

Northrop Grumman's Request for Dismissal of Untimely Grounds for Protest

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. HISTORY OF THE KC-X PROCUREMENT.....	3
A. Market Research.....	4
B. Development of the RFP	5
C. Final RFP.....	7
D. Air Force Evaluation of the Proposals.....	8
III. LEGAL STANDARD FOR SUMMARY DISMISSAL OF UNTIMELY PROTEST GROUNDS	12
A. Bid Protest Rule 21.2(a)(1) Required Boeing to File a Protest Before Submitting a Proposal for Any Protest Claims Based Upon Alleged Improprieties in the RFP That Were Apparent Before the Proposal Was Due.....	13
B. Bid Protest Rule 21.2(a)(2) Required Boeing to File Within 10 Days of Knowledge of the Basis of the Protest for All Other Bases for Protest, With One Narrow Exception.....	15
C. The Exception to Bid Protest Rule 21.2(a)(2)'s 10-Day Rule Applies Only to Bases for Protest That Would Have Been Timely on or After the Date Boeing Requested Its Post-Award Debriefing.....	16
IV. BOEING'S UNTIMELY CLAIMS SHOULD BE SUMMARILY DISMISSED.....	19
A. Boeing's Challenges to the SSA's Recognition of the KC-30's Superior Aerial Refueling and Airlift Capacity Are Untimely and Should Be Dismissed.....	19
1. Boeing's protest is based on the faulty premise that the Air Force misled it as to the capabilities of the tankers it required	19
a. Boeing's claim that the Air Force selection of the KC-30 is a violation of its commitment to purchase a medium tanker is both wrong and untimely.....	20
b. The so-called mid course corrections were RFP and IFARA ground rule changes made months before proposals were due.....	22

Northrop Grumman's Request for Dismissal of Untimely Grounds for Protest

TABLE OF CONTENTS
(continued)

	<u>Page</u>
2. It is too late to complain that the SSA rewarded greater fuel capacity	24
a. Boeing had clear notice that the Air Force would reward greater air refueling capacity	24
(1) Boeing's argument depends on an illogical reading of the RFP	25
(2) The Air Force's interim briefings informed Boeing that the Air Force valued the extent to which the fuel capacity thresholds were being exceeded	28
(3) Addition of the Aerial Refueling Efficiency Factor to the final RFP was further indication of the Air Force's interest in refueling capacity	29
3. It is too late to protest that the Air Force improperly rewarded airlift capability	31
a. Changes to the final RFP emphasized the Air Force's interest in the air tanker's airlift capability	32
b. Boeing's attempts to convert its untimely attack on the RFP's weighting of airlift requirements into evaluation issues are unavailing	35
4. Sections of Boeing's protest that do nothing more than complain about the Air Force's determination of its requirements for aerial refueling and airlift capacity are both untimely and outside the GAO's jurisdiction	37
B. It Is Too Late to Attack the RFP'S IFARA Evaluation Structure or the Model and Groundrules on Which It Was Based	38
1. It is too late to complain that the CMARPS model produces unreliable, inconsistent or unfair results	39
a. RFP Section M spelled out the central role of CMARPS in the IFARA evaluation	39
b. If Boeing objected to the fact and manner of CMARPS's use in the IFARA evaluation, it had to bring a pre-award protest	40
2. It is too late to attack the adjustments that the Air Force made to the IFARA scenarios and groundrules	42

