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The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Thorn EMI Technology Inc.

File: B-228120

Date: January 15, 1988

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### DIGEST

Brand name manufacturer's protest of award on basis of agency's relaxation of salient characteristic is sustained since record establishes that agency in fact accepted a noncompliant offer.

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### DECISION

Thorn EMI Technology Inc., protests the Department of the Navy's acceptance of the offer submitted by Ampex Corporation under request for proposals (RFP) No. N60530-87-R-0358 for a formatter for a high density digital recording system (HDDR). The RFP specified a particular Thorn model or equal, and listed a number of salient characteristics that any offered equal had to meet. Thorn, which offered the specified model, argues that the lower cost "equal" model offered by Ampex does not meet salient characteristics.

We sustain the protest.

The HDDR is an intermediary between a high-speed data transmitting source (for example, a radar system sending data at a high bit rate) and a receiver (primarily a tape recorder logging the data for later replay and analysis) which operates at slower speeds. The HDDR breaks the high-speed data from the source into several slower channels that the tape recorder can handle, and then transmits the data to the tape recorder. The HDDR can also function in reverse to reassemble the high-speed data from the slower recording.

Thorn's principal contention is that the Ampex model does not provide the "integral auto-ranging bit synchronizers" mentioned in the RFP as a salient characteristic of the brand name equipment. Bit synchronizers provide the capability, when reassembling the original high speed data from a slower, multiple channel tape recording, to adjust the HDDR to match the speed of the incoming data. The brand

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name equipment automatically adjusts to accommodate incoming data over a wide range of speeds. The Ampex equipment, while able to handle the data, does not adjust automatically to variations in the data speed; instead, an operator first has to adjust the bit synchronizer manually to the selected tape transport speed before the data is sent. Since Ampex's equipment thus does not provide automatic adjustment over the entire required speed range, Thorn contends that Ampex's equipment did not meet the salient characteristic.

The Navy characterizes auto-ranging as a general requirement and reports that:

"the government's definition of 'auto-ranging bit synchronizers' requires a system with the ability to track the rate of incoming data from an outside source as pre-determined by an operator." (Emphasis supplied.)

On this basis, the Navy contends that Ampex's system met the Navy's minimum need since no adjustments after the predetermined setting would be required regardless of the incoming bit rate.

When salient characteristics are listed in terms of specific performance standards or design features, the "equal" product must meet these requirements precisely. Cohu, Inc., B-199551, Mar. 18, 1981, 81-1 C.P.D. ¶ 207. Further, a brand name or equal solicitation describing various aspects of a particular firm's approach as salient characteristics is not to be interpreted as expressing only a functional requirement. Castle/Division of Sybron Corp., B-219056, Aug. 7, 1985, 85-2 C.P.D. ¶ 142; MII Lundia, Inc., B-214715, Jan. 3, 1985, 85-1 C.P.D. ¶ 14. On the contrary, technical requirements, stated in clear and precise terms, are presumed to be material to the needs of the government. MII Lundia, Inc., B-214715, supra. Notwithstanding that negotiated procurement techniques are used, offerors have the right to assume that such requirements will be enforced and, on that basis, to anticipate the scope of competition for award. Squibb-Vitatek, Inc., B-205306, July 27, 1982, 82-2 C.P.D. ¶ 81.

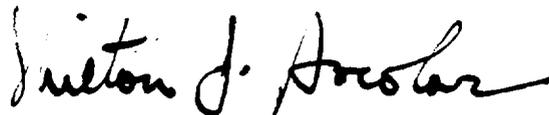
The section of the Thorn brand name model brochure treating the auto-ranging aspect of the bit synchronizers states:

"The important feature of these bit synchronizers is that they require no manual adjustment of any kind throughout their working range. . . ."

Our understanding of this description is consistent with what Thorn says it means, that is, that the equipment is capable of automatic adjustment within a broad range of incoming data speeds, with no manual adjustment by the user. This understanding of the requirement differs significantly from the Navy's statements that equipment providing an initial manual adjustment is acceptable if no further adjustments are required. While the Navy may have intended something other than the brand name's actual feature, that intention is not consistent with the listing of auto-ranging bit synchronizers as a salient characteristic of the brand name. Since the equipment Ampex offered does not provide this capability, we conclude that it did not meet the listed salient requirement, and that the Navy thus improperly accepted noncompliant equipment.

We do not recommend termination of Ampex's contract and resolicitation, however, since it does not appear that resolicitation would serve any useful purpose. It is evident that Ampex's equipment will meet the agency's actual needs; only Thorn and Ampex appear to have expressed any interest in the Navy's requirement; and there is no indication that Thorn's more expensive equipment can compete successfully with Ampex's less expensive equipment under relaxed specifications reflecting the Navy's actual needs. In this respect, we note that Thorn offered the brand name model for \$34,688, approximately \$7,000 more than Ampex's "equal" model. Consequently, we find that Thorn, induced to compete against an overstatement of the government's needs, is entitled to be reimbursed for its proposal preparation costs and the costs of filing and pursuing its protest. 4 C.F.R. §§ 21.6(d) and (e) (1987); see Department of the Air Force--Request for Reconsideration, B-222645.2, Apr. 9, 1987, 98-1 C.P.D. ¶ 388. Thorn should submit its claim for such costs directly to the Navy. 4 C.F.R. § 21.6(f).

The protest is sustained.

*for*   
Comptroller General  
of the United States