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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Testek, Inc.

File: B-297137

Date: October 28, 2005

Sanjiv Joshi for the protester.

Robert Sebold, Esq., Defense Logistics Agency, for the agency.

Jonathan L. Kang, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is denied where agency reasonably determined offeror's proposed alternative approach to meeting sole-source requirement did not comply with solicitation criteria.

DECISION

Testek, Inc. protests the award of a contract to Avtron Manufacturing, Inc. under solicitation No. SP0490-05-R-0489, issued by the Defense Logistics Agency (DLA) for the upgrade and modernization of aircraft generator test stands. The protester argues that the agency improperly solicited the requirement on a sole-source basis and improperly rejected its alternative proposal as technically unacceptable.

We deny the protest.

BACKGROUND

On April 8, 2005, the agency issued a presolicitation notice stating that the agency intended to procure on a sole-source basis "modernization and upgrades" for three Avtron generator drive test stands, model Nos. 738/K and 400, at the Naval Aviation Depot, Naval Air Station, North Island, in San Diego, California.¹ The test stands are used to measure the performance of generators that provide power for various

¹ The solicitation notes that the Avtron test stands, model Nos. 738/K and 400, are effectively the same models.

aircraft systems and components. Because the computer components used in the Avtron test stands currently owned by the agency are considered obsolete, Avtron offers an upgrade kit to modernize the parts, thereby extending the life of the test stand. The statement of work required the upgrade of the three test stands by replacement of the data control and data acquisition systems in a manner compatible with existing software, the upgrade of two gearboxes, and the installation of the upgrades. The upgrades were also intended to provide expanded capabilities for testing newer aircraft generators.

The solicitation, issued on April 11, stated that the procurement was conducted on a sole-source basis because “highly specialized components [are] available only from this contractor,” *i.e.*, Avtron. Agency Report (AR), Tab D, Presolicitation Notice, at 1. The solicitation established a closing date of May 11. The agency prepared a justification for other than full and open competition supporting the sole-source award to Avtron. AR, Tab E, Justification and Approval (J&A), at 1. The J&A stated that the sole-source award was required because the existing Avtron test stands lack the capability to meet current generator test requirements, and that an upgrade of those test stands or the purchase of new test stands was required. *Id.* at 4. The J&A further stated that upgrade packages for the Avtron test stands could not be obtained from another source. *Id.* at 1.

Although the solicitation stated that alternative proposals would not be accepted, on May 11, Testek submitted, and the agency evaluated, a proposal from this firm to upgrade the Avtron test stands using parts from Testek’s AECTS test stand, a model currently offered by Testek. Based on its evaluation, the agency rejected Testek’s proposal as technically unacceptable. Testek filed an agency-level protest, which was denied. Testek then filed its protest with our Office.

DISCUSSION

As an initial matter, Testek raises several protest issues that are untimely because they were not raised prior to the time established for the receipt of proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2005). Testek challenges the agency’s decision to upgrade the existing test stands instead of purchasing new test stands, and the agency’s conclusion that the upgraded Avtron test stands described in the solicitation actually meet the solicitation requirements.² Because Testek did not

² With regard to the capabilities of the upgraded Avtron test stand, Testek contends that only the Testek AECTS test stand has the capability to meet the F-18E/F generator test requirements under the solicitation. The F-18E/F generator test requirement was clearly stated in the solicitation, as was the agency’s intention to obtain the Avtron upgrades to meet this requirement. Thus, to the extent that Testek claims that Avtron cannot provide this functionality, the issue is untimely. 4 C.F.R. § 21.2(a)(1).

challenge the terms of the solicitation prior to the time established for the receipt of proposals, it cannot do so now. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1).

The remaining protest ground addresses the reasonableness of the agency's evaluation of Testek's alternative proposal under the terms of the solicitation. An offeror who submits an alternative proposal to a sole-source solicitation has the burden of affirmatively demonstrating that the alternative product is an acceptable substitute. Sterling Mach. Co., Inc., B-246467, Mar. 2, 1992, 92-1 CPD ¶ 253 at 2-3. An offeror must submit sufficient information in its proposal to enable the agency to determine whether the proposed alternative meets all of the requirements of the solicitation, and we will not sustain a protest challenging the agency's technical determination unless it is unreasonable. Id.

The agency determined that Testek's proposal described its AECTS test stand and its capabilities, but that the proposal did not adequately describe how the test stand's components and Testek's approach to upgrading the Avtron test stands comprised an acceptable alternative to the Avtron upgrade package.³ AR, Tab S, Agency-Level Protest Denial, at 1. The agency concluded that Testek's proposal did not demonstrate that the upgrade of Avtron's test stands with Testek components was possible or that Testek had ever conducted such an upgrade.⁴ In fact, Testek now

³ The agency initially determined that the Testek proposal was unacceptable because the agency apparently believed that Testek proposed to provide new test stands instead of an upgrade package, and further that Testek proposed to provide an AECTS test stand that could only provide 150-horsepower capacity, instead of the required 300-horsepower capacity. AR, Tab P, Rejection of Alternate Proposal, at 1. Testek responded in an agency-level protest that its proposal was for the upgrade of the Avtron test stands using Testek components from its AECTS test stand, rather than a new Testek test stand, and that Testek identified in its proposal components capable of providing 300-horsepower motors. AR, Tab Q, Testek Agency-Level Protest, at 1-2. In its response to the agency-level protest, the agency acknowledged that Testek did propose to upgrade the Avtron test stands, and that Testek's proposal identified components capable of meeting the 300-horsepower requirement. AR, Tab S, Agency-Level Protest Denial, at 1. Nonetheless, the agency, upon reevaluating Testek's proposal, concluded that the proposal still did not comply with the requirements for the reasons discussed above. Id. Thus, the protester was not prejudiced by the initial, apparently incorrect basis for rejecting its proposal. See McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).

⁴ Testek cites phone logs created by its employees of conversations with Navy personnel in August 2004 as evidence that DLA knew or should have known of Testek's capabilities to meet the solicitation requirements. Protester's Comments at 2-3. Discussions with the Navy of the firm's general capabilities do not affect Testek's obligation to submit a proposal that clearly addressed its ability to meet the

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acknowledges that it has no experience upgrading the Avtron test stands, i.e., that it has never performed this upgrade previously.

Further, the solicitation required that the equipment offered be a current production model. Solicitation, Statement of Work, ¶ 3.4. The solicitation prohibited prototype, pre-production, or redesigned products. Id. In light of the solicitation's prohibition on prototype, pre-production, or redesigned products, the agency determined that Testek's proposal would require modification of Testek's AECTS products to achieve compatibility with the Avtron test stands, and thus Testek's products were not acceptable under the terms of the solicitation. Based on the agency's conclusion that Testek had never performed an upgrade of an Avtron test stand by adapting its own AECTS parts, and the agency's conclusion that proprietary data requirements would necessitate analysis of the Avtron test stands and reverse engineering by Testek to achieve an upgrade, the agency, in our view, reasonably determined that Testek's proposal was not technically acceptable under the current production model criterion. AR, Tab S, Agency-Level Protest Denial, at 3.

Testek contends that the agency treated it unequally in the evaluation of this issue, arguing that because Avtron no longer produces test stand model Nos. 738/K and 400, Avtron does not have a product that complies with the current production model requirement. Testek argues that, in contrast, its AECTS test stand is a current production model, and therefore meets the solicitation requirement. The protester, however, misunderstands the nature of the current production model criterion in the context of the solicitation: the Avtron upgrade package, including the parts and installation, is the subject of the solicitation. Thus, the upgrade package itself, and not the upgraded test stand, must be the current production model that is offered for sale. The agency determined, and Avtron's proposal confirms, that the Avtron upgrade package is a current production model as that term is defined in the solicitation. See AR, Tab H, Avtron Upgrade Package Brochure and Proposal.

In sum, Testek submitted, and the agency evaluated, Testek's proposed alternative approach to meeting the solicitation requirements. We conclude that the agency

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specific solicitation requirements here. In any case, as discussed above, Testek acknowledges that it has had no experience in upgrading Avtron test stands.

reasonably determined that Testek's alternative proposal did not meet the solicitation requirements and was technically unacceptable.⁵

The protest is denied.

Anthony H. Gamboa
General Counsel

⁵ Testek raises several other protest issues which we have considered, but do not address as we find them to be without merit.