



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Andromeda Corporation

**File:** B-245345

**Date:** November 20, 1991.

Robert E. Howle for the protester,  
Lt. Col. William H. Spindle, Department of the Air Force,  
for the agency.  
Richard P. Burkard, Esq., and John Brosnan, Esq., Office of  
the General Counsel, GAO, participated in the preparation of  
the decision.

### DIGEST

1. Protest alleging that agency improperly made award to firm whose proposed "equal" product did not meet the stated salient characteristics set forth in the solicitation is denied where the record shows that the awardee furnished the agency with descriptive literature which showed that the proposed product complied with the specifications.
2. In negotiated procurement, agency reasonably included proposal in competitive range despite failure of the initial proposal to include sufficient information to demonstrate its technical adequacy where exclusion of the proposal would have resulted in a competitive range of one, the proposal offered a significant cost savings to the government, and the deficiency could be easily corrected.
3. Agency properly kept proposal in competitive range where during discussions it brought to the attention of the awardee a perceived deficiency in its pricing and allowed the awardee to submit a revised proposal.

### DECISION

Andromeda Corporation protests the award of a contract to Potomac Synergetics, Incorporated (PSI), under request for proposals (RFP) No. F30635-91-R-0538, issued by the Air Force for laser systems to be used by Rome Laboratory at Griffiss Air Force Base, New York. The protester alleges principally that the agency improperly based the award on an "equal" product that did not meet the stated salient characteristics.

We deny the protest.

The RFP, issued on a brand name or equal basis, specified Andromeda's model SL-20 as the brand name product, listed the salient characteristics that had to be satisfied by any product offered as equal, and required that descriptive literature be submitted. The RFP contained two line items, each described the Andromeda model SL-20 or equal. The laser system described in line item No. 1, however, required that a pump refill station be included, while line item No. 2 did not require the station. The RFP stated that award would be made to the low-priced offeror whose proposal was determined to be technically acceptable.

The Air Force received two offers by the April 18, 1991, closing date. The protester submitted its brand name product at a total price of \$106,670, while PSI proposed its own model laser systems, CO2-301SP and CO2-301S, at a total price of \$59,200. The agency determined that Andromeda's proposal, as initially submitted, met all of the solicitation requirements.

On the other hand, the agency evaluator concluded that PSI did not submit sufficient data to permit the agency to determine its technical adequacy, and by letter dated May 7, the contracting officer requested that PSI provide additional information. PSI responded to the request with an addendum to its proposal. The agency's technical evaluator concluded that the additional data demonstrated that PSI was capable of complying with the specifications, but that it had not shown that the proposed system itself would, in fact, meet all of the requirements.

The Air Force therefore requested information from PSI which would verify that its system would function as required. On May 29, PSI furnished the agency with more data, which, according to the agency evaluator, showed that the firm's equipment would comply with the RFP requirements. Based upon the information, the evaluator found that PSI's system was technically acceptable.

Thereafter, because of the disparity in price between PSI's and the protester's proposals, the contracting officer, on June 12, requested that each offeror provide a cost breakdown of its product. After reviewing the cost breakdown submitted by PSI, the contracting officer questioned the firm as to whether it priced all of the required hardware. PSI checked its proposal and stated in its response that it had indeed omitted some of the hardware items from its price.

On July 23, the Air Force requested best and final offers (BAFO) from both firms. PSI, which this time priced all of the required hardware, increased its price to \$72,400.

Since PSI's price still remained substantially lower than Andromeda's, award was made to PSI as the low acceptable offeror on August 15. This protest followed.

Andromeda alleges that the awardee's product offered in its BAFO does not meet the following specification provisions: (1) short-term frequency stability of 5 kilohertz or less, (2) long-term frequency stability of 50 kilohertz or less, and (3) amplitude stability of at least .5 percent over 2 hours. Further, the protester argues that the PSI proposal should have been rejected because it was technically unacceptable as initially submitted and its price did not include all of the required equipment.<sup>1</sup>

In a brand name or equal procurement such as this one, the contracting agency is responsible for evaluating the data submitted by the offeror and ascertaining if it provides sufficient information to determine if the offeror's product is acceptable. VG Instruments, Inc., B-241484, Feb. 7, 1991, 91-1 CPD ¶ 137. In making this determination, the agency enjoys a degree of discretion which we will not disturb unless we find that the determinations are unreasonable. Id. Here, we find that the agency's conclusion that the awardee's product complied with the specifications was reasonable. We have reviewed the data included in the awardee's proposal and find that it does indicate compliance with the characteristics set forth above. We thus conclude that PSI's final technical proposal provides a basis for the agency to reasonably conclude that the laser systems proposed by PSI meet the three specifications cited by the protester.

The protester's other argument is that the Air Force should have rejected PSI's initial proposal because it lacked adequate technical data and because the proposal failed to price certain hardware items. The protester argues

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<sup>1</sup>The protester also complains that PSI should have been required to submit a commercially available product like the one it offered. The RFP did not call for a commercial product, and in the absence of such a provision, there is no absolute requirement for a commercially available product. See VG Instruments, Inc., B-241484, Feb. 7, 1991, 91-1 CPD ¶ 137. To the extent Andromeda contends that the RFP should have required that offerors furnish a commercial product, this allegation is untimely since it was not raised before the time set for receipt of proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1991), as amended by 56 Fed. Reg. 3759 (1991); Central Texas College, B-243212, May 21, 1991, 91-1 CPD ¶ 499.

essentially that PSI's initial proposal should have been excluded from the competitive range. We disagree.

The Federal Acquisition Regulation (FAR) provides that the competitive range must include all proposals that have a reasonable chance of being selected for award and that any doubt as to whether a proposal is in the competitive range should be resolved by inclusion. FAR § 15.609(a). While the determination of whether a proposal is in the competitive range is principally a matter within the reasonable discretion of the procuring agency, in view of the importance of achieving full and open competition in government procurement, we closely scrutinize any evaluation that results in the inclusion of only one offeror. Besserman Corp., 69 Comp. Gen. 252 (1990), 90-1 CPD ¶ 191. If there is a close question of acceptability; if there is an opportunity for significant cost savings; or if an informational deficiency reasonably could be corrected by relatively limited discussions, inclusion of a deficient proposal rather than exclusion is appropriate. Id.

Here, the exclusion of PSI would have resulted in a competitive range of one. Clearly, PSI's proposal offered an opportunity for a significant cost savings, since the brand name product offered by the protester was almost twice the price of PSI's item. In addition, the lack of data in PSI's proposal could be easily remedied, without a major revision to the proposal, by the submission of the missing information. We therefore find nothing objectionable in the agency's decision not to eliminate PSI from the competition. See Power Dynatec Corp., B-236896, Dec. 6, 1989, 89-2 CPD ¶ 522.

With respect to the protester's contention that the awardee's proposal should have been rejected based on the firm's failure to include certain hardware in its price, we find nothing improper in the agency affording PSI with an opportunity to correct this omission in its pricing. Pricing deficiencies typically are a proper subject of competitive range discussions--contracting personnel generally must disclose the existence of perceived deficiencies in offerors' pricing, see FAR § 15.610(c)(2), and afford the offerors an opportunity to revise deficient aspects of their pricing. FAR § 15.610(c)(5); Food Servs., Inc., B-241408, Feb. 12, 1991, 91-1 CPD ¶ 150. Moreover, contracting officers are required to attempt to resolve any suspected mistakes by calling them to the offeror's

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attention, FAR § 15.610(c)(4). We thus find no merit to this contention.

The protest is denied.

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for James F. Hinchman  
General Counsel