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DECISION



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

FILE: B-217036

DATE: February 6, 1985

MATTER OF: Bio-Rad Laboratories, Inc.

DIGEST:

1. By merely contending that salient characteristics could be interpreted several ways and that common meaning does not include approach proposed by awardee, protester did not show that description of salient characteristic of brand name item was ambiguous or unreasonably interpreted by procuring agency.
2. Claims that offeror cannot provide offered product or meet delivery schedule are questions of responsibility, which GAO does not review except in limited circumstances not present here.

Digilab Division of Bio-Rad Laboratories, Inc. protests the award of a contract for an infrared spectrometer to Nicolet Instrument Corporation under request for proposals (RFP) No. DADA15-84-R-0067, issued by the Walter Reed Army Medical Center. Digilab contends that the infrared spectrometer offered by Nicolet does not meet three of the salient characteristics listed in the brand name or equal purchase description.

We deny the protest in part and dismiss it in part.

The RFP specified an infrared spectrometer manufactured by Digilab as the brand name item, and listed a number of salient characteristics that "equal" items had to meet. In response to the RFP, Digilab offered the brand name spectrometer and an alternative "equal" spectrometer. Nicolet proposed an "equal" spectrometer.

Digilab argues that the spectrometer offered by Nicolet does not meet the salient characteristic of

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being "electronically or thermally stabilized." The Army reports that it reviewed the Nicolet proposal and concluded that Nicolet used a "computer-driven optical alignment system" to adjust to temperature variations which was a satisfactory electronic/optical method of producing optical stability. In response, Digilab offers only its own statements that the term "electronically or thermally stabilized" can be interpreted in several ways, and that the commonly accepted meaning does not include the Nicolet approach. Digilab offers no evidence of any kind to support its assertions.

The protester has the burden of affirmatively proving its case. TM Systems, Inc., B-214303, Aug. 14, 1984, 84-2 CPD ¶ 174. We do not conclude from Digilab's bare assertion either that the term "electronically or thermally stabilized" is ambiguous or that it was unreasonably interpreted by the Army technical evaluators in their determination that the Nicolet spectrometer has the required characteristic.

In its proposal, Nicolet offered to meet the salient characteristic of a "microsampling accessory" by providing a component manufactured by Digilab. Nicolet offered a streaming magnetic tape system to meet the "temporary data storage" requirement. Digilab states that Nicolet has not sought to buy from Digilab the microsampling accessory which it offered. Therefore, the protester concludes that Nicolet cannot meet the 90-day delivery requirement of its contract without supplying a used item to the Army. Also Digilab states that Nicolet has never sold a streaming magnetic tape system, although such a system is described in Nicolet's technical literature.

Digilab does not contend that Nicolet's offer does not comply with the microsampling accessory and temporary data storage requirements of the RFP. Nor does Digilab argue that Nicolet is not obligated to provide the offered product. Rather, the protester questions Nicolet's ability to perform the contract, which constitutes a challenge to the contracting officer's determination about Nicolet's responsibility. Business Equipment & Systems, Inc., B-212708, Sept. 6, 1983, 83-2 CPD ¶ 307. Absent a showing of possible fraud or other circumstances not present here, we do not review agency determinations of responsibility. Teal Industries, Inc., B-208358, Aug. 24, 1982, 82-2 CPD ¶ 176.

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The protest is denied in part and dismissed in part.

for *Seymour Efron*
Comptroller General
of the United States