



**The Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Astro-Med, Inc.  
**File:** B-232000  
**Date:** November 21, 1988

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## DIGEST

1. Where solicitation calls for analog recorders that provide two computer interfaces, protest that recorders offered by awardee do not conform to the solicitation because they do not provide for the concurrent accommodation of the two interfaces as do the recorders offered by the protester is denied, since the protester has not shown that the solicitation requires simultaneous accommodation of both forms of data communications to the recorder or that both interfaces can or will be used simultaneously.

2. Protest is sustained, where following its conduct of discussions--during which it requested and obtained information from offerors to determine the technical acceptability of their offers--the agency failed to afford those offerors an opportunity to submit best and final offers (BAFOs), but instead made award on the basis of initial offers as "clarified," in the course of which it: (1) allowed only the awardee to submit a revised delivery schedule; and (2) improperly excluded the protester from the opportunity to submit a BAFO based on an internal agency "projection" that its price would be too high to be competitive.

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## DECISION

Astro-Med, Inc., protests the award of a contract to W.A. Brown Instruments, Inc., under request for proposals (RFP) No. F08635-88-R-0014, issued by the Department of the Air Force Armament Division, Eglin Air Force Base, Florida, for three portable 8-channel analog recorders, including maintenance and accessories. Astro-Med contends that the recorders offered by Brown do not comply with the solicitation specifications.

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We deny this ground for protest but sustain the protest because of other improprieties in the procurement apparent from our review of the record.

The recorders were to be used by Air Force engineers to monitor and record data and designated events in certain simulator radar systems. Among the solicitation specifications was the requirement that "[b]oth RS-232 [standard serial computer interface] and IEEE-488 [8-bit parallel interface, usually found on scientific test equipment] computer interfaces shall be provided." The solicitation also required delivery of the equipment within 30 days after award of the contract and advised offerors that award might be made without discussions "to the technically acceptable offeror with the lowest overall cost to the Government at a fair and reasonable price."

Offers were submitted by 5 out of 21 firms solicited. The agency states that two of those five proposals were rejected for failure to meet the specifications, and that "clarification" was obtained from each of the three remaining "technically acceptable" offerors.<sup>1/</sup> The agency further states that it chose not to request best and final offers (BAFOs) as permitted by the solicitation, but after evaluation of costs made award to Brown, the lowest priced, technically acceptable offeror.

Astro-Med contends that the Western Graphtec Mark 10 Array analog recorder offered by Brown, the awardee, fails to meet the solicitation requirements because it does not accommodate simultaneously both the RS-232 and the IEEE-488 computer interfaces as does Astro-Med's proposed MT9500 model. The question here is the meaning of the specification requirement for both the RS-232 and the IEEE-488 interfaces. Astro-Med is of the view that the specification requires that the recorders provide for the concurrent availability of both interfaces rather than the interchangeable availability of one or the other at any given time. The agency responds that Air Force engineers concluded that the Western Graphtec hardware complies with the specification.

According to the record, only one form of data communications to the recorder can be used at any given time, and the protester has not disputed this assertion. If the Western Graphtec Mark 10 recorder provides both interfaces,

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<sup>1/</sup> One of these three offerors subsequently withdrew its proposal, thus leaving only the awardee and the protester in contention.

it would appear that it does meet the RFP's dual interface requirement, even though Astro-Med's model MT9500 not only provides both interfaces but also accommodates them both simultaneously and is, therefore, more easily adaptable for purposes of changing from one interface to another. While this feature of the MT9500 may be desirable, the protester has not shown that it is required by the solicitation. We therefore deny this basis for protest.

Nevertheless, we find on the basis of our review of the record that the award to Brown was improper. According to the Air Force's initial technical evaluation report (dated April 8, 1988), two of the proposals were unacceptable because their basic recorders used a stylus technology which was expressly excluded by the specifications. The three remaining proposals appeared to offer equipment which would meet the agency's requirements, but the evaluators could not come to a definite conclusion in that regard because of a lack of information. Brown's proposal failed to show that it met the specifications for portable units since it indicated its 8-channel mainframe was rack mounted. In addition, the evaluators thought Brown's proposal did not clearly identify what options were being proposed. The evaluators concluded that Brown's proposal would be acceptable if it were established that it would furnish a portable, and not rack-mounted mainframe, and the appropriate options necessary to meet the RFP's technical specifications.

Similarly, the initial technical evaluation shows that Astro-Med's proposal would be acceptable only if nine additional options were provided. That same evaluation further stated that the proposal submitted by the third "technically acceptable" offeror (which later withdrew its proposal), was "not acceptable" because it indicated no options and, thus, failed to meet the RFP specifications since the proposal required the same additional options as did the Astro-Med proposal. It is apparent from these evaluation results that none of these three initial proposals clearly satisfied the specification requirements.

We think that at this point in the procurement, after the initial technical evaluation, it would have been appropriate for the contracting officer to have conducted discussions with the offerors in the competitive range, requested BAFOs based on those discussions, and proceeded with an award based on the BAFOs unless circumstances dictated a second round of discussions. Federal Acquisition Regulation (FAR) § 15.610. No BAFOs were ever requested in this case because, the contracting officer states, the agency had only requested "clarifications" from the "three technically

acceptable offerors." Our analysis of the record, however, leads us to conclude that the agency in fact did conduct discussions which should have been, but were not, followed by a request for BAFOs.

The record shows that after the initial evaluation of proposals was completed, the agency telephoned the three remaining offerors and inquired, as to Brown, whether its mainframe was portable and, as to all three offerors, what options were being supplied with the mainframe. In response, Brown submitted a letter in which it stated that the mainframe is of a portable architecture and enumerated the options included with each recorder. These responses satisfied the evaluators' concerns. In the same letter, however, Brown stated that after reviewing Western Graphtec's delivery schedule, "we must quote 60-day delivery on all quoted items"--an exception to the RFP's 30-day delivery schedule.

The protester responded to the telephone inquiry made of it by a letter spelling out the equipment it proposed to supply to satisfy the agency's specifications. Even this list fell short of all the options the agency thought necessary in order for the protester's product to meet the government's needs. Based on the protester's published price list, the agency estimated the cost of the options missing from the protester's proposal at more than \$6,000.

The contracting officer was then faced with the situation where Brown's proposal, at a price of \$36,936, was technically acceptable but that offeror had taken exception to the RFP's delivery schedule. Astro-Med had a price projected by the agency to be \$56,038, if one were to include Astro-Med's published prices for the options still missing from its proposal. The user advised contracting officials that a 60-day delivery schedule would be acceptable to it. The contracting officer balanced Brown's offer of a 60-day delivery of a technically acceptable product at the lowest price received against Astro-Med's offer of a 30-day delivery of a product which, were the remaining options to be added, was projected to cost approximately \$19,000 more, and concluded that award to Brown was in the best interests of the government.

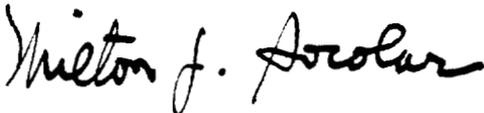
In the context of evaluating a proposal, "clarification" refers to communications with an offeror for the sole purpose of eliminating minor irregularities, informalities, or apparent clerical errors in the proposal, and there can be no modification to the proposal as a result of such clarification except as necessitated and limited by the correction of an apparent clerical error, FAR § 15.601.

"Discussions," on the other hand, occur when an offeror is afforded an opportunity otherwise to modify its proposal, or when information requested from and provided by an offeror is essential to the agency's determination of the technical acceptability of the offeror's proposal. Id.

Based on the results of the initial technical evaluation, we conclude that the information which the contracting officer obtained from Brown was essential to the agency's determination of the technical acceptability of its proposal and, therefore, constituted discussions, not simply clarifications as the contracting officer states. See Keystone Engineering Co., B-228026, Nov. 5, 1987, 87-1 CPD ¶ 449. Consequently, the agency's failure to afford all offerors in the competitive range the opportunity to submit BAFOs was improper. FAR § 15.611. This is particularly so where a proposal revised as to delivery schedule was received from only the awardee and where the agency, based on its own internal "projection" of what the protester's price would be, made the assumption that that price would be uncompetitive. An agency may not use such speculation to foreclose an offeror in the competitive range from the opportunity of submitting a BAFO. SWD Associates, B-226956.2, Sept. 16, 1987, 87-2 CPD ¶ 256.

The protest is, therefore, sustained.

We are unable to recommend corrective action with respect to the award since the contract has been performed and the protest was not filed in sufficient time following award to invoke a stay of performance or the scope of those remedies available under the stay provisions of our Bid Protest Regulations. (See 4 C.F.R. § 21.6(c).) We find, however, that Astro-Med was unreasonably excluded from the procurement as a result of the agency's failure to afford it an opportunity to submit a BAFO, and is, therefore, entitled to the costs of preparing its proposal and of filing and pursuing this protest. 4 C.F.R. § 21.6(d). See SWD Associates, B-226956.2, supra. The protester should submit its claim for these costs directly to the Air Force.

*for*   
Comptroller General  
of the United States