

12286 F. Baskin
Proc. II

DECISION



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

FILE: B-196074 DATE: December 12, 1979

MATTER OF: Thermionics Laboratories, Inc.-- P. 3088
Reconsideration

Protest Alleging Awardee is Not Capable of Meeting Government's Requirements

DIGEST:

1. Where solicitation required ion pump element be "part-for-part interchangeable" with a named ion pump element, protester was on notice that product equivalent to the named pump element would be acceptable and that competition could be expected. Allegation that no other firm can furnish equivalent product is matter of responsibility and will not be reviewed.
2. Where protester's initial submission indicates protest is not for our consideration or without legal merit, GAO will decide matter or dismiss protest without obtaining report from procuring agency.

Thermionics Laboratories, Inc. requests reconsideration of our decision Thermionics Laboratories, Inc., B-196074, October 19, 1979, 79-2 CPD 273. Thermionics protested the award of a contract to any other bidder under request for quotation JR 7/26-1 for ion pump elements issued by Brookhaven National Laboratory, a Government-owned facility operating under a prime contract with the Department of Energy. 912

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Thermionics alleged that the ion pump elements are proprietary to Thermionics and that therefore other lower priced offerors must be quoting something less than the "part-for-part interchangeable" ion pump elements required. Our prior decision held that Thermionics was merely speculating as to the interpretation given this requirement by other offerors and that this was an insufficient basis upon which to conclude that the offerors are not competing on an equal basis.

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Thermionics continues to allege that it is the only supplier capable of meeting the Government's requirements and that its price was based on this premise. Therefore, Thermionics contends, if Brookhaven intends to accept an "or equal" item, it should amend the solicitation to apprise Thermionics that the procurement is competitive.

Thermionics presents no new facts which lead us to alter our original conclusion. The specifications state that:

"These ion pump elements are to replace and be part-for-part interchangeable with Hughes pumping element PE-700C as used in Hughes Ion Pump Model VP-1500."

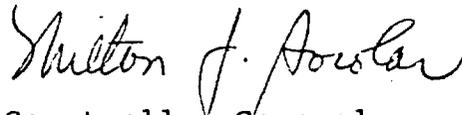
The solicitation does not restrict acceptable products to the Hughes element or the element made by Thermionics. Instead, it states that the items sought must be "part-for-part interchangeable" with the Hughes element. We believe that the "part-for-part interchangeable" language was sufficient to put Thermionics on notice that Brookhaven would accept an item equivalent to the Hughes pumping element. The cases cited by the protester involved awards to companies other than the one whose part numbers were specified in solicitations that did not indicate that an equivalent product would be acceptable. We objected to award to a firm offering an equal product without informing the supplier of the brand name product that competition was being sought. 47 Comp. Gen. 778 (1968); 48 Comp. Gen. 605 (1969). Here, Thermionics should have known from the solicitation that an equivalent product was acceptable and there was no need to issue an amendment advising Thermionics of that fact. We have stated that it is not in the Government's interest to read a sole-source restriction into a solicitation that does not contain express language so restricting competition. B-176861, January 24, 1973.

Thermionics further alleges that in any event no other firm can legally furnish a product equivalent to

the Hughes element. As stated in our initial decision, whether any firm other than Thermionics can furnish the pump elements relates to the responsibility of other firms and will not be reviewed by this Office.

Finally, Thermionics states that we should have obtained an agency report before ruling on its initial protest. We have held in numerous decisions that where a protester's initial submission indicates that the protest is without legal merit, or states a basis for protest which is not for our consideration, we will decide the matter or dismiss the protest without obtaining a report from the procuring activity pursuant to our Bid Protest Procedures, 4 C.F.R. Part 20.3(c) (1979). See, e.g., Murphy Anderson Visual Concepts--Reconsideration, B-191850, July 31, 1978, 78-2 CPD 79.

Our prior decision is affirmed.



For The Comptroller General
of the United States