



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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Washington, DC 20548

Comptroller General
of the United States

Decision

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Matter of: Marvin Test Solutions, Inc.

File: B-423928; B-423928.2

Date: January 28, 2026

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DIGEST

1. Protest alleging that the agency's requirements are unduly restrictive of competition is denied where the agency articulated a reasonable basis for the requirement relating to testing armaments of military aircraft.
2. Protest alleging that the agency should have procured a requirement for armament testers using the commercial item procedures of Federal Acquisition Regulation part 12 is dismissed where, notwithstanding that the protester produces a component of the armament tester that has previously been procured by the agency as a commercial item, the tester does not meet the agency's reasonable minimum requirements for the given component and, therefore, the protester is not an interested party to challenge other aspects of the solicitation.

DECISION

Marvin Test Solutions, Inc., of Irvine, California, protests the terms of request for proposals (RFP) No. FA8533-25-R-0002, issued by the Department of the Air Force for a common armament tester for F-15, F-16, and A-10 fighter aircraft. The protester argues that the agency was required to acquire the testers as a procurement of commercial items under the provisions of Federal Acquisition Regulation (FAR) part 12, and that the solicitation is otherwise unduly restrictive of competition.

We deny the protest in part and dismiss the protest in part.

BACKGROUND

The agency issued the RFP on August 5, 2025, seeking the development, manufacture, and sustainment of a common armament tester for various fighter aircraft (CAT-F). Memorandum of Law (MOL) at 1. The agency was seeking to procure four interrelated hardware components: (1) a handheld tester for operational level (O-level) maintenance on the flightline; (2) aircraft-specific test kits for O-level maintenance; (3) a fault-line tester for intermediate level (I-level) or backshop maintenance; and (4) additional fault-line test kits for I-level maintenance. See Agency Report (AR), Tab 11, Market Research Report at 1; Tab 26, RFP, attach. 3, Statement of Objectives (SOO) at 1. The RFP requires that these systems interoperate and work together to consolidate the functions of multiple legacy testers currently in use for armament testing. See, e.g., AR, Tab 26, RFP, attach. 3, Statement of Objectives (SOO) at 2 (explaining that an offeror's O-level test results "shall be compatible" with I-level test results and that an offeror's I-level tester "shall" incorporate the O-level handheld tester in its design).

Prior to issuing the RFP, the agency engaged in extensive market research over a period of years. MOL at 2-3. In May of 2021 the agency issued its first request for information and capability survey, receiving responses from six vendors. *Id.* This was followed in November of 2021 by an industry outreach event. *Id.* In parallel with its market research, the agency also took steps to research and refine its requirements. *Id.* For example, the agency held site visits at three Air Force bases where the aircraft to be tested are maintained to discuss operational needs, as well as a three-day technical interchange meeting with multiple government subject-matter experts. *Id.*

In 2023 and 2024, the agency conducted additional market research. For example, the agency issued a sources sought notice with draft requirements, and received 11 responses with capability statements. MOL at 2-3. The agency also held a virtual industry day concerning the requirements, which included one-on-one sessions with 14 vendors, including the protester. *Id.* Additionally, the agency held a product demonstration day in December of 2023 for interested vendors, where multiple potential vendors, including the protester, demonstrated products that could potentially meet the agency's requirements. *Id.*

Following these demonstrations, the agency concluded that two firms, including the protester, had mature prototypes that, with development, could meet the agency's needs for an O-level tester, while a third firm had a less mature O-level prototype, and a fourth firm had an O-level concept. AR, Tab 11, Market Research Report at 5. However, the agency also found that no firm demonstrated an I-level tester prototype of similar maturity, and so the I-level tester would require more significant development. *Id.*

Informed by this market research, the agency concluded that the CAT-F system, which would include an O-level tester, an I-level tester, and various test kits that would need to interoperate, was not available in the commercial market. *Id.* at 12. In this regard, the

agency noted that “armament testing is not procured, maintained, or acquired by the general public or a non-Governmental entity” and that “[h]istorically armament testers are not procured commercially.” *Id.* However, the agency also concluded that, while the requirements of the program as a whole are not met by any one commercial item, some sub-components of the CAT-F may be commercial items, and other commercial items may meet a portion of the requirements and could be used as a base for development. *Id.*

Accordingly, the agency issued the RFP as a negotiated procurement using the procedures of FAR part 15 for development, manufacture, and sustainment of the CAT-F system. AR, Tab 22, RFP at 2. The RFP specifically incorporated the agency’s findings concerning available technology. For example, regarding the O-level tester, the RFP does not contemplate that offerors will develop an entirely new O-level tester but rather provides that offerors must propose a plan for how they will modify an existing non-developmental item to meet the agency’s requirements and meet a critical design review within 10 months of contract award. AR, Tab 26, RFP attach. 3, SOO at 2.

Relevant to this protest, the RFP includes numerous requirements specifying the form, fit, and function of CAT-F testers. For example, the RFP requires that the O-level tester must have a screen at least 1.5 inches by 2.5 inches with a minimum resolution of 128 by 64 pixels. AR, Tab 27, System Requirement Document at 12. Similarly, the RFP requires that the CAT-F system be developed using a modular open systems approach to permit the agency to update and modify the CAT-F equipment after it has been procured, and the RFP seeks various additional data rights in the CAT-F system to effectuate the government’s ability to maintain the CAT-F system. *Id.* at 12, 20

Following the issuance of the RFP in August of 2025, this protest followed.

DISCUSSION

The protester primarily challenges the agency’s determination to proceed with this procurement on a non-commercial basis. Protest at 10-15. Specifically, the protester challenges, among other things, the agency’s conclusion that armament testers are, categorically, not commercial items. In this regard, the protester argues that it currently sells a model of handheld tester that both meets the FAR’s definition of a commercial item and can meet the agency’s actual minimum needs for an O-level tester. *Id.* In support of this argument, the protester notes that its O-level tester is currently in use for the purpose of testing armaments on the exact aircraft at issue in this procurement (the F-16, F-15, and A-10 fighters) in the Air National Guard, in select Air Force units, and by several foreign governments. *Id.* The protester further contends that its O-level tester meets the FAR’s definition of a commercial item on several independent bases, and accordingly the agency was required to procure this requirement (or at least the O-level portions of the requirement) on a commercial basis. *Id.* For example, the protester notes that its O-level tester has previously been procured as a commercial item by various Department of Defense (DOD) activities, which indicates that its tester is a commercial item. *Id.* As an additional example supporting the commerciality of its

product, the protester also notes that it has sold its O-level tester to various commercial clients including various large aerospace firms. *Id.* The protester additionally contends that several provisions of the solicitation are inconsistent with customary commercial practice. Accordingly, the protester argues that the agency failed to reasonably consider procuring its requirement on a commercial basis, whether in whole or in part.

The protester also raises a separate challenge to the agency's screen size requirement, arguing that it is unduly restrictive of competition because although the protester's existing O-level tester fails to satisfy the solicitation's minimum screen size requirements, it can nevertheless display all necessary information on a single screen at the required resolution. Protest at 14-16. The protester contends that the agency's true requirement is to display all information on a single screen, to avoid the user needing to page back and forth to see all information, and that the screen size requirement is not necessarily or rationally related to that requirement, and so is unduly restrictive of competition. *Id.* In the alternative, even if the screen size requirement accurately reflects the agency's requirements, the protester notes that statute, regulation, and Federal Circuit precedent collectively require the agency to modify its requirements to a reasonable extent if that would permit the procurement of a commercial item. See *Id.* at 10-11 (citing 10 U.S.C. § 3453(b)(3); FAR 11.002, 10.002(c); and *Palantir USG, Inc. v. United States*, 904 F.3d 980, 992 (Fed. Cir. 2018)). Accordingly, the protester argues that accepting a moderately smaller screen size reflects a reasonable modification of the agency's requirements that the agency did not reasonably consider. Comments and Supp. Protest at 27-29.

As discussed below, we find no basis to object to the agency's screen size requirements as being unduly restrictive of competition or the agency's determination that it could not relax such requirements in order to acquire commercial items. Because we find that the protester's proposed O-line tester cannot satisfy the agency's reasonable minimum requirements, we find that it is not an interested party to pursue its remaining challenges to the terms of the solicitation.

The Agency's Requirements

The agency argues that the protester's tester does not meet the agency's requirements in several respects. Specifically, the agency's market research concluded that, while the protester's O-level tester was a mature prototype, it could not meet the agency's requirements for an O-level tester as it currently exists. See AR, Tab 11, Market Research Report at 5, 14. The RFP, based on this market research, acknowledged the reality that existing testers could meet some of the agency's needs by requiring offerors to modify an existing non-developmental item to create a prototype O-level tester, but also anticipated that a successful offeror would require 10 months of development to sufficiently modify an existing tester to create a prototype that could meet the agency's needs. AR, Tab 26, RFP attach. 3, SOO at 2. A key example of a way in which the protester's tester does not currently meet the agency's requirements is that the protester's tester has a screen that is only 2 inches by 1 inch, while the agency requires

a screen that is 2.5 inches by 1.5 inches.¹ AR, Tab 11, Market Research Report at 153-154.

In challenging the screen size requirement, the protester argues that the agency's requirement is unduly restrictive of competition and unrelated to the agency's actual needs. Protest at 14-16; Comments and Supp. Protest at 27-29. The protester argues that its tester can display all relevant information on one screen at the required resolution, and that the agency's real requirement is for a screen that can display all relevant information at once. *Id.* Accordingly, the protester contends that its tester can meet the agency's actual needs in an alternative manner and so the agency's screen size requirement is unduly restrictive of competition. *Id.*

In response, the agency explains that its site visits and requirements development revealed that the small screens of existing testers were a significant concern for the users of existing testers. MOL at 15-16; Contracting Officer's Statement (COS) at 14-15. While the inability of some testers to show all information on one screen was part of the agency's concern, ease of use more generally was also a concern. *Id.* The agency concluded that larger screens would have benefits for both training and operations. *Id.* Directly responding to the protester's proposed alternative, the agency explained that the protester's proposal to show all information on one screen at the required resolution, but on a smaller screen, would require using smaller fonts than would be required with a larger screen. *Id.* This would result in an output that was harder to read, impairing the ability of flightline maintenance personnel to readily and efficiently read information on the tester.² *Id.*

¹ The agency's market research also suggests that the protester's tester may not meet the agency's requirements in other ways. For example, the protester's tester does not use a modular open systems design to permit agency modifications and upgrades, and the agency questioned its ability to acquire data rights necessary for ongoing maintenance if they procured an existing tester, such as the protester's tester. AR, Tab 11, Market Research Report at 12, 153-154. In this regard, the agency contemporaneously expressed significant concern about its ability to maintain any hypothetical CAT-F system without such an open design or access to appropriate data rights, and notes that the "*primary goal* of this acquisition is for the [g]overnment to obtain CAT-F for which the [g]overnment will possess an acceptable level of data rights for the O-level and I-level," and that "[p]rocurement of data is *vital* so the Government can have the capability to maintain/repair the CAT-F through depot maintenance or contract support capability and prevent reliance on the Original Equipment Manufacturers [...] for sustainment of the CAT-F system." AR, Tab 11, Market Research Report at 2, 14 (emphasis added). Because we resolve this protest on the basis of the protester's tester's failure to satisfy the minimum screen size requirements, however, we need not further address these alternative potential concerns with the acceptability of the protester's product.

² The protester objects to these arguments as improper *post hoc* rationalizations because they are not reflected in the contemporaneous record, and argues that we
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The determination of the government's needs and the best method of accommodating them is primarily the responsibility of the procuring agency. *Columbia Imaging, Inc.*, B-287772.2, B-287363, Apr. 13, 2001, 2001 CPD ¶ 78 at 2. Our Office will not sustain a protest challenging an agency's determination of its needs unless the protester presents clear and convincing evidence that the specifications are in fact impossible to meet or unduly restrict competition. *Instrument Control Services, Inc.; Science & Management Resources, Inc.*, B-289660, B-289660.2, Apr. 15, 2002, 2002 CPD ¶ 66 at 6. To the extent a protester challenges a specification as unduly restrictive, that is, challenges both the restrictive nature of the requirement as well as the agency's need for the restriction, the procuring agency has the responsibility of establishing that the specification is reasonably necessary to meet its needs. *Smith and Nephew, Inc.*, B-410453, Jan. 2, 2015, 2015 CPD ¶ 90 at 5. The adequacy of the agency's justification is ascertained through examining whether the agency's explanation is reasonable, that is, whether it can withstand logical scrutiny. *Id.*

We see no basis to conclude on this record that the agency's justification of its needs is unreasonable or unrelated to a legitimate agency need. Preliminarily, while the protester characterizes its screen as "slightly smaller" than the requirement, the actual difference in screen size is not small. See, e.g., Protest at 15. The agency's requirement is for a screen that measures at least 1.5 inches by 2.5 inches (3.75 square inches), while the protester's tester currently includes a 1-inch by 2-inch screen

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should disregard them. Comments and Supp. Protest at 27-29. In reviewing an agency's evaluation, we do not limit our consideration to contemporaneously-documented evidence, but instead consider all the information provided, including the parties' arguments, explanations, and any hearing testimony. *The S.M. Stoller Corp.*, B-400937 *et al.*, Mar. 25, 2009, 2009 CPD ¶ 193 at 13. While we generally give little or no weight to reevaluations and judgments prepared in the heat of the adversarial process, *Boeing Sikorsky Aircraft Support*, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15, post-protest explanations that provide a detailed rationale for contemporaneous conclusions, and simply fill in previously unrecorded details, will generally be considered in our review--so long as those explanations are credible and consistent with the contemporaneous record. *Remington Arms Co., Inc.*, B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 12.

In this case, the agency's site-visits and technical reviews were conducted in person, and the post protest statements in question were provided by persons with direct knowledge of the information discussed at those meetings. The information offered is both credible and consistent with the contemporaneous record, and merely serves to fill in unrecorded details, and so we see no basis to disregard it, especially where, as here, it is a matter of the agency describing its reasoning for its own requirements and not a post-award reevaluation of an offeror's proposal.

(2 square inches). That is, the agency is seeking a screen that has nearly *double* the viewable area of the protester's existing tester, which is not a minor difference.

More significantly, the devices in question will be used to test armaments for fighter aircraft on flightlines. An inability to quickly and clearly read a display during aircraft armament testing self-evidently poses risks to both safety and readiness, and we are unwilling to second-guess the agency's reasonable determination of its screen size needs on the record before us. For that reason, we cannot conclude that the agency's screen size requirement is unduly restrictive of competition, and it is uncontested that the protester's tester does not meet that requirement.

However, that is not the end of our inquiry. The Federal Acquisition Streamlining Act of 1994 established, among other things, a preference and specific requirements for the acquisition of commercial items that are sufficient to meet the needs of an agency. Federal Acquisition Streamlining Act of 1994 (FASA), Pub. L. No. 103-355 § 8104, 108 Stat. 3243 (codified, as amended, at 10 U.S.C. § 2377). FASA, as implemented by FAR part 12, requires agencies to conduct market research to determine whether commercial items exist that could meet the agency's requirements; be modified to meet the agency's requirements; or meet the agency's requirement if the requirements were modified to a reasonable extent. 10 U.S.C. § 2377(c)(2); FAR 12.101; *see also* FAR 2.101 (defining commercial items to include commercial products that could be modified to meet the agency's needs with either “[m]odifications of a type customarily available in the commercial marketplace,” or “[m]inor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements”). Determining whether a product or service is a commercial item is largely within the discretion of the contracting agency, and such a determination will not be disturbed by our Office unless it is shown to be unreasonable. *Coulson Aviation (USA), Inc.*, B-414566, July 12, 2017, 2017 CPD ¶ 242 at 4; *Analytical Graphics, Inc.*, B-413385, Oct. 17, 2016, 2016 CPD ¶ 293 at 12.

Preliminarily, we note that the RFP, based on the agency's market research, anticipates that an offeror would need 10 months of development to create a prototype O-level tester that meets the agency's needs using an existing non-developmental item as a base (with such development not including the associated work to develop the integrated I-level tester). AR, Tab 26, RFP attach. 3, SOO at 2. Moreover, given the dimensions and compact design of the protester's tester, it is not immediately obvious that the modifications necessary to make the protester's tester meet the agency's requirements would be either minor or of a type customarily available in the commercial marketplace. Significantly, the protester does not allege that it could readily modify its tester to include a larger screen to meet the government's requirements, or that such modifications would be minor or of a type customarily available in the commercial marketplace. Indeed, the protester argues, to the contrary, that it was prejudiced by what it characterizes as the agency's unduly restrictive screen size requirement because its tester does not meet the requirement, and that the requirement would significantly work to its competitive disadvantage. Comments and Supp. Protest at 27-29.

Accordingly, we see no basis to object to the agency's conclusion that it could not procure its requirements on a commercial-item basis because the protester's O-level tester, while it may be a commercial item for some purposes, does not meet the agency's actual requirements under this procurement, and the protester has not provided any basis to conclude that the modifications necessary for its tester to meet the agency's needs are of a type or scope that would compel direct commercial purchase of its product.³

Remaining Protest Allegations

As a result of our foregoing determination, we conclude that the protester is not an interested party to challenge other provisions of the solicitation, such as the agency's decision not to procure this requirement using the commercial item procedures of FAR part 12. Under the bid protest provisions of the Competition in Contracting Act of 1984, only an interested party may protest a federal procurement. 31 U.S.C. § 3551(2). That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. *Id.*; 4 C.F.R. § 21.0(a)(1). Determining whether a party is interested involves consideration of a variety of factors, including the nature of the issues raised, the benefit or relief sought by the protester, and the party's status in relation to the procurement. *Persistent Sys., LLC*, B-415544, Jan. 16, 2018, 2018 CPD ¶ 32 at 4. Moreover, competitive prejudice is an essential element of every viable protest, and where none is shown or otherwise evident, we will not sustain a protest, even where a protester may have shown that the agency's actions arguably were improper. *Id.*

Here, even assuming that the protester were to prevail on its remaining protest allegations that the agency should have solicited this requirement on a commercial item basis, the protester would not be eligible for award under such a solicitation because, as addressed above, its product could not satisfy the agency's reasonable screen size

³ Similarly, while the protester contends that the agency failed to consider whether it could modify its requirements to a reasonable extent to permit it to use the protester's tester, we do not agree. Comments and Supp. Protest at 27-29. The market research reflects that the agency considered the capabilities of available mature testers, including the protester's specific tester, and concluded they were "close" to meeting the agency's requirements, but did not meet them and would require material development to meet them. See AR, Tab 11, Market Research Report at 5. Significantly, the agency carefully considered its requirements and determined that the small screens of existing testers were a significant concern for the end users of the testers, and that a larger screen was necessary for training and operations. See MOL at 15-16; COS at 14-15. In short, the record reflects consideration of the capabilities of the protester's tester as compared to the agency's needs, and we do not agree that the agency's refusal to accept, among other things, a screen with roughly half the viewing area of its stated requirement represents an unreasonable unwillingness to modify its requirements.

requirements. Thus, because the protester's tester cannot meet the agency's requirement, it is not an interested party to object to the agency's refusal to solicit on a commercial item basis or to other related aspects of the procurement.⁴ *Id.*

The protest is denied in part and dismissed in part.

Edda Emmanuelli Perez
General Counsel

⁴ For example, the protester raises numerous alternative arguments concerning the commerciality of its tester. While we need not reach these arguments, we note that the agency responds, in the alternative, that even if the protester's tester were a commercial item that currently met the agency's O-level tester requirements, the CAT-F requirement is not a requirement for only an O-level tester. Supp. MOL at 2-8. Rather, the CAT-F requirement is for an integrated test suite that will include an O-level tester, an I-level tester, and various test kits that must interoperate and function as a coherent whole. *Id.* Significantly, the agency's market research concluded that there were no mature I-level tester prototypes, such that there is no possibility of satisfying that portion of the requirements commercially. *Id.* Accordingly, the agency contends that it could not have procured its total requirement for an interoperable system of testers and test sets through commercial purchases even if the protester's tester met its needs for an O-level tester, which it does not. *Id.*

In this regard, the agency contends that the Federal Circuit has held that agencies are not required "to separate out all potentially commercial items from a procurement," especially where such requirements are "inextricably intertwined." MOL at 9-10 (*citing Analytical Graphics, Inc. v. United States*, 135 Fed. Cl. 378, 430-432 (Fed. Cl. 2017)). The Court reached this conclusion because such a requirement "could lead to the impractical, inefficient, and unintegrated result of having only a fraction of a procurement utilizing a commercial item and the balance of a procurement taking the form of a developmental contract, which could delay procurements and also make the contract cumbersome to perform and administer, and further, could hinder the mission of the agency seeking to award the contract." *Id.*

Because we conclude that the protester's tester cannot meet the agency's requirements for an O-level tester, we need not resolve this argument. However, we note, in passing, that the protester, in responding to these arguments, does not allege that it sells commercial products that could fully meet the agency's need for an integrated CAT-F system, only that the agency failed to reasonably consider whether it could sever its requirements to procure the O-level tester portion of the CAT-F requirement as a commercial item. Supp. Comments at 4-5.