



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Alpha Q, Inc.

File: B-270517

Date: March 14, 1996

Richard Degen, Esq., for the protester.

Craig E. Hodge, Esq., and Tina Marie Pixler, Esq., Department of the Army, for the agency.

Christina Sklarew, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency need not solicit a proposal from a company whose critical flight safety part had not yet been fatigue-tested, where the agency's needs are urgent so that the procurement could not be delayed until the product had been tested.

DECISION

Alpha Q, Inc. protests the proposed issuance of request for proposals (RFP) No. DAAJ09-96-R-0025 on a restricted basis by the Army Materiel Command/Army Aviation and Troop Command (ATCOM) for a quantity of helicopter parts. Alpha argues that the RFP, which ATCOM intends to issue to the only two tested sources, improperly restricts competition, and that the agency has improperly delayed testing Alpha's product, thereby preventing the firm from competing.

We deny the protest.

The RFP will seek offers for housing assemblies for the UH-60 (Blackhawk) helicopter. The housing assembly is designated a flight safety part because failure of the assembly could result in loss of the aircraft with possible loss of life and injury to the air crew. ATCOM has declared its intention to limit competition under the RFP to the only two firms that are approved sources and whose assemblies have been fatigue-tested, Sikorsky Aircraft Corporation and the Purdy Corporation. The agency initially executed a justification and approval limiting the procurement to the sole available source, Sikorsky, citing 10 U.S.C. § 2304(c)(1) (1994) and Federal Acquisition Regulation § 6.302-1, and later decided to include Purdy after Purdy's assembly had been tested. The restricted procurement also is supported by a statement of urgency that projected a zero inventory balance in December 1995, based on the anticipated rate of use and the current inventory for the item.

Although Alpha has been approved as a source for this component, its housing has not yet been fatigue-tested. Fatigue testing is required to provide assurance that the manufacturing process employed by a new source of supply does not cause reductions in the life of the part as established through extensive testing of the original source's part. In February 1995, Alpha was awarded a contract for 29 housing assemblies under a procurement that was limited to approved sources regardless of fatigue-testing status. Under that contract, Alpha was required to submit a first article and report by December 30, 1995, with deliveries of the assembly scheduled to begin in September 1996. After the initial product was delivered, a fatigue test was to be performed, and if successful, Alpha would be considered a tested and approved source for the assembly. Alpha failed to deliver its first article unit for testing by the deadline established under its contract, apparently because of an equipment failure, and now anticipates delivering both its first article unit and an additional unit for fatigue testing on March 15. The agency anticipates that the process of fatigue testing will require 16 months,¹ and thus Alpha could not be determined a responsible or qualified source in time to compete under the procurement in question here.

Alpha protests that ATCOM has unduly delayed testing Alpha's product, thus excluding the protester from the competition. The protester construes the terms of its current contract as requiring the agency to perform the fatigue testing within 20 days of tender of the first article unit, and argues that the agency's intention to complete the test 16 months after tender amounts to an anticipatory breach of Alpha's current contract. In addition, Alpha equates ATCOM's delay in testing Alpha's product with a failure to engage in advance planning, and argues that without advance planning, the agency cannot justify its determination to restrict the competition based on any urgent need.

Alpha's assertions concerning the agency's alleged obligations under Alpha's current contract involve matters of contract administration, which are not within the bid protest jurisdiction of our Office and therefore will not be considered. See Bid Protest Regulations, section 21.5(a), 60 Fed. Reg. 40,737, 40,742 (Aug. 10, 1995) (to be codified at 4 C.F.R. § 21.5(a)); Martin Advertising Agency, Inc., B-225347, Mar. 13, 1987, 87-1 CPD ¶ 285.

Regarding the restriction of competition to approved sources, a procuring agency may limit competition for the supply of parts if doing so is necessary to ensure the safe, dependable, and effective operation of military equipment, Arrow Gear Co.,

¹The agency's report on the protest acknowledges that "it would be in the Government's and protester's interest to expedite testing," but states that the only current source for testing has a 16-month lead time for testing new items.

69 Comp. Gen. 596 (1990), 90-2 CPD ¶ 28, and if non-approved sources are given a reasonable opportunity to qualify. Pacific Sky Supply, Inc., 64 Comp. Gen. 194 (1985), 85-1 CPD ¶ 53; see Florida Ordnance Corp., B-247363.4, Aug. 31, 1992, 92-2 CPD ¶ 138. Under 10 U.S.C. § 2319(c)(3), a potential offeror may not be denied the opportunity to submit and have considered an offer for a contract if the offeror can demonstrate that its product meets or can meet the approval standards before the date for award.

Here, while Alpha argues that the agency has unduly delayed fatigue testing Alpha's assembly, the undisputed sequence of events shows that Alpha is not prepared to deliver its assemblies for testing until March 15. Based on the inventory for the item, the agency's stocks will be completely depleted well before Alpha's assembly is ready to be tested. Thus, even if the agency were able to perform the fatigue test quickly, Alpha's assembly would not be tested in time to meet the agency's urgent need. The law does not require ATCOM to delay the procurement long enough to allow testing of Alpha's assembly and thus accommodate the firm's potential availability to supply the items. 10 U.S.C. § 2319(c)(5); see Texstar, Inc., B-239905, Oct. 9, 1990, 90-2 CPD ¶ 273.

Alpha argues that the reason the fatigue testing process is so slow, and the reason the requirement for the assemblies is so urgent, is the agency's lack of planning. In essence, the protester alleges that the agency failed to take the steps necessary to eliminate a testing bottleneck, and asserts that the agency should be required to expedite the testing of Alpha's product.

We do not agree with the protester. The record shows that ATCOM planned to conduct fatigue testing by means of a contract with the firm of Dayton T. Brown, Inc., and expected that fatigue testing could be accomplished relatively quickly. However, the volume of parts requiring such testing has resulted in delays. The agency states that when a backlog of untested parts accumulates, it approaches other contractors, or original equipment manufacturers, to perform such tests. However, the record shows that the few firms that are capable of performing the testing generally have not been willing to perform in this capacity.² Thus, these efforts have been unsuccessful or only partially successful.³ Although the law

²The agency report includes a letter from Sikorsky stating that "[w]hile Sikorsky Aircraft supports the policy of the Government to foster competition and obtain new sources of supply, Sikorsky Aircraft's core business does not include being a qualification testing supplier." Sikorsky declined to participate in testing other sources' products.

³Alpha alleges that the agency maintains a "hidden testing program" with Sikorsky,
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requires advance procurement planning, see 10 U.S.C. § 2304(f)(5)(A), it does not require that the planning be successful. Honeycomb Co. of Am., B-225685, June 8, 1987, 87-1 CPD ¶ 579.

In addition to the difficulties involved in finding firms willing and able to conduct the testing, the record shows that the agency experienced an unexpected increase in the demand for the housing assemblies when it was discovered during transmission overhauls that a significant number of housings had become corroded. Because of the corrosion, a number of housings that the agency had expected to be able to overhaul needed to be replaced instead. Thus, the record also shows that the increased and urgent demand for the housings to a large extent has been unforeseen.

Alpha also challenges whether the agency has limited the quantity that it will procure on a restricted basis to the minimum number of assemblies needed to fill only its urgent requirements. In a synopsis that appeared in the Commerce Business Daily on November 8, 1995, the Army announced its intention to procure 119 assemblies on a restricted basis.

The Army, however, states that the synopsized quantity does not reflect a conclusive determination of the number of units to be procured. The agency reports that the quantity needed on an urgent basis is dependent on when the new contract can be signed and lead times for delivery. The agency indicates that it is attempting to base its requirements objective on its anticipated need, less the number of assemblies in stock and less the assemblies that Alpha is contractually bound to deliver; the agency also is not planning to include any option quantity in the procurement. We therefore see no merit to Alpha's challenge.

The protest is denied.

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³(...continued)

and allows firms "placed in a preferred category" to have their products tested more quickly under this program. However, the agency points out that a prior testing contract with Sikorsky predated Alpha's contract, and thus Alpha's assembly was not available for testing; the contract with Sikorsky essentially was limited to the use of Sikorsky's equipment, so that the testing required the involvement of government and/or contractor personnel, resulting in delays; and while Sikorsky recently has tentatively agreed to test flight safety parts, no contractual agreement has yet been signed.