

DECISION



11751 *Golden Trans*
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-195113

DATE: October 24, 1979

MATTER OF: Dumont Oscilloscope Laboratories, Inc.

DIGEST:

- [Protest Alleging]*
1. Question regarding alleged misuse of protester's proprietary rights in technical data by successful offeror involves dispute between private parties which is properly for resolution by courts rather than by protest to GAO.
 2. Allegation that successful offeror would be unable to supply technically acceptable product is matter of responsibility and GAO does not review affirmative determinations of responsibility except under circumstances not applicable here.
 3. GAO's Bid Protest Procedures are for purpose of considering whether award or proposed award complies with statutory, regulatory and other legal requirements; allegation that award will affect protester's ability to perform contract previously awarded is matter of contract administration which is responsibility of contracting agency.

Dumont Oscilloscope Laboratories, Inc. (Dumont) protests a contract award for spare parts under request for proposals (RFP) No. F41608-79-R-4108 issued by the San Antonio Air Logistics Center, Kelly Air Force Base, Texas, to Erie Technological Products, Inc. (Erie). The item to be purchased is identified in the solicitation as Part Number 8800-3262, a component of an oscilloscope manufactured by Dumont for the Air Force. Both Dumont and Erie are listed in the solicitation as sources for the item.

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Dumont states that the item solicited is proprietary and that all designs, engineering prints and specifications are the sole property of Dumont; that these materials were issued to its subcontractors in confidence for the sole purpose of manufacturing the item to Dumont's specifications; and that Dumont has not relinquished its proprietary rights to the prints and specifications. It therefore protests that the Air Force improperly listed Erie as an approved source because Erie cannot supply the contract item without violating Dumont's proprietary rights, and thus only Dumont should have been solicited. In addition, Dumont argues that the product supplied by Erie would be technically unacceptable and alludes to the high failure and rejection rate of units produced by Erie under a previous contract agreement with Dumont. Dumont contends that the use of Erie's product in these circumstances would frustrate Dumont's performance under its related maintenance contract for the oscilloscopes.

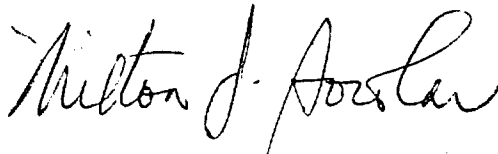
Whether Erie can supply the item without violating Dumont's proprietary rights involves a dispute between those parties. Washington School of Psychiatry, B-189702, March 7, 1978, 78-1 CPD 176. The appropriate remedy for the resolution of a company's proprietary rights is a court action, rather than a protest to our Office. See York Industries, Inc.--request for reconsideration, B-186958, January 10, 1977, 77-1 CPD 17. We therefore will not consider this basis of protest.

Dumont's assertion regarding Erie's technical ability to perform the contract concerns a matter of responsibility. Thus, Dumont's allegation constitutes a protest against the Air Force's affirmative determination of Erie's responsibility which is necessarily involved in the decision to award the contract to Erie. American Mutual Protective

Bureau, B-194953, June 21, 1979, 79-1 CPD 447. We do not review affirmative determinations of responsibility unless either fraud on the part of the procuring officials is alleged or the solicitation contains definitive responsibility criteria which have allegedly not been applied. Bogue Electric Manufacturing Company, B-194222, June 18, 1979, 79-1 CPD 431; Worthington Pump, Inc., B-192385, October 11, 1978, 78-2 CPD 267. Neither exception is applicable here.

Dumont's assertion regarding the effect of an award to Erie on Dumont's ability to perform its maintenance contract with the Air Force is in our opinion a matter of contract administration which is the function and responsibility of the contracting agency. Bid protests are reserved for considering whether an award or proposed award of a contract complies with statutory, regulatory and other legal requirements. See Albert Freedman d/b/a Reliable Security Services, B-194016, February 16, 1979, 79-1 CPD 122; Joy Manufacturing Company, B-191168, March 7, 1978, 78-1 CPD 180. Therefore, there is no basis for our consideration of this matter.

The protest is dismissed.



Milton J. Socolar
General Counsel