

DECISION



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

FILE: B-222461.2 **DATE:** May 1, 1986
MATTER OF: American Office Equipment Company--
Request for Reconsideration

DIGEST:

1. Dismissal of a protest is affirmed where protester does not show that the dismissal was improper.
2. Allegation that awardee will not be able to perform in accordance with solicitation's terms deals with the responsibility of the awardee and not with the responsiveness of the awardee's bid. GAO does not review affirmative determinations of responsibility absent a showing that such determination was made fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were not met.
3. Compliance with the contract specifications is a matter of contract administration for the agency, not GAO.

American Office Equipment Company (American) requests reconsideration of our dismissal of its protest against the award of a contract to Phoenix Copier Company (Phoenix), under invitation for bids (IFB) No. F26600-86-B0071, issued by Nellis Air Force Base (Air Force) for the installation of 104 new or rebuilt copiers and for photocopying services to be performed on a cost-per-copy basis.

We affirm the dismissal.

In its initial protest, filed with our Office on April 4, 1986, American protested against Phoenix's ability to comply with the IFB requirement for new or rebuilt photocopiers. American argued that Phoenix proposed to use copiers made by a company which no longer makes new or rebuilds old copiers. We dismissed American's protest primarily because American's assertion that Phoenix would not be able to comply with the IFB concerned a matter of bidder responsibility and GAO does not review such matters

absent a showing that contracting agency personnel acted in bad faith or that definitive responsibility criteria contained in the IFB were not met. 4 C.F.R. § 21.3(f)(5) (1985); Montgomery Elevator Co., B-220655, Jan. 28, 1986, 86-1 C.P.D. ¶ 98. American had not alleged either exception.

In its request for reconsideration, American argues that we mischaracterized its initial protest and that, according to American, its protest dealt with a matter of bid responsiveness and not bidder responsibility. American contends that since Phoenix, the incumbent, allegedly intends to leave in place the same used copiers that were utilized on a predecessor contract, Phoenix was nonresponsive to the IFB. Specifically, however, American initially argued that Phoenix could not obtain the parts to rebuild the copiers offered because the original equipment manufacturer was no longer in business, and that Phoenix did not have the resources and personnel to rebuild the copiers. Thus, American argued that Phoenix could not rebuild the copiers in the time required under the IFB.

The record shows that in response to a prior agency-level protest by American, the contracting officer determined that Phoenix had the capability to rebuild the copiers in question, and that the necessary parts were available.

In general, responsiveness refers to a bidder's unconditional agreement to supply precisely what is called for in a solicitation. Bender Shipbuilding & Repair Co., Inc., B-219629.2, Oct. 25, 1985, 85-2 C.P.D. ¶ 462. Responsibility, however, refers to a bidder's apparent ability and capacity to perform the contract requirements. A. Metz, Inc., B-213518, Apr. 6, 1984, 84-1 C.P.D. ¶ 386. Here, American does not allege that Phoenix took exception in its bid to the terms of the IFB but, instead, American argues that Phoenix will be unable to perform in accordance with the terms of the contract. Therefore, American is not alleging that Phoenix is nonresponsive, but is alleging that Phoenix is not responsible.

The record reveals, that Phoenix was affirmatively determined to be a responsible contractor, and our Office will not question that determination. 4 C.F.R. § 21.3(f)(5) (1985); Montgomery Elevator Co., B-220655, supra. Further,

compliance with the specifications is a matter of contract administration for the agency, not GAO. Bender Shipbuilding & Repair Co., Inc., B-219629.2, supra.

Our prior dismissal is affirmed.

for Seymour Gross
Harry R. Van Cleave
General Counsel