



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: Abbott Laboratories; E.I. du Pont de Nemours  
& Company  
File: B-223952; B-223952.2  
Date: August 25, 1986

## DIGEST

1. Protest is dismissed where action taken by the agency subsequent to the filing of the protest has rendered the issues raised therein academic. The General Accounting Office (GAO) will not consider an issue of protest where the agency has altered its actions so that no useful purpose would be served by GAO's decision.
2. Protest against agency's action to rectify the improper award of a contract by rescinding the written notice of award is dismissed where the protester readily acknowledges that its proposal took explicit exception to certain requirements of the solicitation. The question of whether contract cancellation or termination for the convenience of the government is the correct method to rectify an improper award is a matter of contract administration for resolution under the procedures of the Contract Disputes Act of 1978, and, therefore, not for consideration under General Accounting Office's bid protest function.

## DECISION

Abbott Laboratories (Abbott) protests the award of a contract to E.I. du Pont de Nemours & Company (Du Pont) under request for proposals (RFP) No. N00140-86-R-3788, issued by the Department of the Navy. The procurement is for the supply of medical test kits to various Navy facilities for use in screening human blood for the Acquired Immune Deficiency Syndrome (AIDS) virus. Abbott complains that the award to Du Pont was improper because it was made solely on the basis of a price competition without a technical evaluation being conducted by the Navy as to the acceptability of submitted proposals. Abbott contends in this regard that Du Pont's offered product does not conform to several of the "minimum essential characteristics" of the test kits set forth in the RFP.

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Subsequent to the filing of Abbott's protest, the Navy has determined that the award to Du Pont was improper because the firm submitted an attachment with its proposal which took exception to certain solicitation requirements. The Navy has advised Du Pont that it is withdrawing the written notice of award that was sent to the firm and is presently conducting a technical review of Du Pont's proposal. Du Pont now protests the Navy's action on the ground that the notice of award created a valid contract which cannot be rescinded. Moreover, Du Pont asserts that it has removed any qualifications from its proposal so that its offer conforms to the requirements of the solicitation and the original award.

We dismiss the protests.

Because of the measures taken by the Navy subsequent to the filing of Abbott's protest, we believe the issues raised by Abbott concerning the propriety of the award to Du Pont therefore have been rendered academic. We will not consider an issue of protest where the agency has altered its actions so that no useful purpose would be served by our decision. Data Transformation Corp., B-220581, Jan. 16, 1986, 86-1 CPD ¶ 55. Of course, this necessarily does not preclude Abbott from filing a later protest with regard to the Navy's further conduct of the procurement if a legal basis for doing so should arise.

As to Du Pont's protest, the Competition in Contracting Act of 1984, 10 U.S.C. § 2305(b)(4)(D) (Supp. III 1985), and the Federal Acquisition Regulation, 48 C.F.R. § 15.1002 (1985), expressly provide that the contracting officer shall award a contract under competitive proposals by transmitting written notice of award to the successful offeror. See TSCO, Inc., B-221306, Feb. 26, 1986, 65 Comp. Gen. \_\_\_\_\_, 86-1 CPD ¶ 198. Although such a notice was transmitted to Du Pont, it is also clear that the award was made on an improper basis. The solicitation provided that:

"The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, cost or price and other factors, specified elsewhere in this solicitation, considered." (Emphasis supplied.)

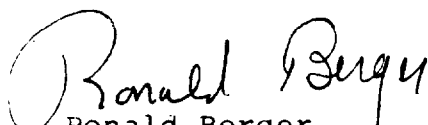
However, Du Pont acknowledges in its protest submission that:

"It appears that the Contracting Officer made the erroneous assumption that our proposal constituted an unqualified offer to provide material and equipment in strict accordance with the requirements of the solicitation. Our proposal did, however, contain qualifications as stated in Attachment "A" of our offer."

It is well-settled that it is the responsibility of each offeror to establish that what it proposes will meet the government's needs, Falcon Systems, Inc., B-214562, Sept. 10, 1984, 84-2 CPD ¶ 270, and that proposals must be evaluated based on the information furnished with them. Aqua-Tech, Inc., B-210593, July 14, 1983, 83-2 CPD ¶ 91. Thus, where a proposal is accompanied by other documentation which takes explicit exception to certain solicitation requirements and indicates the offeror's intent not to comply with those requirements, the proposal does not constitute a proper basis for award. See Rollm Southern California, B-216955, Mar. 14, 1985, 85-1 CPD ¶ 327. Accordingly, Du Pont's proposal, because of the exceptions admittedly taken, was nonconforming to what the Navy presumably regards as material technical characteristics of the test kits, see True Machine Co., B-215885, Jan. 4, 1985, 85-1 CPD ¶ 18, and the Navy has acted correctly in taking steps to rectify the improper award. See Redifon Computers Ltd.--Reconsideration, B-186691, June 30, 1977, 77-1 CPD ¶ 463.

We have held that the question of whether contract cancellation or termination for the convenience of the government is the correct method to rectify an improper award is for resolution under the procedures of the Contract Disputes Act of 1978, 41 U.S.C. §§ 601-613 (1982). New England Telephone and Telegraph Co., 59 Comp. Gen. 746 (1980), 80-2 CPD ¶ 225. Therefore, Du Pont's protest against the Navy's rescission of the notice of award is matter of contract administration not for consideration under our bid protest function. See 4 C.F.R. § 21.3(f)(1) (1986).

The protests are dismissed.

  
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