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**Comptroller General  
of the United States**

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

## Decision

**Matter of:** 3 Phoenix, Inc.

**File:** B-407821

**Date:** February 28, 2013

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Keith L. Baker, Esq., Barton, Baker, Thomas & Tolle, LLP, for the protester.  
Liza V. Craig, Esq., Department of the Navy, for the agency.  
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GAO, participated in the preparation of the decision.

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### **DIGEST**

1. Protest that solicitation is unduly restrictive of competition is denied where restriction is reasonably necessary to meet agency's needs.
  2. Protest that agency improperly failed to provide information required to prepare a proposal is denied where the agency does not have the requested information.
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### **DECISION**

3 Phoenix, Inc., of Chantilly, Virginia, protests that request for proposals (RFP) No. N00024-12-R-6230, issued by the Department of the Navy for TB-37/U multi-function towed arrays (MFTA), is unduly restrictive of competition.

We deny the protest.

The TB-37 passive sonar towed array is comprised of seven interconnected modules--including acoustic modules to detect acoustic signals from enemy targets, an acoustic intercept module to provide early warning of enemy torpedoes, vibration isolation modules, and an environmental sensor module--which are towed behind a naval surface ship by a long, heavyweight cable. The TB-37 is the most recent generation of towed array, and its significantly improved detection capabilities provide the capability to detect threats from quieter submarines and torpedoes in littoral (coastal) environments. The Navy currently has TB-37 arrays that were manufactured by Lockheed Martin under a contract awarded in May, 2008, pursuant to full and open competition, and engineering development models that were delivered by 3 different firms.

As relevant to this protest, the solicitation included a performance specification which requires that “[t]he TAA [Towed Array Assembly] shall be of modular construction such that spares can be provided. All modules of the same type shall . . . be fully interchangeable with previous production MFTA modules.” Performance Specification § 3.4.5. The agency later clarified that each of the modules must be interchangeable with the corresponding module in the TB-37 array currently in stock. Solicitation Amendments 7, 8. (According to the Navy, all of the current TB-37 arrays, including the engineering development models, are fully interchangeable with each other at the module level. Declaration of Navy Program Manager (PM) at 2-3.) Phoenix protests that the requirement for module level interchangeability is unduly restrictive of competition.

While a contracting agency has the discretion to determine its needs and the best method to accommodate them, Mark Dunning Indus., Inc., B-289378, Feb. 27, 2002, 2002 CPD ¶ 46 at 3-4, those needs must be specified in a manner designed to achieve full and open competition; solicitations may include restrictive requirements only to the extent they are necessary to satisfy the agency’s legitimate needs. 10 U.S.C. §§ 2305(a)(1)(A)(i), (B)(ii) (2012). Where a protester challenges a specification as unduly restrictive, the procuring agency has the responsibility of establishing that the specification is reasonably necessary to meet its needs. The adequacy of the agency’s justification is ascertained through examining whether the agency’s explanation is reasonable, that is, whether the explanation can withstand logical scrutiny. Chadwick-Helmuth Co., Inc., B-279621.2, Aug. 17, 1998, 98-2 CPD ¶ 44 at 3. A protester’s mere disagreement with the agency’s judgment concerning the agency’s needs and how to accommodate them does not show that the agency’s judgment is unreasonable. Further, where the requirements relate to national defense or human safety, an agency may define its requirements to achieve not just reasonable results, but the highest possible reliability and effectiveness. See Northwest Airport Management, L.P., B-404098, B-404098.2, Jan. 5, 2011, 2011 CPD ¶ 1 at 4.

Here, the Navy determined that module level interchangeability was necessary to ensure that failed TB-37 arrays can be rapidly repaired or replaced, thereby maximizing the time naval ships are on-station and equipped with the means to detect and track threats from enemy submarines. PM at 4. In this regard, there are three levels of ship maintenance: operational, which takes place aboard the ship while it is deployed; intermediate, which takes place in a port; and depot. At the operational level, sailors on board the ship troubleshoot the failed array while it is being transported back to port in order to identify the module or modules in need of replacement. At the intermediate level, personnel receive troubleshooting information from operational level maintenance personnel on returning ships; ready potential replacement modules from available pre-positioned spares; and use specialized test equipment and procedures to confirm the operational level diagnostic findings before replacing modules (or the whole array if necessary). At the depot level, failed modules are repaired (and stored as spare parts) using

certified repair processes and procedures, and corresponding specialized test equipment, custom repair tools and facility outfitting (including repair benches). Id. at 4-6.

The Navy explains that the potential architectural, electrical and software differences, and differences at the power and data protocol level, that could result if modules in the new arrays were not required to be interchangeable with the current, legacy modules of the same type, could lead to significant duplication in the repair infrastructure and call into question the ability to easily and quickly repair the TB-37 arrays. Specifically, the agency reports that allowing introduction of TB-37 arrays that are interchangeable only at the array level, and not at the module level, would require personnel (including sailors aboard ships) to become familiar with and receive training on two versions of the array, and may require duplication or modification of certified repair processes and procedures, specialized test equipment, repair tools, and facility fixtures. In addition, if a new variant were introduced, the agency would be required to purchase and store two sets of spares. In sum, the agency determined that module level interchangeability facilitates the easy and quick repair of a system vital to the defense of naval ships. PM at 2-6; Agency Comments, Jan. 10, 2013, at 2-7.

Although 3 Phoenix questions the extent of duplication that would result from foregoing module level interchangeability (and instead requiring only array level interchangeability), the protester has not demonstrated that there would be no potential for significant duplication from introduction of an additional variant of the TB-37. Furthermore, the protester's speculation that abandoning module level interchangeability would yield overall savings to the government, even if correct, does not establish that the agency was unreasonable in focusing on ensuring the expeditious repair of failed TB-37 passive sonar towed arrays. Again, where, as here, the requirements relate to national defense or human safety, an agency may define its requirements to achieve not just reasonable results, but the highest possible reliability and effectiveness. Northwest Airport Management, L.P., supra.

3 Phoenix argues that the agency has not provided sufficient information to enable it to manufacture an array that is interchangeable at the module level. More specifically, the protester asserts that it requires detailed electrical, logical and mechanical data concerning each module interface that has not been provided in the solicitation.

The agency responds that it has provided all relevant data in its possession, and has directed offerors to L3-CSC for information that it does not have. Response to Questions at 7. In this regard, the Navy explains that the information that 3 Phoenix is requesting relates to the towed array integrated product team (TAIPT) telemetry used by the array to transmit data, which was developed by and is proprietary to L3-CSC. Agency Comments, Jan. 10, 2013, at 8; Agency Report at 8. Since 3 Phoenix has made no showing that the information in question is

available from the agency, or that the agency otherwise acted unreasonably in this regard, there is no basis to sustain the protest on this basis. Oktel, B-244956, B-244956.2, December 4, 1991, 91-2 CPD ¶ 512 at 2.<sup>1</sup>

The protest is denied.

Susan A. Poling  
General Counsel

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<sup>1</sup> In its January 4, 2013 comments on the agency report, the protester for the first time asserts that the solicitation does not provide for the evaluation of total costs to the government. This issue was not raised in its initial, November 26, 2012 protest and therefore constitutes an untimely, piecemeal presentation of alleged solicitation improprieties. Accordingly, it will not be considered. International Filter Manufacturing, Inc., B-299407, Apr. 10, 2007, 2007 CPD ¶ 71 at 5.