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PUBLIC-PRIVATE COMPETITIONS

Review of San Antonio Depot Solicitation

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The Honorable Strom Thurmond
Chairman
The Honorable Carl Levin
Ranking Minority Member
Committee on Armed Services
United States Senate

The Honorable Floyd Spence
Chairman
The Honorable Ike Skelton
Ranking Minority Member
Committee on National Security
House of Representatives

This responds to one of several reporting requirements contained in the National Defense Authorization Act for Fiscal Year 1998, P.L. 105-85, relating to the allocation of depot workloads currently performed at the closing San Antonio and Sacramento Air Logistics Centers. Section 359 of the act, codified at 10 U.S.C. 2469a, requires us to review solicitations issued for the workloads at San Antonio and Sacramento, and to report within 45 days of the solicitations' issuance on whether they (1) are in compliance with applicable laws and regulations and (2) provide a "substantially equal opportunity for public and private offerors to compete for the contract without regard to the location at which the workload is to be performed."[1]

On March 30, 1998, the Air Force issued a solicitation for the purpose of conducting a public-private competition for various depot-level workloads being performed at the San Antonio Air Logistics Center at Kelly Air Force Base, Texas. As described in detail in Appendix I, the solicitation provides for a single award, for a period of up to fifteen years, for the performance of workloads for the T56, TF39, and F100 engines and fuel accessories. This letter provides our assessment of the solicitation as required by 10 U.S.C. 2469a.

[1]On March 20, the Air Force, Sacramento Air Logistics Center at McClellan Air Force Base, California, issued a solicitation for the various depot-level workloads being performed at Sacramento. We recently issued a report addressing the requirements of section 2469a with respect to that solicitation. Public-Private Competitions: Review of Sacramento Air Force Depot Solicitation (GAO/OGC-98-48, May 4, 1998).

Background

Several laws govern the solicitation and selection of offerors to perform depot workloads. Section 2469a of title 10 of the United States Code provides for special procedures for public-private competitions at the closing San Antonio and Sacramento depots. In particular, section 2469a sets forth certain elements that must be reflected in the solicitation and considered in making the selection of the source for the performance of the workloads. These include requirements that all estimated savings and costs to the Department of Defense (DOD) related to the award must be considered, and that no offeror may be given preferential consideration for, or be limited to, performing the work at a particular location.

In addition to 10 U.S.C. 2469a, there are a number of other laws that generally apply to the outsourcing of government-performed depot workloads. In particular, 10 U.S.C. 2469a provides for the use of "competitive procedures for competitions among private and public sector entities" whenever DOD contemplates changing the performance of public depot workloads of $3 million or more to contractor performance. Further, because the Air Force will use the competitive acquisition system for the workload competitions, these competitions are subject to the standards in 10 U.S.C. chapter 137 and the Federal Acquisition Regulation to the extent they are consistent with 10 U.S.C. 2469a and the other applicable provisions relating to the outsourcing of depot workloads and conversions of DOD functions to private-sector performance.

As required by 10 U.S.C. 2469a, we reviewed the San Antonio solicitation in the context of the applicable laws and regulations to determine whether it (1) complies with those laws and regulations and (2) provides a substantially equal opportunity for public and private offerors to compete for the contract without regard to performance location. We did our review based on the solicitation terms as of May 5, and, in addition, we spoke to Air Force officials and considered concerns raised informally by potential competitors. We recognize that the terms of the solicitation may be amended and that the concerns raised may change until the time for receipt of proposals, and that a potential offeror may file a protest with our Office or with the courts. If a protest is filed, factual information, issues and arguments raised by the parties will be reviewed in the context of an adversarial process; for that reason, the result of a protest may differ from that of our current review.

The results of our review, described in detail in Appendix I, are summarized below.

Review Results

(1) Compliance With Applicable Laws and Regulations

Based on our review of the San Antonio solicitation and concerns raised informally by potential offerors, we found that the Air Force has not, as of May 5, provided a sufficient basis to show that soliciting the workloads on a combined basis is necessary to satisfy its needs. Otherwise, we found that the solicitation is in compliance with applicable laws, including the provisions of 10 U.S.C. 2469a.[2]

The specific issues raised by potential offerors, and our conclusions, follow.

Solicitation of Combined Workloads

One potential competitor has expressed concern about the inclusion in the San Antonio solicitation of workloads for three different engines as a single requirement. The potential competitor argues that the combination of the three dissimilar engine workloads will result in a requirement that is beyond the capability of a single firm and that is unduly restrictive of competition.

Because the Air Force issued a solicitation combining multiple engine workloads, it was required to issue a determination that the workloads could not as logically and economically be performed without combination by potentially qualified sources, accompanied by a supporting report. See 10 U.S.C. 2469a(e). On December 19, 1997, DOD issued the required determination. We reviewed this report and found that it did not provide adequate information to support the determination.[3] Subsequently, the Air Force provided additional supporting rationale for the workload combination. We reviewed the Air Force's rationale and found that it was not well supported.[4]

Because a combination of requirements can restrict competition, the acquisition laws require that a workload combination be reasonably

[2]In addition to reviewing specific compliance issues arising under 10 U.S.C. 2469a, such as the treatment of overhead savings, and addressing the section 2469a provisions concerning performance location, we reviewed the San Antonio solicitation to determine whether it includes the specific elements required by section 2469a. All of the section 2469a requirements are specifically acknowledged in the solicitation, and we found no basis to conclude that the solicitation deviates in any material respect from the section 2469a requirements.

[3]Public-Private Competitions: DOD's Determination to Combine Depot Workloads Is Not Adequately Supported (GAO/NSIAD-98-76, Jan. 20, 1998).

[4]Public-Private Competitions: DOD's Additional Support For Combining Workloads Contains Weaknesses (GAO/NSIAD-98-143, Apr. 17, 1998).

required to satisfy the agency's needs, and not simply an outgrowth of the agency's desire for administrative convenience or an unsupported claim that economies will be achieved. Normally, we review the solicitation of combined requirements in the context of a bid protest; in that context, the agency has an opportunity to justify the combination by showing it is reasonably related to its needs or that it may actually enhance competition. The Air Force's supporting rationale, which was prepared in a different context, is not at this point sufficient to justify the workload combination. However, the rationale for the combination contains some elements -such as readiness concerns and potential competition enhancements - that if supported could establish the reasonableness of the combination under the acquisition laws.

Best Value Selection Criteria

The San Antonio solicitation provides that the award will be made to the responsible offeror whose conforming proposal represents "the best value to the Government." Under the solicitation's evaluation scheme, described in detail in Appendix I, it is possible that the entity selected - whether public or private - may not be the competitor whose proposal is determined to represent the lowest evaluated cost. A potential competitor has questioned the Air Force's authority to select a source that does not represent the lowest total evaluated cost for performing the workloads.

We found nothing in 10 U.S.C 2469a, the basic authority governing the San Antonio competition, that limits the Air Force to a selection based on low evaluated cost. However, while the Air Force is not required to use any particular source selection method, it still must comply with provisions that apply generally to conversions of functions to private sector performance. For example, if the San Antonio competition results in the selection of a private-sector source, the Air Force will have to comply with 10 U.S.C. 2461(a)(2). This provision requires that whenever a DOD-performed function is converted to performance by a contractor, DOD must provide Congress with a cost comparison that shows that savings will result.

Evaluation of Overhead Savings for Other Workloads

A potential competitor has raised concerns about the solicitation's method for crediting an offeror with overhead savings it expects to achieve in its other government work as a result of adding the competed workloads. In essence, the solicitation requires more support for savings that are

proposed to be achieved in the later years of the performance period.[5] The potential competitor's concern is that this methodology may not capture an offeror's projected overhead savings for the entire performance period.

We found that the solicitation establishes a reasonable method for measuring estimated overhead savings consistent with the requirements of 10 U.S.C. 2469a. Under section 2469a, the source selection process for the San Antonio workloads must take into account "the total estimated direct and indirect savings (including overhead) that will be derived by the Department of Defense." This provision is sufficiently general to permit the Air Force broad discretion to decide exactly how to measure estimated overhead savings as those savings apply to a successful offeror's other government work. Considering that the performance period for the San Antonio workloads could last for as long as fifteen years, we believe it is reasonable for the Air Force to require strong support for projected future savings and to consider that such projections may well be less accurate for the later portion of the performance period.

(2) Performance Location

As discussed earlier, 10 U.S.C. 2469a requires us to determine whether the San Antonio solicitation provides a "substantially equal opportunity for public and private offerors to compete for the contract without regard to where the workload is to be performed." In addition, under 10 U.S.C. 2469a(d), a competitor must be allowed to perform at the location of its choosing and a competitor is not to be given preferential treatment for, or be limited to, performing the workload in place or at any other single location.

We found nothing in the solicitation that designates a particular location, such as the closing San Antonio depot, at which performance is required or preferred. Nor do any of the solicitation evaluation criteria evidence a bias toward any particular performance location.

[5]For example, the evaluation formula provides that the proposed first year savings, if determined to be reasonable "will be allowed," while second year savings if supportable will also be allowed, but "discounted for risk." The solicitation goes on to explain that proposed savings for three years and beyond "may be allowed if clearly appropriate, but in any event will be considered under the best value analysis."

We informally obtained comments on our analysis from representatives of the Air Force. The Air Force raised several points concerning our statements with respect to the applicable legal standards and the workload combination and provided specific suggestions which we have incorporated when appropriate.

Sincerely yours,

Robert P. Murphy
General Counsel

Review of Solicitation for San Antonio Air Logistics Center Workloads

On March 30, 1998, the Department of the Air Force, San Antonio Air Logistics Center at Kelly Air Force Base, Texas issued request for proposals (RFP) No. F41608-98-R-0084 for the purpose of conducting a public-private competition for propulsion business area depot-level workloads being performed at the closing San Antonio Air Logistics Center. An amendment to the solicitation was also issued on March 30, which, among other things, provided the following due dates for the receipt of various portions of the proposals: (1) May 15 for volume IV, concerning past and present performance, (2) June 15 for volumes I and II, the executive summary and technical volume, including transition and repair operations, and (3) June 30 for volumes III and V, concerning cost and contract information.

Section 359 of the National Defense Authorization Act for Fiscal Year 1998, P.L. 105-85 (1998 Authorization Act) added section 2469a to title 10 of the United States Code, which provides for special procedures for public-private competitions for the workloads at the closing San Antonio and Sacramento Air Logistics Centers. Among other things, section 2469a also requires that we review all solicitations issued for the workloads at the two closing Air Logistics Centers and report to Congress within 45 days of the solicitations' issuance regarding whether the solicitations (1) are in compliance with the provisions of section 2469a and "all applicable provisions of law and regulations" and (2) provide a "substantially equal opportunity for public and private offerors to compete for the contract without regard to the location at which the workload is to be performed."[1]

Our review is based on the terms of the San Antonio solicitation as of May 5. In addition, we spoke to Air Force officials and considered concerns raised informally by potential competitors. We recognize that the terms of the solicitation may be amended and the concerns raised may change until the time for receipt of proposals. Further, a potential offeror may file a protest with our Office pursuant to 31 U.S.C. 3551-3556, or with the courts, or may file an objection to the solicitation with the Department of Defense (DOD) under 10 U.S.C. 2469a(h). If a protest is filed, factual information, issues and arguments raised by the interested parties will be reviewed in the context of an adversarial process. For that reason, the result of a protest may differ from that of our current review.

[1]On March 20, 1998, the Air Force, Sacramento Air Logistics Center at McClellan Air Force Base, California, issued a solicitation for various depot-level workloads being performed at Sacramento. We recently issued a report addressing the requirements of section 2469a with respect to that solicitation. Public-Private Competitions: Review of Sacramento Air Force Depot Solicitation (GAO/OGC-98-48, May 4, 1998).

Based on our review of the San Antonio solicitation and the applicable laws and regulations, we conclude that the Air Force has not, as of May 5, provided a sufficient basis to show that soliciting the workloads on a combined basis is necessary to satisfy its needs. Otherwise, we conclude that the solicitation is in compliance with applicable laws, including the provisions of 10 U.S.C. 2469a, and that it provides a substantially equal opportunity for offerors to compete without regard to performance location. Whether the actual evaluation process and the final selection meets these standards and the others prescribed by 10 U.S.C. 2469a will be the subject of a separate review by our Office after the award is made.[2]

The following sections describe the legal standards applicable to the San Antonio RFP and our analysis of the RFP under those standards.

Applicable Legal Standards

The basic authority for the San Antonio workload competition is 10 U.S.C. 2469a, which provides procedures for public-private competitions for the workloads of the closing Sacramento and San Antonio Air Logistics Centers that are proposed to be outsourced after the November 18, 1997, enactment of the 1998 Authorization Act.[3] Section 2469a sets forth a number of requirements which the Air Force must satisfy in the solicitations it issues and the source selection process it uses, to make awards for the specified workloads. Particularly, the solicitation and the source selection process must: (1) permit both public and private offerors to submit offers, (2) take into account the fair market value of any land, plant, or equipment at a closed or realigned military installation that is proposed to be used by a private offeror in the performance of the workload, (3) take into account the total estimated direct and indirect costs that will be incurred by DOD and the total estimated direct and indirect savings (including overhead) that will be derived by DOD, (4) use cost standards to determine the depreciation of facilities and equipment that provide, to the maximum extent practicable, identical treatment to public and private offerors, (5) permit any offeror, whether public or

[2]10 U.S.C. 2469a(g) provides that within 45 days after any award is made, GAO is to review the selection process and report to Congress on whether (1) the procedures provide a substantially equal opportunity for offerors to compete without regard to performance location (2) the procedures were in compliance with all applicable laws and regulations (3) appropriate consideration was given to factors other than cost in the selection and (4) the award resulted in the lowest total cost to DOD for the performance of the workload.

[3]The workload for the C-5 aircraft that had been performed at the San Antonio Air Logistics Center was awarded in September 1997 to the Warner Robins Air Logistics Center as a result of a public-private competition. That competition, which was the subject our report entitled Public-Private Competitions: Processes Used For C-5 Aircraft Appear Reasonable (GAO/NSIAD-98-72, Jan. 20, 1998), was not conducted under 10 U.S.C. 2469a as it was completed before the enactment of the provision.

private, to team with any other public or private entity to perform the workload at any location or locations of their choosing, and (6) ensure that no offeror may be given any preferential consideration for, or in any way be limited to, performing the workload in place or at any other single location.[4]

In addition to 10 U.S.C. 2469a, there are a number of existing laws that are generally applicable to the outsourcing of government-performed depot workloads. One of the principal requirements is in 10 U.S.C. 2469, which provides for the use of "competitive procedures for competitions among private and public sector entities" when DOD contemplates changing the performance of a depot workload, valued at $3 million or more, to contractor performance. In addition, section 8039 of the Department of Defense Appropriations Act for Fiscal Year 1998, P.L. 105-56, authorizes public-private competitions for depot workloads as long as the "successful bids" are certified to "include comparable estimates of all direct and indirect costs for both public and private bids." Both provisions state that Office of Management and Budget Circular A-76 is not to apply to the competitions. Other than the reference in section 8039 of the act to the use of comparable estimates of all costs, neither provision prescribes the elements that constitute a competition. Further, 10 U.S.C. 2470 provides that depot-level activities are eligible to compete for depot workloads.[5]

There are other provisions that apply, generally, to conversions of DOD functions to private-sector performance. For example, section 8014 of the 1998 DOD Appropriations Act requires that DOD certify its in-house estimate to Congressional committees before converting any activity

[4]In addition, 10 U.S.C. 2469a(e) provides that DOD may issue a solicitation for multiple workloads under 10 U.S.C. 2469a only if DOD first determines that individual workloads cannot as logically and economically be performed without combination by potentially qualified sources and submits a report to Congress setting forth the reasons for the determination. The provision also requires GAO to review and provide its views on the DOD report. DOD decided to issue RFPs, including the one here, containing combined workloads and submitted the required determinations and reports on December 19, 1997. We reported on January 20, 1998, that the DOD reports did not support the determination. Public-Private Competitions: DOD's Determination to Combine Depot Workloads Is Not Adequately Supported (GAO/NSIAD-98-76, Jan. 20, 1998). Under 10 U.S.C. 2469a(e) DOD must wait 60 days from the submission of its report to issue an RFP containing combined workloads. There is no other restriction in subsection (e). The Air Force issued the San Antonio solicitation containing multiple workloads on March 30. Subsequent to our January 20 report, the Air Force provided additional supporting rationale for the combined workloads. As discussed in more detail later, we reported that the additional rationale was not well supported. Public-Private Competitions: DOD's Additional Support For Combining Workloads Contains Weaknesses (GAO/NSIAD-98-143, Apr. 17, 1998).

[5]We see nothing in the other applicable provisions governing the outsourcing of depot workloads that is inconsistent with 10 U.S.C. 2469a. In fact, the use of comparable cost estimates and the participation of DOD depot-level activities are provided for in 10 U.S.C. 2469a. Consequently, consistent with the rule of statutory construction that statutes be construed harmoniously to give effect to all provisions whenever possible, all of the above-cited provisions are effective and applicable to the San Antonio competition. See Posadas v. National City Bank, 296 U.S. 503-504 (1936); 53 Comp. Gen. 853 (1974).

performed by more than 10 civilian employees to contractor performance; the provisions of 10 U.S.C. 2461 require that whenever a DOD-performed function is converted to performance by a contractor, DOD must provide to Congress a cost comparison which shows that a savings will result. Under 10 U.S.C. 2462, DOD is generally required to contract with the private sector if a source can provide the supply or service at a lower cost than DOD can and to ensure that all costs considered are realistic and fair.[6]

The Air Force implements these outsourcing authorities through the Air Force Material Command, Procedures for Depot Level Public-Private Competition, December 20, 1996 (Depot Competition Procedures). The procedures are supplemented by the Defense Depot Maintenance Council Cost Comparability Handbook, including the January 28, 1998 revision (CCH), the Air Force Materiel Command Guide to the Cost Comparability Handbook and the SAF/AQ Public-Private Competition Cost Procedures of February 21, 1998. Among other things, the procedures provide for issuing a solicitation calling for offers from public and private sector sources. They establish the criteria, including those listed in 10 U.S.C. 2469a, for deciding how the Air Force will select a source for the performance of depot workloads from the private or public sector. According to these procedures, a competitive solicitation is to be issued in accordance with the applicable provisions of the Federal Acquisition Regulation (FAR). The FAR sets forth uniform policies and procedures for the competitive acquisition system used by all executive agencies and implements the provisions of chapter 137 of title 10 of the United States Code, which govern DOD acquisitions.

This use of the competitive acquisition system subjects a depot workload competition to the applicable provisions of chapter 137 and the FAR to the extent that they do not conflict with the public-private competition statutes cited above. Newport News Shipbuilding and Dry Dock Company, B-221888, July 2, 1986, 86-2 CPD 23. Further, aspects of a competition that fall outside the competitive acquisition system's parameters as defined by chapter 137 and the FAR, such as the comparison of public and private offers for the workloads from the two closing Air Logistics Centers, are governed by 10 U.S.C. 2469a and the other statutes applicable to public-private depot competitions as implemented by the Air Force.

[6]Again, these provisions do not conflict with the six 10 U.S.C. 2469a competition requirements listed above and are also applicable to the San Antonio competition. See Posadas v. National City Bank, cited above.

In general, the standards in chapter 137 and the FAR (1) require that a solicitation clearly and unambiguously state what is required so that all offerors can compete on an equal basis and (2) allow restrictive provisions to be included only to the extent necessary to satisfy an agency's needs. Further, under these standards, an agency must follow the criteria announced in the solicitation and exercise its judgment in a reasonable manner in determining which of the competing offers is to be selected. Dimensions International/QSOFT, Inc. , B-270966.2, May 28, 1996, 96-1 CPD 257.

Solicitation

The RFP for the San Antonio workloads contains several line items representing the transition and performance of various combinations of the propulsion workload. For example, (1) line item no. 0001 calls for offers for the transition and performance of the T56, TF39, and F100 engine workloads, (2) line item no. 0002, for the transition and performance of the work for the same three engines, plus fuel accessories, (3) line item no. 0003, for the transition and the work for the same three engines, the fuel accessories and for two-level maintenance on the T56 engines, and finally (4) line item no. 0004, for the transition and the work on the three engines, the fuel accessories and for two-level maintenance for the T56 and TF39 engines.

The RFP provides for a transition period, which is to begin at the award and to end not later than July 13, 2001 and a seven-year basic performance period, which may be reduced to five years after transition, or extended up to fifteen years after award, based upon the performance of the awardee. The fixed price requirements-type award is to be based on the work as represented either by line item no. 0001, no. 0002, no. 0003, or no. 0004.[7] The size of the workload to be awarded to a private sector source is, according to the solicitation, to be determined based on the constraints of 10 U.S.C. 2466(a). That provision restricts the funds which can be expended for private sector performance of depot-level workloads to no more than 50 percent of the funds made available to the Air Force for such work in a particular fiscal year.

According to the solicitation, the competition is to be conducted in accordance with FAR 15.101, which sets forth the source selection processes and techniques to be used in competitive negotiated acquisitions, as well as the applicable Air Force and Air Force Materiel

[7]According to the solicitation, the prices would be subject to economic adjustment based on various measurement standards and to prospective redetermination based on revisions in the estimated quantities of the work and process improvements.

Command supplements. Further, the Depot Competition Procedures, the CCH and their updates are to govern the selection.

The solicitation states that the award will be made to the offeror - either public or private - who is deemed responsible in accordance with the FAR,[8] whose proposal conforms with the solicitation and is judged to represent the best value to the government. According to the RFP, the Source Selection Authority (SSA) will integrate the source selection team's assessments of the proposals under the criteria listed in the solicitation to arrive at a best value selection.

The evaluation criteria include criteria for the transition and repair operations areas, cost criteria, and assessment critera. Transition is made up of four factors: (1) capability and resources, (2) equipment, (3) responsibility transfer milestones, and (4) risk management. Repair operations consists of five factors: (1) continuing operations plan, (2) risk management, (3) process improvements, (4) additional workloads, and (5) small business. The assessment criteria, which will be used for measuring the extent to which a proposal meets the transition, repair operations and cost criteria, is made up of two parts: (1) understanding of/compliance with the solicitation requirements and (2) soundness of approach.

Under the cost criteria, proposals will first be assessed for completeness, realism and reasonableness.[9] Then each offeror's total proposed cost is to be determined by calculating the various unit prices and hourly rates proposed for the different line items. Next, the offerors' total alternative cost is to be developed by factoring in the numerous adjustments to public and private offerors' total proposed cost in accordance with the CCH and the RFP. Finally, the offerors' total evaluated cost is to be determined by adjusting the total alternative cost to reflect the "dollarized impact of significant discriminators, to the extent that a dollar value can be assigned

[8]According to FAR Subpart 9.1, a responsible prospective contractor is one that meets the standards in FAR 9-104, which include having adequate financial resources, or the ability to obtain them, the ability to comply with the performance schedule, a satisfactory performance record, and possession of the necessary facilities and equipment or the ability to obtain them.

[9]Under FAR 15.404-1(d) a cost realism analysis is the process of reviewing and evaluating specific elements of an offeror's cost estimate to determine whether the proposed elements are realistic for the work to be performed. According to FAR 15-404-1, reasonableness is to be assessed through an analysis of either cost elements or of the overall price.

to such discriminators, based on identified proposal strengths, weaknesses and risks."[10]

Further, the RFP evaluation scheme provides for the consideration of general considerations such as the results of pre-award surveys, site visits and "fair market value." In addition, the proposals are to be the subject of two risk assessments: proposal risk and performance risk. Proposal risk is to measure the risk associated with an offeror's proposed approach to accomplishing the solicitation requirements relating to the transition and repair operations areas. Performance risk is to assess, based on an offeror's present and past performance, the probability of the offeror successfully accomplishing the proposed effort.

Finally, the RFP provides that an "integrated assessment of best value" is to be conducted by the SSA in order to select the successful proposal. In this assessment, the criteria for transition and repair operations areas and cost criteria are to be equally important, while the general considerations are to be "considered substantially less important than transition, repair operations, or cost." According to the RFP, this assessment is also to include "as appropriate" items listed in the solicitation as "Other Considerations." This category essentially reiterates five of the six requirements for the competition listed in the 1998 Authorization Act.[11]

Analysis of Solicitation

As noted previously, subsection (g) of 10 U.S.C. 2469a requires us to review the solicitation issued by the Air Force for the San Antonio workloads and to report to Congress on whether (1) it is in compliance with the requirements of 10 U.S.C. 2469a and other applicable laws and regulations and (2) it provides a substantially equal opportunity for all offerors to compete without regard to the performance location. The results of our review are set forth below.

(1) Compliance With Applicable Laws and Regulations

As discussed previously, several statutes govern the solicitation and award process for public-private competitions for the depot workloads of the closing San Antonio and Sacramento Air Logistics Centers. In particular,

[10]"Dollarized impact" as we understand it, is the assignment of an estimated dollar value to the assessment of the benefit or detriment to the Air Force that would result from the aspects of an offeror's technical proposal in the calculation of an offeror's total evaluated cost.

[11]The one requirement not listed in section M-902 of the RFP is the requirement that the cost standards used to determine the depreciation of facilities and equipment provide, to the maximum extent practicable, identical treatment to public and private offerors. This requirement is addressed in the RFP at paragraph 5.f.6 of section L and paragraphs 2.6. (7) and (8) of section M-901.

10 U.S.C. 2469a sets forth the elements that must be considered in making the selection of the public or private source for the performance of the workloads. Further, because the Air Force will use the competitive acquisition system, the standards in chapter 137 of title 10 of the United States Code and the FAR apply to the extent they are consistent with 10 U.S.C. 2469a and the other applicable provisions relating to the outsourcing of depot workloads and to conversions of DOD functions to private-sector performance. See Newport News Shipbuilding and Dry Dock Co., cited above.

In addition to reviewing the solicitation, we have spoken to potential competitors who have informally raised several specific concerns. The major concerns,[12] analyzed below, are that (1) the combination in the solicitation of different engine workloads will result in a requirement that is beyond the capability of a single firm and that is unduly restrictive of competition; (2) the use of a best value selection process, which can result in the selection of a public or private source that does not represent the lowest total evaluated cost, is contrary to the laws applicable to the conversion of DOD functions to private-sector performance; and (3) the solicitation evaluation scheme for measuring the credit to be given for an offeror's projected overhead savings on its other government work as a result of adding the San Antonio workloads will not reflect the impact of the savings for the entire performance period.

Solicitation of Combined Workloads

One potential competitor has expressed concern to us about the inclusion in the San Antonio solicitation of workloads for three different engines as a single requirement. The potential competitor states that no single firm has the capability to perform the work for three such dissimilar engines as the T56, TF39 and F100. Thus, the potential offeror argues that consolidation of workloads for the three engines will limit the competition to those firms that can enter into subcontract or joint venture arrangements with others, without achieving a corresponding reduction in cost or efficiency, except possibly, in the case of an offeror proposing to perform at the closing San Antonio location.

[12]A number of other questions have been raised concerning various aspects of the solicitation, such as the lack of detail on how fair market value of the closing San Antonio facility and equipment will be evaluated. While we have carefully considered all of the matters raised during our review, these matters did not raise questions that, in our view, impacted the solicitation's compliance with 10 U.S.C. 2469a or other applicable laws and regulations so we have not treated them as separate issues in our report.

Since the Air Force issued an RFP combining multi-engine (T56, TF39 and F100) and accessory workloads, DOD was required to issue a determination that the workloads could not as logically and economically be performed without combination by potentially qualified sources, accompanied by a supporting report. See 10 U.S.C. 2469a(e). On December 19, 1997, DOD issued the required determination. In accordance with 10 U.S.C. 2469a(e), we reviewed the DOD report and informed Congress on January 20, 1998, that we found that it did not provide adequate information to support the determination.[13]

Subsequently, the Air Force provided additional rationale supporting the determination to combine the workloads. Essentially, the Air Force maintained that combining the San Antonio multi-engine and accessory workloads would enable potential competitors to take advantage of efficiencies from shared personnel and facilities for all of the workloads and to achieve overhead savings. In addition, the Air Force pointed out that a single award for the multi-engine and accessory workloads was favored by potential competitors and would reduce the performance and readiness risks inherent in managing multiple workload transitions and the resulting sequential personnel reductions at the closing San Antonio depot. According to the agency, the delay and administrative burden as well as the additional costs of awarding and managing multiple contracts for each of the workloads, in combination with the other factors mentioned above, necessitated the solicitation of the combined workloads.

We also reported our views on the additional supporting rationale to the Subcommittee on Readiness, Senate Committee on Armed Services and the Subcommittee on Military Readiness, House Committee on National Security.[14] While we recognized that the Air Force had submitted considerable additional information relevant to the determination to solicit combined workloads and that the use of a solicitation for combined workloads represented a management judgment based upon various qualitative and quantitative factors that well may be appropriate, we concluded that, for the purpose of the determination required by 10 U.S.C. 2469a(e), the supporting information had significant weaknesses in logic, assumptions and data.

[13]Public-Private Competitions: DOD's Determination to Combine Depot Workloads Is Not Adequately Supported (GAO/NSIAD-98-76, Jan. 20, 1998).

[14] Public-Private Competitions:DOD's Additional Support For Combining Depot Workloads Contains Weaknesses (GAO/NSIAD-98-143, Apr. 17, 1998).

For the purpose of the current review the issue is whether the combination of the workloads in the San Antonio solicitation complies with the laws governing the competitive acquisition system and applicable provisions of 10 U.S.C. 2469a. The applicable statute governing DOD acquisitions is 10 U.S.C. 2305(a)(1), which generally requires that solicitations permit full and open competition, and contain restrictive provisions and conditions only to the extent necessary to satisfy the agency's needs, or as authorized by law. Since consolidated acquisitions combine separate, multiple requirements into one award, they have the potential for restricting competition by excluding potential competitors that can only furnish a portion of the requirement. Consequently, the combination of requirements must be reasonably required to satisfy the agency's needs, and not simply an outgrowth of the agency's desire for administrative convenience or an unsupported claim that economies will be achieved. See National Customer Eng'g, 72 Comp. Gen. 132 (1993), 93-1 CPD 225; The Sequoia Group, Inc., B-252016, May 24, 1993, 93-1 CPD 405.

Normally, we review the solicitation of combined requirements in the context of a bid protest based upon the argument that the combination unduly restricts competition. See 31 U.S.C. 3551-3556. In response to the protest, the agency will usually attempt to justify the combined requirements by showing that the combination is reasonably related to its needs or that the combination may actually enhance, rather than inhibit, competition. The Air Force's rationale for the structure of the San Antonio solicitation was prepared in a different context, in order to establish that it was more logical and economical, than not, to combine the workloads, and if a protest is filed, the Air Force will have an opportunity to provide a more detailed justification. As explained below, our assessment is that although the rationale contains some elements that could be used to support a combined requirement under the acquisition laws, it is not at this point sufficient to justify the workload combination.

Several of the reasons cited by the Air Force for the combination of the various engine and accessory workloads pertain to matters related to hoped for efficiencies. For example, the agency says that the engines constitute a single commodity and that regardless of the type or model series of the engine, the repair processes are common and use the same personnel skills. Thus, according to the Air Force, a single contractor will be able to share personnel skills, fixed overhead-type functions (planning, scheduling, materiel support, etc.) and backshops for the work on the

three engines.[15] To the extent these projected efficiencies are based on the assumption that all of the workloads will be performed at the closing San Antonio location or some other single location that can accommodate them, these efficiencies cannot be used to justify the workload combination. The solicitation does not, and by law it cannot, require that the workloads be performed in place at the San Antonio facility or at any other location. In fact, 10 U.S.C. 2469a(d) provides that any offeror may propose to perform at any location or locations it chooses and that no offeror may be given preferential consideration, or be limited to, performing the workloads in place or at any other single location. So, the perceived benefits from the performance of the combined engine workloads at a single location cannot serve as a justification for combining the three engine and accessory workloads in the solicitation.

On the other hand, the Air Force has cited factors such as the risk to readiness as a reason for combining the workloads into a single award. According to the agency, "Engine support is the number one readiness problem facing the Air Force today." The readiness risk here is associated with the management of separate transitions of the multiple workloads and with the decreased efficiency of the workforce at the closing depot due to multiple reduction-in force actions. As an example of the kinds of readiness problems that may arise, the Air Force cites the transition of engine workloads that were transferred from the closing Naval Aviation Depot at Alameda, California, to the Jacksonville, Florida Naval Aviation Depot and to the San Antonio Air Logistics Center. The agency states that the gaining facilities were unable to meet production requirements during the transition, and maintains that production has yet to recover. Moreover, the Air Force states these factors would be exacerbated by the Base Closure and Realignment Commission (BRAC) decision requiring that the depot be closed and the workloads transferred by July 2001. Elements such as these do relate to the Air Force's needs. A statement that identifies and fully explains these concerns may support the solicitation of combined requirements.[16]

In addition, the Air Force maintains that the workload combination will promote competition by providing a large economically attractive

[15]While these factors may indeed represent potential efficiencies, the Air Force has not maintained that they are related to technical requirements or risks inherent in performing these workloads or represent performance methods that are needed to successfully accomplish the work.

[16]We have previously reported on the transition of the workloads cited by the Air Force and concluded that readiness problems associated with workload transfers can be mitigated by careful management. Depot Maintenance: Lessons Learned From Transferring Alameda Naval Aviation Depot Engine Workloads (GAO/NSIAD-98-10BR, Mar. 25, 1998).

package. The Air Force points out that most of the potential competitors it surveyed in 1995 preferred a single award for the three engine and accessory workloads.[17] In fact, Air Force officials expressed doubt as to whether one of the engine workloads solicited separately would generate more than a single private-sector response. In this context, the impact of the solicitation of the multi-engine and accessory workloads on competition, if backed by sufficient evidence, could also be a factor in support of the combination. See Canon U.S.A., Inc., B-23226, Nov. 30, 1998, 88-2 CPD 538.

Our bid protest decisions have held that in order to determine whether the solicitation of combined requirements is unduly restrictive of competition in a particular instance, the agency's justifications must be balanced against the possible restriction of competition represented by potential competitors who maintain that they can perform only a portion of the requirement. See, for example, Phoenix Technical Services Corp., B-274694.2, March 12, 1997, 97-2 CPD 142. Here, there is a solicitation that contains combined requirements, a potential competitor who says that no single firm can perform all of the requirements and some Air Force justifications for the workload combination, including readiness concerns and potential competition enhancement, which, if supported, may establish the reasonableness of combined requirements. Based on what is available at this time, however, we cannot say that the Air Force has sufficiently justified the solicitation of combined multi-engine and accessory workloads as being reasonably related to its needs as opposed to the desire to avoid management difficulties that may accompany the movement of workloads at different times to different locations. We recognize that the management difficulties could have a potential readiness impact. However, as noted earlier, equipment readiness problems associated with workload transition can be mitigated if the transition is properly planned and effectively implemented. [18] Moreover, the agency has not sufficiently supported its view that the workload combination will likely enhance competition. If a protest is filed, the Air Force will have an opportunity to provide further support to show that the

[17]We have reported that this survey was conducted in the context of the then-current strategy of privatizing the C-5 aircraft and the engine work at the closing San Antonio depot. The results are less relevant under the current public-private competition for the engine work to be performed at the location of the successful offeror's choice. See Public Private Competitions: DOD's Additional Support For Combining Workloads Contains Weaknesses cited earlier.

[18]Depot Maintenance: Lessons Learned From Transferring Alameda Naval Aviation Depot Engine Workloads, cited earlier.

San Antonio solicitation is not unduly restrictive of competition. See National Customer Eng'g, cited above.[19]

Best Value Selection Criteria

As discussed previously, the San Antonio solicitation provides that the award will be made to the responsible offeror whose conforming proposal represents "the best value to the Government." According to the solicitation, the Air Force is to determine best value by integrating the evaluations of the proposals under the specific criteria, including transition and repair operations, cost criteria, assessment criteria and general considerations. Transition, repair operations and cost are to be accorded equal weight, while general considerations are to be substantially less important than cost, transition, or repair operations. Under the RFP evaluation scheme, it is possible that the entity selected - whether public or private - may not be the competitor whose proposal is determined to represent the lowest total evaluated cost.

A potential competitor has questioned the Air Force's authority to select a source that does not represent the lowest total evaluated cost for performing the workloads. In this regard, some have suggested that 10 U.S.C. 2469a, the basic authority governing the San Antonio competition, limits the Air Force to a selection based on low evaluated cost. We find nothing in 10 U.S.C. 2469a that prescribes the use of any particular evaluation method or requires that cost be the determining factor in the selection of the successful offeror. Subsection (d) of 10 U.S.C. 2469a sets forth requirements the Air Force must satisfy in the selection process. While they include a number of cost elements that must be considered in the selection, such as depreciation, noncost factors such as performance location are also specified.[20] In view of the mixture of cost and noncost elements and the lack of any specific reference to a particular evaluation method, in our view the subsection (d) requirements do not dictate that

[19]As discussed later, we do not find, however, that the workload combination in the San Antonio solicitation is necessarily inconsistent with the 10 U.S.C. 2469a(d) requirement that competitors be permitted to perform at their chosen locations and not be given preferential treatment for performing at any single location. While many of the factors cited by the Air Force in favor of combining the workloads are related to projected efficiencies of performance at the closing San Antonio location, they could well apply to other locations that can accommodate all of the workloads. Moreover, there is no restriction as to performance location in the solicitation.

[20]The fact that a number of the requirements in subsection (d) concern elements of cost that must be considered in the evaluation does not mean that the selection must be based only on cost. It does mean, we think, that cost must be a significant factor in any selection. This would be the case under the San Antonio RFP, as cost is weighted the same as each of the two major noncost or technical areas.

cost be the deciding factor in the selection of a source for the San Antonio and Sacramento workloads.[21]

While the Air Force is not required to use any particular source selection method, it still must comply with provisions that apply generally to the conversion of functions to private-sector performance, particularly 10 U.S.C. 2461. Section 2461(a)(2) requires that whenever a DOD-performed function, such as the San Antonio workloads, is converted to performance by a contractor, DOD must provide to Congress a cost comparison which shows that savings will result. This provision would apply if the San Antonio competition resulted in the selection of a private-sector source. Similarly, the Air Force's selection would have to comply with 10 U.S.C. 2462, which requires that DOD procure the services it needs from the private sector if a private source can provide that service at a lower cost.[22]

Evaluation of Overhead Savings for Other Workloads

A potential competitor has raised concerns to us about the method provided in the RFP for evaluating the overhead savings that may be attributed to an offeror's existing government work resulting from the addition of the competed workloads. The concerns center on whether the projected savings will be applied to the entire performance period for the San Antonio workloads. For the reasons stated below, we conclude that the RFP establishes a reasonable method for measuring the estimated overhead savings that can be attributed to the addition of the competed workloads to existing government work and that it complies with the relevant provisions of 10 U.S.C. 2469a.

The solicitation states that an adjustment will be made to a public or private offeror's proposal for overhead savings to be realized for other workloads. At the outset of the applicable provision, the solicitation warns: "Due to uncertainty in forecasting long term overhead rates by both public and private offerors, the ability to forecast associated out-year savings significantly diminishes with time." The RFP further explains that the evaluation will emphasize an offeror's analysis and documentation of proposed management initiatives to ensure that the projected savings,

[21]This interpretation is consistent with subsection (g) of 10 U.S.C. 2469a, which provides for GAO review of the awards made under the San Antonio and Sacramento competitions. In the reviews we are to consider whether "appropriate consideration was given to factors other than cost" in the selection and, on the other hand, to report on whether the award "resulted in the lowest total cost to the Department of Defense for the performance of the workload."

[22]In addition, the Air Force would be required to certify to Congressional committees the various cost estimates in accordance with section 8039 of the 1998 Defense Appropriations Act and, if a private sector source is selected, the Air Force would have to certify to Congressional committees its "in-house estimate" in accordance with section 8014 of the act.

particularly those predicted for more than 24 months after award, will occur. The evaluation formula provides that the proposed first year savings, if determined to be reasonable "will be allowed,"[23] while second year savings if supportable will also be allowed, but "discounted for risk." The RFP goes on to explain that proposed savings for three years and beyond "may be allowed if clearly appropriate, but in any event will be considered under the best value analysis."[24]

To help ensure that the proposed savings that are evaluated are realized by the agency, the solicitation further provides that private offerors must agree, after award, to negotiate appropriate government contract and forward pricing rate reductions. A winning public offeror would similarly be required to adjust the rates charged for the workloads that were the subject of the evaluation credit.

We have no reason to question the Air Force's method for evaluating overhead savings. It seems reasonable for the agency to carefully evaluate an offeror's projected savings in terms of the information and analysis provided to the agency during the evaluation process and to factor into that evaluation the possibility that conditions could change over time so that what may be achievable savings in the short term may be less so in the longer term. Similarly, we have no basis to conclude that the RFP evaluation process for the projected overhead savings on other workloads is other than a reasonable implementation of the 10 U.S.C. 2469a(d)(2)(B) requirement that the source selection process take into account "the total estimated direct and indirect savings (including overhead) that will be derived by the Department of Defense." This provision is sufficiently general to permit the agency broad discretion to decide exactly how to measure "estimated" overhead savings as those savings apply to a successful offeror's other government work. Considering that the performance period for the San Antonio workloads could extend for as long as fifteen years, we believe it is a legitimate exercise of the agency's discretion to require strong support for projected future savings and to consider that such projections may well be less accurate for the later portion of the performance period.

[23]As we understand it, the term "allowed" means that the amount of the projected savings that the agency considers to be reasonable will be credited to the offeror in the determination of the offeror's total alternative cost.

[24]This part of the evaluation scheme provides for the consideration of out-year savings that are not clearly supported by backup data, but which otherwise seem to be achievable, at least in part, as a positive element in the noncost portion of the SSA's integrated assessment of best value.

(2) Performance Location

Subsection (g) of 10 U.S.C. 2469a provides that our report on a solicitation for workloads from the closing depots is to include our view as to whether the solicitation under review provides a "substantially equal opportunity for public and private offerors to compete for the contract without regard to the location at which the workload is to be performed." In addition, 10 U.S.C. 2469a(d), which lists the requirements for the source selection process, provides that a public or private competitor must be permitted to perform at the location of its choosing and a competitor is not to be given preferential treatment for, or be limited to, performing the workload in place or at any other single location.

We have found no provisions in the solicitation that designate a particular location, such as the closing San Antonio depot, at which performance is required or preferred. Nor do any of the solicitation evaluation criteria evidence a bias towards any particular performance location.

Nonetheless, as discussed earlier, a potential competitor has expressed the concern that the consolidation of workloads in a single solicitation, in effect, would favor an offeror proposing to perform the work at the closing San Antonio facility. The basis of this concern is that the multi-engine and accessory workloads have little in common - the potential competitor maintains that no single firm has the capability to perform the workloads for all three engines - and were arguably combined only because they had been performed together at the San Antonio depot.

As we understand the 10 U.S.C. 2469a provisions concerning performance location, they are to prevent the Air Force from specifying a performance location or from creating an advantage for a particular location for reasons that are not reasonably related to performance or cost. In this regard, the legislative history of 10 U.S.C. 2469a makes clear that the provision does not prohibit offerors from selecting the best performance location and receiving an evaluation credit for that location based upon legitimate performance considerations. In fact, the statement of managers accompanying the 1998 Authorization Act states that the agency "would be expected to consider real differences among bidders in cost or capability to perform the work based on factors that would include the proposed location or locations of the workloads." Conf. Rept. No. 105-340 on H.R. 1119, at 717 (1997). While it may be that the closing San Antonio depot would be an advantageous performance location for the combined workloads, as stated earlier, other locations or combinations may also be suitable Thus, we cannot say that the workload combination, without a corresponding location restriction in the solicitation, directly interferes

with an offeror's right under 10 U.S.C. 2469a(d) to compete without regard to performance location.

(3) Compliance With Other Applicable Provisions of 10 U.s.c. 2469a

In addition to reviewing specific compliance issues arising under 10 U.S.C. 2469a, such as the treatment of overhead savings, and addressing the section 2469a provisions concerning performance location, we reviewed the San Antonio solicitation to determine whether it otherwise complies with the requirements of section 2469a.

As noted previously, 10 U.S.C. 2469a sets forth a number of requirements that must be satisfied in the San Antonio solicitation and selection process. Particularly, the solicitation and the source selection process must: (1) permit both public and private offerors to submit offers, (2) take into account the fair market value of any land, plant, or equipment at a closed or realigned military installation that is proposed to be used by a private offeror in the performance of the workload, (3) take into account the total estimated direct and indirect costs that will be incurred by DOD and the total estimated direct and indirect savings (including overhead) that will be derived by DOD, (4) use cost standards to determine the depreciation of facilities and equipment that provide, to the maximum extent practicable, identical treatment to public and private offerors, (5) permit any offeror, whether public or private, to team with any other public or private entity to perform the workload at any location or locations of their choosing, and (6) ensure that no offeror may be given any preferential consideration for, or in any way be limited to, performing the workload in place or at any single location. Section 2469a requires that all six of these conditions be stated in the solicitation.

Reviewing the solicitation in the context of the 10 U.S.C. 2469a requirements we found that all of the requirements are specifically acknowledged in the solicitation.[25] Further, we are unaware of other provisions of the solicitation that are inconsistent with the 10 U.S.C. 2469a requirements. Thus, we find no basis to conclude that the San Antonio solicitation deviates in any material respect from the requirements of 10 U.S.C. 2469a.

[25]Five of the six requirements are listed in section M-902 of the solicitation. The one requirement not listed in this section is the requirement that cost standards used to determine the depreciation of facilities and equipment provide, to the maximum extent practicable, identical treatment to public and private offerors. This requirement is addressed in the solicitation at paragraph 5.f.6 of section L and paragraphs 2.6.(7) and (8) of section M-901, as well as in the SAF/AQ Public-Private Competition Cost Procedures of Feb. 21, 1998.

Agency Comments and Our Evaluation

We informally obtained comments on our review from Air Force officials. They had concerns with our statements that provisions of law other than 10 U.S.C. 2469a apply to the San Antonio competition and that the Air Force had not as of May 5, 1998, provided a sufficient basis to show that soliciting the various engine and accessory workloads on a combined basis is necessary to satisfy the agency's needs. The Air Force's concerns and our responses follow.

First, the Air Force states that our discussion of the applicable legal standards may suggest that the Air Force will have to comply with provisions that it characterizes as inapplicable because of inconsistency or incompatibility with the basic authority in 10 U.S.C. 2469a, or the Defense Base Closure and Realignment Act of 1990. The Air Force maintains that it will fully comply with 10 U.S.C. 2469a, the relevant BRAC decision and other applicable provisions of law. The Air Force does not specify which provisions it views as inapplicable.

Our report states that in addition to 10 U.S.C. 2469a, a number of laws such as 10 U.S.C 2469, 10 U.S.C. 2470, and section 8039 of the 1998 DOD Appropriations Act, that are generally applicable to the outsourcing of depot workloads, are also applicable to the San Antonio competition. Further, we state that other provisions such as 10 U.S.C. 2461, 10 U.S.C. 2462 and section 8014 of the 1998 DOD Appropriations Act, that apply generally to DOD outsourcing could be applicable to the San Antonio competition depending upon the outcome of the selection process. Finally, we state that the competition is subject to the applicable provisions of chapter 137 of title 10 of the United States Code and the FAR, to the extent they do not conflict with the public-private competition statutes. While the Air Force disagrees with at least some of the above mentioned statements it has not specified what provisions it views as inapplicable.

Second, the Air Force takes exception to our conclusion that as of May 5, the Air Force had not provided sufficient support for soliciting the workloads as a combined requirement. In this regard, the Air Force states that it has shown that engine repair work has many common elements and that shared facilities for different engine types are commonly used by commercial repair sources. The agency further states that we have understated the impact of multiple solicitations on readiness by failing to consider the impact on war readiness and by not fully considering the inability of the closing depot to keep key management and supervisory personnel in place to manage multiple solicitations.

We recognize in our report the Air Force's position that the repair of the various engines involves common processes and skills that could lead to efficiencies. However, we also point out that these projected efficiencies cannot be used to justify the workload combination as they are based on the assumption that all of the workloads are to be performed at a single location that can accommodate them all. The solicitation does not, and by law cannot, require that the workload be performed at the San Antonio facility or at any other location. As far as readiness is concerned, we fully considered all of the support provided by the Air Force. However, it is our view that the possible readiness problems, as thus far described by the Air Force, can be mitigated if the transition is properly planned and effectively implemented. Our report acknowledges that readiness concerns do relate to the agency's needs and with further explanation could support the solicitation of combined workloads.

We have incorporated changes suggested by the Air Force when appropriate.

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