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Comptroller General  
of the United States

United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** MTU Maintenance Canada, LTD  
**File:** B-411185; B-411185.2; B-411185.3  
**Date:** June 9, 2015

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Lorenzo F. Exposito, Esq., Law Office of Lorenzo F. Exposito, for the protester.  
Andrew A. Shipley, Esq., Lee P. Curtis, Esq., and Seth H. Locke, Esq., Perkins Coie LLP, for the intervenor.  
Marvin Kent Gibbs, Esq., Department of the Air Force, for the agency.  
Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest challenging agency decision to include engine maintenance requirements within a larger contract for logistics support of an entire aircraft system is denied where record shows that there is a logical, reasonable basis for agency to include engine maintenance as part of its larger requirement, and, in addition, the agency performed extensive market research, in which the protester elected not to participate, that showed that there was no reasonable expectation of stand-alone competition for the engine maintenance requirement.

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### DECISION

MTU Maintenance Canada, LTD, of Richmond, British Columbia, Canada, protests the terms of request for proposals (RFP) No. FA8106-15-R-0003, issued by the Department of the Air Force for contractor logistics support (CLS) services required in connection with the Air Force's sustainment and maintenance of the E-4B National Airborne Operations Center (NAOC) fleet of aircraft. MTU maintains that the agency improperly has included engine maintenance services with its larger requirement for CLS services.

We deny the protest.

### BACKGROUND

The NAOC fleet is comprised of four E-4B airplanes that are highly modified, specialized Boeing 747-200 aircraft. The primary mission of the NAOC fleet is to

provide a strategic command and control capability for the President, the Secretary of Defense and the Chairman of the Joint Chiefs of Staff. Agency Report (AR), exh. 11, Performance Work Statement (PWS) at 5. Specifically, the fleet is designed to provide a highly survivable command, control and communications center to direct United States forces, execute emergency war orders and coordinate civil authorities' activities. Id. The E-4B fleet provides a worldwide, survivable, enduring node of the National Military Command System to fulfill national security requirements throughout the full spectrum of conflict. Id.

The Boeing Company is the original equipment manufacturer of the E-4B aircraft, and has been providing CLS services in connection with the NAOC fleet under a predecessor contract that was awarded in 2005. Contracting Officer's Statement, at 10. That predecessor contract was known as the product support integrator (PSI) contract, and included services that were more comprehensive than the services sought under the current solicitation. Id. The current solicitation is for the acquisition of a subset of the services provided under the PSI contract, including program management, aircraft depot maintenance, supply chain management, field service representatives, and engine maintenance and overhaul.<sup>1</sup> Id. at 3-4, 10.

The record shows that the agency began planning the current acquisition by engaging in extensive market research. In March, 2011, the agency issued a sources-sought request for information (RFI). AR, exh. 5, Agency Requests for Information, at 1. The agency issued a second sources-sought RFI on June 15, 2011, which was subsequently modified on June 26, 2012; the second RFI included a draft performance work statement (PWS). Id. at 4-7. The agency also issued an industry day notification on January 6, 2012. Id. at 8-15. As is relevant to the current protest, the industry day notification included an extensive list of questions for prospective contractors. That list included the following questions:

#### Engine Sustainment Support

- i. What knowledge/experience does your company have in developing and maintaining an engine airworthiness management program used in forecasting engine management recommendations based on known requirements and trends?
- ii. What knowledge/experience does your company have of the CF6-50 engine and does your company have the ability to maintain and overhaul the engine. Provide examples.

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<sup>1</sup> The agency states that it adopted the CLS approach--having one prime contractor responsible for the whole air vehicle, including engines--more than 30 years ago. Affidavit of the E-4B Program Manager, at 1.

Id. at 15. The agency issued a third sources-sought RFI on May 31, 2012, that was modified on October 29, 2013. Id. at 16-18. That RFI also included a list of questions to which interested vendors could respond, as well as a revised PWS that more accurately reflected the agency's requirements. Id.

On the basis of the information gathered by the agency in response to the various RFIs and industry day activity, the agency prepared a market research report in September 2014. In that report, the agency found that award of a contract to Boeing on a sole-source basis was appropriate because the agency had concluded that Boeing was the only responsible source capable of providing its requirements. AR, exh. 6, Market Research Report.

In addition to these market research efforts, the record shows that during this same period of time, the agency was contemplating extending Boeing's predecessor PSI contract. In connection with that activity, the record shows that the agency gave consideration to whether or not it could separately acquire the engine maintenance element of its requirement. The agency concluded that it would not be in the government's interest to separately acquire the engine maintenance requirement. AR, exh. 7, Considerations Relating to the Extension of the Boeing Predecessor Contract, at 1-2.

The agency issued a final RFI on February 11, 2015. That RFI again sought information from firms interested in performing the CLS effort for the E-4B fleet. Among other things, and consistent with the other, previous, RFIs, that RFI asked respondents to provide the agency with recommendations or concerns relating to the agency's proposed source selection. AR, exh. 5, Agency Requests for Information, at 16-19. On February 19, MTU, for the first time, responded to the final sources-sought RFI. In its response, MTU stated that it thought the agency should separate out the engine maintenance element of the overall CLS requirement because MTU believed that it could perform that element of the requirement at a cost savings to the agency. AR, exh. 8, MTU E-Mail to the Air Force, at 1-2.

The agency responded to MTU's recommendation, stating that it intended to continue with its strategy of acquiring the entire CLS requirement using a single contract. The agency further represented that its acquisition strategy was based on the market research it had conducted over the last several years, as detailed above. Thereafter, on February 27, the agency posted a notice of its intent to acquire its CLS requirement from Boeing on a sole-source basis, because the agency concluded, pursuant to 10 U.S.C. § 2304 (c)(1), that only one responsible source was capable of meeting the agency's requirement.

## PROTEST

MTU characterizes its protest as a challenge to the agency's proposed sole-source award of the CLS contract to Boeing. According to the protester, the agency is required to separate the engine maintenance element of its overall requirement from the balance of the CLS requirement because MTU can perform that aspect of the requirement, and because, in MTU's view, there are other potential contractors with the capability to perform the engine maintenance element of the requirement. MTU also notes that the solicitation itself contemplates that the engine maintenance element of the requirement will be subcontracted, and that this further demonstrates that it is suitable for competition. MTU argues that the agency's decision to include the engine maintenance element of the requirement with the balance of the CLS requirements reflects a lack of advanced planning on the part of the agency.

We find no merit to MTU's protest. As an initial matter, we point out that MTU does not object generally to the agency's sole-source approach to this acquisition. In fact, in its February 19 response to the agency's final sources sought notice, MTU's consultant specifically stated that a sole-source award to Boeing "appears justified" and stated further that: "In summary, I fully appreciate that the government's market research was properly conducted and resulted in the decision to award the E-4B contract sole source to Boeing." AR, exh. 8, MTU E-Mail to the Air Force, at 1-2. We note as well that, inasmuch as MTU has never alleged or demonstrated that it is capable of performing the entire CLS requirement, it is not an interested party to challenge the agency's overall approach to awarding a contract for its CLS requirements on a sole-source basis. H.L. Boulton Co., Inc., B-256014, B-256014.4, Oct. 24, 1994, 94-2 CPD ¶ 149 at 4.

Notwithstanding MTU's characterization of its protest as a challenge to the agency's proposed sole-source acquisition, its protest actually is a challenge to the agency's decision to include the engine maintenance element of the requirement within the larger CLS contract. In effect, MTU maintains that the agency's market research--and correspondingly, its advance planning--was flawed because it failed to take cognizance of the fact that MTU is (and, allegedly, other concerns are) interested in, and capable of, competing separately for the engine maintenance element of the CLS effort. MTU therefore takes the position that the agency improperly has included the engine maintenance element of its requirement with the larger CLS requirement.

As noted, the record shows that, at the time it was engaged in market research for the current requirement, the agency contemporaneously considered whether it would be feasible or beneficial to separately compete the engine maintenance element under Boeing's predecessor contract. In this connection, the record shows that the Air Force's Deputy Assistant Secretary for Contracting (DASC) inquired about the viability of acquiring engine maintenance services through a separate contract.

The agency considered the question and responded to the DASC's inquiry, finding, among other things, that, because the size of the E-4B fleet is so small (just four aircraft), the administrative costs of separately awarding a contract for engine maintenance would not justify any potential benefit. In addition, the agency noted that, on a different program for maintaining a similarly-configured engine system separately from maintenance of the remainder of the aircraft system, the cost for performing engine overhauls under that contract was more than double what the agency was paying for the same services under Boeing's predecessor contract. AR, exh. 7, Considerations Relating to the Extension of the Boeing Predecessor Contract, at 1-2.<sup>2</sup> MTU has advanced no evidence to rebut these agency findings.

In addition to these considerations, during the course of the protest the agency has offered a reasonable explanation for consolidating all of the CLS requirements into a single contract vehicle. The agency's program manager explains that the small size of the fleet, coupled with the extremely high demand for these aircraft because of critical national security requirements, translates into an unusually high demand for fleet readiness. The program manager explained in an affidavit as follows:

To meet the demanding commitment of having [a] nuclear hardened flying command post always ready for war, the integrated Contractor Logistics Support (CLS) concept was adopted over 30 years ago. By having an integrated CLS concept with the prime contractor fully responsible for the whole air vehicle (including engines), we have the agility to fix problems on the alert jet immediately--without additional administrative actions. If the Government were to start breaking apart our requirement, additional administrative delays would be incurred as the Government mediates to get contractor "A" to work with contractor "B" to fix a broken alert jet. The mission risk in this scenario is unacceptable. The current integrated CLS sustainment concept has succeeded and will continue to succeed in meeting national security requirements.

Affidavit of the E-4B Program Manager at 1 (emphasis in original).

In addition, the agency's justification and approval for acquiring its requirement on a sole-source basis echoes these considerations, and also details the unique

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<sup>2</sup> The agency also noted, in responding to the Deputy Assistant Secretary's inquiry, that its market research efforts for the CLS contract--the requirement at issue here--did not identify any interested parties for the engine maintenance requirement. AR, exh. 7, Considerations Relating to the Extension of the Boeing Predecessor Contract, at 1. Had MTU responded to the agency's market research efforts, this representation presumably would not have been included in the agency's findings.

engineering and proprietary information only possessed by Boeing that is necessary to maintain the aircraft in the required heightened state of readiness. AR, exh. 1, Justification and Approval, at 3-6. Inasmuch as our Office affords considerable weight to an assertion on the part of a military agency that a requirement is necessary to meet critical human safety and military requirements, Coastal Seal Servs., LLC, B-406219, Mar. 12, 2012, 2012 CPD ¶ 111 at 4, and in light of the agency's explanation here, we have no basis to object to the agency's decision to include its engine maintenance requirements within its larger CLS requirement.

As a final matter, as discussed above, the record shows that the agency engaged in extensive market research that described in detail the CLS requirement. That research was intended to assist the agency in determining whether the overall CLS requirement was suitable for competition, as well as determining whether the various elements comprising the requirement were suitable for separate competition.

Notwithstanding the agency's extensive efforts to probe the market for its requirements, MTU elected to remain silent and not participate in the agency's research.<sup>3</sup> During the course of this protest, MTU has not explained why it elected not to participate in the agency's market research efforts. Thus, to the extent that MTU now characterizes the agency's market research conclusions as inaccurate, the record shows that MTU itself is at least partially responsible for the state of the agency's information because of its failure to participate in the RFI process. We also conclude that the extent and duration of the agency's market research efforts belie any suggestion that the agency failed to engage in adequate advance planning.

The protest is denied.

Susan A. Poling  
General Counsel

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<sup>3</sup> In its February 19 e-mail to the agency responding to the agency's final sources-sought RFI, MTU suggested that it did not know about the agency's market research efforts. AR, exh. 8, MTU E-Mail to the Air Force, at 1. The record shows, however, that Boeing conducted a competition for the award of a subcontract to perform engine maintenance services in connection with the E-4B fleet for the period from January 2014 to November 2018. Intervenor's Comments on the Agency Report, exh. C. MTU participated in that competition, but ultimately lost. In any event, MTU was on constructive notice of the agency's market research activities in light of the fact that all of the agency's sources-sought notices and industry day notice were published on [www.fbo.gov](http://www.fbo.gov). PR Newswire Assn, LLC, B-400430, Sept. 26, 2008, 2008 CPD ¶ 178 at 2.