



Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** The Microscope Company, Inc.

**File:** B-238214.2

**Date:** April 5, 1990

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James H. Nazarian, for the protester.  
James F. Trickett, Department of Health and Human Services,  
for the agency.  
Barbara C. Coles, Esq., and Christine S. Melody, Esq.,  
Office of the General Counsel, GAO, participated in the  
preparation of the decision.

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## DIGEST

1. Protest that contracting agency improperly awarded duplicate contracts to two bidders under solicitation contemplating one award is denied where, although a vendor other than the protester was listed inadvertently in the agency's automated records as the awardee, the agency states that only one award (to the protester) was made, and the protester fails to present sufficient evidence to substantiate its claim of improper agency action.
2. Protester's arguments concerning performance of contract involves contract administration and is not for consideration by the General Accounting Office. 4 C.F.R. § 21.3(m) (1989).

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## DECISION

The Microscope Company, Inc., protests the alleged award of duplicate contracts to two bidders under invitation for bids (IFB) No. 263-89-B-(49)-0333, issued by the National Institutes of Health (NIH) for an operating room microscopic system. Microscope claims that while NIH awarded a contract to it as the low bidder, NIH's action was merely part of a plan to later terminate the contract, and allow the alleged second awardee, Baltimore Instruments, to fulfill the contract requirements.

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

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NIH reports that the requisition initiating the procurement action was maintained as an electronic record in the computerized contract system at NIH. The requisition in part contained funding information as well as the name of a suggested source, Baltimore Instruments. According to the agency, NIH personnel failed to update the agency's computerized record after the award was made to Microscope, by entering the firm's name into the tracking system. NIH personnel first noticed that a problem existed in the records upon receipt of Microscope's invoice of November 13, 1989. They failed to recognize the nature of the error, however, because the tracking system listed Baltimore Instruments, the suggested source, as the contractor "by default"; according to NIH, this occurred because the name of Microscope, the actual awardee, had not been entered into the system. As a result, NIH returned the invoice to the protester, noting that the "payee" on the invoice (Microscope) was "different from the payee on the order" (Baltimore Instruments). Microscope's protest to our Office followed.

To the extent that Microscope argues that the agency improperly awarded a second contract under the solicitation to Baltimore Instruments and postponed acceptance of Microscope's product as a pretext to have Baltimore Instruments fulfill the requirements, Microscope is inferring that NIH acted in bad faith, based on the fact that Baltimore Instruments' name appears in the tracking system and because of the returned invoice. To show bad faith, a protester must submit convincing evidence that the contracting agency directed its actions with the specific and malicious intent to injure the protester. See Thermal Reduction Co., B-236724, Dec. 7, 1989, 89-2 CPD ¶ 527. The protester has made no such showing here.

The parties agree that an award was made to Microscope; there is sufficient evidence in the record to show that a second award was made to Baltimore Instruments. Even though Baltimore Instruments' name remained in the tracking system after the contract was awarded to Microscope, this, by itself, does not show that a second award was made to that firm, since the information in the tracking system is merely administrative in nature, serving as an automated checklist for particular procurements. This aspect of the protest is, therefore, denied.

Microscope's claim that the agency has improperly postponed acceptance of its product as a pretext for terminating Microscope's contract, so that Baltimore Instruments can fulfill the contract's requirement, in essence concerns a

matter of contract administration and, therefore, is not for consideration under our Bid Protest Regulations. 4 C.F.R. § 21.3(m)(1) (1989). In any event, there is no indication that the agency's decision not to accept Microscope's product to date is due to any improper motive on NIH's part. Rather, the record shows that NIH identified various features of Microscope's product which did not comply with the salient characteristics in the IFB and has refused to accept the product unless Microscope cures the noted deficiencies. This aspect of the protest is dismissed as involving contract administration.

The protest is dismissed in part and denied in part.



*for*  
James F. Hinchman  
General Counsel