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**DECISION**



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

**FILE: E-206268 DATE: July 6, 1982**

**MATTER OF: Baird Corporation**

**DIGEST:**

1. Protest alleging that protester is the only firm qualified to develop a particular instrument is dismissed since protest is tantamount to saying that the Government should procure the work from protester on a sole-source basis, a matter which GAO will not review.
2. GAO has no basis to object to procuring agency's evaluation of the relative desirability of proposals where record reflects agency's reasonable and specific basis for its relative assessment of proposals and protester's comments provide no basis to question that evaluation.
3. When solicitation clearly indicates that cost will be less important than technical considerations and procuring agency determines that one proposal is technically superior to another, award to the offeror proposing the lowest cost is not required.

Baird Corporation protests the proposed award of a contract to The Perkin-Elmer Corporation (P-E) under request for proposals F33615-81-R-2080 issued by the Air Force Systems Command for the development of a portable wear metal analyzer. Baird contends that it is the only company qualified to accomplish the correlation of the planned portable analyzer with existing analyzers; that its technical approach is preferable; and that its price is lower. Because the procuring agency did not abuse its discretion in its technical evaluations and because cost was a secondary factor in selection, we deny the protest.

### Background

The subject solicitation was issued September 18, 1981 for the development of a portable wear metal analyzer and the manufacture of six prototype units. These instruments indicate engine wear by measuring the concentration of metal in lubricants removed from aircraft engines. Existing analyzers are laboratory instruments, large, delicate and difficult to transport. The objective of this procurement is to develop a rugged, simple, light instrument readily transportable for independent use in remote field locations.

Three organizations, Baird, P-E, and the University of Dayton Research Institute, responded by the November 2, 1981 closing date for receipt of proposals. After initial evaluation of proposals, the Air Force conducted discussions with the two firms that submitted technically acceptable proposals, Baird and P-E. Both firms responded by the January 8, 1982 cutoff date for best and final offers. After final evaluation, the Air Force concluded that P-E's highly acceptable proposal was preferable to Baird's marginally acceptable proposal, despite Baird's slight advantage in proposed costs.

Baird timely filed a protest with this Office; the Air Force has withheld award pending our decision.

### Correlation of Instruments

Baird contends that it is the only firm qualified to correlate the portable analyzer to be developed under this procurement with the standard analyzer now in use by the Department of Defense. Baird argues that the Government only overcame past difficulties with correlating data from different analyzers by adopting the Baird-produced A/E35U-3 analyzer as its standard. Therefore, as the only manufacturer of the A/E35U-3, Baird concludes that it is the only firm capable of producing a portable analyzer that will correlate with the data base of the analyzers now in use.

The Air Force contends that Baird is not the only firm qualified to accomplish the correlation in question. In its opinion, any firm with considerable experience in the use of atomic absorption or atomic emission instruments,

with a statistical background, could establish the necessary correlation. The Air Force also advises that Baird's facts are mistaken, in that other types of analyzers are now in use by the Government and that the Government currently uses two data bases, not one, for wear metal analysis.

As an interested party to Baird's protest, P-E argues that if Baird believed that only Baird was qualified to perform this work, it should have objected to the competition prior to the receipt of proposals. Having failed to object then, P-E argues that Baird's protest is now untimely.

It is not entirely clear what theory Baird is arguing when it asserts that it is the only firm qualified to correlate the data base of the planned portable analyzer with the Government's existing analyzers. However, Baird's arguments focus upon its belief that Baird has exclusive capabilities and experience not available elsewhere, rather than on the relative abilities of P-E and Baird to perform the correlation. Further, Baird does not challenge any particular aspect of the Air Force's evaluation related to this issue. We therefore interpret this aspect of Baird's protest as an assertion that the Air Force should have solicited only Baird on a noncompetitive basis.

As a general matter, we do not consider protests seeking to restrict competition. Holosonics, Inc., B-192414, October 17, 1978, 78-2 CPD 282. This is so even where the protester claims that its proprietary position makes it the only firm qualified to do the work. Thermionics Laboratory, Inc., B-196074, October 19, 1979, 79-2 CPD 273. Since Baird expresses a similar desire to restrict competition, we dismiss this aspect of its protest.

#### Developmental Approach

Baird contends that its approach to developing the portable wear metal analyzer offers the best solution to the solicitation requirements. In this regard, Baird points out that its proposed use of a single lamp meets the intent of paragraph 3.4 of the specification while P-E's dual lamp source does not. Further, Baird disagrees with the Air Force's assessment that Baird's proposed approach was not adequately

defined. Baird asserts that its proposal included discussion of alternative approaches at the Air Force's suggestion, since the Air Force was concerned that back-up approaches might be needed in the event unanticipated difficulties were encountered in development.

The Air Force argues that it found a lack of certainty in Baird's initial design approach, which was not cured in Baird's final proposal. The Air Force faults Baird's design in a number of areas, including its limited argon gas supply, its furnace design, and its sample delivery system.

All offerors were given an equal opportunity to compete against the same specification and, given the developmental nature of the program, different approaches are to be anticipated. In considering protests against a procuring agency's evaluation of proposals in such circumstances, we recognize that the relative desirability of proposals is largely subjective, primarily the responsibility of the procuring agency, and not subject to objection by our Office unless shown to be unreasonable, arbitrary or violative of law. See Development Associates, Inc., B-203938, October 9, 1981, 81-2 CPD 296.

Our review of the record confirms the Air Force's judgment that P-E's proposed design approach is more complete and better defined. In this regard, P-E gained a substantial advantage through its expenditure of several man years of effort over the last few years independently developing a wear metal analyzer. The Air Force evaluators placed great emphasis upon P-E's extensive pre-contract work in their award recommendation, concluding that P-E's proposal was considered superior "largely due to the fact that Perkin-Elmer has engaged in an extensive amount of concentrated pre-proposal activity addressing the optimization of design schemes and investigating potential problems." Consequently, as compared to Baird, the Air Force had much greater confidence in P-E's proposed design, even though Baird's design approach was considered technically acceptable.

As to the specifics of its design, Baird correctly states that the specification favored the use of a single lamp over dual lamps because the single lamp would be

more rugged, smaller and lighter. However, the specification did not require the use of a single lamp and P-E's approach satisfied the evaluators that P-E could meet the ruggedness, weight and size limitations of the specification despite the use of dual lamps.

The Air Force evaluators also questioned whether Baird's proposed graphite furnace rod and associated rapid ramp burn technique would cause serious problems of repeatability. In comparison, the evaluators had considerable confidence in the feasibility of P-E's proposed step temperature sequencing of ramp operation and its off-the-shelf graphite furnace. Similarly, the Air Force had serious concern about the feasibility of Baird's proposed use of ampules for obtaining samples and Baird's proposed alternative, a manual sample dispenser, was not rated as highly as P-E's capillary action system for sample injection. Again, the Air Force evaluators considered P-E's selection of a self-contained argon supply adequate for a full day's operation to be more satisfactory than Baird's more limited supply, which would require changing tanks during the day. And while Baird is correct in its assertion that no set number of analyses were specified for the argon supply, the specification did establish strict weight requirements, as well as requirements pertaining to portability and ease of operation, all of which are affected by the need for additional tanks for one day's operation.

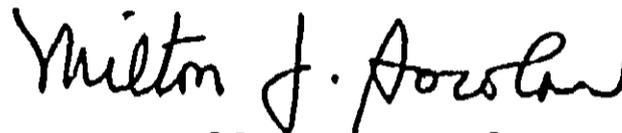
In summary, after reviewing Baird's contentions and the Air Force's explanations, we find that the Air Force's evaluation is reasonable and not subject to objection by our Office. See Goodyear Aerospace Corporation, B-202722, July 24, 1981, 81-2 CPD 59.

#### Cost Consideration

Baird asserts that its proposed cost was low and that the resulting cost savings must be considered in making contract award. The Air Force contends that the fact that Baird's proposed cost is low is irrelevant because the solicitation provided that technical merit would be most important and cost of secondary importance in determining the offer most advantageous to the Government.

The solicitation clearly advised offerors of the paramount importance of technical considerations as opposed to cost. The Air Force rated P-E's technical proposal as highly acceptable and Baird's as marginally acceptable; and P-E's proposed costs were \$924,877 as compared to \$903,833 for Baird. There is no legal basis to object to award to P-E simply because its total estimated cost is slightly higher than the total cost proposed by Baird, since the selection decision was consistent with the solicitation guidance as to the relative merits of cost and technical factors in selection. Research, Analysis & Management Corporation, B-203786, November 2, 1981, 81-2 CPD 372.

The protest is dismissed in part and denied in part.



Acting Comptroller General  
of the United States