



Comptroller General  
of the United States  
Washington, D.C. 20548

## Decision

**Matter of:** Ampex Recording Media Corporation  
**File:** B-247722; B-247801  
**Date:** July 2, 1992

Allen Samelson, Esq., Rogers, Joseph, O'Donnell & Quinn, for the protester.  
Joseph Falzone for Memorex Computer Supplies, an interested party.  
Vasso K. Monta, Esq., and Jeffery B. Greer, Esq., Defense Logistics Agency, for the agency.  
Scott H. Riback, Esq., and David Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest is sustained where procuring agency failed to advise offeror proposing an alternate product of agency needs where alternate product can be readily modified to be acceptable.

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### DECISION

Ampex Recording Media Corporation protests the Defense Logistics Agency's (DLA) award of a contract to Memorex Computer Supplies under request for quotations (RFQ) No. DLA900-91-Q-JA22 (RFQ-JA22), for electronic data tape. Ampex also protests the terms of request for proposals (RFP) No. DLA900-92-R-0148 (RFP-0148), also issued for electronic data tape.<sup>1</sup> Ampex contends that DLA improperly relaxed its requirements in making award under RFQ-JA22. Ampex also argues that RFP-0148 is ambiguous because offerors cannot determine the agency's minimum needs from the solicitation.

We deny the protest of award under RFQ-JA22 and sustain the protest of the terms of RFP-0148.

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<sup>1</sup>The electronic data tape being procured by DLA in each case is to be used in a variety of critical applications. The primary user is the Department of the Air Force, which uses the tape in recorders in aircraft for recording tracking data on other moving aircraft and missiles. The second primary user is the National Aeronautics and Space Administration, which uses the tape to record space shuttle launch data. The Department of the Navy also uses the tape on submarines to record tracking data on other submarines.

## BACKGROUND

RFQ-JA22, issued on July 9, 1991, was conducted on the basis of limited competition. It called for Ampex part No. 799-57GJ11C, electronic data tape (Ampex 799 tape), also identified by national stock number (NSN) 5895-01-264-8782. The RFQ incorporated DLA's "Products Offered" clause, which allows firms to submit quotations for "alternate" products which are physically, mechanically, electrically, and functionally interchangeable with the product identified in the solicitation. The Products Offered clause requires firms offering alternate products to provide the agency with sufficient information to allow DLA to determine whether the alternate product being offered is in fact interchangeable with the product identified in the solicitation; the clause states that this information is necessary because the agency does not possess adequate technical data to independently make such a determination.

In response to RFQ-JA22, DLA received three quotations, including those of Ampex and Memorex, by the September 22 closing date. Ampex offered its 799 tape, as specified in the solicitation. Memorex offered to supply an alternate product, its part No. 897L0242W3D3 (Memorex 897 tape), and submitted technical data so as to enable DLA to determine the interchangeability of its offered alternate product. Based upon the information furnished by Memorex and user activities, DLA determined that the Memorex alternate was physically, mechanically, electrically, and functionally interchangeable with Ampex 799 tape. DLA then made award to Memorex on the basis of its low, overall price.

RFP-0148, issued on February 10, 1992, was also conducted based on limited competition. It specified both Ampex 799 tape and Memorex 897 tape as acceptable products; the solicitation also incorporated DLA's Products Offered clause. Ampex protested the terms of the solicitation prior to the closing date for receipt of proposals.

Regarding the agency's award of the contract to Memorex under RFQ-JA22, Ampex disputes the agency determination that Memorex 897 tape is physically, mechanically, electrically, and functionally interchangeable with Ampex 799 tape. According to Ampex, the primary difference between the two tapes relates to what is referred to as a tape's "drop out" count. Drop outs are essentially flaws in the surface of the tape which result in an inability of the tape to record data; they are measured on a per track basis in terms of magnitude (expressed in decibels (dB)) and duration (expressed in microseconds).

Ampex contends that it requires its 799 tape to meet a more stringent standard for drop outs than the standard required

for the Memorex 897 tape. Ampex acknowledges that both its 799 tape and the Memorex 897 tape are 100 percent tested, that is, every reel is tested. Ampex states that, as described in its commercial literature, its 799 tape is tested and warranted to have, on average, no more than 4 drop outs of a 12 dB magnitude and a one microsecond duration for every 100 feet of tape when drop outs are measured on the basis of 25 mil (twenty-five thousandths of an inch) tracks. In contrast, Memorex's commercial literature warrants that its 897 tape has an absolute total, rather than an average, of no more than 10 drop outs--of 6 dB magnitude and 10 microseconds duration--for outside tracks and 5 drop outs for center tracks per 100 feet of tape, as measured on the basis of 50 mil tracks.

According to Ampex, the Memorex tape does not meet the drop out standard for which its 799 tape is warranted, but instead meets a less stringent set of criteria specified in Department of Defense (DOD) standard WT1553A, which was established for analog rather than digital tape applications. Ampex argues that it would have offered one of its less expensive tapes--its 797 tape--which is warranted to the WT1553A standard, and offered to test 100 percent of the reels, had it known that this would be acceptable to the agency.

Ampex's arguments in its protest under RFP-0148 are also based on its contention that the Memorex 897 and Ampex 799 are not interchangeable and that its 799 tape is tested to a more stringent standard. Ampex asserts that RFP-0148 is ambiguous because it specifies two significantly different products; given the significant differences in characteristics between the specified tapes, Ampex argues that RFP-0148 fails to adequately advise offerors which characteristics of the two tapes are necessary to satisfy the agency's requirements.

DLA responds that the Memorex 897 tape is interchangeable with the Ampex 799 tape based upon the technical data submitted by Memorex. The agency questions Ampex's assertion that its 799 tape is tested to a more stringent standard for drop outs. According to DLA, the two standards are not comparable; while the 799 tape standard is more stringent in some respects (e.g., the duration of the drop out counted under the criteria is much shorter), the standard to which the Memorex tape is tested is more stringent in other respects (e.g., the magnitude of the drop out which is counted is smaller, and Memorex warrants its tape to an absolute maximum number of drop outs per unit of tape rather than to an average number of drop outs), and more of Memorex's tape (14 tracks and 75 percent of the total surface) is tested than of Ampex's (7 tracks and 25 percent of the total surface). DLA also states that it

made its determination of interchangeability after discussing the matter with military personnel who have used the Memorex 897 tape and who concluded that it is equivalent to the Ampex 799 tape. In addition, DLA contends that it lacked sufficient information to promulgate a specification for its electronic data tape requirements and that it therefore properly used the Products Offered clause to identify its minimum needs.

#### ANALYSIS

An agency may properly express its needs by specifying a particular product and affording other firms an opportunity to submit offers for alternate products (as DLA has done by use of its Products Offered clause) where the agency has insufficient technical information to more adequately describe its requirements. See GALE Corp., B-201657, May 5, 1981, 81-1 CPD ¶ 343. When using this method of describing its needs, agencies may not relax the requirement of the Products Offered clause that an alternate item be physically, mechanically, electrically, and functionally interchangeable with the named product. Hobart Bros. Co., B-222579, July 28, 1986, 86-2 CPD ¶ 120.

The Ampex 799 and Memorex 897 tapes, as well as the Ampex 797 tape the firm states it would have offered under the first procurement, are manufactured to the same standards. (Hearing videotape (VT) 17:21-17:24.) Thus, the issues here concern only the drop out standard each manufacturer requires its tape to meet in order for it to be sold as a particular brand item.

As discussed above, the tapes differ with respect to the standard to which they are tested: the Memorex 897 tape is tested to a drop out standard set forth in the analog-based DOD standard WT1553A, as is the Ampex 797 tape; the Ampex 799 tape is tested to a different standard, which is in part better suited for digital applications. (VT 17:22, 17:29.) Agency technical personnel testified in this case that the Memorex 897 tape is physically, mechanically, electrically, and functionally interchangeable with the Ampex 799 tape; they concluded that neither the Memorex nor Ampex testing standard would result in tape that would more reliably record incoming data than the other. (VT 17:22-17:24, 17:26-17:27.) Agency technical personnel also testified that 100 percent testing of each reel was critical to assuring the tape would satisfy the agency's minimum needs; every reel of the Ampex 799 and Memorex 897 tapes (but not the Ampex 797 tape) is tested. (VT 17:33.)

The record does not establish that DLA had an adequate specification or more detailed description to guide vendors other than the fact that the Ampex 799 satisfied agency

needs. When Memorex offered its 897 tape, which the agency found was interchangeable for its purposes with the Ampex 799 tape, we believe that the agency reasonably could accept the Memorex product. The Products Offered clause is used to alert the marketplace that alternative, interchangeable products are acceptable, and we do not believe that agencies must interrupt such procurements to announce that a particular alternative product is considered interchangeable. See East West Research, Inc., B-238177 et al., Apr. 18, 1990, 90-1 CPD ¶ 399.

As stated above, after the award to Memorex, Ampex protested on February 26, 1992, informing DLA that Ampex believed it had an alternative product that is subject to the same drop out testing standard as the Memorex product. In its March 3 protest of the terms of RFP-0148, which designated both the Ampex 799 and the Memorex 897, Ampex argued that there are a substantial number of tape products on the market that meet various performance standards and that Ampex requires salient characteristics or some other description of the agency's needs to adequately compete.

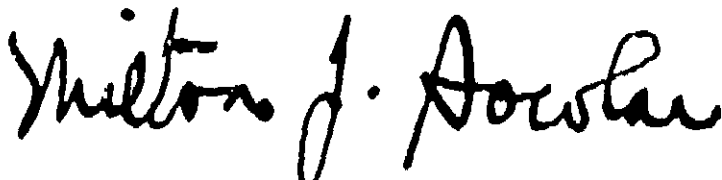
On March 11, Ampex proposed in response to RFP-0148 both its 799 tape and its 797 tape; the latter is tested to the same drop out standard as the Memorex 897 tape (WT1553A). While the drop out standard used for the 897 tape requires only sample testing, as Memorex's literature states, the firm tests all of its 897 tape reels. The agency rejected the offer of the Ampex 797 tape because it is not normally 100 percent tested. (VT 16:20-16:22.) Ampex has submitted a sworn statement from its marketing manager that it would have offered its less expensive 797 tape, 100 percent tested for drop outs, had it been aware that the agency considered 100 percent testing critical to the government's minimum needs.

We cannot fault the agency for conducting these procurements using limited competition. A detailed specification or even the salient characteristics of the name brand items were not feasible given the state of the government's understanding of its needs. Moreover, the record only establishes the possibility of specific prejudice to Ampex from one particular descriptive element of the tapes being procured. That is, DLA requires all tapes to have been 100 percent tested. The record does not establish when DLA became aware of the significance of the 100 percent testing requirement to its needs. It certainly knew of this requirement at least before it rejected the Ampex 797 tape during the pendency of the protested second procurement. It is clear that this is a material requirement and that the agency had sufficient information that Ampex was unaware of this requirement.

Where an agency properly limits a procurement to a particular name brand item or alternate that meets an equivalency standard, the offeror proposing an alternate should be promptly informed regarding why its product is not acceptable. See Kitco, Inc., B-241868, Mar. 1, 1991, 91-1 CPD ¶ 238. If the alternate can be readily modified to meet the agency's needs within available time constraints, we believe that the offeror should be given an opportunity to offer a conforming product.

At this point, it is clear that DLA should advise Ampex, either through modifying the RFP or conducting discussions, that 100 percent testing is an essential element of the agency needs. Loral Terracom; Marconi Italiana, 66 Comp. Gen. 272 (1987), 87-1 CPD ¶ 182, aff'd, The Aydin Corp.; Department of the Army--Recon., B-224908.3; B-224908.4, May 19, 1987, 87-1 CPD ¶ 527. The agency should then request best and final offers. Thus, we sustain this aspect of Ampex's protest, and we find Ampex to be entitled to reimbursement of the costs of pursuing the protest under RFP-0148, including reasonable attorneys' fees. 4 C.F.R. § 21.6(d)(1) (1992); see Falcon Carriers, Inc., 68 Comp. Gen. 206 (1989), 89-1 CPD ¶ 96.

We deny the protest of award under RFQ-JA22, and sustain the protest of the terms of RFP-0148.

*for*   
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