

DECISION

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

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FILE:

B-207852.2

DATE: April 12, 1983**MATTER OF:**

Panasonic Industrial Company

DIGEST:

Protest that awardee's product was not equal to the brand name product specified in the solicitation is denied. The protester has failed to establish as unreasonable the agency's acceptance during discussions of the awardee's statement regarding the features of the awardee's product that allowed it to meet the questioned salient characteristic.

Panasonic Industrial Company (Panasonic) protests the award of a contract to Sony Corporation of America (Sony) under request for proposals (RFP) GSC-CDPCE-00020-N-7-19-82 issued by the General Services Administration (GSA). The RFP called for the supply of video tape recorder/players, Panasonic models or equal.

Panasonic contends that the video tape recorder/players offered by Sony as equal to the Panasonic models did not conform to the RFP specifications.

For the reasons set forth below, we deny Panasonic's protest.

Sony offered its models SLP-303 and SLO-323 and furnished both descriptive literature and letters for technical evaluation by GSA of the offered models. Following evaluation of Sony's initial offer, GSA found that Sony's models met the listed salient characteristics except for (1) the requirement for no "head to tape" contact during machine search, fast forward and rewind modes and (2) the requirement that the "freeze frame" release within 3-1/2 minutes from time of initiation.

The above deficiencies in Sony's initial offer were pointed out to the company and Sony was requested to furnish a best and final offer reflecting all modifications to the offered models which would make them conform to the RFP's

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requirements. Evaluation of Sony's best and final offer resulted in a determination by GSA that Sony's proposed modifications were "satisfactory." An award was subsequently made to Sony as the offeror having the lowest aggregate price for the required recorder/players.

Panasonic contends that the Sony models are not equal to the Panasonic models specified in RFP because:

1. The Sony models are not in VHS format.
2. The Sony models are incapable of playing/recording for 2 hours.
3. The Sony models have "head to tape" contact during the rewind and fast forward modes.
4. The Sony models have "noise band" in the viewing area during freeze frame.
5. The freeze frame in the Sony models does not automatically release within 3-1/2 minutes.

GSA states that the salient characteristics did not require that recorder/players be in the VHS format or specify any playing/recording time. As to Panasonic's allegation that Sony's models have a "noise band" during freeze frame, GSA declares that the descriptive literature that Sony furnished with its offer clearly shows a "noiseless still frame" for Sony model SLO-323 and a "noiseless still" for Sony model SLP-303.

An automatic freeze release within 3-1/2 minutes was required and the Sony standard release time is 7 minutes. However, GSA argues that under the Federal Procurement Regulations, a product may be modified to make it conform to solicitation requirements and that during discussions of the submitted offers, it requested Sony to provide certain information relative to mechanically changing the freeze frame release time on its models. As noted above, Sony responded to GSA's request and furnished the information. GSA determined that this information was satisfactory.

With regard to "head to tape" contact during recorder/player fast forward and rewind modes, GSA states that in a letter dated July 20, 1982, to GSA, Sony enclosed a copy of an earlier letter to the Internal Revenue

Service. In the Internal Revenue Service letter, Sony specified that during fast forward and rewind, "the tape is separated from the head drum assembly utilizing a specially designed air deflection configuration." GSA emphasizes that Sony's Internal Revenue Service letter was incorporated into and made part of Sony's awarded contract.

In response, Panasonic takes exception to Sony's representation that a specially designed air deflection configuration in Sony's machines separates the videotape during fast forward and rewind. According to Panasonic, there is no difference in tape path in Sony's play, record, search, fast forward and rewind modes in that the video tape is constantly touching the machine heads. More specifically, Panasonic alleges that both its recorder/players and Sony's recorder/players are "helical scan formats" and, therefore, use an airflow configuration. Panasonic alleges, however, that the function of the airflow in such a format is to prevent the spinning head drum from grabbing the video tape and not, as Sony has indicated, to separate the head from the tape. In support of these allegations, Panasonic has provided diagrams of the loading mechanisms of its recorder/players and Sony's recorder/players.

The procuring agency is responsible for evaluating the data supplied by an offeror and ascertaining if it provides sufficient information to determine the acceptability of the offeror's item. See Fil-Coil Company, B-198055, June 11, 1980, 80-1 CPD 409. We will not disturb this technical determination by the agency unless it is shown to be unreasonable. See Schottel of America, Inc., B-190322, February 15, 1978, 78-1 CPD 130. The protester has the burden of affirmatively proving its case, C. L. Systems, Inc., B-197123, June 30, 1980, 80-1 CPD 448, and the fact that the protester does not agree with the agency's technical evaluation does not in itself render the evaluation unreasonable. See Kaman Sciences Corporation, B-190143, February 10, 1978, 78-1 CPD 117.

The solicitation specified that when products were proposed as "equal" to the Panasonic recorder/players, offerors had to furnish data that would enable the Government to determine that the proposed products were in fact equal in all respects. The record shows that while Sony's initial descriptive data failed to indicate whether the company's video recorder/players had no "head to tape" contact during rewind and fast forward modes, Sony did, during discussions on its proposal, furnish GSA with a statement that the video tape was separated from the head drum assembly by an air

deflection configuration on the machines. We cannot question the fact that GSA chose to accept the statement, especially since it was made a part of the contract GSA awarded to Sony. As to the diagrams that Panasonic has submitted to us, we find that they do not demonstrate that Sony's machines have tape contact during rewind and fast forward. Consequently, we conclude that Panasonic has not met its burden of proving that Sony's machines failed to meet the salient characteristics.

Protest denied.

for 
Comptroller General
of the United States