

Chapin
27885

DECISION



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

FILE: B-213347.2 **DATE:** April 2, 1984

MATTER OF: Computer Technology and Imaging, Inc.--
Request for Reconsideration

DIGEST:

Request for reconsideration is dismissed where the protester presents a new basis for protest--whether the contractor will be able to produce the scanner system it offered--which appears untimely and, in any event, concerns (1) an agency's affirmative determination of responsibility which GAO does not review absent circumstances not applicable here and (2) contract administration which GAO also does not consider.

Computer Technology and Imaging, Inc. (CTI), requests reconsideration of our decision in EG&G Ortec, B-213347, February 13, 1984, 84-1 CPD _____. CTI alleges that it acquired all the assets and rights to the EG&G Ortec ECAT scanner product line on January 19, 1984, and, in doing so, assumed an interest in our previous decision and the procurement involved.

We dismiss the request for reconsideration.

In our prior decision, we held that, while EG&G Ortec's technical point rating was higher than that of the awardee, Nucletronix, the selection officials were not bound by these scores and had discretion to determine which proposal was superior based upon the facts and circumstances of the procurement. We also held that, since the selection officials determined the two proposals to be essentially equal technically, it was permissible for cost to become the determinative factor in making award even though cost was ranked as the least important evaluation factor in the solicitation. Further, we held that an allegation against the applicability of the Trade Agreement Act of 1979 was untimely and not for consideration since the issue was not raised prior to the submission of initial proposals.

One of the major factors in the agency's determination that Nucletronix's proposal was essentially equal technically to that of EG&G Ortec was Nucletronix's method of

028482

✓ 1003

coupling dissimilar crystals. According to CTI, one of those crystals is cerium activated gadolinium silicate (GSO). CTI contends that GSO is not available from any commercial supplier--the two probable suppliers have both refused to quote on the availability of GSO--and, therefore, Nucletronix cannot possibly produce the scanner system it purported to offer. It appears that this issue is untimely since it was first raised long after the award. Under 4 C.F.R. § 21.2(b)(2) (1983) of our Bid Protest Procedures, protests of this nature are required to be filed not later than 10 days after the basis for protest is known or should have been known, whichever is earlier.

In any event, CTI's contention that Nucletronix cannot use GSO crystals in its scanner system because GSO crystals are not commercially available concerns Nucletronix's ability to perform the contract and, thus, is a matter of responsibility. Weaver Shipyard & Drydock, Inc., B-210652, February 9, 1983, 83-1 CPD 146. Accordingly, CTI's contention constitutes a protest of the agency's affirmative determination of Nucletronix's responsibility which is necessarily involved in any decision to award to Nucletronix. American Elevator Company, B-213192, December 16, 1983, 83-2 CPD 700. Because they are essentially matters of business judgment, we do not review affirmative determinations of responsibility unless there is a showing of possible fraud on the part of the procuring officials or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Harnischfeger Corporation, B-211313, July 8, 1983, 83-2 CPD 68. Neither exception applies here. Moreover, whether the contractor adheres to its contract is a matter of contract administration which we also do not consider under our Bid Protest Procedures. Aqua-Trol Corporation, B-213809, December 12, 1983, 83-2 CPD 672.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel