

Ayer

DECISION



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

FILE: B-221869 **DATE:** April 7, 1986
MATTER OF: DEST Corporation

DIGEST:

1. Contracting agency's determination that awardee's descriptive literature is sufficient to establish equivalence of awardee's product to protester's "brand name" product will not be disturbed where protester has not shown that the products are not equal, or that the agency's determination is otherwise erroneous, and where the awardee's descriptive literature is not insufficient on its face.
2. Allegation that awardee will not be able to deliver a product that conforms to the requirements of the solicitation raises an issue involving the agency's determination that the awardee is responsible, a matter the General Accounting Office generally does not review.
3. Allegation that awardee might provide a nonconforming item raises a matter of contract administration which is the responsibility of the procuring agency, not the General Accounting Office.

DEST Corporation (DEST) protests the award of a contract to Word Processing Associates, Inc. (WPA), under request for quotations (RFQ) No. F18601-86-Q-0149 issued by the United States Air Force, 1st Information Support Group, The Pentagon, Washington, D. C. The RFQ solicited an optical character reader (OCR), Dest model 212 or equal.^{1/}

^{1/} An optical character reader is a piece of office equipment, about the size of a desk-top copier, which automatically scans typewritten documents extracting their information for direct transmission into a computer/wordprocessor. The equipment eliminates the need to manually retype (input/keyboard) the data into the computer.

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The RFQ described several salient characteristics including a requirement for 12 fonts (typesets) of which one had to be "courier 10," and required offerors of equal items to supply information establishing equality to the brand name. DEST contends that award to WPA is improper because WPA's OCR cannot read proportionally spaced text (i.e., it cannot scan typed characters separated from each other by nonuniform or varying distances) and because it does not have a 12-font capability (i.e., it cannot scan 12 different typefaces).

Initially, we note that the ability to read proportionally spaced text was not listed as a salient characteristic of the DEST model 212. Ordinarily, where nothing in the solicitation or the listed salient characteristics requires a specific feature, the contracting agency cannot consider the feature in its evaluation. See Bell & Howell Co., Datatape Division, B-204791, Mar. 9, 1982, 82-1 C.P.D. ¶ 219. However, even where the contracting agency fails to adequately specify a mandatory requirement, it nevertheless may enforce that requirement if offerors have been put on notice of it. CCL, Inc., B-215485, Oct. 22, 1984, 84-2 C.P.D. ¶ 431. Here, the record shows the awardee apparently was aware of the proportionally spaced text requirement and, in fact, addressed the feature in its offer.

We deny the protest.

WPA quoted its \$9,995.25 Totec model TO-5000B (model "B") and furnished annotated descriptive literature in support of its assertion that the model "B" was equal to the brand name DEST model 212 priced at \$11,043.40. The initialed annotations showed that the model "B" would automatically select up to 12 document typesets (prior to annotation the brochure read eight typesets; WPA reports that new brochures showing 12 typesets are still at the printers). The record shows that an Air Force evaluator expressed concern about the model "B's" ability to read proportionally spaced text, and DEST contends that the model "B" was demonstrated to the Air Force on two occasions and both times failed to meet the proportional space and the 12-font requirements.

The Air Force denies knowledge of these demonstrations and reports that no demonstrations were made under this RFQ. However, WPA reports that it demonstrated an earlier version of its OCR (Totec model TO-5000A (model "A")) to "an office in the Pentagon." WPA further reports that the demonstration was not pursuant to any solicitation and that

the model "A" which was demonstrated lacks the features of the model "B" which are now in question.

In any event, the Air Force ultimately concluded here that the WPA equipment was equal to the brand name equipment based on WPA's descriptive literature showing proportional space fonts available as special order items on the model "B" and the availability of 12 fonts, and on the manufacturer's (Totec) verbal confirmation, in response to an Air Force inquiry, of the accuracy of the representations in the literature.

Where the contracting agency finds that the awardee's product is equal to a specified brand name product, we will not object to that finding absent a showing that the product, in fact, is not equivalent to the brand name product or that the finding is otherwise erroneous, so long as the awardee's descriptive literature is not insufficient on its face. Polarad Electronics, Inc., B-204025, Nov. 12, 1981, 81-2 C.P.D. ¶ 401. Moreover, the contracting agency's decision after receipt of quotations to obtain confirmation that the awardee's quotation would meet the specifications is not objectionable. See The Washington Management Group, Inc., B-211847, Mar. 20, 1984, 84-1 C.P.D. ¶ 329; Panasonic Industrial Co., B-207852.2, Apr. 12, 1983, 83-1 C.P.D. ¶ 379.

Essentially, DEST objects to the Air Force's acceptance of anything less than an actual demonstration of the model "B's" equality to its model 212. DEST argues that Totec's specifications (WPA's descriptive literature) have claimed proportional spacing for several years ". . . yet to the best of our knowledge there is not one case successfully demonstrated or delivered."

As stated above, WPA's offer and annotated literature provided that the model offered would handle up to 12 document typestyles and that proportional space fonts were available by special order. The contracting officer confirmed by telephone these representations concerning the model offered with the equipment manufacturer. Thus, we think the contracting officer reasonably concluded that WPA's offered OCR was equal to the DEST model. Moreover, DEST has not provided either the Air Force or us with specific information concerning the model "B's" alleged inability to meet Air Force requirements. Under these circumstances, we deny the protest.

To the extent that DEST's contentions can be construed as a protest against the Air Force's finding WPA a responsible contractor, we do not review protests against affirmative determinations of responsibility unless fraud on the part of contracting officials is alleged, or the solicitation contains definitive responsibility criteria which allegedly have been misapplied. Newgard Industries, Inc., B-216272, Sept. 24, 1984, 84-2 C.P.D. ¶ 337. Neither exception is applicable here.

Finally, to the extent that DEST alleges that WPA might provide nonconforming items, this is a matter of contract administration which we will not review. Lion Brothers Co., Inc., B-212960, Dec. 20, 1983, 84-1 C.P.D. ¶ 7.

for *Raymond E. Egan*
Harry R. Van Cleve
General Counsel