



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Astro-Med, Inc.

File: B-232147.2

Date: November 1, 1988

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### DIGEST

Where protester initially protests generally that performance-type specification should have been included in solicitation instead of design-type specification, but presents for the first time in its comments on the agency report its detailed argument as to why its item is acceptable without meeting the design requirements, the detailed argument is untimely and will not be considered; detailed argument, which must independently satisfy timeliness requirements, concerns alleged solicitation deficiency and was not raised prior to closing date for submission of proposals as required under Bid Protest Regulations.

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### DECISION

Astro-Med, Inc. protests the terms of request for proposals (RFP) No. N60530-88-R-0406, issued by the Department of the Navy, for a thermal-writing, strip-chart recorder, which is used to record analog data. The RFP required a "Western Graphic Model #WK 3507-B, or equal" and included a list of salient characteristics to be satisfied by any proposed equal items. Astro-Med argues that the specifications are unduly restrictive. We dismiss the protest.

Astro-Med argued in its original protest submission, filed before the closing date for receipt of proposals, that this Navy RFP should have incorporated performance-type specifications instead of a brand name or equal product description with salient characteristics based on specific design features; Astro-Med maintained that using design-type specifications would preclude it from competing. Astro-Med's protest provided no further details.

In the course of preparing its report in response to the protest, the Navy telephoned Astro-Med to determine exactly which of the salient characteristics the protester believed

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were restrictive. Astro-Med reportedly cited three: (1) "pen recorder" feature--Astro-Med contended that this was old technology and that its "thermal array" approach should be acceptable; (2) "manually adjustable heat control" feature--Astro-Med's machine adjusts automatically; and (3) "sprocket drive" feature--Astro-Med's machine advances the paper instead with friction drive (similar to a typewriter roller).

The Navy agreed that the thermal array approach was acceptable, and thus issued amendment 0002, allowing for either approach. This amendment reflected the Navy's further agreement that automatic heat control adjustment was generally acceptable, although the Navy reports it determined that a manual capability also was necessary to allow for initial adjustments of writing intensity for certain charts.

The Navy reports it does not agree with Astro-Med that a friction drive paper advance is acceptable in lieu of the sprocket drive (which advances paper by means of small sprockets that fit into holes in the edges of the paper). In this regard, the Navy's telemetry expert specifically concluded that pinch roller paper drives do not evenly advance chart paper in desert climates (where the recorders here were to be used), thereby affecting calibration, because the paper expands and contracts based on moisture content. The Navy's position appears to us to be reasonable on its face.

In its comments on the Navy's report, Astro-Med for the first time presents its detailed position, arguing, essentially, that its recorder represents new technology that is capable of performing in accordance with the Navy's performance requirements, although the machine operates differently from the recorder described in the purchase description. Astro-Med included in these comments a detailed explanation of this difference in technology and detailed descriptive literature further explaining the technology, and concluded that the design features specified in the salient characteristics, including the sprocket drive, are unnecessary for its recorder. We will not consider these detailed arguments.

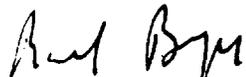
Under our Bid Protest Regulations, a protest must set forth a detailed statement of the legal and factual grounds of protest. 4 C.F.R. § 21.2(b)(4) (1988). Where a protester, in its initial protest submission, presents arguments in general terms and then, in its comments on the agency's report, for the first time details alleged procurement deficiencies, the detailed arguments will not be considered

unless they independently satisfy the timeliness requirements under our Regulations. See Dayton T. Brown, Inc.--Reconsideration, B-223774.4, Jan. 21, 1987, 87-1 CPD ¶ 75.

Here, Astro-Med's detailed position underlying its original general protest against the use of design-type specifications in the RFP was nowhere stated in its initial protest submission. Further, although the Navy did attempt to determine the precise nature of Astro-Med's challenge to the salient characteristics, the firm at that time merely specified three features it considered unnecessary for its recorder; it apparently never furnished the agency with its detailed position later set forth in its comments, resulting in a Navy report that does not address the essence of Astro-Med's argument. In any case, these details were not furnished to our Office until we received the firm's comments.

Under these circumstances, Astro-Med's detailed argument is untimely; alleged defects on the face of a solicitation must be protested prior to the closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1988). Astro-Med's comments were not filed until September 16, after the September 8 closing date, and raising its argument in this fashion effectively precluded the Navy from considering and addressing the argument in its entirety. Accordingly, we will not consider Astro-Med's detailed arguments. See Conversational Voice Technologies Corp., B-224255, Feb. 17, 1987, 87-1 CPD ¶ 169.

Since, as indicated above, we find no other basis for taking issue with the Navy's position, the protest is dismissed.



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