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DECISION



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

FILE: B-219234 **DATE:** August 28, 1985

MATTER OF: Nicolet Biomedical Instruments

DIGEST:

1. Protest against awardee's ability to provide equipment meeting brand name or equal specifications challenges the contracting officer's affirmative determination of the awardee's responsibility, which this Office does not review unless the protester shows possible fraud on the part of the contracting officials or alleges that the solicitation contains definitive responsibility criteria which have been misapplied.
2. Whether an awardee's delivered equipment actually conforms to the contract requirements is a matter of contract administration and is not encompassed by the bid protest function.

Nicolet Biomedical Instruments protests the May 17, 1985 award of a contract to Bio-logic Systems Corp. under invitation for bids (IFB) No. F41613-85-B-0011, issued by the Contracting Office, Carswell Air Force Base, Texas. The brand name or equal solicitation called for an electrodiagnostic system for testing auditory brainstem evoked response, Nicolet Compact Four or equal. This is a type of medical equipment used to evaluate hearing disorders.

We dismiss the protest.

Nicolet filed its protest with our Office after it had an opportunity to observe the system proposed by Bio-logic at a symposium held in June 1985. Based upon this observation, Nicolet contends that the Bio-logic unit does not meet the technical requirements of the solicitation. Specifically, Nicolet asserts that the unit demonstrated did not have a provision for hardcopy reporting, a two-channel data recording capability, or a two-channel averaging recording capability. However, Nicolet does not allege that the equipment described in the awardee's bid did not conform to the brand name or equal specifications

or that Bio-logic took exception to any of these specifications. Rather, the protester challenges the awardee's ability to provide equipment that will have the required operating capabilities.

The Air Force maintains that the unit produced for and installed at Carswell does have the required capabilities, and that the agency's technical evaluation established this before award.

A bidder's ability to provide equipment in accord with solicitation requirements is a matter of responsibility, that is, the ability to perform a contract according to the specifications. Domar Industries, B-209861, Dec. 30, 1982, 82-2 CPD ¶ 589. Nicolet's contention constitutes a protest against the Air Force's affirmative determination of Bio-logic's responsibility, which was necessarily involved in the decision to award to Bio-logic. Federal Acquisition Regulation, 48 C.F.R. § 9.105-2 (1984); Mann Rental Service, B-216868, Oct. 31, 1984, 84-2 CPD ¶ 493. This Office does not review decisions that prospective contractors are responsible in the absence of a showing of possible fraud or bad faith on the part of procuring officials or an allegation of failure to apply definitive responsibility criteria. 4 C.F.R. § 21.3(f)(5) (1985); Domar Industries, B-209861, supra, 82-2 CPD ¶ 589. Neither is alleged here, and we therefore dismiss this basis of protest.

Nicolet has furnished no evidence to refute the agency's finding that the delivered equipment performs according to the required operating capabilities. In any case, whether the equipment a contractor delivers actually complies with the performance obligation resulting from an award is a matter of contract administration. This is the responsibility of the procuring activity and is not encompassed by our bid protest function. 4 C.F.R. § 21.3(f)(1); Container Products Corp., B-218556, June 26, 1985, 64 Comp. Gen. _____, 85-1 CPD ¶ 727.

The protest is dismissed.



Ronald Berger
Deputy Associate
General Counsel