9, 2001, 2001 CPD ¶ 45 at 7 n.8.

⁴⁸ MDHI does not dispute the assessment of risk due to the floor and ceiling limitations.

E. “Best Value” Determination

AWI complains that the SSA failed to perform, or adequately document, his cost-technical tradeoff analysis of AWI’s higher technically rated proposal against EADS’s lower-priced proposal. More specifically, AWI complains that the SSDD is only seven pages long and fails to discuss most of the technical elements where AWI’s proposal was superior to EADS’s. AWI contends that the SSA either was not aware of, or did not adequately consider, the technical advantages of AWI’s proposal and whether they were worth the additional \$800 million in cost.⁴⁹

An SSA may select a lower-priced, lower technically rated proposal if he or she decides that the price premium involved in selecting the higher-rated, higher-priced offer is not justified given the acceptable level of technical competence available at the lower cost. The determining element is not the difference in technical merit, per se, but the contracting agency’s judgment concerning the significance of the difference. In making this determination, the SSA has broad discretion, and the extent to which technical merit may be sacrificed for cost, or vice versa, is limited only by the requirement that the tradeoff decision be reasonable in light of the established evaluation and source selection criteria. CVB Co., B-278478.4, Sept. 21, 1998, 98-2 CPD ¶ 109 at 8.

As detailed above, the record shows that the SSA was provided with a comprehensive briefing of the offerors’ proposals, which highlighted for the SSA significant strengths, weaknesses, and discriminators in each proposal. Agency Hearing Book, exhs. C-F, SSA Final Briefing Materials; Tr. at 17, 56. During the briefing, the SSA “probed” behind the briefing materials and asked questions of the expert evaluators and “users.” Tr. at 18-21, 29. In reviewing the materials, the SSA did not just “put blinders on,” but instead “went through [the briefing chart] meticulously to find out if there was value in those attributes above and beyond what’s listed on that chart.” Tr. at 119. From this briefing, the SSA fully understood the relative differences in capability between the EADS and AWI proposals in terms of the mission and did not “trivialize” AWI’s proposal strengths, as asserted by AWI. Tr. at 37-38, 227. In fact, given the detailed, voluminous record in this case and the complexities in this procurement, the SSA reasonably relied on the expertise of the factor leads, LUH “users,” SSEB, and SSAC to advise him of the value of exceeding,

⁴⁹ MDHI also protests the source selection decision, based on the asserted “flaws” in the evaluation of each of the evaluation factors. MDHI Protest (July 14, 2006) at 29; MDHI’s Comments (Aug. 31, 2006) at 24-25. However, as we have discussed above, we find this evaluation to be reasonable. Since MDHI’s proposal was lower technically rated and higher priced than EADS’s proposal, a cost-technical tradeoff was not required. Gentex Corp.–W. Operations, B-291793 et al., Mar. 25, 2003, 2003 CPD ¶ 66 at 29.

or failing to meet, attributes relative to the mission.⁵⁰ Although it is true that the SSA did not separately quantify the value for each element, Tr. at 68, 180-81, this was not required and does not mean that the SSA failed to perform any analysis of value as AWI appears to argue. See FAR § 15.308 (SSA’s “documentation need not quantify the tradeoffs that led to the decision”).

Contrary to AWI’s arguments, the SSA considered essentially all of the areas where AWI’s aircraft capability exceeded EADS’s, including those elements where both offers received the same rating.⁵¹ He considered the offerors’ proposed capabilities under the technical elements “individually” and then “cumulatively” to determine whether AWI’s technical superiority in the “totality” was worth the additional cost. Tr. at 67, 117, 122-23. Although the SSA did not discuss each and every element in the SSDD as AWI would have liked, the record shows that the relative differences between the proposals under each of these elements were thoroughly documented in a well-reasoned and rational SSEB report, and a detailed summary of these findings was briefed to the SSA and considered in his decision. Agency Hearing Book, exhs. C-F, SSA Final Briefing Materials; Tr. at 17-21, 204. The SSDD highlighted the key discriminators among offerors’ proposals, albeit not all of the elements that AWI would have liked the SSA to agree were discriminators, and illustrates a well-reasoned and sufficiently detailed selection decision that clearly credits AWI’s strengths and technical superiority, but explains why its proposal was not worth \$800 million over EADS’s highly rated \$3.9 billion proposal.

Based on our review of the record, and considering that price was the most important factor in the evaluation, we find that the SSA’s decision to select the lower technically rated, lower-priced proposal for award was reasonable.

The protests are denied.

Gary L. Kepplinger
General Counsel

⁵⁰ This reliance upon the aviation experts and LUH “users” was especially reasonable given that the SSA lacked aviation experience. Tr. at 208-09. It does not evidence that the SSA failed to exercise his own independent judgment, as AWI alleges. See AWI’s Post-Hearing Comments, at 30.

⁵¹ Although AWI complains that the SSA did not perform any tradeoff under the P/M and logistics factors, AWI’s Post-Hearing Comments, at 25-26, the record shows that the SSA reasonably considered there to be little distinction between the AWI and EADS proposals under these factors. AR, DVD Tab 8, SSDD, ¶ 12.