

10,965 PLI

DECISION



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

FILE: B-193146

DATE: August 6, 1979

MATTER OF: The Perkin-Elmer Corporation

DIGEST:

DLG 01479

1. Ability of awardee to comply with technical requirements of solicitation is not reviewable by GAO since it involves challenge to contracting officer's affirmative determination of awardee's responsibility.
2. Whether item being furnished by awardee actually complies with contract specifications is matter of contract administration which is responsibility of procuring activity, not GAO.

The Perkin-Elmer Corporation (Perkin-Elmer) protests the contract award to Electronic Controls, Inc. (Electronic Controls), by the Defense Logistics Agency (DLA) under invitation for bids (IFB) No. DLA900-78-B-0979. The solicitation was for the supply of linear precision variable resistors (potentiometers) for use by the Navy in shipboard weapons fire control systems.

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Perkin-Elmer contends that the potentiometers bid by Electronic Controls deviate substantially from the IFB requirements and, therefore, Electronic Controls was nonresponsive to the solicitation. Specifically, Perkin-Elmer asserts that Electronic Controls' potentiometers fail to meet the requirements of Note 26 of BuOrd Drawing 2162815, Revision "C," in the solicitation. Note 26 provided as follows:

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[ALLEGATION THAT Awardee CANNOT Comply With Solicitation REQUIREMENTS]

"Turns shall be continuous with no stops. When one cycle has been completed, a new cycle shall start. There shall be 10 turns between CW and CCW terminals and min. 90 over-travel at each end. There shall be no more than 12 mechanical turns for a complete cycle."

Perkin-Elmer claims that Electronic Controls' potentiometers contain stops which are located at the beginning of the first rotation of the device's shaft and somewhere near the twelfth rotation of this shaft. Further, Perkin-Elmer alleges that Electronic Controls' potentiometers have more than 12 shaft rotations in a complete electrical cycle. According to Perkin-Elmer, the voltage output of a potentiometer is 0 percent of the voltage input at one end of the device's shaft rotation and 100 percent of the voltage input at the other end of the shaft rotation. To traverse a complete cycle, Perkin-Elmer argues that it is necessary to begin at 0-percent output; traverse to 100-percent output; and, then, either continue shaft rotation onward to 0 percent or reverse shaft rotation back to 0 percent. In order to meet the foregoing definition of a cycle, Perkin-Elmer avers that it is necessary in Electronic Controls' devices to rotate the shaft a minimum of 10 turns in one direction and a minimum of 10 turns in another direction, thus making 20 total turns.

DLA states that Electronic Controls inserted in its bid, as requested by the solicitation, that it was offering its part number 1062ACX1 and indicated that it was manufactured in complete conformance with the solicitation specifications. DLA informs us that this part number was an approved item of supply. DLA further states that Electronic Controls' bid did not contain any deviations from the IFB terms and conditions. Thus, DLA takes the position that Electronic Controls was, as low bidder, legally entitled to the award of a contract since the company unqualifiedly offered to meet all solicitation requirements and there was nothing on the face of the company's bid limiting, reducing, or modifying its obligation to perform in accordance with the solicitation's terms and conditions.

DLA also points out that Electronic Controls' ability to comply with the IFB specifications was specifically evaluated during its preaward survey of that company. Electronic Controls was directly queried as to whether its potentiometers met the Revision "C" requirements of BuOrd Drawing 2162815. Electronic Controls responded to DLA's question in a letter dated August 15, 1978. Electronic Controls specifically stated in this letter that the turns of its potentiometers are continuous with no stops for 10 turns between CW and CCW terminals. Electronic Controls also stated unequivocally that its potentiometers had no more than 12 mechanical turns in a complete cycle.

Based on the information received from Electronic Controls and based on the technical comment on this information from the cognizant engineering support activity, the contracting officer determined that Electronic Controls' potentiometer did, in fact, meet the IFB specifications and was an acceptable item of supply for Navy use. In view of the foregoing, DLA argues that this protest should not be considered on the merits by us since it challenges factors used by the contracting officer in making his affirmative determination of responsibility and awarding a contract to Electronic Controls. See Central Metal Products, Incorporated Solicitation No. M2-40-74, 54 Comp. Gen. 66 (1974), 74-2 CPD 64.

There is a definite distinction between questions related to bid responsiveness and those concerned with bidder responsibility. As we stated in 49 Comp. Gen. 553 (1970), at page 556:

"* * * [t]he test to be applied in determining the responsiveness of a bid is whether the bid as submitted is an offer to perform, without exception, the exact thing called for in the invitation, and upon acceptance will bind the contractor to perform in accordance with all the terms and conditions thereof. Unless something on the face of the bid, or specifically a part thereof, either limits, reduces or modifies the obligation of the prospective contractor to perform in accordance

with the terms of the invitation, it is responsive. * * *

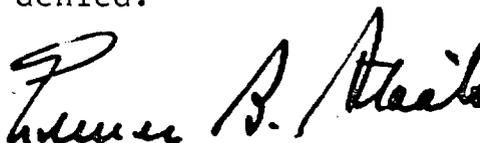
Responsibility, on the other hand, concerns a bidder's ability to perform its obligations under the terms of its submitted bid. New Haven Ambulance Service, Inc., B-190223, March 22, 1978, 78-1 CPD 225.

Since nothing on the face of Electronic Controls bid limited, reduced or modified its obligation under the IFB, its bid was responsive.

To the extent the protest relates to Electronic Controls' responsibility, we do not review affirmative determinations of responsibility except where the protester alleges fraud on the part of procuring officials or where the solicitation contains definitive responsibility criteria which allegedly have not been applied. Central Products, Incorporated Solicitation No. M2-40-74, supra. Neither exception applies here.

Whether Electronic Controls has in fact performed in accordance with the contract awarded under the IFB is a matter of contract administration. Contract administration is the function and responsibility of the procuring activity and such matters are not for resolution under our Bid Protest Procedures, 4 C.F.R. part 20 (1979). SMI (Watertown), Inc., B-188174, February 8, 1977, 77-1 CPD 98. In any event, DLA advises that Electronic Controls completed performance under the awarded contract and that all the potentiometers delivered by Electronic Controls were accepted and paid for by the Government.

The protest is denied.


Comptroller General
of the United States