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## Decision

**Matter of:** Northrop Grumman Systems Corporation--Mission Systems

**File:** B-419560.6

**Date:** August 18, 2021

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Jason A. Carey, Esq., Kayleigh M. Scalzo, Esq., J. Hunter Bennett, Esq., Andrew Guy, Esq., Peter B. Terenzio III, Esq., Paul Rowley, Esq., Covington & Burling, LLP, for the protester.

Craig A. Holman, Esq., Mark D. Colley, Esq., Kara L Daniels, Esq., Michael McGill, Esq., Thomas A. Pettit, Esq., and Trevor Schmitt, Esq., Arnold & Porter Kay Scholer LLP, for L3 Technologies, Inc. Communication Systems - West, the intervenor.

Theresa M. Francis, Esq., Patrick R. Vanderpool, Esq., and Talor M. Rudolph, Esq., Department of the Navy, for the agency.

Sarah T. Zaffina, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest that agency unreasonably evaluated awardee's proposal is sustained where the agency evaluated the awardee's technical proposal as acceptable even though the awardee's proposal did not demonstrate compliance with a material solicitation requirement.

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### DECISION

Northrop Grumman Systems Corporation--Mission Systems (Northrop), of Bethpage, New York, protests the award of a contract to L3 Technologies, Inc. Communication Systems - West (L3Harris), of Salt Lake City, Utah, under request for proposals (RFP) No. N00019-19-R-0069, issued by the Department of the Navy, Naval Air Systems Command (NAVAIR), for an aircraft-mounted jamming system for low band radar. The protester alleges that the agency miscalculated the awardee's proposal when it rated the proposal as acceptable despite the fact that the proposal did not demonstrate compliance with a material solicitation requirement.

We sustain the protest.<sup>1</sup>

## BACKGROUND<sup>2</sup>

The Next Generation Jammer Low Band (NGJ-LB) system is part of a larger next generation jammer system that will augment and replace the current tactical jamming system used on the EA-18G Growler aircraft for airborne electronic attack. Agency Report (AR), Tab J, Program Streamlined Acquisition Plan at 1.<sup>3</sup> The NGJ-LB system will specifically counter low radio frequency band electronic attacks. *Id.*

On September 9, 2019, the Navy issued the RFP for the NGJ-LB capability block (CB-1) requirement.<sup>4</sup> The resulting engineering, manufacturing, and development contract will require the successful firm to “design, develop, build, integrate, test, and maintain” operational prototype NGJ-LB pods. AR, Tab AA, Statement of Work at 14. Award will be made to the offeror that provides the best value to the government considering technical and cost factors. AR, Tab D, RFP amend. 3 at 140-141.<sup>5</sup>

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<sup>1</sup> Northrop also protested the agency’s investigation and consideration of a conflict of interest in connection with the procurement. We sustained these allegations in a second separate unclassified decision issued pursuant to our Bid Protest Regulations. *Northrop Grumman Sys. Corp.--Mission Sys.*, B-419560.3 *et al.*, Aug. 18, 2021, 2021 CPD ¶ \_\_. Moreover, Northrop raised other allegations related to an addendum to the RFP, which was classified [DELETED]. We denied these allegations in a third separate classified decision. *Northrop Grumman Sys. Corp.--Mission Sys.*, B-419557.2 *et al.*, Aug. 18, 2021, 2021 CPD ¶ \_\_. The allegations and issues addressed in this protest decision are different from those addressed in the unclassified protest decision and the [DELETED] decision.

<sup>2</sup> For a more robust description of this procurement, see *Northrop Grumman Systems Corp.--Mission Systems*, B-419560.3 *et al.*, *supra*. In this decision, we only include information necessary to our discussion of the merits of the protest.

<sup>3</sup> This decision shares the agency report produced in *Northrop Grumman Systems Corp.--Mission Systems*, B-419560.3 *et al.*, *supra*. Unless otherwise noted, agency report documents are unclassified.

<sup>4</sup> The Navy also decided that there was an urgent need to add requirements that the Navy could only procure in a [DELETED] environment. Accordingly, the Navy issued the [DELETED] requirements as a separate solicitation--[DELETED] (Addendum RFP). The Navy will award the CB-1 contract and the contract for the Addendum RFP to one offer. AR, Tab D, RFP amend. 3 at 140. The [DELETED] requirements for the Addendum RFP should not be confused with the secret classified requirements in the CB-1 RFP addressed here.

<sup>5</sup> The solicitation was amended three times. All references to the solicitation are to the conformed RFP as set forth in amendment 3 except where noted.

Under the technical factor, proposals will be assigned a technical rating and a technical risk rating. *Id.* at 141. For the technical rating, the Navy will “evaluate the proposal to determine the [o]fferor’s understanding of, approach to, and ability to meet the solicitation requirements.” *Id.* The RFP provided that the agency will consider the proposal’s compliance with solicitation requirements and merit regarding the benefits and detriments related to program performance and operations. *Id.* Strengths may be assessed based upon the degree to which the proposal exceeds threshold requirements. *Id.* Proposals failing to address parts of the technical factor due to the lack of information may be assessed a weakness, significant weakness<sup>6</sup> or multiple significant weaknesses and multiple significant weaknesses raising the risk of unsuccessful performance to an unacceptable level may be assessed as a deficiency.<sup>7</sup> AR, Tab D, RFP amend. 3 at 142. Proposals receiving a deficiency will be ineligible for award. *Id.* at 141.

With regard to the technical risk rating, the agency will assess the risk associated with the proposed technical approach in meeting the requirement. *Id.* at 142. The Navy will evaluate the information substantiating the design approach submitted in the proposal and assign risk based on the level of confidence that the agency has with the substantiating information. *Id.* at 142.

In January 2020, the agency received two proposals, one from Northrop and one from L3Harris. Contracting Officer’s Statement and Memorandum of Law (COS/MOL) at 6. The agency conducted several rounds of discussions with both offerors and directed them to provide any final proposal revisions by November 5. *Id.* at 6-7. The agency then evaluated the revised proposals and assigned the following ratings:

	<b>Northrop</b>	<b>L3Harris</b>
<b>Technical Rating</b>	Unacceptable <sup>8</sup>	Outstanding
<b>Technical Risk Rating</b>	Unacceptable	Moderate
<b>Price</b>	\$496,000,000	\$544,400,000

<sup>6</sup> Significant weakness was defined as “a flaw that appreciably increases the risk of unsuccessful contract performance.” AR, Tab D, RFP amend. 3 at 145.

<sup>7</sup> Deficiency was defined as a “material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.” AR, Tab D, RFP amend. 3 at 145.

<sup>8</sup> The agency evaluated the protester’s proposal with a deficiency under the Addendum RFP and therefore the agency rated the protester unacceptable. AR, Tab Q, Debriefing Slides at 25.

AR, Tab O, Source Selection Advisory Council (SSAC) Report at 5.<sup>9</sup> In December 2020, the agency concluded that L3Harris's proposal represented the best value and awarded L3Harris the contract for \$544.4 million.

Following a debriefing, Northrop filed protests with our Office on February 1, 2021 alleging, among other things, a variety of conflicts of interest, which precluded an award to L3Harris. After the agency announced it was taking corrective action to investigate the conflict of interest allegations, we dismissed Northrop's protests as academic. *Northrop Grumman Sys. Corp.--Mission Sys., B-419557 et al.*, Mar. 5, 2021 (unpublished decision).

The agency completed its investigation, concluded that L3Harris did not have a conflict of interest, and affirmed the award to L3Harris. COS/MOL at 9. This protest followed.

## DISCUSSION

Northrop challenges the agency's evaluation of the awardee's proposal under the jamming performance element of the technical factor. According to Northrop, L3Harris's proposal failed to demonstrate that its proposed approach met certain threshold requirements set forth in the solicitation and, as a consequence, the agency should have assigned the proposal a deficiency, rendering it unacceptable for award. Based on our review of the record, we agree with the protester that the agency's evaluation was unreasonable.

In reviewing protests of an agency's evaluation and source selection decision, our Office will not reevaluate proposals; rather, we review the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation's evaluation criteria, and applicable procurement laws and regulations. *Conley & Assocs., Inc.*, B-415458.3, B-415458.4, Apr. 26, 2018, 2018 CPD ¶ 161 at 5; *Avionic Instruments LLC*, B-418604, B-418604.2, June 30, 2020, 2020 CPD ¶ 225 at 5.

While we will not substitute our judgment for that of the agency, we will sustain a protest where the agency's conclusions are inconsistent with the solicitation's evaluation criteria, undocumented, or not reasonably based. *Conley & Assocs., Inc.*, *supra* at 5.

In a procurement conducted pursuant to negotiated contracting procedures of Federal Acquisition Regulation part 15, any proposal that fails to conform to material terms and conditions of the solicitation is unacceptable and may not form the basis for award. *Intelsat Gen. Corp.*, B-412097, B-412097.2, Dec. 23, 2015, 2016 CPD ¶ 30 at 14. Material terms of a solicitation include those which affect the price, quantity, quality, or

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<sup>9</sup> The agency initially produced this document with extensive redactions as Tab O in the agency report. Subsequently, the agency produced an unredacted version of the document on June 22, 2021. We refer to this document using the tab identifier from the initial agency report.

delivery of the goods or services being provided. *Kratos Def & Rocket Support Servs., Inc.*, B-413143, B-413143.2, Aug. 23, 2016, 2016 CPD ¶ 227 at 5.

As relevant here, under the technical factor, the agency was to evaluate jamming performance as 1 of 11 elements under the technical factor. AR, Tab D, RFP amend. 3 at 141. Under jamming performance, the RFP requires the agency to evaluate compliance and risk, and provides that the agency may assess strengths, weaknesses, significant weaknesses or deficiencies. *Id.* at 142.

For the purpose of evaluating jamming performance, the solicitation instructs offerors to describe how its design approach meets certain specific system performance specifications (SPS). The CB-1 RFP SPS differentiates between “threshold” and “objective” requirements. “Threshold” [requirements] are the minimum acceptable performance level required by the Navy.” AR, Tab D, RFP amend. 3, attach. J(2), Classified CB-1 RFP SPS version 1.2.0 § 1.3.2.5 at 25. Whereas, “objective” requirements exceed the capabilities of the threshold requirements. *Id.* § 1.3.2.6 at 26.

The cSPS-1128 specification is one of several specifically identified threshold requirements offerors are required to meet. In particular, the RFP directs each offeror to “describe how its design approach meets the Effective Isotropic Radiated Power (EIRP) requirements . . . cSPS-1128 NGJ-LB SPS Section 3.3.2 ‘Installed EIRP Over Frequency’ . . . .” *Id.* at 95. Under this specification, a NGJ-LB pod is required to radiate a signal at a specific signal strength, which is measured by decibels (db). *Id.* § 3.3.2 at 48. The signal strength varies by [DELETED] and frequency [DELETED]. *Id.* at 47-48. Specifically, the cSPS-1128 specification states that the [DELETED]. *Id.* § 3.3.2 at 48. Table V identifies [DELETED]. *Id.* Table V also refers to Table IV, which specifies threshold and objective EIRP [DELETED], so that the cSPS-1128 requirement must be read in conjunction with Table IV to determine threshold signal strength for each frequency for each [DELETED].<sup>10</sup> *Id.* § 3.3.2 at 47-48.

The specification requires offerors to measure signal strength using a bounded area percentage (BAP). *Id.* at 45. To achieve the specified threshold requirements, the [DELETED]. *Id.* In short, cSPS-1128 requires offerors to achieve a BAP of at least [DELETED] or more for each frequency for each [DELETED].

Northrop alleges that L3Harris did not propose an approach to meet the cSPS-1128 specification for every required frequency and [DELETED]. Classified Third Supp. Protest at 15-19; Classified 3rd Supp. Protester Comments at 2-5. Northrop asserts that the Navy should have assessed L3Harris’s proposal a deficiency for failing to meet this threshold requirement instead of a significant weakness. Classified Third Supp. Protest at 17. In challenging the agency’s evaluation, Northrop disputes the agency’s contention that L3Harris merely had to propose “a path to meeting” the threshold requirement, and argues, in any event, that L3Harris offered no path. *Id.* at 17-19.

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<sup>10</sup> In the record, the parties also refer to this activity as beamforming.

According to Northrop, L3Harris's proposal was technically unacceptable and ineligible for award. *Id.* at 13-19.

The agency makes several arguments in response to Northrop. Essentially, the Navy contends that the RFP did not require L3Harris to demonstrate a design approach that met the specification because the solicitation did not require offerors to submit a complete design before contract award. Third Supp. MOL at 4-14. Thus, proposing to improve its approach during the performance of the contract did not reflect a failure of L3Harris to meet solicitation requirements. *Id.* at 12. The agency maintains that it properly assessed the level of risk associated with L3Harris's proposed design approach to meet requirements as "significant" and found that L3Harris proposed a "credible" path to meet the requirements. *Id.* at 12-13. In this regard, the Navy contends that it consistently assessed a significant risk when either Northrop or L3Harris proposed a credible path to meet the requirement or proposed a design that improved upon the design that generated most of the substantiating data. *Id.* at 13.

Notwithstanding the agency's arguments to the contrary, we agree with the protester that the agency's evaluation of L3Harris's proposal was not consistent with the terms of the solicitation. While the solicitation did not require complete pod designs at the time of proposal submission, the solicitation did identify certain "threshold" requirements, to include the EIRP cSPS-1128 specification. For these threshold requirements, offerors were to "describe how [their] design approach meets" the EIRP cSPS1128 requirements. AR, Tab D, RFP amend. 3 at 95. By use of the present tense "meets," the plain language of the solicitation required offerors to demonstrate in their proposals that their design approach "meets" the threshold requirements.

Despite the clear language of the solicitation, requiring offerors to describe how their design approach "meets" the cSPS-1128 threshold requirements, the record shows that the agency's evaluators considered L3Harris's proposed design approach as acceptable, albeit with significant risk, notwithstanding the fact that L3Harris's proposal did not describe an approach that actually "meets" these requirements.

Specifically, the agency found that L3Harris's proposed approach "has not been fully substantiated to enable full compliance with [DELETED] EIRP requirement, (cSPS-1128) resulting in potential technical and schedule risk." AR, Tab N, Source Selection Evaluation Board (SSEB) Report at 41.<sup>11</sup> The agency also specifically observed that L3Harris's proposed [DELETED] "does not meet requirements at some [DELETED] frequencies" and that L3Harris planned to [DELETED] for the [DELETED] frequencies where the requirement could not be met. *Id.* The agency noted that while L3Harris's proposed [DELETED] showed "up to [DELETED] EIRP improvement; . . . .

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<sup>11</sup> The agency initially produced this document with extensive redactions as Tab N in the agency report. Subsequently, the agency produced an unredacted version of the document on June 22, 2021. We refer to this document using the tab identifier from the initial agency report.

however, [L3Harris] does not directly compare the proposed improved performance to requirements.” *Id.*

Despite the fact that L3Harris’s proposed design approach did not meet the stated requirements, the agency noted that L3Harris intends to continue to improve the [DELETED] during the performance of the CB-1 contract and found that L3Harris’s proposed approach to use the [DELETED] “provides a credible path to meeting [DELETED] EIRP requirements” even though the proposed design is not fully substantiated. *Id.* The agency concluded that this limited substantiation increased the risk of meeting EIRP compliance. *Id.* The agency also concluded that this risk, combined with another risk not relevant to this discussion, warranted a significant weakness for L3Harris’s overall beamforming approach. AR, Tab O, SSAC Report at 10.

There is no dispute that the Navy’s own evaluators found that L3Harris’s proposal did not demonstrate an approach that met the threshold requirements for the cSPS-1128 specification. L3Harris’s proposal includes a table identifying 16 frequencies that do not achieve the [DELETED] BAP threshold requirements and even with L3Harris’s anticipated modifications identified in its proposal, L3Harris’s approach will not meet the requirement for 12 frequencies. Classified AR, Tab HH, L3Harris Resp. to Evaluation Notice (EN) No. 173 at 9. Accordingly, we agree with the protester that L3Harris’s proposal did not comply with the cSPS-1128 requirements. To the contrary, L3Harris’s proposal clearly reflected a design approach that did not meet these requirements. Accordingly, the agency erred by failing to assign L3Harris’s proposal a deficiency for this failure.

Throughout its defense, the agency insists that it properly focused on the risk related to L3Harris’s limited substantiation for its [DELETED] because L3Harris proposed a credible path forward to meet the EIRP requirement. The agency’s argument, however, reflects a misunderstanding of the fundamental problem with the evaluation. The error in the agency’s evaluation is not whether, or the degree to which, L3Harris substantiated its design approach. Rather, the error is the agency’s failure to properly assess L3Harris’s failure to comply with the requirement to provide a design approach that “meets” the cSPS-1128 specification threshold requirements.<sup>12</sup> In other words, per the terms of the solicitation, L3Harris was required to demonstrate a compliant

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<sup>12</sup> We note that the both the agency and L3Harris argue that failing to meet a material solicitation requirement is different from a material failure to meet a government requirement. See *e.g.*, 3rd Supp. MOL at 12 (“A material failure to meet a requirement does not equal non-compliance with a material requirement[.]”); 3rd Supp. Intervenor Comments at 10 n.8 (“‘material failure’ is not the same thing as risk associated with the proposed approach to fulfilling a ‘material requirement.’”). We are unpersuaded by these arguments. The fact is that L3Harris’s proposed approach did not meet [DELETED] BAP for each identified frequency; therefore, L3Harris failed to demonstrate an approach that “meets” threshold requirements for EIRP at certain [DELETED] frequencies, which is a failure to meet a clearly stated solicitation requirement.

approach in its proposal, not after award. While the agency could reasonably consider the risks associated with the viability of a proposed approach, the approach had to some degree demonstrate that it met requirements in the first instance. The agency's consideration of risks of L3Harris's substantiation of an approach that did not, as a threshold matter, demonstrate the ability to meet the requirement as proposed, is therefore beside the point.

As explained above, L3Harris's proposal clearly showed how its approach fell short of many of the threshold requirements set forth under the cSPS-1128 specification. L3Harris clearly identified each of the non-compliant frequencies, which it referred to as "less than ideal." Classified AR, Tab HH, L3Harris Resp. to EN No. 173 at 3, 9. Moreover, L3Harris's alleged "path forward" was little more than the firm's cautiously optimistic statements about a potential ability to comply, although hedging that "improvements in EIRP do not directly translate to an increase in compliance" and that positive impacts on BAPs were "as of yet, unquantified." Id. at 8. L3Harris's proposal was therefore technically unacceptable. Based on this record, the agency unreasonably evaluated L3Harris's proposal as technically acceptable and we sustain the protest.<sup>13</sup>

## RECOMMENDATION

In this protest, we sustain the allegation that the Navy unreasonably evaluated L3Harris's proposal as technically acceptable when L3Harris's proposed approach did not meet the solicitation's material requirements.<sup>14</sup> We therefore recommend that the Navy reopen discussions and request revised proposals; evaluate proposals consistent with the evaluation criteria; and make a new source selection decision. Alternatively, if in conjunction with our recommended corrective action in *Northrop Grumman Systems Corporation--Mission Systems*, B-419560.3 *et al.*, *supra*, the agency concludes that its specifications should be revised, we recommend that the agency issue an amendment to the solicitation reflecting updated specifications, request revised proposals, and make a new source selection decision.

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<sup>13</sup> We conclude that Northrop was competitively prejudiced by the agency's unreasonable evaluation of L3Harris's proposal. Had L3Harris been properly assigned a deficiency, both proposals would have been technically unacceptable and the agency would have been required to reopen discussions, giving Northrop an opportunity to revise its proposal and address its deficiency.

<sup>14</sup> As explained in note 1, *supra*, we also sustained the protester's allegation in the unclassified protest, *Northrop Grumman Systems Corporation--Mission Systems*, B-419560.3 *et al.*, *supra*. Our recommendation in this decision is also informed by our decision in that protest in which we found that the agency failed to reasonably consider the potential impact of a conflict of interest created by a government employee who developed specifications for the solicitation while simultaneously engaging in employment negotiations with a firm that ultimately received award under the solicitation.



We also recommend that Northrop be reimbursed its reasonable costs of filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). The protester's certified claim for costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision. *Id.*

The protest is sustained.

Edda Emmanuelli Perez  
General Counsel