



3LS Data Lab Pro Line precision coordinate backlit digitizer with modular power supply (An Altek product) or equal.

4. The digitizer specifications were listed in part as follows:

- variable intensity backlighting, continuous from 0% to 100%
- 16 button cursor with .002 cross-hairs and cursor rotation error of less than .002 inches
- Absolute accuracy of  $\pm .003$  inches.<sup>2</sup>

5. Bids were due by May 25, 1993 and Appellant and Calcomp were the only bidders who submitted quotations. Calcomp offered its 9500 Series digitizer and Appellant offered the brand name product. The University's buyer determined that both bidders products met the University's specifications and that Calcomp was the low bidder.

6. Pursuant to COMAR 21.05.07.06D, the University's buyer decided to award on the basis of the "most favorable bid price," and on May 28, 1993, a Purchase Order was issued to Calcomp.

7. On May 28, 1993, Appellant sent a letter dated May 21, 1993, to the Procurement Officer who in turn forwarded it to the buyer. The letter read in pertinent part:

"ALTEK was contacted by the Geography Department for specifications and budgetary prices for a 42" x 60" graphic digitizer . . . We have been told that ALTEK and a company named Calcomp will be asked to bid. As expected, and should be, the low bidder who meets the specification would get the order. Of particular concern is that the accuracy required will be specified at +/-003" [sic] . . . .

"Many times we have been told by potential customers that if a company advertised they meet a specified accuracy, then that is accepted as true. It is far from true. We have measured many competitors [sic]

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<sup>2</sup>As described in the Agency Report, these requirements translate roughly as follows. The variable intensity backlighting requirement means that the digitizer table must be lit from behind and controlled by a dimmer switch. The cursor must consist of cross-hairs of a certain size that record cursor location within a specific margin of error no matter how the cursor casing is rotated. Absolute accuracy refers to the overall ability of the digitizing system to read and recreate images within the specific margin of error.

digitizers and not one has met the stated accuracy. Test results that may be provided are incomplete and misleading. We can help you interpret them. Our lower accuracy units usually exceed the accuracy of competitors [sic] high accuracy units."

"If +/- .003" accuracy is really required then it is imperative that a proper specification is called up and a demonstration proves it--before an order is placed. It seems there is an attitude of 'prove we are wrong and we will replace it.' We take a position we can prove we meet the specification so you do not need to replace it . . . ."

8. On May 28, 1993, the buyer telephone Calcomp to ascertain the digitizer it offered satisfied the specifications for accuracy. Calcomp orally verified that its digitizer met the specifications and offered to send test results which were received by the University on June 8, 1993, outlining the testing criteria used to test each digitizer accuracy test.
9. On June 1, 1993, the buyer notified Appellant by telephone that Calcomp had been awarded the bid for the digitizer.
10. On June 1, 1993, the University received a letter of protest from Appellant dated May 21, 1993, which states the following:

"The basis of our protest is that the unit accepted for the award does not meet the mandatory specifications and requirements of the bid..." "Specifically, we challenge if the following specifications are being met by the competitive bid." In pertinent part they are:

- variable intensity backlighting
- cursor accuracy and absolute accuracy

Appellant additionally protested that the University was:

"discriminating in refusing to request testing prior to purchase after being put on notice of possible failure to meet specifications..."

11. On June 10, 1993, the University's buyer directed Calcomp to stop delivery on the purchase order. The buyer additionally

requested Calcomp to verify that, in addition to meeting accuracy requirements, the digitizer system ordered met cursor and backlighting requirements

12. On June 28, 1993, the University's buyer received from Calcomp attachments and test results for its digitizer system. The attachments described Calcomp's methods for determining accuracy within the specified degree of error and Calcomp also verified that the illumination system complied with backlighting and dimmer requirements. Furthermore, on August 20, 1993, Calcomp forwarded to the University's buyer information regarding the precision tuning methodology used to assure that cursors are tuned to the specified margin of error.
13. Based on information furnished by the University's buyer the Procurement Officer concluded Calcomp's digitizer system met or exceeded the University's bid specifications and on September 2, 1993, the Procurement Officer denied Appellant's protest.
14. On September 14, 1993, Appellant filed its appeal to this Board.

#### Decision

Prior to the instant invitation for bids Appellant cooperated with the Geography Department of the University in providing specifications and budgetary prices for a graphic digitizer. However, this record reveals that the University proceeded to invite other vendors to participate in open competition to supply a digitizer that would meet its specific needs and Calcomp responsively fulfilled the specifications.

Appellant's May 21, 1993 letter to the Procurement Officer states: "... As expected, and should be, the low bidder who meets the specification would get the order." Appellant's statement is the essence of open competition. However, Appellant questions whether any other product would meet the specifications.

This Board notes the University has assured itself that the Calcomp digitizer meets the specifications and needs of the eventual user. As this Board has consistently maintained "...

(1) a procurement officer's determination concerning whether a bidder's product complies with the specifications from a technical stand point will not be disturbed unless clearly erroneous, and (2) ... an Appellant bears the burden of demonstrating that the expressed technical judgment of the procurement officer is clearly erroneous." General Electric Company, MSBCA 1316, 2 MICPEL ¶143 at p. 4 (1987).

Nothing in this record before us suggests the technical judgment of the Procurement Officer and his subordinates that the Calcomp digitizer met the University's requirements and specifications was in error.

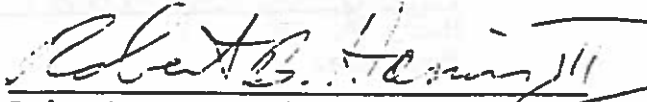
Therefore, the appeal is denied.


Wherefore, it is this 20th day of October, 1993 ORDERED that the appeal is dismissed.

Dated: October 20, 1993

  
Sheldon H. Press  
Board Member

I concur:

  
Robert B. Harrison, III  
Chairman

  
Neal E. Malone  
Board Member

#### Certification

COMAR 21.10.01.02 Judicial Review.

A decision of the Appeals Board is subject to judicial review in accordance with the provisions of the Administrative Procedure Act governing cases.

Annotated Code of MD Rule 7-203 Time for Filing Action.

(a) Generally. - Except as otherwise provided in this Rule or by statute, a petition for judicial review shall be filed within 30 days after the latest of:


- (1) the date of the order or action of which review is sought;
- (2) the date the administrative agency sent notice of the order or action to the petitioner, if notice was required by law to be sent to the petitioner; or
- (3) the date the petitioner received notice of the agency's order or action, if notice was required by law to be received by the petitioner.

(b) **Petition by Other Party.** - If one party files a timely petition, any other person may file a petition within 10 days after the date the agency mailed notice of the filing of the first petition, or within the period set forth in section (a), whichever is later.

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I certify that the foregoing is a true copy of the Maryland State Board of Contract Appeals decision in MSBCA 1744, appeal of Altek Corporation under University of Maryland IFB No. 93-923; 01-3-93307.

Dated: *October 20, 1993*

  
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Mary S. Priscilla  
Recorder