

DECISION

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

FILE: B-220228 **DATE:** September 27, 1985
MATTER OF: AUL Instruments, Inc.

DIGEST:

1. Whether a responsive bidder may submit claims during contract performance for an equitable adjustment is a matter of contract administration, not for resolution under GAO's Bid Protest Regulations.
2. The ability to perform a contract is a matter of responsibility and GAO generally does not review affirmative determinations of responsibility.
3. A bid should not be rejected as nonresponsive when notation of NSP (not separately priced) instead of numerical prices is used as NSP clearly equates with zero dollar costs and indicates the bidder's affirmative intent to obligate itself to provide the items at no charge to the government.

AUL Instruments, Inc. (AUL), protests the proposed award to Numax Electronics Inc. (Numax) under solicitation No. DAAL01-85-B-0790, issued by the United States Army Electronics Research and Development Command, for infrared jammers and other end items.

We dismiss the protest in accordance with 4 C.F.R. § 21.3(f) (1985), which provides that when, on its face, a protest does not state a valid basis for protest, the General Accounting Office will dismiss the protest without requiring the submission of an agency report.

AUL states that the contract requires the contractor to have a secret security clearance and, while Numax obtained a clearance after bid opening, at the time Numax was preparing its bid, it did not possess a valid clearance. Therefore, Numax would not have had access to key information regarding costing production, alignment and testing of the item, which was available only through classified documents. AUL

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alleges that an award to Numax may be subject to later claims for an equitable adjustment due to the absence of drawings.

Numax took no exception in its bid to the specifications and, therefore, its bid was responsive. AUL's speculation that Numax may later submit a claim under the contract is a matter of contract administration, not for resolution under our Bid Protest Regulations, 4 C.F.R. § 21.3(f)(1) (1985).

AUL's second basis of protest is that Numax submitted a nonresponsive bid when it indicated on its bid that it would not acquire additional industrial facilities and no special tools, dies, jigs, molds, manufacturing aids or other special equipment to perform the contract. AUL appears to argue that since Numax does not have and, therefore, would need to acquire the specialized items mentioned above, its statement that it does not have to acquire those items means that it is nonresponsive and does not have the ability to perform.

The ability to perform a contract and whether a bidder has the capacity to perform are matters of responsibility, not of responsiveness. DAVSAM International, Inc., B-218201.3 Apr. 22, 1985, 85-1 C.P.D. ¶ 462. We generally will not review an affirmative determination of responsibility absent a showing of bad faith or that definitive responsibility criteria in the solicitation were not met. Career Consultants, Inc., B-203260.2, Nov. 19, 1981, 81-2 C.P.D. ¶ 409. There is no showing of bad faith here. Moreover, the solicitation merely requested information as to whether additional industrial facilities or special equipment would be required. Accordingly, Numax's response did not require meeting definitive criteria of responsibility.

AUL's third basis of protest is that the Numax bid is nonresponsive because it noted "NSP" instead of numerical prices for many required data items. We have held, however, that a bid should not be rejected when NSP (not separately priced) is inserted. Spectrum Leasing Corporation--Request for Reconsideration, B-218267.2, Mar. 25, 1985, 85-1 C.P.D. ¶ 350. An NSP notation clearly equates with zero dollar costs and indicates the bidder's affirmative intent to obligate itself to provide the items at no charge to the government.

The protest is dismissed.

A handwritten signature in black ink, appearing to read 'R. Strong', written in a cursive style.

Robert M. Strong
Deputy Associate General Counsel