

UPDATE: Latest KC-X Tanker RFP Illegal?

Written by Administrator
Thursday, 19 November 2009 00:00

We [previously wrote](#) about the troubled history of the KC-X aerial tanker program, calling it a “poster child for what’s wrong with the modern Defense acquisition system.” We noted continued problems with the RFP and noted that any significant revisions to the current draft RFP might lead to further delays, but that if any bidder believed that the playing field wasn’t level, it might pull out of the competition altogether.

Now from InsideDefense.com comes word that a former Bush administration “Top Procurement Official” questions whether the Air Force’s proposed evaluation methodology complies with a recently enacted statute governing Defense acquisition of major weapon systems. Enjoying wide bipartisan support, the Weapon Systems Acquisition Reform Act of 2009 (Public Law 111-23) was passed quickly by both Houses of Congress and signed into law by President Obama in June 2009. An analysis of the statute can be found [here](#). Among other things, the statute requires that “mechanisms to ensure that trade-offs among cost, schedule and performance objectives are made as a part of the process for developing program requirements.” In the words of one commenter, “The Act targets acquisition programs at the point of concept refinement, technology development and requirements definition, rather than when programs reach the system development phase. The conscious effort to force trade-offs between cost, schedule and performance is a clear reaction to the perception in Congress that the budget, acquisition and requirements processes are not now rationally connected.”

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So when [Robert Burton](#), former (and longtime) Deputy Administrator of the Office of Federal Procurement Policy (OFPP) whispers that there may be a problem with the current KC-X RFP, one must take the allegation quite seriously, even if he made the allegation as a legal consultant for hire by one of the bidders. InsideDefense.com quotes Burton as saying, "Clearly the KC-X draft request for proposals goes against the spirit of the ... Act and I think you could make an argument that it might even be in violation of the law."

The problem with the RFP, according to Burton, is that it reportedly contains 373 equally weighted pass-or-fail attributes. As we previously reported, "water flow in the sink and toilet were just as important as fuel offload rate." Because the Air Force is seeking to award a fixed-price development contract for the next generation aerial tanker, and because there is no apparent mechanism to evaluate the risk associated with each bidder's approach, Burton asserts that the "best value" solicitation approach has been converted into a "low-price, technically acceptable" approach, which significantly increases the Government's risk of cost overruns, quality issues, and schedule delays.

Burton is not alone in expressing criticism of the draft RFP. Senator John McCain (R-AZ), who sponsored the Weapon Systems Acquisition Reform Act, reportedly wrote a letter to SecDef Gates in late October 2009 stating his concerns with the Air Force's approach to selecting the KC-X contractor. InsideDefense.com reports that McCain was concerned that Systems Engineering and Technology Maturing evaluation sub-factors were not weighted more heavily than other evaluation sub-factors, since doing so would help the Pentagon evaluate "relative developmental and integration risk" (according to Senator McCain). Burton agreed, asserting that "the failure of the draft RFP to provide for trade-offs between cost, schedule and performance is clearly inconsistent with the intent of the law and Congress' desire to maximize competition and minimize risk."

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As always, the political ramifications of a contract of this magnitude (\$40 billion) have to be understood as background noise to the actual proposal process that is underway. That being said, the history of this troubled acquisition fails to inspire confidence that the Air Force finally got it right, this time.