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United States Government Accountability Office  
Washington, DC 20548

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## Decision

**Matter of:** Raytheon Company, Space and Airborne Systems

**File:** B-298626.2, B-298626.3

**Date:** September 27, 2007

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W. Jay DeVecchio, Esq., Donald B. Verrilli, Jr., Esq., Kevin C. Dwyer, Esq., Darren H. Lubetzky, Esq., and Edward Jackson, Esq., Jenner & Block LLP, for L-3 Communications Integrated Systems, an intervenor.

Brian E. Toland, Esq., and Tina Marie Pixler, Esq., Department of the Army, for the agency.

Glenn G. Wolcott, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Solicitation reasonably put protester on notice that performance of the solicitation's aircraft "service ceiling" threshold capabilities would be considered in evaluation of proposals.
2. Agency was reasonably concerned with protester's proposed approach to performing "service ceiling" aircraft threshold capabilities in that the approach involved protester's application of a "new operational mode" relying on [deleted].
3. Agency reasonably evaluated protester's proposal as "marginal" under the air vehicle subfactor, and as creating "high performance risk," where protester failed to provide data from engine manufacturer addressing the impact of protester's "new operational mode."
4. Protester's assertion that awardee's proposal contemplated use of [deleted] similar to that of the protester's is without merit where record shows that awardee's aircraft was able to perform threshold capabilities without [deleted], that use of [deleted] was relied on by awardee to expedite task performance, and that awardee's proposed use of [deleted] was consistent with the existing manufacturer documentation for the aircraft engines.

5. Agency properly assigned only adjectival ratings to offerors' life cycle costs where solicitation expressly advised offerors that comparison of numerical cost values associated with life cycle costs would not be a "driver" in the source selection decision.

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## **DECISION**

Raytheon Company, Space and Airborne Systems, protests the Department of the Army's award of a contract to L-3 Communications Integrated Systems, pursuant to request for proposals (RFP) No. W58RGZ-06-R-0213, to provide the joint cargo aircraft (JCA) to the government.<sup>1</sup> Raytheon maintains that the agency improperly evaluated various aspects of Raytheon's and L-3's proposals.

We deny the protest.

## **BACKGROUND**

In March 2006, the Army issued solicitation No. W58RGZ-06-R-0213, seeking proposals to provide the JCA—that is, to provide a "multifunctional aircraft, able to perform logistical resupply, casualty evacuation, troop movement, airdrop operations, humanitarian assistance, and Homeland Security support," with a "primary mission . . . to move time-sensitive/mission-critical cargo to forward tactical units in remote and austere locations."<sup>2</sup> Agency Report (AR), Tab 25, Performance Work Statement (PWS) ¶ 1.1. The solicitation contemplates award of a fixed-price requirements contract with three 1-year base ordering periods and two 1-year option ordering periods.

Section M of the solicitation advised offerors that award would be made on a "best value" basis and established the following evaluation factors: technical,<sup>3</sup>

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<sup>1</sup> The JCA program evolved from the Department of the Army's preparations to procure a "future cargo aircraft" and the Department of the Air Force's preparations to procure a "light cargo aircraft." In December 2005, the Office of the Secretary of Defense directed the Army and Air Force to combine the two aircraft programs to form the JCA program, and provided that the Army would serve as the lead agency for the acquisition.

<sup>2</sup> With regard to where the JCA will be employed, the record states that the JCA is intended to "address operational shortfalls within fixed-wing cargo mission requirements noted in Operations Enduring Freedom/Iraqi Freedom," that is, in Afghanistan and Iraq. Agency Report (AR), Tab 81, Memorandum of Source Selection Decision, at 1.

<sup>3</sup> Under the technical evaluation factor, the solicitation established three equally weighted subfactors: air vehicle, mission equipment, and aircraft safety. Each of the subfactors was further divided into various elements.

price,<sup>4</sup> logistics, management/production and past performance.<sup>5</sup> AR, Tab 2, RFP ¶ M-3 (1.1). The solicitation also contained a purchase description (PD) that established certain aircraft performance requirements.<sup>6</sup> Among others, the PD contained headings of “self deployment,” “enhanced takeoff and landing performance,” “cruise airspeed,” and “service ceiling” under which the particular capabilities the government sought were identified. AR, Tab 20, PD ¶¶ 5.3.3, 5.3.4, 5.3.5, 5.3.6. For example, under the heading “service ceiling,” the PD identified the following “threshold” capability:

At the beginning of the cruise segment, the [JCA] will have a minimum service ceiling of 25,000 ft pressure altitude while carrying a standard crew of four, a 12,000 lb payload and fuel (including a 45 minute reserve) for a 1,200 nm[nautical mile] mission.

AR, Tab 20, PD ¶ 5.3.6.1.

Offerors were advised that evaluation would occur in three phases: phase I, in which proposals would be evaluated on a pass/fail basis for compliance with the MPS requirements; phase II, in which proposals would be evaluated against all solicitation

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<sup>4</sup> The price evaluation factor was divided into two subfactors: proposal price and life cycle costs. Regarding evaluation of proposal price, the solicitation stated that the agency would evaluate “the total proposed price for the estimated quantities specified for each CLIN [contract line item] for all five years.” RFP ¶ M-3 (2.2.2.1). Regarding evaluation of life cycle costs, the solicitation stated that each proposal would receive an adjectival rating assessing “program price/cost risk,” further advising offerors that “[n]umerical cost values [associated with life cycle costs] are not a driver in and of themselves.” RFP ¶ M-3 (2.2.2).

<sup>5</sup> The solicitation provided that the technical factor was more important than price, which was more important than either the logistics or management/production factors, which were of equal importance and both of which were more important than the past performance factor. All of the non-price factors combined were significantly more important than price. RFP ¶ M-3 (2.0).

<sup>6</sup> Specifically, the PD identified certain capabilities as: “minimum performance standards” (MPS) that “shall be embodied in the candidate aircraft” and “shall not be traded against other technical or non-technical requirements”; “threshold” capabilities that “will be embodied in the candidate aircraft” but which “may be traded against other technical and non-technical requirements”; and “objective” capabilities that “should be offered in the candidate aircraft” (underlining in original). AR, Tab 20, PD ¶ 2.0.

requirements<sup>7</sup>; and phase III, early user survey (EUS) demonstration, during which the performance of each offeror's aircraft would be assessed against its proposal.<sup>8</sup>

Initial proposals were submitted by Raytheon, L-3, and a third offeror in June 2006.<sup>9</sup> Raytheon's proposal was based on the commercially available EADS<sup>10</sup>-CASA<sup>11</sup> C-295 aircraft, powered by a Pratt & Whitney engine. L-3's proposal was based on the commercially available Alenia C-27J aircraft powered by a Rolls-Royce engine.<sup>12</sup> The agency performed an initial review and evaluation of proposals and, thereafter, prepared multiple written discussion questions for the two offerors.<sup>13</sup>

In reviewing Raytheon's proposal, the agency had concerns regarding the ability of Raytheon's proposed aircraft to meet certain performance capabilities. In an EOC to Raytheon dated August 2006, the agency asked Raytheon:

Please provide the specific certificates, performance analysis software, test report excerpts, or other official evidence explaining

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<sup>7</sup> In phase II of the evaluation, the agency applied an adjectival rating system using the terms "Excellent," "Good," "Satisfactory," "Marginal," and "Unsatisfactory." AR, Tab 84, Source Selection Plan, at 48. In addition, section M of the solicitation specifically advised offerors that proposal risk associated with an offeror's proposed approach would be evaluated, stating "[r]isk shall be an inherent consideration in the evaluation." RFP ¶ M-3 (1.3).

<sup>8</sup> The solicitation stated: "The EUS will not receive an adjectival rating, but will receive a risk rating." RFP ¶ M-3 (1.3).

<sup>9</sup> Raytheon submitted two proposals--one based on the C-295 aircraft which is discussed in this decision, and one based on another aircraft. The agency subsequently determined that Raytheon's other proposal, along with the third offeror's proposal, failed to meet the phase I entry gate requirements; accordingly, those proposals were eliminated from the competition and are not further discussed.

<sup>10</sup> European Aeronautic Defense and Space Company.

<sup>11</sup> Construcciones Aeronauticas, SA. CASA is the Spanish branch of EADS.

<sup>12</sup> The agency's source selection plan stated that the acquisition strategy was "based on leveraging the commercial market," noting that "[t]he intent is to procure a previously developed and fielded, low-risk, commercially available aircraft." AR, Tab 84, Source Selection Plan, at 6.

<sup>13</sup> Following its initial evaluation, the agency's discussions questions were labeled "Errors, Omissions, and Clarifications" (EOC); subsequently, the agency labeled its discussions questions "Items for Negotiation" (IFN). The agency also conducted oral discussions with both offerors.

how the CASA C-295 aircraft meets the requirements of the RFP PD paragraphs 5.3.3 [Self Deployment], 5.3.4 [Enhanced Takeoff and Landing Performance], 5.3.5 [Cruise Airspeed], 5.3.6 [Service Ceiling].

AR, Tab 44, at EOC 164-1.

Raytheon responded that it had “used the same aircraft, aerodynamic and engine data used during the certification process of the basic C-295 aircraft,” but further stated:

In addition to the performance validation previously discussed, a new operational mode is required using [deleted] to comply with several requirements of the RFP . . . .

Id. at EOC 164-18.

Reacting to Raytheon’s statement that it was proposing a “new operational mode” during which [deleted], the agency prepared a follow-up discussion question for Raytheon, making the following observations:

[Raytheon] uses an undefined [deleted] to accomplish performance goals in the C-295 proposal. . . . [Raytheon] does not state how [deleted] . . . does not indicate how [deleted] will be employed . . . [and] has not indicated the impact of [deleted]. . . . These issues affect numerous areas of evaluation.

AR, Tab 46, at EOC 548-1.

Based on the omissions noted above, the agency sought responses to a variety of questions regarding Raytheon’s “new operational mode,” including a query as to whether the new usage was certified by the Federal Aviation Administration (FAA). Id. at EOC 548-2 through EOC 548-3. Raytheon responded stating:

Usage of this new [deleted] mode ([deleted]) is not currently certified under FAR [Federal Aviation Regulation Part] 25. However, . . . [t]he certification program is already underway. . . .<sup>14</sup>

AR, Tab 46, at EOC 548-6.

Thereafter, Raytheon participated in phase III of the agency's evaluation, the EUS demonstration, during which Raytheon was required to demonstrate selected capabilities of its proposed aircraft. In preparing for the EUS demonstration, the agency advised Raytheon of various evaluated weaknesses in its proposal, including performance of the "service ceiling" threshold capabilities, stating:

The C-295 JCA does not have [deleted] performance to meet the Threshold service-ceiling requirement of 25,000 feet. . . . The offer states that the C-295M can achieve a cruise altitude of 25,000 ft., but not at [deleted].<sup>15</sup>

AR, Tab 48, at IFN TO4-1.

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<sup>14</sup> Raytheon subsequently provided its certification plan with regard to its proposed [deleted]. This plan stated, among other things:

The purpose of this document is to define the Certification Plan for the new improved performance of the C-295 using [deleted]. . . .

[deleted]

As comprised in the C-295 AFM [aircraft flight manual] ([deleted]) this regime is intended for abnormal or special circumstances.

The proposal of EADS-CASA is to . . . enable using the [deleted] during normal phases of [deleted].

AR, Tab 50, attach. 1, at 5.

<sup>15</sup> As noted above, the PD identified the following threshold capabilities under the heading "service ceiling":

At the beginning of the cruise segment, the [JCA] will have a minimum service ceiling of 25,000 ft pressure altitude while carrying a standard crew of four, a 12,000 lb payload and fuel (including a 45 minute reserve) for a 1,200 nm[nautical mile] mission.

AR, Tab 20, PD ¶ 5.3.6.

Thereafter, during the EUS demonstration, Raytheon demonstrated compliance with the “service ceiling” threshold capabilities; however to perform these capabilities, the aircraft was required to [deleted]. Protest at 16; AR, Tab 36, Raytheon Final Revised Proposal, vol. 3, at 440 (EOC 392-10). Confirming the required [deleted] to meet the “service ceiling” threshold capabilities, Raytheon stated:

Compliance with the PD requirement 5.3.6.1 [service ceiling threshold capabilities] was demonstrated in the Early User Survey of the C-295 aircraft. . . . The JCA C-295 achieved a cruise altitude of over 25,000 ft. at the beginning of the cruise segment by [deleted].

AR, Tab 48, at IFN T04-2.

The record shows that, throughout the discussion period, the agency repeatedly requested information from Raytheon regarding the impact of its “new operational mode” and its proposed [deleted]. In an IFN dated December 19, 2006, the agency stated:

Results from the EUS indicate that [deleted]. It is unclear what percent of [deleted] was assumed in the Pratt & Whitney assessment during engine certification. Earlier discussions with the offeror (October 2006) indicated that [deleted].<sup>16</sup>

Pratt & Whitney Maintenance Manual [deleted], states: “Operators making [deleted] must submit their mission profile to Pratt & Whitney Canada for analysis.”

AR, Tab 53, at IFN T73-1.

Accordingly, the agency asked Raytheon to:

Provide an assessment of the life and maintenance impacts as a consequence of [deleted]. Graphs showing the relationship between [deleted] and [deleted] should be included (this was requested at Discussions in October 2006).

Id.

Raytheon responded that the requested information was “not available . . . since it requires a detailed study,” represented that Pratt & Whitney Canada was in the

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<sup>16</sup> The record contains a Raytheon response to another agency request for information in which Raytheon stated: “[deleted].” AR, Tab 51, at IFN T71-2.

process of conducting the necessary study to address the agency's concerns, and concluded, "[t]his study will be fully accomplished and the new use of [deleted] in JCA will be certified by May 2007." AR, Tab 53, at IFN T73-2, T73-3. Raytheon's response further promised: "Life and maintenance impacts as a consequence of extended operation in the [deleted] mode . . . will be provided when P&WC [Pratt & Whitney Canada] completes their detailed assessment, due by May 2007." Id. Neither the information requested by the agency, the "life and maintenance impacts," nor the promised certification were ever provided.

Final revised proposals were submitted by Raytheon and L-3 on January 31, 2007, and thereafter evaluated by the agency. Overall, both proposals were assigned the same adjectival ratings, as follows:

	<b>Technical</b>	<b>Logistics</b>	<b>Management/ Production</b>	<b>Past Performance</b>	<b>Price</b>
<b>Raytheon</b>	Satisfactory	Good	Satisfactory	Low Risk	\$1.77 billion
<b>L-3</b>	Satisfactory	Good	Satisfactory	Low Risk	\$2.04 billion

AR, Tab 81, at 5.

However, Raytheon's proposal was rated "marginal" under the air vehicle subfactor within the technical evaluation factor (the most heavily-weighted factor), and "high" risk under the air vehicle performance element within the air vehicle subfactor. AR, Tab 78, at 23-24. In this regard, the technical subfactor ratings were as follows:

	<b>Air Vehicle</b>	<b>Mission Equipment</b>	<b>Air Safety/Survivability</b>
<b>Raytheon</b>	Marginal	Excellent	Good
<b>L-3</b>	Satisfactory	Satisfactory	Excellent

AR, Tab 78, at 23, 30, 39, 89, 98, 107.

In making the source selection decision, the source selection authority (SSA) stated that he "carefully considered the underlying rationale and ratings at all levels of the evaluation" and determined that the C-27J aircraft has a "superior military operational envelope," and "provides superior military utility." AR, Tab 81, Source Selection Decision Document, at 30-31. The SSA elaborated that, although both proposals were evaluated as being capable of meeting the same basic performance requirements, L-3's proposed aircraft demonstrated an ability to exceed many of the performance requirements by significant margins, whereas Raytheon's proposed aircraft [deleted]. Further, the SSA noted that Raytheon's "predicted performance margin[s] may be easily eroded for cruise airspeed, self deployment and service ceiling," elaborating that Raytheon's proposed approach "relies heavily on [deleted]" and that "[w]ithout sufficient documentation to prove otherwise it is reasonable to expect that [deleted]," concluding "[t]his poses a high performance risk."



Id. at 30-31. Thereafter, the SSA selected L-3's proposal for award summarizing his cost/technical tradeoff as follows:

For the 5-year instant contract, the price proposed by L-3 for the C-27J is \$2,042,186,555. Raytheon's proposed price for the C-295 is \$1,744,106,086. This equates to a cost difference of \$268,080,469 or approximately 15.1%. Based on the high performance risk of the C-295's air vehicle, the cost trade-off is justified.

Id. at 31.

Raytheon was subsequently informed that L-3's proposal had been selected for award, and was provided a debriefing by the agency. This protest followed.

## DISCUSSION

Raytheon first challenges its rating of "marginal" under the air vehicle subfactor, and the agency's conclusion that Raytheon's proposed [deleted] created "high performance risk," asserting that these assessments were unreasonable, or were based on unstated evaluation criteria. More specifically, Raytheon complains that it was unreasonable for the agency to be concerned with Raytheon's proposed [deleted] to meet the "service ceiling" threshold capabilities because those capabilities will not form a material portion of the overall contract requirements. In making this assertion, Raytheon refers to an appendix to the solicitation's performance work statement (PWS), titled "Standard Mission Profiles," which contained the following table:

<b>Mission</b>	<b>Percentage of Life Cycle Usage</b>
Aerial Sustainment	20%
Self Deployment	1%
Air Delivery -- Dual Airdrop with Low-Level Ingress/Egress	2%
Air Delivery -- Single Airdrop	2%
Cargo Transport	60%
Tactical Resupply	15%

AR, Tab 27, PWS app. 3.

Following this table, the document presented profile information for each of the above-listed missions, identifying certain characteristics of each mission in terms of crew, payload, and length of mission. The document also advised offerors that:

These profiles represent a composite of typical missions likely to be flown by the [JCA] in support of military wartime operations,

non-wartime operations, and homeland security. . . . The profiles shall not be construed as all inclusive.

Id.

None of the mission profiles specified all three of the “service ceiling” threshold capabilities (that is, cruise altitude of 25,000 feet, payload of 12,000 lb., and mission length of 1,200 nautical miles).<sup>17</sup> Accordingly, Raytheon argues that the mission profile data in appendix 3 of the PWS effectively eliminated—or should have eliminated—the “service ceiling” threshold capabilities from consideration in the agency’s evaluation of aircraft capabilities. Raytheon’s arguments are based on the assumption that because the mission profile data in appendix 3 did not expressly state that performance of a particular mission (for example, aerial sustainment or cargo transport) would require an aircraft to fly at 25,000 feet for 1,200 nautical miles with a 12,000 lb. payload, those combined capabilities will form, at most, an insignificant portion of contract performance and therefore, should not have played a meaningful role in the source selection process. Raytheon’s assertions are neither consistent with the provisions of the solicitation, nor otherwise reasonable.

First, as noted above, PWS appendix 3 expressly advised offerors that “[t]he profiles shall not be construed as all inclusive.” Consistent with this provision, paragraph 5.1.10.2 of the solicitation’s PD expressly notified offerors that, in addition to considering the mission profile information at PWS appendix 3, offerors must take into consideration “other specific requirements of this document [the PD]”—including, for example, the “service ceiling” provisions at PD ¶ 5.3.6.1. Further, the same section of the PWS that directed offerors to appendix 3 also reminded them that the “primary mission” of the JCA is “to move time-sensitive/mission-critical cargo to forward tactical units in remote and austere locations.” PWS ¶ 1.0. At the hearing conducted by GAO in connection with this protest,<sup>18</sup> the technical factor lead evaluator provided testimony regarding the ongoing requirements associated with moving cargo to forward units in remote and austere locations, testifying as follows:

Q. In performing aerial sustainment exercises . . . are they or aren’t they required to fly . . . at least at 25,000 feet, if you know?

A. Yes, I do know, and in many environments, especially in Iraq and Afghanistan, they are required to fly over mountainous terrain in high/hot conditions to avoid threats down below such as missiles.

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<sup>17</sup> In fact, none of the mission profiles identified any particular cruise altitude for any of the missions.

<sup>18</sup> In resolving this protest, GAO conducted a hearing on the record during which testimony was provided by the agency’s technical factor lead evaluator and the SSA.

. . . . .

Q. [I]n performing the cargo transport mission . . . are they or aren't they, expected to fly . . . at least [at] 25,000 feet[?]

A. For certain missions they will be expected to do that yes.

Q. Can you give me an example . . . of missions that would require them to do that with regard to cargo transport[?]

A. Having served my last two years as lead air vehicle engineer for the fielded aircraft on the Chinook [one of the aircraft currently performing logistics missions], they are constantly delivering loads to [deleted]. That's the location of the site. . . [I]f you are going to avoid small-arms fire, and missiles, certainly, you would want to fly at 25,000 feet to deliver your load that is located at [deleted].

Hearing Transcript (Tr.) at 23-27.

Similarly, the SSA testified as follows:

Q. Do you have a feeling for how often the Army is going to need to [meet the "service ceiling" threshold requirements]?

A. In Iraq and Afghanistan . . . probably daily. Parts of South America, every time they are down there. In the Western United States, a lot. So over the globe, a lot.

Tr. at 405.

Solicitations must inform offerors of the basis for proposal evaluation, and the evaluation must be based on the factors set forth in the solicitation. Federal Acquisition Regulation (FAR) § 15.304. Although procuring agencies are required to identify all major evaluation factors, they are not required to specifically list under the stated factors every area that may be taken into account, provided such areas are reasonably related to or encompassed by the stated criteria. E.g. AIA-Todini-Lotos, B-294337, Oct. 15, 2004, 2004 CPD ¶ 211 at 8.

On the record here, it is clear that the solicitation, along with the agency's discussions with Raytheon, reasonably put Raytheon on notice that the agency would evaluate an aircraft's ability to perform the "service ceiling" threshold capabilities, and that those aircraft capabilities were important to the agency. In this regard, we find nothing unreasonable in the agency's concern that, in order to perform these capabilities, Raytheon was proposing a "new operational mode" that

required [deleted], and that the impact of this new approach had not been meaningfully addressed by the engine manufacturer nor certified by the FAA. Further, there is no dispute that the agency repeatedly requested specific data from Raytheon regarding the impact of its proposed approach, and that the requested data—though promised—was never provided. On this record, there is no basis to question the agency’s “marginal” rating and “high” risk assessment, and Raytheon’s protest challenging that rating and assessment as inconsistent with the RFP provisions or unreasonable is without merit.

Raytheon next protests that the agency’s source selection decision gave undue weight to the air vehicle evaluation subfactor, under which Raytheon’s proposal was rated “marginal,”<sup>19</sup> and that the agency’s concerns regarding the risk associated with Raytheon’s proposed [deleted] were disproportionate to the evaluation scheme established in the solicitation. We disagree.

Evaluating the relative merits of competing proposals is a matter within the discretion of the contracting agency since the agency is responsible for defining its needs and the best method of accommodating them, and must bear the burden resulting from a defective evaluation. Advanced Tech. and Research Corp., B-257451.2, Dec. 9, 1994, 94-2 CPD ¶ 230 at 3. Further, there is no requirement that award discriminators be the most heavily weighted evaluation factors, Keane Fed. Sys., Inc., B-280595, Oct. 23, 1998, 98-2 CPD ¶ 132 at 16, and consideration of risk is always proper in the evaluation of technical proposals, particularly where, as here, risk is specifically identified as an evaluation factor. E.g., Communications Int’l, Inc., B-246067, Feb. 18, 1992, 92-1 CPD ¶ 194 at 6. Finally, information regarding specific proposal advantages or disadvantages is the type of information that agencies should make available to source selection officials to enable them to reasonably determine whether and to what extent adjectival evaluation ratings indicate meaningful differences in proposals and the resulting value of such differences. Israel Aircraft Indus., Ltd., MATA Helicopters Div., B-274389 et al., Dec. 6, 1996, 97-1 CPD ¶ 41 at 7. Such considerations are the essence of any best value source selection decision. F2M-WSCI, B-278281, Jan. 14, 1998, 98-1 CPD ¶ 16 at 8.

Here, the record shows that the SSA specifically considered the underlying bases for the adjectival ratings assigned at both the factor and subfactor level, and the record is replete with documentation of the agency’s concerns regarding Raytheon’s proposed approach and the risk associated with Raytheon’s failure to meaningfully respond to the agency’s information requests regarding its “new operational mode.” In addition to the discussion questions quoted above, the agency’s evaluation documentation repeatedly address the [deleted] capabilities of Raytheon’s aircraft. For example, the evaluators stated: “[deleted] may negatively affect [deleted] and

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<sup>19</sup> As noted above, the air vehicle subfactor was one of three equally weighted subfactors within the technical evaluation factor (the most heavily weighted factor).

[deleted], AR, Tab 42, at 16; “[i]f the actual C-295 JCA [deleted] deviate slightly in the wrong direction, the C-295 JCA’s actual performance may risk not meeting an MPS and some Threshold requirements,” *id.* at 64-65; and “after repeated requests, [Raytheon] has failed to document the potential life implications due to [deleted].” *Id.* Finally, as noted above, the solicitation expressly advised offerors that risk “shall be an inherent consideration in the evaluation.” RFP ¶ M-3 (1.3).

Based on our review of the entire record we find no basis to question the agency’s determination that the risk to successful contract performance—that is, to successful execution of JCA’s primary mission to move cargo to forward tactical units in remote and austere locations—created by Raytheon’s proposed “new operational mode” outweighed L-3’s higher price, and that this assessment was consistent with the solicitation’s evaluation scheme. Raytheon’s protest that the agency’s source selection decision did not conform to the solicitation’s stated evaluation factors is without merit.

Following receipt of the agency report responding to its initial protest, Raytheon supplemented its protest by asserting that L-3’s proposed performance will employ [deleted] in a manner similar to that proposed by Raytheon and, thus, maintains that the proposals were evaluated unequally. Based on the record, Raytheon is mistaken.

Raytheon notes that L-3’s aircraft flight manuals provide that [deleted]. Second Supp. Protest, July 30, 2007, at 4. However, the record is clear that L-3’s proposed aircraft is capable of performing the solicitation’s threshold capabilities for which L-3 was given credit without [deleted]. Contracting Officer’s (CO) Statement (Second Supp. Protest), Aug. 17, 2007, at 6. Specifically, in contrast to Raytheon’s [deleted] to [deleted] meet the “service ceiling” threshold capabilities, L-3’s proposal required [deleted] for [deleted], but not for [deleted], in order to perform those threshold capabilities. Tr. at 95-96. L-3’s proposal did provide that if [deleted], L-3’s aircraft can perform various tasks, including the “service ceiling” threshold capabilities, in an expedited manner. CO Statement, supra; Tr. at 108-16. In short, while Raytheon’s aircraft required [deleted] to [deleted] meet the threshold capabilities, L-3’s proposal demonstrated that if it [deleted], it could perform the capabilities in an expedited manner.<sup>20</sup> Accordingly, there is no merit to Raytheon’s assertion that the agency performed an unequal evaluation of proposals.

Finally, Raytheon challenges the agency’s evaluation with regard to life cycle costs, asserting that the agency was required to calculate and compare numerical values

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<sup>20</sup> In any event, the record indicates that even L-3’s proposed [deleted] to expedite task performance was consistent with the existing engine certification, whereas Raytheon’s proposed [deleted] was not. CO Statement, supra at 1-5; Tr. at 79-88, 108-09.

associated with each offeror's anticipated life cycle costs.<sup>21</sup> The terms of the solicitation are to the contrary.

As discussed above, the solicitation advised offerors that total proposed prices for estimated CLIN quantities would be considered, evaluated and compared. In contrast, with regard to evaluation of life cycle costs, the solicitation expressly advised offerors that “[n]umerical cost values [associated with life cycle costs] are not a driver in and of themselves” and that the agency would assign each proposal an adjectival rating based on program price/cost risk. RFP ¶ M-3(2.2.2). That is precisely what the agency did.<sup>22</sup> Accordingly, there is no merit to Raytheon's assertion that the agency was required to perform a numerical comparison of the life cycle costs associated with the two proposals.

The protest is denied.<sup>23</sup>

Gary L. Kepplinger  
General Counsel

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<sup>21</sup> The life cycle cost information submitted by the offerors regarding anticipated life cycle costs is not binding on the offerors.

<sup>22</sup> Both proposals received adjectival ratings of “good” with regard to life cycle costs. AR, Tab 81, at 29.

<sup>23</sup> In addition to the arguments specifically addressed above, Raytheon's initial and supplemental protests challenge the agency's evaluation of virtually every non-price evaluation factor and subfactor, expressing disagreement with the agency's judgments and asserting that Raytheon's proposal should have been evaluated more favorably and/or that L-3's proposal should have been evaluated less favorably. We have considered all of Raytheon's arguments and find no basis for sustaining its protest.