



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

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

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Northrop Grumman Space and Missile Systems Corporation; Textron Marine & Land Systems Corporation

File: B-400837; B-400837.2; B-400837.3; B-400837.4; B-400837.5

Date: February 17, 2009

John W. Chierichella, Esq., Anne B. Perry, Esq., Jonathan S. Aronie, Esq., Keith R. Szeliga, Esq., Jessica Mailman, Esq., George Coller, Esq., Franklin C. Turner, Esq., Daniel J. Marcinak, Esq., Jesse J. Williams, Esq., Louis D. Victorino, Esq., and Aleksander Lamvol, Esq., Sheppard Mullin Richter & Hampton, and Joseph O. Costello, Esq., Northrop Grumman Space & Missile Systems Corporation, for Northrop Grumman Space and Missile Systems Corporation; and F. Whitten Peters, Esq., Jeffrey D. Bailey, Esq., Lauren K. Collogan, Esq., Robert A. Van Kirk, Esq., and Jonathan M. Landy, Esq., Williams & Connolly, for Textron Marine & Land Systems Corporation, the protesters.

Marcia G. Madsen, Esq., David Dowd, Esq., Cameron S. Hamrick, Esq., Melissa L. Baker, Esq., Polly A. Myers, Esq., Roger Waldron, Esq., and Luke Levasseur, Esq., Mayer Brown, and Bucky P. Mansuy, Esq., for Lockheed Martin Systems Integration; Rand L. Allen, Esq., Paul F. Khoury, Esq., Nicole P. Wishart, Esq., Julie A. Dunne, Esq., and John Prairie, Esq., Wiley Rein, for BAE Systems Land & Armaments-Ground Systems; W. Jay DeVecchio, Esq., David A. Churchill, Esq., Kevin C. Dwyer, Esq., Edward Jackson, Esq., Daniel E. Chudd, Esq., Damien C. Specht, Esq., Joshua L. Kaul, Esq., and Caroline A. Keller, Esq., Jenner & Block, for General Tactical Vehicles, the intervenors.

Brian Toland, Esq., Joseph E. Jecks, Esq., Kim B. Tycker, Esq., and Wendy S. Saigh, Esq., U.S. Army Materiel Command, for the agency.

David Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest of agency evaluation of system maturity of offerors' proposed joint light tactical vehicle configurations is denied; agency reasonably determined that awardees had previously constructed and tested demonstrators or prototypes that were sufficiently representative of proposed configurations such that risk awardees would be unable to meet demanding performance schedule was materially reduced.

2. Agency reasonably determined that incorporated joint venture awardee satisfied requirement for Cost Accounting Standards disclosure statement where proposal included disclosure statements originally submitted by, and concerning cost accounting systems of, joint venture members/subcontractors; proposal indicated that all costs to be billed under contract would be incurred and accounted for by joint venture members/subcontractors, with no allowance for any costs to be incurred and accounted for at joint venture level; and proposal delineated overall share in cost of performance and specific roles to be filled by each joint venture member/subcontractor.

DECISION

Northrop Grumman Space and Missile Systems Corporation (NG), of Los Angeles, California, and Textron Marine & Land Systems Corporation, of Slidell, Louisiana, protest the U.S. Army Materiel Command's (AMC) award of contracts to Lockheed Martin Corporation Systems Integration (LM), of Owego, New York, BAE Systems Land & Armaments-Ground Systems, of Santa Clara, California, and General Tactical Vehicles (GTV), of Sterling Heights, Michigan, under request for proposals (RFP) No. W56HZV-08-R-0210, for the Technology Development phase of the Joint Light Tactical Vehicle (JLTV). The protesters challenge the evaluation of proposals.

We deny the protests.

The JLTV program is a joint Army/Marine Corps program for the development and production of a family of vehicles consisting of 10 vehicle sub-configurations (General Purpose Mobility; Infantry Carrier, Fire Team; Reconnaissance; Command & Control On The Move; Heavy Guns Carrier; Close Combat Weapons Carrier; Utility; Ambulance (configurations B and C); Shelter Carrier/Utility/Prime Mover) in three payload categories, and companion trailers. JLTV objectives include increased protection and performance over the current fleet; minimizing ownership costs by maximizing commonality of components, maintenance procedures, training, etc. between vehicles and trailers; increasing fuel efficiency; and encouraging effective competition throughout the program development. RFP, Executive Summary. The JLTV Technology Development (TD) goal is to demonstrate a high probability of delivering systems on time and within budget. The evaluation was to take into consideration three proposal configurations, one from each payload category: a JLTV-A general command and control vehicle; a JLTV-B mounted infantry/combat arms force vehicle; and a JLTV-C transport vehicle for carrying wounded personnel, general cargo, ammunition, and shelters. A total of 7 demonstrator test vehicles and 4 demonstrator trailers were to be delivered to agency facilities within 440 days (less than 15 months) after award, with overall performance, including testing, to be completed within 27 months. RFP § F.1.

The solicitation contemplated the award of three contracts to the offerors whose proposals represented the "best value" to the government based on four evaluation factors: (1) technical, including equally weighted subfactors for integrated system

maturity (ISM) and performance; (2) logistics commonality; (3) cost; and (4) past performance/small business participation, with past performance more important than small business participation. Technical was significantly more important than logistics commonality, which was more important than cost; cost and past performance/small business participation were approximately equal in importance. The non-cost factors, combined, were significantly more important than cost.¹ RFP § M.1.1.

Eight proposals were received in response to the RFP. After conducting written and oral discussions with offerors, AMC requested the submission of final proposal revisions (FPR) from six offerors. The FPRs were evaluated as follows:

	LM	BAE	GTV	NG	Textron
TECHNICAL	Excellent /Very Low Risk	Good /Low Risk	Good /Low Risk	Good /Low Risk	Adequate /Moderate Risk
ISM	Excellent /Very Low Risk	Good /Low Risk	Good /Low Risk	Adequate /Moderate Risk	Marginal /High Risk
Performance	Good /Low Risk	Good /Low Risk	Good /Low Risk	Good /Low Risk	Good /Low Risk
LOGISTICS COMMONALITY	Good /Low Risk	Good /Low Risk	Good /Low Risk	Good /Low Risk	Good /Low Risk
PAST PERFORMANCE /SMALL BUSINESS	Good	Good	Adequate	Good	Good
Past Performance	Good /Low Risk	Good /Low Risk	Good /Low Risk	Good /Low Risk	Good /Low Risk
Small Business	Good	Adequate	Poor	Good	Good
EVALUATED COST (millions)	\$50.91	\$58.54	\$55.02	\$32.95	\$53.32

Source Selection Decision (SSD) at 3-8.

LM’s proposal received the highest overall rating under the technical factor (the most important factor), based on a finding that LM’s proposed approach and technology were the most mature, with the lowest risk of not achieving the program objectives within the allowed 27 months (including less than 15 months to furnish

¹ In addition, the RFP stated that “technical diversity may play a deciding role in decisions for multiple awards. For example, several highly rated non-cost proposals which are similar to each other may not be selected in favor of other lower rated, but dissimilar proposals to achieve technical diversity.” RFP § M.1.1.

the required demonstrators). In this regard, the source selection decision specifically noted that LM had built and partially tested both JLTV-B and JLTV-C demonstrators, and had recently completed a JLTV-A demonstrator; according to the agency, LM's proposal was "clearly superior" to the others under the ISM subfactor. SSD at 11. BAE's and GTV's proposals were rated overall good with low risk under the ISM subfactor; BAE had completed a JLTV-B demonstrator, which also partially supported the maturity of the JLTV-A and JLTV-C systems (because of the many common components among BAE's family of vehicles), while GTV had built a JLTV-C demonstrator, which also supported the maturity of GTV's JLTV-A and JLTV-B systems. AMC determined that there was little doubt that BAE and GTV would achieve the JLTV program objectives within 27 months. (BAE's proposal was rated slightly more mature than GTV's.) SSD at 3-5.

In contrast, not only was NG's proposal rated overall only adequate with moderate risk under the ISM subfactor, but each of its JLTV-A, JLTV-B and JLTV-C configurations was rated high risk for reliability and maintainability (as well as moderate risk for design). While NG's approach was based on three generations of mock-ups, NG had not built a demonstrator, and AMC determined that there was some doubt that NG would achieve the JLTV program requirements within 27 months. As for Textron, its proposal was rated marginal with high risk under the ISM subfactor, and only adequate with moderate risk under the overall technical factor, as a result of each of its JLTV-A, JLTV-B and JLTV-C configurations being rated high risk with respect to design, reliability and maintainability maturity. SSD at 5-7. AMC determined that Textron's proposal, which was not based on a demonstrator, was inferior to the other proposals as a result of its immature design; according to the agency, there was substantial doubt that Textron would achieve the JLTV program requirements within 27 months. The agency determined that Textron's proposal offered no meaningful benefits that outweighed the immaturity of its design. As for the other four proposals which remained in the competition, the agency determined that the greater maturity and lesser risk of LM's, BAE's and GTV's proposals relative to NG's were worth their higher costs such that they represented the best value to the government. Upon learning of the resulting awards to LM, BAE and GTV, NG and Textron filed these protests with our Office. SSD at 7-14.

NG and Textron challenge the evaluation of proposals, including, especially, the evaluation under the ISM subfactor. In reviewing protests against allegedly improper evaluations, it is not our role to reevaluate proposals. Rather, we will examine the record to determine whether the agency's judgment was reasonable and in accord with the evaluation factors set forth in the RFP and applicable procurement statutes and regulations. A protester's mere disagreement with the agency's judgment does not establish that an evaluation was unreasonable. Hanford Env'tl. Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 4. Here, based on our review of all of NG's and Textron's timely arguments, we find no basis to question the award decisions. We discuss NG's and Textron's principal arguments below.

ISM EVALUATION

NG's and Textron's protests focus in significant measure on the evaluation under the ISM subfactor. The ISM subfactor included four equally-weighted elements--the JLTV-A, JLTV-B, and JLTV-C configurations, and program management. The RFP provided that for each of the three configuration elements, the government would assess the probability/risk that the configuration would achieve program requirements within 27 months based on four considerations: system design maturity, system reliability maturity, system maintainability maturity, and system command, control, communications, computers and intelligence (C4I) maturity.

For each configuration element, offerors were required to complete a self-assessment of the level of maturity for each of the above four considerations, assigning one of six levels of maturity for each consideration as listed in solicitation attachment 24 (level 1 being the lowest and level 6 the highest). For example, attachment 24 generally defined the maturity levels for system design maturity as follows: level 1, completed concept system analysis; level 2, completed preliminary design analysis; level 3, completed system physical mock-up; level 4, completed detailed design analysis; level 5, fabricated system demonstrator; and level 6, tested system demonstrator. As another example, the maturity levels for system reliability maturity were generally defined as follows: level 1, reliability management program and failure allocation prediction; level 2, reliability prediction; level 3, reliability design analysis, in which the reliability design prediction is supported by identification of the critical components and physics of failure analysis, fault tree analysis, finite element analysis (FEA), and dynamic and/or static design modeling and simulation have been performed on the identified critical components; level 4, component level testing; level 5, systems integration testing of a system demonstrator; and level 6, system level testing of a system demonstrator to validate the system level reliability. As with design and reliability maturity, attachment 24 indicated that, for both system maintainability and C4I maturity, fabrication of a demonstrator was necessary to achieve level 5 and testing of the demonstrator was necessary to achieve level 6.

Offerors were also required to furnish substantiating data--"technical information, documentation, test data and rationale [that is] complete, specific, and relevant"--supporting the claimed maturity levels. According to the RFP,

[t]he primary purpose of the substantiating data submitted for the integrated system maturity subfactor is to document and verify the achievement and credibility of the offerors proposed maturity level. The Government will review the substantiating data in the breadth and depth necessary to conduct its assessment of the offerors integrated

system maturity, but the review may be less than a complete evaluation of every aspect of all substantiating data submitted for this factor.

RFP § M.4.1.1.3.

Based on its review of the substantiating data submitted by offerors, AMC evaluated the maturity levels completed or partially completed for the JLTV-A, JLTV-B and JLTV-C configurations (as relevant here) as follows:

	DESIGN			MAINTAINABILITY			RELIABILITY		
	Complete	Some Complete	Partial	Complete	Some Complete	Partial	Complete	Some Complete	Partial
LM									
A	1 - 4	5		1 - 4		5	1 - 3	4, 5	
B	1 - 5		6	1 - 6			1 - 3	4, 5	6
C	1 - 5		6	1 - 6			1 - 3	4, 5	6
BAE									
A	1 - 4	5		1 - 3		5	1, 2	4	3, 5
B	1 - 4	5	6	1 - 3	5		1, 2	4, 5	3, 6
C	1 - 4	5		1 - 3	5		1, 2	4	3, 5
GTV									
A	1 - 3	4, 5		1 - 3	4, 5	6	1 - 3		4, 5
B	1 - 3	4, 5		1 - 3	4, 5	6	1 - 3		4, 5
C	1 - 3	4, 5	6	1 - 3	4, 5	6	1 - 3	5	4, 6
NG									
A	1 - 3	4, 5		1 - 2		4	1 - 2		3
B	1 - 3	4, 5		1 - 2		4	1 - 2		3
C	1 - 3	4, 5		1 - 2		4	1 - 2		3
Textron									
A	1 - 3	5	4	1, 2	3		1, 2	3	
B	1 - 3	5	4	1, 2	3		1, 2	3	
C	1 - 3	5	4	1, 2	3		1, 2	3	

Final Review Briefing to the JLTV Source Selection Authority (SSA) and Source Selection Advisory Council (SSAC), Oct. 21, 2008, at 22-26.

As generally shown above, LM's JLTV configurations were evaluated as the most mature, having completed the highest maturity levels. BAE's and GTV's configurations were rated as less mature than LM's, but more mature than NG's and Textron's, especially with respect to the maintainability and reliability maturity levels completed in whole or part. In terms of overall risk, the agency noted that LM had built and partially tested both JLTV-B and JLTV-C demonstrators and recently completed a JLTV-A demonstrator. While LM's JLTV-A configuration was rated low risk for design, maintainability, and reliability maturity, and very low risk for C4I maturity, its JLTV-B and JLTV-C configurations were rated very low risk for all but reliability and low risk for reliability. The agency noted that BAE had completed a JLTV-B demonstrator that also partially supported the maturity of the JLTV-A and JLTV-C systems. While BAE's JLTV-A and JLTV-C configurations were rated low risk for all but maintainability maturity, for which they were rated moderate risk, BAE's JLTV-B configuration was rated very low risk for design maturity, low risk for reliability and C4I maturity, and moderate risk for maintainability maturity. The agency also noted that GTV had built a JLTV-C demonstrator that also supported the maturity of GTV's JLTV-A and JLTV-B systems. GTV's configurations were rated moderate risk for design maturity and low risk otherwise, except that its JLTV-C configuration was rated very low risk for reliability maturity. In contrast, NG, which had completed mockups but not a demonstrator, was rated moderate risk for design maturity and low risk for C4I maturity, but was rated high risk for maintainability and reliability maturity of its JLTV configurations. Textron, which had not completed a demonstrator, was rated low risk for C4I maturity, but high risk for design, maintainability and reliability maturity of its configurations. Final Review Briefing to the JLTV SSA and SSAC at 22-26.

NG and Textron assert that BAE and GTV improperly received credit in the ISM maturity evaluation for having built a demonstrator, since the agency did not consider whether the demonstrators were comparable to the offerors' proposed JLTV approaches.

The protesters' arguments are without merit. As an initial matter, we agree with the agency that nothing in the solicitation required a showing that an offeror's demonstrator was identical to its ultimate proposed design in order to receive some credit in the maturity evaluation for the demonstrator. In this regard, the RFP provided only that "[t]he primary purpose of the substantiating data submitted for the integrated system maturity subfactor is to document and verify the achievement and credibility of the offeror's proposed maturity level," RFP § M.4.1.1.3, with the maturity self-assessment in turn to "be based upon the proposal configurations characterized in the offeror's System Description." RFP § L.4.1.1(a). Agency witnesses at the hearing our Office conducted in this matter testified that the agency undertook the ISM maturity evaluation with the view that the demonstrator "doesn't necessarily have to be the 100 percent solution that you are going to deliver to the Army, but it has to be representative." Hearing Transcript (Tr.) at 161; see Tr. at 480-81, 630. As an agency witness noted in discussing one of LM's demonstrators:

It wasn't a 100 percent representation of the proposed design, nor would we expect it to be. In many cases, when you're going through this design process, you're making changes to your design, you're refining your design, refining your design based off of those lessons learned in testing and implementing those changes into your proposed design that you will deliver to the government.

And that's all part of the maturity process.

Tr. at 384. We think the agency's focus on whether a demonstrator was representative of, rather than identical to, an offeror's ultimate proposed design, and on whether it appeared that the offeror had refined its design based on lessons learned from the demonstrator, was both consistent with the terms of the solicitation and reasonable.

Further, the protesters have not shown that the agency unreasonably accorded BAE's and GTV's proposals credit in the ISM maturity evaluation based on their having built demonstrators. In this regard, AMC notes that BAE's proposal indicated that its proposed design and its demonstrator used a number of essentially the same systems, including, for example, [REDACTED].² BAE Technical Proposal, 1.2 Element 2; BAE Technical Proposal attach. 1.18, CTV & Critical Design Review, June 26, 2007; AMC Post Hearing Comments at 15-17. Based on this information from BAE's proposal, AMC assigned BAE partial credit for completing some elements of maturity level 5 (for construction of a demonstrator) for design, maintainability, reliability, and C4I maturity. The agency also recognized in its evaluation of design and maintainability maturity that BAE had partially completed some elements of level 6 with respect to demonstrator testing. In light of the information in BAE's proposal demonstrating similarity of its demonstrator to its proposed design in significant areas, we find nothing unreasonable in the agency's according evaluation credit to BAE based on its demonstrator.

GTV's proposal included less detail (than BAE's) as to the characteristics of its JLTV demonstrator, but did indicate that its proposed design was based on previously demonstrated technical approaches. In this regard, GTV's proposal indicated that its JLTV demonstrator was based on the [REDACTED] demonstrators built by AM

² A monocoque hull is one where the panels that make up the hull are welded directly together rather than onto an internal frame. Tr. at 760. While the hull design remained the same in BAE's proposed design as in its demonstrator, the record indicates that there was a change in the grade of aluminum in order to provide superior ballistic protection. According to the agency, which is familiar with both grades of aluminum, the change did not increase weight and did not represent a fundamental change. Agency Post Hearing Comments at 17.

General (one of the two joint venture partners in GTV) and furnished to the government for testing. GTV FPR Technical, at Fig. 1.2-1. According to GTV's proposal, as of March 2008, the [REDACTED] demonstrators had undergone [REDACTED] miles of combined AM General and government testing. GTV FPR Technical, at 1.2.1A. GTV's proposal further indicated that its proposed design was based on the [REDACTED] prototypes. GTV FPR Technical, at 1.3.3, 1.4.1.2, 1.4.4B, 1.4.5.2A, 1.4.5.4, 1.4.5.5, 2.5.1.2B. In addition, GTV's proposal elsewhere indicated that its proposed design was based on its JLTV demonstrator. For example, GTV's proposal stated as follows:

A detailed full scale vehicle mockup and automotive demonstrator were then built to assess JLTV design feasibility against the evolving JLTV Purchase Description requirements. Shown in Figure 1.2.4-1 is the GTV JLTV demonstrator and mockup. The Demonstrator has served as the basis and test bed for the GTV proposed designs for the common platform hull structure approach, and the engine, transmission, and driveline selection.

GTV FPR Technical, at 1.2.4; see GTV FPR Technical, at 1.4.1.2, 1.4.2, 2.5.1.5.1, 2.5.2.5.1 (“[t]he GTV demonstrator is currently configured to represent Payload category C and is reconfigurable to reflect Payload category A and B”), at 145-A; AMC Post Hearing Comments at 14. In other words, GTV's proposal indicated that GTV's proposed design was based in significant respects on GTV's JLTV demonstrator, which in turn was based in significant respects on the [REDACTED] prototypes. Based on this information in GTV's proposal, AMC assigned GTV partial credit for completing some elements of maturity level 5 (for construction of a demonstrator) for design, maintainability, and reliability maturity, and also recognized in its evaluation of design and maintainability maturity that GTV had partially completed some elements of level 6 with respect to demonstrator testing. We find nothing unreasonable in these evaluation conclusions; AMC could reasonably determine that GTV's proposed design was based on and developed from actual demonstrators or prototypes sufficient to materially reduce the risk that GTV would fail to meet the solicitation performance requirements within the demanding solicitation schedule. We conclude that there is no basis to question the evaluated maturity levels for GTV.

NG asserts that AMC improperly assigned proposals evaluation credit for demonstrating achievement of all or part of a higher maturity level, when all lower maturity levels had not been achieved. The protester notes, in this regard, that attachment 24 provided, with respect to the system design maturity levels, that “[t]he below levels are cumulative; any level achieved must include achievement of all lower levels (except for Level 3 . . .),” and with respect to the maintainability, reliability and C4I maturity levels, that “[t]he below levels are cumulative; any level achieved must include achievement of all lower levels.” Attachment 24.

AMC responds that its evaluation approach was consistent with the provision in RFP section M for the agency to evaluate the “extent and credibility” of offerors’ system design, reliability, maintainability, and C4I maturity. RFP § M.4.1.1.1. Moreover, agency witnesses testified that offerors were advised during face-to-face discussions that the ISM evaluation “would take into account all maturity accomplishments, regardless of their level, regardless of the completion of the levels below them.” Tr. at 641-43, 676.

The RFP and discussions language cited by the agency appears to support its view that offerors were on notice that all maturity characteristics would be considered, regardless of the level achieved. In any case, however, we need not resolve this dispute, since the record indicates that NG’s proposal was based on the agency’s interpretation of the RFP. Specifically, in the maturity self-assessment in its FPR, NG claimed credit for having partially completed system design maturity level 5, even though its own self-assessment indicated that it had only partially completed maturity level 4. NG FPR Technical Proposal at A-2.1-1. Having submitted a proposal on the understanding that partial credit was available for a maturity level notwithstanding the failure to complete lower maturity levels, NG cannot now assert that this approach was inconsistent with the terms of the solicitation. The integrity of the protest process does not permit a protester to espouse one interpretation or position during the procurement, and then argue during a protest that the interpretation or position is unreasonable or otherwise improper. IBM Global Bus. Servs., B-298833.4, B-298833.5, Mar. 1, 2007, 2007 CPD ¶ 82 at 6; Northrop Grumman Sys. Corp., B-298954 et al., Jan. 12, 2007, 2007 CPD ¶ 63 at 8; BST Sys., Inc., B-298761, B-298761.2, Dec. 1, 2006, 2006 CPD ¶ 62 at 6; AAI Eng’g Support, Inc., B-257857, Nov. 16, 1994, 95-1 CPD ¶ 2 at 3-4.³

RISK

NG and Textron assert that the risk with respect to the evaluated performance of the offerors’ proposed designs as reported to the SSA and SSAC was misleading. In this regard, the RFP generally provided that the evaluation would take into account “the relative strengths/weaknesses and risks of each proposal.” RFP § M.1.2. The RFP further generally provided for consideration of proposal risk, stating as follows: “Proposal Risk is assessed by the SSEB [Source Selection Evaluation Board] and is integrated into the assessment of the Technical, Logistics Commonality, and Cost

³ Textron indicated in its response to an ISM discussion question that “[o]ur understanding of the guidance received at the February 19-21, 2008 Pre-proposal Conference was that bidders should show all relevant Integrated System Maturity work performed to date for potential granting of partial credit.” Textron Response to TEX-ISM-A9, May 20, 2008. Textron’s FPR indicated an understanding that partial credit was available under the maturity levels. See, e.g., Textron FPR, Technical Proposal, 3.2.2, JLTV-B, Reliability Maturity (maturity Level “2+” claimed).

Factors and the Small Business Participation subfactor.” RFP § M.3.4. Regarding the performance subfactor of the technical evaluation factor, under which the transportability, mobility, force protection, and payload characteristics of the proposed JLTV configurations were to be evaluated, the solicitation provided that:

a. where the PD [Product Description] requirements in Attachment 26 identifies objectives, the Government will assess the extent to which the Offeror’s proposed performance levels satisfy the PD objective performance.

And

b. the proposal risk probability that, for the PD requirements in Attachment 26, the Offeror will achieve (1) PD threshold performance levels, and (2) any offeror proposed performance above PD threshold levels up to objective performance levels.

RFP § M.4.1.2.

The protesters assert that several of the risk ratings in the evaluation findings regarding mobility as set forth in the briefing slides presented to the SSA and SSAC were misleading. In this regard, the briefing slides included 12 evaluation categories based on various PD requirements (e.g., forward speed, acceleration dash speed, speed on grade, etc.) with respect to mobility, 1 of the 4 elements of the performance subfactor of the technical evaluation factor, resulting in a total of 36 ratings (12 categories x 3 JLTV configurations). As noted by the protesters, the agency assigned the risk rating associated with each category/JLTV rating based on the risk that the configuration would achieve the proposed performance, rather than the risk that the configuration would achieve either the threshold or objective performance levels, with the result that in several instances the risk ratings appear anomalous.

For example, PD requirement 985 (PD985) established a minimum threshold forward speed requirement of 70 mph and a desired objective of 90 mph. The briefing slides indicate that NG proposed a forward speed of [REDACTED] mph for its JLTV-A configuration (but only [REDACTED] mph for its JLTV-B and JLTV-C configurations), and was evaluated as likely to achieve [REDACTED] mph for the JLTV-A, resulting in a moderate risk that it would not achieve its proposed forward speed. In contrast, BAE proposed a forward speed of [REDACTED] mph for its JLTV-A configuration (and [REDACTED] mph for the JLTV-B and JLTV-C configurations), and was evaluated as likely to achieve [REDACTED] mph for the JLTV-A, resulting in a very low risk that it would not achieve its proposed forward speed ([REDACTED] mph). LM proposed a forward speed of [REDACTED] mph for its JLTV-A configuration (but [REDACTED] mph for its JLTV-B and JLTV-C configurations), and was evaluated as likely to achieve [REDACTED] mph for the JLTV-A, resulting in a moderate risk that it would not achieve its proposed forward

speed ([REDACTED] mph). Final Review Briefing to the JLTV SSA and SSAC, at 53, 61, 69, 77, 93. Thus, as a result of the agency's rating risk in terms of achieving the proposed performance, rather than in terms of the threshold or objective performance levels, the risk assigned NG's proposal with respect to the forward speed of its JLTV-A configuration was higher than the risk assigned BAE's in that regard, even though NG's JLTV-A's evaluated forward speed ([REDACTED] mph) was higher than BAE's ([REDACTED] mph).

However, while the protesters are correct that basing the risk rating in the briefing slides on the difference between the proposed and evaluated speeds could, in the absence of further information, potentially mislead the SSA as to the relative speeds of the proposed JLTVs, it is clear that the briefing slides in fact reasonably set forth the evaluated relative performance of the proposed JLTV configurations for consideration by the SSA and SSAC. Again, the slides not only included a risk rating based on the likelihood that each JLTV configuration would meet the proposed level of performance, an evaluation approach provided for under the solicitation, RFP § M.4.1.2, but also included both the evaluated level of performance of each JLTV configuration and the associated strengths and weaknesses. Thus, it was apparent from the briefing slides that NG's proposed JLTV-A configuration was evaluated as likely to achieve a higher forward speed ([REDACTED] mph) than BAE's ([REDACTED] mph). We conclude that the evaluation record was sufficient to put the SSA and SSAC on notice of the relative merits (including regarding mobility) of the proposed designs.

The protesters assert that the overall evaluation ratings were mechanical in that the adjectival and risk ratings were inextricably and improperly linked. In this regard, the protesters note that the agency's source selection plan defines five adjectival evaluation ratings for the ISM and performance subfactors of the technical evaluation factor, and lists a risk rating for each adjectival rating as follows: excellent/very low risk, good/low risk, adequate/moderate risk, marginal/high risk, and poor/very high risk. The source selection plan further provides as follows:

Technical Performance Sub-factor: Evaluators should consider the possibility that, by exceeding the requirement, the offer will reduce the risk of meeting the requirement. If the Offeror's suggested approach does not have a direct impact on the risk of achieving the requirement, it should not be considered in the evaluation. Evaluators will apply the rating for the definition that most closely matches the evaluation.

Source Selection Plan at 18-19.

As noted by the protesters, in each case, the overall adjectival rating and risk ratings assigned an offeror's proposal for the 4 ISM subfactor elements (JLTV-A, JLTV-B, JLTV-C and program management) and 4 performance subfactor elements (transportability, mobility, force protection and payload) correlated to the above

adjectival/risk rating pairings. Final Review Briefing to the JLTV SSA and SSAC, Oct. 21, 2008, at 100. However, while the protesters assert that the above facts demonstrate that the agency's adjectival and risk evaluation ratings were mechanically, and therefore improperly, linked, they have made no showing that the overall ratings at the element level did not in fact reasonably reflect the relative strengths and weaknesses of the offerors' proposals such that the linking resulted in competitive prejudice. See United Int'l Eng'g, Inc. et al., B-245448 et al., Jan. 29, 1992, 92-1 CPD ¶ 122 at 14.

GTV JOINT VENTURE

The protesters assert that GTV's proposal was unacceptable for failure to comply with the solicitation's cost accounting standards (CAS) and small business participation requirements. We find that these arguments furnish no basis for questioning the award to GTV.

CAS

Section 422 of title 42 of the United States Code directs the CAS Board to promulgate regulations, which shall be incorporated into the Federal Acquisition Regulation (FAR) and shall "require contractors and subcontractors as a condition of contracting with the United States to--(A) disclose in writing their cost accounting practices, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs." 42 U.S.C. § 422(h)(1) (2006). In this regard, the solicitation incorporated FAR clause 52.230-1, CAS Notices and Certifications, which provides as follows:

Any offeror submitting a proposal which, if accepted, will result in a contract subject to the requirements of 48 CFR Chapter 99 must, as a condition of contracting, submit a Disclosure Statement as required by 48 CFR 9903.202. When required, the Disclosure Statement must be submitted as a part of the offeror's proposal under this solicitation unless the offeror has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal.

FAR § 52.130-1(b). In turn, 48 C.F.R. § 9903.202-1(b)(1) provides that "[a]ny business unit that is selected to receive a CAS-covered contract or subcontract of \$50 million or more shall submit a Disclosure Statement before award." Here, the negotiated contract with GTV is a CAS-covered contract, 48 C.F.R § 9903.201-1, and because the contract was in excess of \$50 million, GTV "as a condition of contracting," was required to submit a CAS disclosure statement.

GTV, a limited liability joint venture incorporated in the state of Delaware, is comprised of two large business joint venture members--AM General and General

Dynamics Land Systems (GDLS). GTV's proposal indicated that 100 percent of the contract costs would be accounted for by subcontracts with the two joint venture members, apportioned between them equally. GTV FPR Cost Proposal at 31. GTV indicated in its proposal that a CAS disclosure statement had previously been submitted, and specifically cited in this regard disclosure statements submitted by AM General and GDLS.

The protesters assert that, because the CAS disclosure statements GTV relied on to meet the solicitation requirements had been submitted by and concerned the cost accounting systems of GTV's joint venture members--that is, its subcontractors for this contract--and did not address the cost accounting system of GTV itself, the prime contractor, GTV failed to meet the CAS disclosure requirement and thus was ineligible for award.

This argument is unpersuasive. In order to assist in our consideration of this matter, we requested an advisory opinion from the Defense Contract Audit Agency (DCAA), which is responsible for performing contract audits for the Department of Defense (DOD), and for providing accounting and financial advisory services regarding contracts and subcontracts to all DOD components responsible for procurement and contract administration. DCAA Information for Contractors, DCAAP 7641.90, Jan. 2005, 1-301. In responding to this request, DCAA referred to the DCAA Contract Audit Manual, DCAAM §§ 7640.1, 7-1810.2, which provides the following audit guidance:

b. Joint ventures are composed of two or more contractors each of which may have already filed a Disclosure Statement as a result of having obtained other Government contracts. Review the characteristics of the joint venture to determine if the joint venture meets the definition of a CAS segment.

c. The need for a joint venture CAS Disclosure Statement depends upon the characteristics of the venture itself. The determination must be made on a case-by-case basis. Where the joint venture is the entity actually performing the contract, has the responsibility for profit and/or producing a product or service, and has certain characteristics of ownership or control, a Disclosure Statement should be required. Where the venture merely unites the efforts of two contractors performing separate and distinct portions of the contract with little or no technical interface, separate joint venture disclosure may not be required. Where doubt exists, discuss the circumstances with the contracting officer.

DCAAM § 7-1810.2. Applying this guidance, DCAA advised that submission of a CAS disclosure statement by the GTV joint venture itself may not be required; since all of the joint venture's costs were proposed to be incurred and accounted for by the two joint venture members (which had already submitted their respective CAS disclosure

statements) it would not serve a useful purpose in the examination of the joint venture's cost proposal or in ensuring the joint venture's compliance with the CAS Board's rules.

We find DCAA's position persuasive. GTV's proposal in fact incorporated CAS disclosure statements applicable to the contemplated contract effort. While these disclosure statements had originally been submitted by, and concerned the cost accounting systems of, GTV's joint venture members/subcontractors, GTV's proposal indicated that all costs to be billed under the contemplated contract would be incurred and accounted for by GTV's joint venture members/subcontractors, with no allowance for any costs to be incurred and accounted for at the GTV level. Furthermore, GTV's proposal delineated the overall share in the cost of performance and the specific roles to be filled by each joint venture member/subcontractor. In these circumstances, we think AMC could reasonably determine that GTV's proposal satisfied the CAS disclosure requirements.

Small Business Participation

NG asserts that GTV failed to comply with the solicitation requirements concerning small business participation. In this regard, consistent with the requirements under 15 U.S.C. §§ 637(d)(4)(B), 637(d)(6), the solicitation required large business offerors to submit a subcontracting plan. RFP § L-18, 52.219-4005, Submission of Subcontracting Plan (Feb. 1999) (TACOM); FAR § 52.219-9. As set forth in FAR clause 52.219-9, incorporated by reference in the solicitation, the subcontracting plan was required to include the following:

Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

The solicitation specifically cautioned that “[f]ailure to submit and, if applicable, negotiate an acceptable subcontracting plan which, in the judgment of the Contracting Officer, provides the maximum practicable opportunity for small business and small disadvantaged business concerns to participate in the awarded contract shall render the offeror ineligible for award.” RFP § L-18, 52.219-4005(d) (TACOM). In addition to these solicitation provisions, small business participation was an evaluation subfactor.

As noted above, GTV's proposal indicated that 100 percent of the contract costs would be incurred through subcontracts with the two joint venture members, both

large businesses. However, GTV's FPR also included a small business participation plan that included, among other information, small business participation projections and goals, including projected small business subcontracting of [REDACTED] percent. GTV FPR Past Performance/Small Business Participation Proposal at 72-73. Although GTV's proposal acknowledged that the projected small business participation did not include any tier 1 subcontracts, it maintained that GTV's approach would satisfy the intent of the small business participation requirements. Id. at 76-D.

The Office of Small Business Programs for the U.S. Army TACOM Life Cycle Management Command (LCMC) viewed GTV's small business participation plan as unacceptable due to the absence of tier 1 subcontracting goals. GTV Subcontracting Plan Review, TACOM LCMC Office of Small Business Programs, May 31, 2008. In contrast, the Small Business Administration's (SBA) Procurement Center Representative, found the plan to be acceptable. SBA Advisory Comments on GTV Subcontracting Plan, Sept. 22, 2008. Ultimately, the contracting officer, with the approval of his supervisor, likewise determined GTV's small business participation plan to be acceptable. In approving the plan, the contracting officer acknowledged that GTV had goals of 0 percent for tier 1 small business subcontracting, but noted that "both members of the joint venture actively support and assist small businesses and small disadvantaged businesses and will strive to achieve the overall small business and diverse business concern percentage goals assessed by [DOD]." Determination and Findings, Approval of Small and Small Disadvantaged Business Contracting Plan from GTV, Oct. 14, 2008. The SSEB, while finding the plan "highly realistic," rated GTV's small business participation plan poor for purposes of the comparative evaluation, notwithstanding the determination that GTV's plan was acceptable. Final Review Briefing to the JLTV SSA and SSAC, Oct. 21, 2008, at 146.

NG asserts that GTV's small business participation plan should not merely have been downgraded, but should have been found unacceptable such that GTV's proposal was not eligible for award.

We find the agency's evaluation of GTV's small business participation plan unobjectionable. As noted, rather than establish a minimum mandatory tier 1 subcontracting requirement, the RFP provided that failure to submit "an acceptable subcontracting plan which, in the judgment of the Contracting Officer, provides the maximum practicable opportunity for small business and small disadvantaged business concerns to participate in the awarded contract shall render the offeror ineligible for award" (emphasis added). RFP § L-18, 52.219-4005(d) (TACOM). Thus, the mere fact that the plan did not provide tier 1 small business subcontracting opportunities did not render the plan unacceptable. Moreover, given that GTV's joint venture was comprised of two large business joint venture members, in light of GTV's commitment to aggressive small business participation below tier 1, including

projected small business subcontracting of [REDACTED] percent, we find no basis for concluding that GTV's small business participation plan was unacceptable.

The protests are denied.

Gary L. Kepplinger
General Counsel