

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

must further

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**FILE:** B-209505

**DATE:** September 22, 1983

**MATTER OF:** Protek Industries, Inc.

**DIGEST:**

1. Results of agency's technical evaluation of proposal will not be questioned where protester does not meet its burden of affirmatively proving results to be unreasonable.
2. Where procurement meets requirements for acceptably restricted procurement and protester's unapproved product was unable to be qualified prior to award due to fact that agency lacked fully adequate data or sufficient test results, and testing of product was not feasible, proposal was properly rejected.

Protek Industries, Inc. (Protek), protests the rejection of its offer under Defense General Supply Center (DGSC), Defense Logistics Agency, request for proposals (RFP) No. DLA400-82-R-5084.

We deny the protest.

The RFP requested prices for the supplying of either Eutectic (part No. TungTec 10112) or R&D Metals and Chemicals (part No. Ferrolife 570) metallic overlay welding powder (NSN 3439-00-151-6823). Clause L9 advised that "Specifications, plans, or drawings cited in the item description are not available and cannot be furnished by DGSC."

Four offers were received. The low priced offer of Worl-Tech Metals & Composites Corp. (Worl-Tech), based upon an alternate brand of powder, was rejected because DGSC's Engineering Support Activity (ESA) did not possess sufficient data on the Eutectic powder to permit an evaluation of the technical data submitted by Worl-Tech. In response to the request for an evaluation, ESA replied that it:

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"\* \* \* has been asked to compare other welding powders to the Eutectic powder several times in the past. Each time the new powder systems failed to perform adequately in spite of vigorous guaranties by the manufacturers. We do not have the manpower or dollars that would be required to reverse engineer Eutectic's powder, nor do we wish to expropriate proprietary information for Government use. Therefore, \* \* \* there is no alternative method of procurement to be used other than to buy the powder from Eutectic or R&D Metals & Chemicals, both of which have proven ability to supply the correct and adequate product."

Negotiations were opened with the remaining offerors--Protek, Eutectic, and Alloy Metals, Inc. Each firm submitted a revised offer. Protek submitted the lowest priced offer, Eutectic (the eventual awardee) the second low priced offer. Protek's offer, based on its own alternate powder, included technical data in the form of a material safety data sheet, a description of its powder, and a catalog page on the Eutectic powder. In view of the ESA response to the evaluation request regarding the Worl-Tech offer, the data of Protek was returned on the basis that an evaluation could not be made. Subsequently, contracting personnel advise, Protek was asked during a telephone conversation if it had any further data on the Eutectic powder which might make an evaluation possible. Protek, we are told, was unable to submit additional data, and its offer was rejected.

The contracting agency contends that the rejection of the Protek offer was proper inasmuch as the limited Eutectic catalog description submitted by Protek did not contain enough data to permit an adequate evaluation. It is noted that the description gave no percentages for chemical and metallurgical composition, no information as to particle size and shape, and nothing on the processes used to produce the powder. The Agency also states that the Duraoptic values (abrasion and friction resistances, machinability, and weldability) listed on an Eutectic catalog page are not industry standards and have meaning only to Eutectic. In response to the protest, DGSC contacted the American Welding Society (Society) to determine if there are any industry standards for welding powders and was advised there are none. DGSC believes that it provided Protek with an adequate opportunity to have its product accepted for the procurement.

Protek states, first, that it submitted enough technical data to establish the equality of its powder with the Eutectic powder. In this regard, Protek queries why, if the technical data it submitted was inadequate, was it requested to submit a revised offer without a request for additional technical data. Protek disputes that it was requested to submit additional data nor was it provided with an opportunity to submit a sample of its powder for testing. Rather, Protek states, it asked the Agency if any additional technical data was necessary and was told that the Agency did not know as it did not have any technical data on the Eutectic product. Protek questions the adequacies of a procurement system where the Government buys materials without knowing what it is actually buying since it has no technical information on the item.

Concerning the adequacy of Protek's technical data, determinations involving technical matters are the responsibility of the agency concerned and are questioned by our Office only upon a clear showing of unreasonableness. Collins Telecommunications Products Division, B-199539, March 26, 1981, 81-1 CPD 225. We do not believe that Protek has clearly shown that position to be unreasonable. A technical evaluation will not be regarded as unreasonable merely because there exists some disagreement between the contracting agency and the offeror. For an evaluation to be determined unreasonable, it must clearly appear from the record that there is no rational basis for the agency's determination. Joanell Laboratories, Inc., 56 Comp. Gen. 291 (1977), 77-1 CPD 51. Further, the protester has the burden of affirmatively proving its case. C. L. Systems, Inc., B-197123, June 30, 1980, 80-1 CPD 448. Here, DGSC simply did not possess adequate data on the two approved powders to permit a finding that Protek's powder was acceptable.

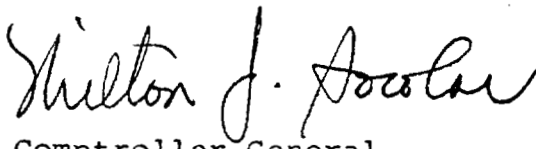
With regard to Protek's argument that it should have been requested to submit a sample for testing, the record indicates that this would not have been feasible in the course of the procurement. ESA has stated that it had insufficient data on the Eutectic powder to compare Protek's data and reverse engineering was not possible because of dollar and manpower constraints. From the record, it appears that testing by the user activity in field applications is the only feasible means. There is no indication that this was possible during the course of the procurement. Therefore, we do not find the failure to request a sample for testing by the using activity improper.

We have held that an acceptably restricted procurement must be structured so that no firm which is able to provide a satisfactory product is necessarily precluded from competing and so that a firm may become eligible to compete at any time it demonstrates under suitable procedures that it is able to furnish an acceptable item. Hill Industries, B-210093, July 6, 1983, 83-2 CPD 59.

In this case, we find that these requirements have been met. DGSC did accept a proposal from Protek, a nonapproved source, and did attempt to permit Protek to qualify its powder. Protek was unable to qualify its powder because DGSC lacked fully adequate data or sufficient test results to conduct the procurement on an unrestricted basis, however, and for this reason the actions of DGSC must be found to have been reasonable. Compressor Engineering Corporation, B-206879, October 29, 1982, 82-2 CPD 383; Hill Industries, supra.

We note that since filing the protest, Protek has submitted to the using activity a sample of the firm's powder which will be considered for approval for future procurements.

The protest is denied.

*for*   
Comptroller General  
of the United States