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## Decision

**Matter of:** ArmorWorks Enterprises LLC

**File:** B-405450

**Date:** October 28, 2011

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Christopher R. Yukins, Esq., and Avi M. Baldinger, Esq., Arnold & Porter LLP, for the protester.

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### DIGEST

Protest arguing that agency improperly rejected proposal as technically unacceptable is denied where the protester's challenge is based on an unreasonable interpretation of the solicitation's requirements.

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### DECISION

ArmorWorks Enterprises LLC, of Chandler, Arizona, protests the rejection of its proposal under request for proposals (RFP) No. SPM1C1-10-R-0151, issued by the Defense Logistics Agency (DLA) for Enhanced Small Arms Protective Inserts (ESAPI). The protester contends that the agency unreasonably determined that it had failed to submit required ballistic tests results.

We deny the protest.

### BACKGROUND

The RFP, which was issued on January 14, 2011, contemplates the award of three 3-year (a base plus two option years) indefinite-delivery/indefinite-quantity contracts for ESAPIs, which are plates that are inserted into an outer tactical vest as part of a body armor system. The first contract is for 50 percent of the total estimated

quantity; the second contract, 30 percent; and the third contract, 20 percent.<sup>1</sup> The solicitation contemplates first article testing after award.

The solicitation provides for the evaluation of proposals on the basis of several non-price factors, the first of which is “Passing Ballistic Test Results.” The RFP advises that proposals will be evaluated under the foregoing factor on a pass/fail basis, and that failing proposals will be rejected without further evaluation. RFP at 53. To receive a passing rating under the factor, offerors must provide “passing ballistic test results in accordance with First Article Test (FAT) criteria,” and the results must demonstrate “the offeror’s ability to meet the complete ballistic requirements for FAT found under specification CO/PD 04-19D, CO/PD 04-19E or CO/PD 04-19F.” RFP at 52; Amend. 0002 at 2.

CO/PD 04-19D, CO/PD 04-19E, and CO/PD 04-19F are Product Descriptions for the ESAPI. (Version -19E, issued on May 4, 2010, superseded version -19D, and version -19F, issued on November 24, 2010, superseded version -19E.) All of the versions of the purchase description include a number of ballistic test requirements for FAT. Among the required tests is a weatherometer resistance (or weathered) test, which involves ballistic testing of the plates after they have been exposed to a specified weathering cycle (involving light and moisture), and altitude testing, which involves ballistic testing of the plates after they have been placed in an air pressure chamber.

On April 28, ArmorWorks submitted a proposal for the small business set-aside portion of the RFP. With its proposal, the protester included the results of first article testing accepted by the Marine Corps under a Corps contract for ESAPIs to which CO/PD 04-19D applied. The first article testing results accepted by the Marine Corps did not, however, include the weatherometer resistance or altitude tests; the Marine Corps evidently waived these tests for ArmorWorks during ArmorWorks’ performance of that contract. The contracting officer concluded that ArmorWorks’ proposal failed to comply with the requirements of the first evaluation factor. By letter of July 19, the contracting officer notified ArmorWorks as follows:

[Your proposal] is being removed from the competition because of your firm’s failure to be in compliance with the terms of the solicitation. Review of the FAT ballistic reports revealed that Altitude and Weathered Testing were not performed, as required by CO/PD 04-19 Rev D. In the absence of these two tests, [the proposal] fails to demonstrate the ability to meet the complete ballistic requirements for FAT, under CO/PD 04-19 Rev D and as specified by the solicitation.

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<sup>1</sup> Portions 1 and 2 were solicited on an unrestricted basis, whereas portion 3 was set aside for competition among small business concerns.

Contracting Officer Letter to Protester, July 19, 2011. The agency furnished the protester with a debriefing on July 26, and ArmorWorks protested to our Office on July 29.

## DISCUSSION

The protester contends that the agency improperly rejected its proposal based on an unreasonable reading of the solicitation's ballistic testing submission requirements. In this regard, ArmorWorks maintains that the solicitation language requiring ballistic test results demonstrating an offeror's "ability to meet the complete ballistic requirements for FAT found under specification CO/PD 04-19D, CO/PD 04-19E, or CO/PD 04-19F" merely required offerors to provide the results of the tests required by the agency for which the applicable FAT was performed. In other words, since the Marine Corps accepted first article test results that did not include the weathered and altitude tests, ArmorWorks was not required to further demonstrate compliance with these two tests.

Where a dispute exists as to the actual meaning of a particular solicitation provision, our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all its provisions; to be reasonable, an interpretation of a solicitation must be consistent with such a reading. The Boeing Co., B-311344 et al., June 18, 2008, 2008 CPD ¶ 114 at 35.

Notwithstanding the protester's arguments to the contrary, there is only one reasonable interpretation of the language in question, which is that offerors were required to provide results demonstrating compliance with all of the FAT specification's ballistic testing requirements. Specifically, the solicitation required offerors to submit "passing ballistic test results in accordance with First Article Test (FAT) criteria" and provided that the test results must demonstrate the offeror's ability to meet "the complete ballistic requirements" for the FAT found under the specification. There simply is no basis to conclude that the agency required anything other than proof of having passed all the required FAT tests. While the protester contends that because agencies such as the Marine Corps have previously waived the requirement for the weathered and altitude tests during FAT, it reasonably assumed that DLA intended to exclude those tests from the required tests here, where solicitation language is clear, it should not be interpreted in a manner inconsistent with the clearly expressed intent merely because different requirements have been imposed in the past. In this connection, we have repeatedly observed that each procurement stands alone. Connectec Co., Inc., B-310460, Nov. 27, 2007, 2007 CPD ¶ 211 at 3. Moreover, DLA points out that under its recent contract with ArmorWorks for ESAPIs, it did not waive the requirement for weathering and

altitude testing during FAT.<sup>2</sup> Accordingly, the record does not even support the protester's assertion that the parties had established a course of dealing whereby the weathered and altitude tests were waived as part of the FAT testing process.

ArmorWorks also argues that the requirement for offerors to demonstrate compliance with all of the specification's ballistic test requirements constitutes a preaward qualification requirement that could not be properly imposed without adhering to the procedural requirements set forth in Federal Acquisition Regulation (FAR) Subpart 9.2.<sup>3</sup> Along similar lines, the protester argues that requiring prior FAT test results demonstrating compliance with all of the specification's ballistic test requirements is restrictive of competition.

We will not consider these complaints because they are challenges to the terms of the solicitation, and, as such, to be timely, needed to be raised prior to the closing date for receipt of proposals. See Bid Protest Regulation, 4 C.F.R. § 21.2(a)(1) (2011). In connection with the former argument, the protester maintains that it did not have a reason to object to the requirement for prior FAT results until it realized that the agency was interpreting the requirement in a manner inimical to its interests (that is, as requiring the submission of weathering and altitude test results). The particular tests required, however, have no bearing on the protester's underlying argument that the requirement for test results was essentially a preaward qualification requirement. Accordingly, we do not agree with the protester that its basis for protest did not arise until it realized that application of the requirement would work to its prejudice. In any event, since, as discussed above, it was apparent

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<sup>2</sup> The agency furnished the following detailed explanation regarding the foregoing contract. The contract was awarded pursuant to RFP No. SPM1C1-06-R-0088, which required production and supply of ESAPIs. The solicitation included a requirement for a Product Demonstration Model (PDM), which was required to pass a number of ballistic tests consistent with CO/PD 04-19B. On April 2, 2007, the agency advised offerors that altitude and weathered testing would not be required for the PDM, and that two additional ambient tests would be substituted in their place. During the course of contract performance, ArmorWorks experienced production lot failures on a specific ESAPI design, which was then deleted from the contract. When ArmorWorks requested to reinstate that design into the contract, the agency responded that it would require new first article testing. This FAT was to be in accordance with the testing matrix outlined in CO/PD 04-19. ArmorWorks requested a waiver of altitude and weathered testing on this FAT requirement, but the waiver was denied.

<sup>3</sup> For example FAR § 9.202(a)(1) requires that the agency prepare a written justification before establishing a qualification requirement stating why the qualification requirement is necessary and specifying why the qualification requirement must be demonstrated before contract award.

from the face of the solicitation that offerors were required to provide passing results for all FAR test specifications, to be timely, ArmorWorks' contention that this requirement was contrary to the FAR, or unduly restrictive of competition, needed to be raised prior to closing.

The protest is denied.

Lynn H. Gibson  
General Counsel