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Comptroller General  
of the United States

United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** R4 Integration, Inc.

**File:** B-407580.4

**Date:** December 16, 2013

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John S. Parsley for the protester.

Dennis J. Gallagher, Esq., Department of State, for the agency.

Pedro E. Briones, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest objecting to proposed corrective action taken in response to earlier protest of contract award is denied where one of the bases for cancellation is that the agency must reassess its requirement in light of shifting priorities and funding availability.

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### DECISION

R4 Integration, Inc., of Fort Walton Beach, Florida, protests the corrective action proposed by the Department of State in connection with the agency's procurement of passenger aircraft under request for proposals (RFP) No. SAQMMA-12-R-0215. The corrective action is being taken in response to an earlier protest of the award of a contract to R4 for the aircraft.

We deny the protest.

### BACKGROUND

The solicitation sought proposals for the purchase of two (with an option for up to four additional) Beechcraft B1900D aircraft meeting various specifications, including that the planes have less than 25,000 flight hours and be equipped with autopilot and weather radar systems, among other things. RFP amend. 4 (revised) at 1, 7-9.

Of significance here, technical proposals were to include a copy of the “current FAA/EASA/TC<sup>1</sup> Airworthiness certificate for all aircraft proposed.” Id. at 9, 30. The RFP advised, in response to questions from offerors, that “alternate certifying agencies airworthiness certificates (other than FAA/EASA/TC airworthiness certificates)” would not be acceptable. RFP, Questions & Answers, at 1.

The State Department received a number of proposals, including from R4 and TKC Aerospace, Inc., of Charlestown, South Carolina. See Contracting Officer’s Statement at 5-6. As relevant here, R4’s proposal included current airworthiness certificates issued by the Directorates General of Civil Aviation of India and Indonesia.<sup>2</sup> AR, Tab 5, R4 Tech. Proposal, at 89-90, 102-3. R4 did not submit airworthiness certificates from the FAA, EASA, or TC. The agency awarded the contract to R4.

TKC protested the award, arguing, among other things, that R4’s proposal was technically unacceptable because its planes lacked current FAA/EASA/TC airworthiness certificates, as required by the solicitation. After reviewing TKC’s protest, the State Department concluded that the award to R4 was, in fact, inconsistent with the requirement that offerors provide current FAA/EASA/TC airworthiness certificates, and the agency informed our Office that it intended to take corrective action in response to TKC’s protest. The agency advised that it intended to terminate the award, reexamine and revise the requirements, and resolicit the aircraft in the near future. Our Office dismissed TKC’s protest as academic based on the agency’s proposed corrective action. TKC Aerospace, Inc., B-407580.3, Sept. 25, 2013.

R4 now protests the State Department’s corrective action, arguing that it is based on a misreading of the term “FAA/EASA/TC airworthiness certificate.” Protest at 1-2; Comments at 2, 4. In the protester’s view, “FAA/EASA/TC,” as used in the RFP, is an illustrative, not exclusive, list of acceptable airworthiness certifications from jurisdictions that have bilateral aviation safety agreements with the U.S., such as the EU and Canada, as well as India and Indonesia. Comments at 4.

The State Department disputes the protester’s interpretation of the certification provision, and now asserts that the agency must reassess its requirement in view of shifting priorities and funding availability, as well as its experience in attempting to procure this particular type of aircraft. AR at 9.

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<sup>1</sup> That is, the Federal Aviation Administration (FAA) and its European Union (EU) and Canadian counterparts--the European Aviation Safety Agency (EASA) and Transport Canada (TC). Agency Report (AR) at 2.

<sup>2</sup> One of R4’s proposed planes is registered and operated in India; the other is registered and operated in Indonesia. See Comments at 1-2.

We need not resolve the parties' conflicting interpretation of the RFP's airworthiness certification provision, or the reasonableness of the State Department's corrective action in that regard, because the agency's decision to reassess its requirement in light of shifting priorities and funding availability otherwise establishes a reasonable basis for cancelling the contract award to R4.<sup>3</sup> See, e.g., Optimum Servs., Inc., B-401051, Apr. 15, 2009, 2009 CPD ¶ 85 at 3-4 (agency reasonably terminated protester's contract and cancelled underlying solicitation where solicitation no longer reflected the agency's requirements due to program funding.); KGL Logistics, B-404340, Jan. 26, 2011, 2011 CPD ¶ 60 at 2-3 (cancellation reasonable where agency must reassess its needs before proceeding with the procurement); VSE Corp., B-290452.2, Apr. 11, 2005, 2005 CPD ¶ 111 at 6 (reasonable basis for cancellation exists and cancellation is appropriate when a solicitation does not accurately reflect the agency's requirements).<sup>4</sup>

The protest is denied.

Susan A. Poling  
General Counsel

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<sup>3</sup> The protester does not dispute the agency's assertion that it must reassess its requirement. See generally Comments.

<sup>4</sup> Even if an agency's initial justification for cancellation is unreasonable, that fact is immaterial, provided that another, proper, basis for cancellation exists, such as uncertainty regarding the agency's future needs. KGL Logistics, *supra*; see also Alden Elec., Inc.--Recon., B-224160.2, B-224161.2, Mar. 12, 1987, 87-1 CPD ¶ 277 at 5 (agency properly may justify cancellation on subsequently enunciated basis if that basis would have supported the action had it been raised by the agency initially).