



Comptroller General  
of the United States

Washington, D.C. 20548

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## Decision

**Matter of:** Laser Diode, Inc.

**File:** B-249990

**Date:** December 29, 1992

Jeffrey L. Michelman, Esq., Blumenfeld, Kaplan, Sandweiss, Marx, Ponfil & Kaskowitz, P.C., for the protester. Charles J. McManus, Esq., Eric A. Lile, Esq., and Thomas G. Robisch, Esq., Department of the Navy, for the agency. Sylvia Schatz, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Agency action in relaxing specification limiting power consumption of laser without also affording protester an opportunity to submit a revised quote based on the relaxed specification does not furnish a basis for sustaining protest where record demonstrates that protester would have offered an unacceptable laser had it known of the revised specification; prejudice is an essential element of a viable protest, and where no prejudice is shown, or is otherwise evident, GAO will not sustain a protest, even if a deficiency in the procurement is evident.

### DECISION

Laser Diode, Inc. (LDI) protests the Department of the Navy's award of purchase order No. N00164-92-M-5135 to Adlas Advanced Design Lasers, issued under an oral request for quotations (RFQ) pursuant to the small purchase procedures set forth in Federal Acquisition Regulation (FAR), part 13, for the design, production, and delivery of a Weapon Mounted Aiming Laser (WMAL) system. LDI primarily contends that the award was improper because the Navy awarded the purchase order to Adlas on the basis of revised specifications but without giving LDI an opportunity to submit a revised quotation based on the revised specifications.

We dismiss the protest.

On July 8, 1992, the Navy requested quotations from five firms, including LDI, based on a list of written salient characteristics, which included specifications requiring the WMAL to have a minimum continuous wave output power of 50 milliwatts (mW) and an average power consumption of less

than 100 watts. In response to the RFQ, LDI submitted a written quote of \$16,900 for a WMAL with 50 mW of output power and a power consumption of less than 100 watts. However, since the Navy had conducted a field test of an 100 mW WMAL manufactured by LDI and advised LDI that it preferred an output power of 100 mW, LDI also submitted a quote of \$21,400 for an WMAL with an output power of 100 mW and a power consumption of less than 100 watts. Two other firms submitted written quotes and unsolicited descriptive literature for WMALs with an output power of at least 50 mW. Amoco Laser Company submitted a quote of \$19,500 for its model OEM 532-50EH WMAL, with a minimum output power of 50 mW and a power consumption of less than or equal to 70 watts. Adlas submitted a quote of \$16,600 for its model 305 II SP WMAL, with an output power greater than or equal to 50 mW and a power consumption of less than 80 watts.

In response to LDI's quote for the 100 mW WMAL, the Navy amended the salient characteristics to increase the minimum output power from 50 mW to 100 mW and increase the maximum permissible average power consumption level from less than 100 watts to less than 500 watts. On July 17, the Navy faxed the revised specifications to three of the five firms initially contacted (Amoco, Adlas, and Micro Laser Systems), but not to LDI. Two firms submitted quotes based on the revised specifications. Amoco submitted a revised quote of \$30,500 for its model OEM 532-100EH WMAL, with a minimum of 100 mW output power and a power consumption of less than or equal to 70 watts. Adlas submitted a revised quote of \$19,900 for a model 315 II SP WMAL, with an output power of 100 mW and power consumption of less than 80 watts. After reviewing the quotes of these two firms and LDI's previous July 13 quote for the 100 mW WMAL, the Navy issued a purchase order to Adlas on July 27 on the basis of that firm's low priced quote for an 100 mW WMAL. After learning of the award to Adlas, LDI filed this protest with our Office on August 20. Since the protest was not filed within 10 calendar days after issuance of the purchase order, the Navy has not suspended performance of Adlas's order. 31 U.S.C. § 3553(d) (1988).

LDI contends that the award was improper because the Navy relaxed the power consumption limitation in the specification without affording LDI the opportunity to compete based on this revised specification. According to LDI, increasing the permissible power consumption level from less than 100 watts to less than 500 watts reduces the cost of the WMAL because achieving the required minimum 100 mW output power with the higher input power is a less demanding task which requires less design engineering and makes use of less expensive electrical components. The protester asserts that had the Navy requested a revised quote from LDI based on the relaxed specification, with a power consumption level

of less than 500 watts considered acceptable, it could have furnished a conforming WMAL at a price lower than offered by Adlas.

The Navy maintains that it was reasonable for the contracting officer not to request a revised quote from LDI because at the time the specifications were amended, the contracting officer had no basis to conclude that LDI would decrease its price in response to an increase in the permissible power consumption level of the WMAL. In this regard, the Navy notes that despite the fact that the permissible power consumption limit was raised, neither of the two firms (Adlas and Amoco) who received the revised specifications and responded submitted revised quotes for WMALs with increased power consumption levels. The agency maintains that since the contracting officer reasonably believed that the price of a WMAL would be affected only by an increase in required output power, and not by an increase in the permissible power consumption limit, it was proper for the contracting officer to consider only LDI's initial quote for the 100 mW WMAL without soliciting a revised quote from the firm.

The small purchase procedures of the FAR set forth abbreviated competition requirements designed to reduce administrative costs that otherwise might equal or exceed the cost of procuring relatively inexpensive items. Ann Riley & Assocs., Ltd., B-241309.2, Feb. 8, 1991, 91-1 CPD ¶ 142. While small purchases therefore are not governed by normal competition procedures, all procurements, including small purchases, must be conducted and concluded with the concern for fair and equitable competition that is inherent in any procurement. Ronald S. Yacisin, B-245803, Nov. 20, 1991, 91-2 CPD ¶ 486; R.E. White & Assocs., Inc., B-205489, Apr. 1, 1982, 82-1 CPD ¶ 294.

As a general rule, when the government changes or relaxes its stated requirements, all eligible offerors must be afforded an opportunity to respond to the revised requirements. See Tripp, Scott, Conklin & Smith, B-243142, July 9, 1991, 91-2 CPD ¶ 36; Uni-Tek Mfg. Co., B-208324, Nov. 29, 1982, 82-2 CPD ¶ 483. Accordingly, when an agency modifies or waives the technical requirements which it has included in a request for quotations issued for a small purchase, fundamental fairness requires application of the same rules. Id.

As indicated above, the Navy relaxed the power consumption specification, by increasing the permissible power consumption level from less than 100 watts to less than 500 watts, without affording LDI an opportunity to submit a quote based on this revised specification. Prejudice, however, is an essential element of a viable protest and,

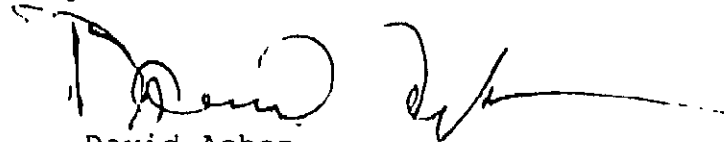
where no prejudice is shown, or is otherwise evident, our Office will not sustain a protest, even if a deficiency in the procurement is evident. See United Int'l Eng'g, Inc. et al., 71 Comp. Gen. 177 (1992), 92-1 CPD ¶ 122; FFA Flugzeugwerke Altenrhein AG, B-248640.5, Sept. 14, 1992, 92-2 CPD ¶ 223. Here, the record shows that LDI was not prejudiced by the Navy's failure to solicit it for an 100 mW WMAL with a power consumption of less than 500 watts.

LDI has submitted descriptive literature and a standard price list to support its claim that it would have submitted a quote of \$17,900 for its standard model LDP 1100-4 series laser, with a minimum output power of 100 mW and a power consumption of less than 400 watts, had it known of the agency's relaxation of the power consumption specification. The descriptive literature for this model, however, demonstrates that it fails to comply with several of the stated salient characteristics. For example, while the salient characteristics provided that the beam divergence of the WMAL shall not exceed 1.5 mrad, LDI's descriptive literature indicates that its model LDP 1100-4 laser has a beam divergence of no more than 2.5 mrad. While the salient characteristics required that the WMAL operate at temperatures between 50 and 90 degrees fahrenheit, LDI describes its model LDP 1100-4 laser as operating at temperatures of between only 62 and 86 degrees. While the salient characteristics provided that the WMAL laser head shall not exceed 12 inches in length, 6 inches in width, and 6 inches in height, LDI describes its model LDP 1100-4 laser head as measuring 26 inches in length, 7 inches in width, and 6.5 inches in height. While the salient characteristics provided that the weight of the WMAL laser head shall not exceed 5 pounds, LDI describes its model LDP 1100-4 laser head as weighing 25 pounds. Accordingly, since LDI would have quoted an unacceptable WMAL, the Navy's failure to afford LDI an opportunity to submit a revised quote in response to the relaxed power consumption specification did not result in competitive prejudice to that firm.

In its October 13, 1992, comments on the agency report, LDI argued that Atlas's revised quote for its model 315 II SP WMAL should have been determined unacceptable because unsolicited descriptive literature submitted with Atlas's initial quote described this model as producing only 80 mW of output power rather than the minimum output of 100 mW required by the revised specification. Under our Bid Protest Regulations, however, protests, other than those based on apparent improprieties in a solicitation, shall be filed not later than 10 working days after the basis for protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(1) (1992). In its letter to the Navy dated August 12, 1992, LDI advised the agency that it was "our understanding that the [Atlas] model quoted is

rated at 80 mW and not 100 mW." Since Adlas did not raise this argument with our Office until more than 2 months later, it is untimely. In any case, Adlas's revised quote specifically stated that the model 315 II SP WMAL to be furnished would have an output power of 100 mW. (In this regard, the descriptive literature submitted with Adlas's initial quote indicated that the Adlas series 300 lasers could be furnished with an output power of up to 150 mW.) Thus, Adlas was clearly committed under its revised quote to furnishing a WMAL complying with the requirement for an output power of 100 mW. See US Sprint Communications Co. Ltd. Partnership, B-243767, Aug. 27, 1991, 91-2 CPD ¶ 201. Whether an awardee actually performs its contract in accordance with the specifications is a matter of contract administration which is not for review by our Office. Carrier Communications, B-248430, Aug. 21, 1992, 92-2 CPD ¶ 119; US Sprint Communications Co. Ltd. Partnership, supra. Accordingly, LDI's challenge to the acceptability of Adlas's revised quote likewise furnishes no basis upon which to question the award.

The protest is dismissed.

A handwritten signature in black ink, appearing to read 'David Ashen', followed by a long horizontal flourish.

David Ashen  
Deputy Assistant General Counsel