

John E. Melody

DECISION



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

FILE: B-222213

DATE: March 19, 1986

MATTER OF: Interstate Equipment Sales

DIGEST:

1. General Accounting Office (GAO) will not consider incumbent contractor's contention that contracting agency should exercise option under existing contract instead of conducting a new procurement, since decision whether to exercise option is a matter of contract administration outside the scope of GAO bid protest function.
2. Bid may not be rejected because equipment offered is prototype rather than commercial product where invitation for bids does not require that equipment be commercially available.

Interstate Equipment Sales protests the decision by the Defense Logistics Agency (DLA) to award a contract for equipment under invitation for bids (IFB) No. DLA700-85-B-4700, instead of acquiring the equipment through exercise of an option under an existing contract with Interstate. The protester contends that the decision to conduct a new competitive procurement resulted in an unnecessary duplication of effort and costs since the equipment could have been acquired through exercise of the option without incurring the administrative costs of a new procurement. Interstate also maintains that the proposed award is improper because the awardee's equipment is not a commercially available product. We dismiss the protest.

Option provisions in a contract generally are exercisable at the sole discretion of the government. See Federal Acquisition Regulation, 48 C.F.R. § 17.201 (1984) (option is a "unilateral right" of the government). Interstate does not contend that its contract provides otherwise. Where the exercise of an option is solely within the government's discretion, we will not consider the incumbent contractor's contention that the contracting

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agency should exercise the option; whether to do so is a matter of contract administration outside the scope of our bid protest function. Terex Corp., B-215161, May 23, 1984, 84-1 CPD ¶ 567.

The protester also maintains that the awardee's equipment is a prototype and not commercially available. Interstate argues that DLA's acceptance of prototype equipment is improper in view of executive branch policy favoring acquisition of commercially available products. Even assuming the awardee's equipment is a prototype, however, the policy statements referred to by Interstate do not affect the legality of the proposed award. See Terex Corp., et al., 64 Comp. Gen. 691, 694-695 (1985), 85-2 CPD ¶ 76. There is no requirement in the Competition in Contracting Act of 1984, Pub. L. No. 98-369, title VII, 98 Stat. 1175, or in the policy statements in the legislation creating the Office of Federal Procurement Policy, 41 U.S.C. § 401 (1982) cited by the protester, mandating acquisition of commercial products in any particular procurement. Id. Further, Interstate does not contend that the IFB required the equipment to be commercially available. In the absence of such a provision in the IFB, it would have been improper to reject any bidder's equipment on the basis that it was not commercially available. See Tenavision, Inc., B-216274, Apr. 15, 1985, 85-1 CPD ¶ 427.

Finally, Interstate contends that the awardee is not capable of producing conforming equipment. A bidder's ability and capacity to perform the contract is a matter of responsibility. We will not review an agency's affirmative determination of responsibility except in circumstances not present here. See 4 C.F.R. § 21.3(f)(5) (1985); Bellevue Bus Service, Inc., B-219814, Aug. 15, 1985, 85-2 CPD ¶ 176.

The protest is dismissed.



Ronald Berger
Deputy Associate
General Counsel