Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Dynamic Instruments, Inc.

File: B-270236

Date: February 20, 1996

Paul F. Whitten, Sr., for the protester.
John B. Denniston, Esq., and Jason A. Levine, Esq., Covington & Burling, for Mechanical Technology Inc., an intervenor.
David M. Hill, Esq., and Richard P. Castiglia, Jr., Esq., Department of the Air Force, for the agency.
C. Douglas McArthur, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly rejected protester's offered equipment under proposed sole-source procurement is denied where record shows that protester's equipment, an engine balancing system, did not meet the agency's minimum needs because of the system's limited ability to provide real-time data on engine vibration levels.

DECISION

Dynamic Instruments, Inc. protests the sole-source award of a contract to Mechanical Technology Inc. (MTI) under request for proposals (RFP) No. F41608-95-R-0239, issued by the Department of the Air Force for a portable balancing system.

We deny the protest.

On March 8, 1995, the agency issued the solicitation for a fixed-price requirements contract for a PBS 4100 portable balancing system, plus accessories, for the F108 engine used in the KC-135R aerial tanker. The agency subsequently executed a justification and approval (J & A) authorizing the use of other than full and open competition. That J & A identifies MTI as the only source for the PBS 4100, based on the agency's lack of technical data and drawings necessary for any other firm to manufacture the PBS 4100.

The J & A and the synopsis that the agency published in the Commerce Business Daily (CBD) described the PBS 4100 as follows:

> "Automatically collects vibration data during engine test run and calculates balance solution, displays a diagram of engine balance to indicate where weights should be installed."

In other words, the system monitors engine vibration at different speeds and produces a recommended configuration for attaching weights to keep vibration within acceptable limits.

Dynamic Instruments provided a timely expression of interest in the procurement; subsequent correspondence from the protester disclosed that Dynamic Instruments was seeking qualification of a Vibration Analysis Test Set (VATS) to satisfy the agency's needs.

The protester submitted an offer by the amended closing date of July 7, and requested an opportunity to make a presentation on the capabilities of the VATS. The Air Force granted this request and, after the presentation, scheduled a demonstration test for the VATS at the Rickenbacker Air National Guard facility in Ohio.

The technician in charge of the demonstration test noted several shortcomings in the VATS. Where the PBS 4100 produced a survey of vibration from ground idle to take-off, the VATS required acceleration at a set rate, within a pre-established range. The operator, it was discovered, became distracted from monitoring engine gauges by the need to provide boost at these prescribed levels. Further, the VATS did not allow an analysis for all phases of engine operation, but only analyzed vibration at the prescribed settings. More seriously, the technician noted, the VATS could not monitor fan frame vibration and turbine rear frame vibration simultaneously. The VATS did not display real-time data, but provided a balance solution only at the end of the testing cycle. Consequently, with no means of monitoring vibration during testing, there was no way to ensure that the engine was not being damaged during the testing. Further, that portion of the engine--fan frame or turbine rear frame--not currently being tested could suffer damage while an operator was running tests on the other portion.

Air Force technical personnel concluded that although the VATS could track engine vibration and provide a balance solution, it would not be able to balance the engines safely--without danger of damage during testing--without significant modification. On October 13, 1995, the Air Force rejected Dynamic Instruments's offer. This protest followed.

The protester challenges the decision to procure the engine balancing system on a sole-source basis, essentially arguing that the agency improperly concluded that the protester's equipment would not also meet the agency's needs. Based on our review of the record here, we see no basis to object to the agency's decision to

reject Dynamic Instruments's offer and to procure the equipment on a sole-source basis.

The CBD notice identified three functions of the equipment--the collection of vibration data, the calculation of a balance solution, and the display of that solution. The record shows that the VATS is not comparable to the PBS 4100 in two of the three functions mentioned in the CBD--collecting vibration data (simultaneously from two points) and displaying the solution in real time. Dynamic Instruments does not argue that its equipment in fact has these features of the PBS 4100; instead, the protester contends that its equipment will meet the agency's needs without those features. In essence, the protester is challenging the agency's determination of its minimum needs.

The contracting agency has the primary responsibility for determining its minimum needs since it best understands the conditions under which solicited supplies and services will be used. See Vorum Research Corp., B-255393; B-255394; Feb. 28, 1994, 94-1 CPD ¶ 155. We have no basis to question the agency's conclusion that the features lacking from the VATS--simultaneous monitoring of the fan frame and rear turbine frame, and the ability to provide real-time data--are necessary to balance an engine safely, or to discount the agency's concern that the engine not be damaged during testing. The protester here does not deny the risks of engine failure, described in detail above, that might result where the cited characteristics of the equipment are absent. Under these circumstances, we see no basis to object to the agency's conclusion that these features are necessary to meet its needs.

To the extent that Dynamic Instruments now asserts that the solicitation should have provided a more precise listing of those features, the protest is untimely. Protests based upon alleged improprieties in a solicitation which are apparent prior to the time set for receipt of offers must be filed prior to that time. Bid Protest Regulations, section 21.2(a)(1), 60 Fed. Reg. 40,737, 40,740 (Aug. 10, 1995) (to be codified at 4 C.F.R. § 21.2(a)(1)). Accordingly, the protester should have raised these issues prior to the time for submission of offers on July 7, rather than waiting for the rejection of its offer on October 13.

The Competition in Contracting Act of 1984 permits a noncompetitive acquisition where there is only one responsible source for a needed item and no other item meets the government's needs. 10 U.S.C. § 2304(c)(1) (1994). The record here establishes that the VATS does not meet the government's needs and that, insofar as

the agency is aware, only the PBS 4100, available only from MTI, meets its needs. Accordingly, a noncompetitive award to MTI is legally unobjectionable.[1]

The protest is denied.

Comptroller General
of the United States

---

[1]Initially, the protester also argued that the agency has rights to MTI's proprietary data and should provide that data to other firms, so that they can produce a balancing system that meets the agency's needs. The submissions of MTI and the agency contradict the protester's assertions that the agency has or can obtain data from MTI to allow a competitive procurement. The protester has not directly responded on these points, and we consider it to have abandoned this argument. See Datum Timing, Div. of Datum, Inc., B-254493, Dec. 17, 1993, 93-2 CPD ¶ 328. In any event, this issue is untimely, because it concerns an alleged solicitation impropriety which should have been raised prior to the time set for submission of initial proposals. See Bid Protest Regulations, section 21.2(a)(1), supra.