

Improper Exclusion of Bidders on Light Air Support Award?

Written by Nick Sanders

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On December 30, 2011, the U.S. Air Force announced that it had awarded a \$355 Million delivery order (and a simultaneous ID/IQ contract) to Sierra Nevada Corporation for “Light Air Support” (LAS) aircraft and associated support. Reportedly, the ID/IQ contract may end up being worth as much as \$1.5 Billion. The Air Force contract award announced that—

This is a non-developmental aircraft procured for conducting advanced flight training, surveillance, air interdiction, and close air support. The LAS aircraft is a single-engine turboprop fixed-wing aircraft with tricycle, retractable landing gear, and tandem two-place pressurized cockpit with ejection seats, capable of operating from semi-prepared air fields.

The award announcement was made about one week after the [GAO had dismissed](#) a protest by a disappointed bidder—Hawker Beechcraft Defense Company, LLC (HBDC).as being “untimely”. According to the decision, HBDC had protested its exclusion from the competitive range because “multiple deficiencies and significant weaknesses found in HBDC’s proposal make it technically unacceptable and results in unacceptable mission capability risk.”

Because HBDC had been excluded from the competitive range, that left its only competitor, Sierra Nevada Corporation (SNC) as the winner by default. The SNC proposal was based on use of the Embraer A-29 Super Tucano—a plane allegedly manufactured in Brazil.

The Air Force notified HBDC that it had been excluded from consideration on November 1,

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2011 and the GAO found that HBDC had received that notification on November 4. Bid protest rules require a pre-award debriefing request must be made within 3 days after receipt (see FAR 15.505(a)). Yet HBDC inexplicably waited until November 15 to request a debrief.

The contracting officer refused to provide any debriefing, because HBDC had made its request too late, and thus HBDC found itself before the GAO—where it received little sympathy and a succinct dismissal. The GAO protest decision said—

Accordingly, HBDC was required to request a debriefing within three days of its receipt of the Air Force notice on November 4, or, absent a debriefing, was required to file its protest no later than 10 days after that date. Where HBDC did not timely request a debriefing, and failed to file its protest until 17 (*sic*) days after it was notified that its proposal had been excluded from the competitive range, the protest is untimely and must be dismissed.

The GAO was seemingly mystified as to why it would take HBDC so long to file its protest. (And frankly so are we.) Apparently, it took the HBDC contracts manager more than two weeks (until November 15) to review the Air Force's notification that the company had been excluded from the competitive range, and do something about it. Was the HBDC contracts manager sick or on vacation? Was he or she busy with other pressing matters? The GAO didn't say and we may never know. But still, it says something (to us, anyway) that correspondence from a customer regarding a competition for what was potentially more than a billion dollars' worth of business just sat in an in-box for two weeks.

In a footnote, GAO offered a subtle suggestion that might lead to a resolution of the issue. It said—

Although the Air Force is not required to provide HBDC with a preaward debriefing due to HBDC's untimely debriefing request, we note that the Air Force is not prohibited from providing HBDC with such a debriefing, so that HBDC can have a full understanding of the basis for its exclusion from the competition.

As far as we can tell, the Air Force declined to provide HBDC with a "full understanding" of its proposal deficiencies.

Normally, that would be the end of the story. Protest filed; protest dismissed. Better luck next time. But that was not the end of *this* story.

HBDC then did two things. First, it issued a [press release](#) that said—

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'We are disappointed in the GAO's decision as we were relying on their investigation to provide transparency into what has been a bidding process of inconsistent, irregular and constantly changing requirements,' said Bill Boisture, Hawker Beechcraft chairman and CEO. 'We find ourselves still without answers, which is unacceptable, and continue to believe that our exclusion from this important contract was made without basis in process or fact.'

'As a U.S. company, we believe we deserve a fair chance at this contract,' Boisture said. 'Hawker Beechcraft has been delivering U.S. Department of Defense aircraft certified to military specifications for more than 50 years. We are qualified and prepared to continue doing so for the Air Force's LAS operations with our capable, affordable and sustainable AT-6 aircraft.'

'We are asking concerned Americans, members of the flying military and anyone else dedicated to the success of U.S. manufacturing, preservation of the aerospace industrial base and U.S. tactical air power to take action to ensure the AT-6 gets proper consideration for this Air Force contract. Visit the AT-6 website at www.missionreadyat-6.com to send a letter to your congressional leaders.'

Second, the company filed a suit in the U.S. Court of Federal Claims. As part of that suit, it asked the Court to issue a temporary restraining order that would prevent the Air Force from executing the LAS contract with SNC.

That second step resulted in the Air Force sending SNC a Stop Work Notice pending resolution of the matter. According to [this Washington Post story](#), the Air Force "decided put its own stop work order in place before the court ruled on the temporary restraining order."

The same Washington Post story also reported that—

Hawker Beechcraft CEO Bill Boisture and U.S. Rep. Mike Pompeo planned a news conference Friday [January 6, 2012] to talk about the developments. U.S. Sen. Pat Roberts said Hawker Beechcraft deserves more answers as to why it was excluded from the competition. 'On every turn, the Air Force has denied the company and the congressional delegation the opportunity to understand why it made the decision,' Roberts said in a statement.

Okay, stay tuned for further developments on this interesting story.

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But before we leave it, readers should note that HBDC is pulling out all the stops on this one. We're guessing that the potential revenue from this contract made it a "must-win" for the company, and that everybody is scrambling to address the issues involved in the fiasco.

And fiasco it was, make no mistake.

The Air Force could have resolved this with some open communication as to why HBDC was excluded from the competitive range. Sure, they didn't have to but, as GAO pointed out, there was nothing preventing them from doing so. And so now we have Congress involved. Not to mention a very important warfighter support contract on hold. Remember, the Commander-in-Chief has promised taxpayers more transparency, and his folks clearly are not living up to his pledge.

HBDC still has to explain (to its Board of Directors and shareholders, if to nobody else) why a critically important piece of correspondence lay unopened for two weeks, letting regulatory deadlines lapse in the meantime. (We would not want to be in that contracts manager's seat right now....)

Not to mention, of course, why its proposal for such a "must-win" competition was so flawed that the Air Force threw it out as being (essentially) uncorrectable. Did HBDC have the right skill sets? Did they put the company's varsity team on the proposal? What went wrong?

It is incorrect to posture this story in terms of "USA versus Brazil". That's not what this is about. What it is about, quite clearly, is having the Air Force act like stewards of taxpayer funds, and explain their decision-making. The Air Force is hunkered-down and lawyered-up, and acting like this is an adversarial relationship. Instead, they need to come clean and make this all go away.

HBDC needs to understand why it screwed-up, so we can get the warfighters the light air support (and reconnaissance) necessary to minimize the loss of life in the war zone.

That's our take, anyway.