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FEATURE COMMENT: Splitting The Baby— Why The Air Force Needs Two Tankers

The secretary of defense recently deferred the competition to replace an aging fleet of Air Force airborne tankers. By delaying a decision on the politically charged contract to the next administration, the Department of Defense essentially admitted that no palatable solution exists for proceeding with the program. At the same time, tension is mounting on Capitol Hill, with the House and Senate Appropriations committees expected to be deadlocked on the issue as they struggle to complete work on the fiscal year 2009 funding bill. This long-standing tanker replacement battle has confounded DOD and congressional leaders for nearly a decade. To break the deadlock, the next administration's DOD leadership should consider an unconventional alternative.

The troubled program, which has been rocked by a major scandal that landed senior Boeing Co. officials in jail, seemed on track earlier this year. Then in a shocking move, the Air Force selected the aircraft submitted by a consortium comprised of Northrop Grumman and EADS, resulting in a political outcry by Boeing supporters who blasted the selection of a "foreign" aircraft. Now, because of Boeing's successful protest at the Government Accountability Office, the Air Force must recompute the contract, further delaying delivery of the much-needed platform. Many experts predict that no matter who wins the next round, another protest is likely.

Language in the House Appropriations defense subcommittee's FY 2009 spending bill would require the Air Force to consider the ramifications on the U.S. industrial base of awarding the contract

to a foreign firm, which portends a Boeing victory. The report accompanying the House bill states, "The Committee is deeply concerned with the potential implications to the national industrial base with the trend ... towards contracting for major defense acquisition programs that are developed and produced overseas." Free-trade advocates will argue that such protectionist language undercuts U.S. efforts—which have been gaining momentum since World War II—to open foreign procurement markets to U.S. exporters, including Boeing. But with powerful congressional advocates on key committees like defense appropriations, Boeing appears to have the political upper hand in the tanker case, leaving the Northrop team with an uphill battle and DOD with few options.

One obvious solution is for DOD to reconsider its procurement strategy and move forward with a "split-buy," which would mean both Boeing and Northrop/EADS win a piece of the contract. Issuing two low-rate initial production contracts, of 10–15 aircraft each for Boeing and Northrop/EADS, could break the logjam. By flying both companies' aircraft for 3–5 years and reviewing the performance using objective criteria, the Air Force could obtain measurable data on which to base a single award and force both companies to deliver what they promise. The pressure to deliver on time and on budget or risk losing the ultimate prize—the follow-on contract—arguably would bring out the best in the aerospace industry.

When asked if a "split-buy" was feasible, current U.S. Air Force, Air Mobility Commander Gen. Arthur Lichte said, "[I]f you were to tell me that was the only way to get out of [the current situation] then I'd take it." At the same time, DOD's chief weapons buyer, Undersecretary of Defense for Acquisition John Young, has remained adamantly opposed to a split-buy, calling it "unaffordable." Advocates of this solution argue that a split-buy, if structured creatively, could be economical, field aircraft quickly and provide the means to end an unwinnable political battle.

What would it take to get each company to agree to such a capital-intensive, high-risk battle? Simply guarantee the “loser” a market by predetermining that the Air Force will sell its aircraft under the Foreign Military Sales program. This does not mean “dumping” an inferior aircraft on foreign markets; the U.S. military has special logistical demands, far more complex and geographically diverse than those of other nations. A “second-best” aircraft for the U.S.—especially one proven over years of performance—may be the best value for foreign buyers.

By taking this approach, the Air Force could recoup a major portion of its initial investment in the second aircraft, and the “losing” defense contractor would receive a ready-made foreign market for sale of its flight-tested aircraft. Northrop/EADS, arguably the team with the most to lose in a split-buy, could effectively double their chances of winning—either by winning the Air Force contract outright (a politically challenging prospect for the reasons discussed), or winning a guaranteed FMS market.

Forcing two fierce competitors to deliver on time and on budget to claim the ultimate prize will not only get replacement aircraft in the air more quickly, but also bring true competition to the procurement process. An FMS market for the “loser” is a strong incentive to keep both players in the tanker replacement game. More importantly, splitting the buy ends the political stalemate and creates a win-win business outcome by forcing competition into the defense procurement process without creating a true winner-take-all scenario. In the end, a split-buy means everyone—Boeing, Northrop, the Air Force and U.S. taxpayers—wins.



This FEATURE COMMENT was written for THE GOVERNMENT CONTRACTOR by Jeffery A. Green, Esq. Mr. Green is former Counsel to the House Armed Services Committee, President of J.A. Green and Co., LLC and a Major in the Air Force Reserve. The views expressed are his own and not those of the Air Force. He represents neither Boeing nor Northrop Grumman/EADS.

