



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

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B-170942

December 26, 1973

DLB-01052
Digilab, Incorporated
237 Putnam Avenue
Cambridge, Massachusetts 02139

Attention: Dr. S. Thomas Dunn
President

Gentlemen:

This refers to your letters of October 20, 1972 and April 2, 1973, requesting reconsideration of our decision B-170942, September 8, 1971, in which we denied your protest relative to the award of a subcontract to Idealab, Incorporated (Idealab), for a high resolution fourier transform spectrometer system under General Electric Company's (GE's) prime contract with the National Aeronautics and Space Administration (NASA). *DLB-01052*
AIC 00836

In your protest you made a number of contentions concerning GE's evaluation of your proposal and Idealab's proposal and you urged that your firm was entitled to the award. For the reasons stated in our decision we found no basis to question GE's selection of Idealab as the successful offeror and your protest was denied.

The contentions in your letter of October 20 were that the Idealab unit was delivered late; that it did not meet specifications and that Langley Research Center (LRC) was using the unit for its own general purposes. A statement was made in your letter that the unit "can't be found" and you urged that the reason for this was to avoid testing of the unit. You have urged that these events prove the validity of your initial protest.

We requested NASA to furnish a report on the matters raised in your letter. NASA's report stated that the Idealab unit had been delivered late for the reasons stated in our decision to you of September 8, 1971. Our decision was referred to as "Attachment A" in NASA's report. The report further stated that the Idealab unit was used in connection with experiments required under GE's prime contract. With

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respect to acceptance, NASA reported that GE thoroughly tested the unit to determine compliance with the specifications; that these tests were witnessed by NASA's representatives and that all the parties were satisfied that the unit complied with the specifications. NASA advised that the unit had been returned to Idealab for the addition of a magnetic tape recorder and that the unit would be delivered to NASA upon completion of the GE prime contract.

In your letter of April 2, 1973, commenting on NASA's report you urged that an investigation would reveal that the unit was being used by LRC for its own purpose in its 400 foot tunnel. You asserted that the return of the unit to Idealab for the purpose of adding a magnetic tape recorder was merely a subterfuge and that the real reason for returning the unit was to correct deficiencies in the unit. You urged that our Office should investigate the acceptance tests of the Idealab unit. The specific relief you have requested as a result of these contentions is that your firm should be awarded a contract for this procurement.

We note that you did not request reconsideration of our decision until over a year after it had been rendered. Moreover the bases for your request relate primarily to the administration of the contract and do not necessarily relate to the process by which the contract was awarded. Idealab's contract had been completed and delivery of the unit had been accomplished at the time you requested reconsideration. Thus our Office could not take any remedial action with respect to that award even if we found merit to your contentions. Therefore, the matters raised in your letters are not for consideration in connection with our function in considering bid protests. However, we felt that the matters raised in your letters merited further investigation. Accordingly, our auditors made an independent investigation of the administration of Idealab's subcontract.

The audit report substantiates NASA's advice regarding the acceptance of Idealab's unit. Moreover, the system was delivered to LRC for use in the 400 foot tunnel at that activity by GE pursuant to the requirement of its prime contract. We found that the unit had been returned to Idealab for the addition of a magnetic tape recorder and interpolation software. The additional requirements were to have been completed by June 15, 1972 but the unit was not returned to GE until March 16, 1973 because of other difficulties with the system which arose subsequent to June 15 and have now been corrected. The auditors also found that

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all of the tasks originally intended for the unit under GE's prime contract had been completed before the unit was returned to Idealab. In addition the auditors found that the unit is now being used by LRC but some of these uses relate to tasks under the GE prime contract.

Based on our review we do not find cause to take any further action with respect to this matter.

Sincerely yours,

H.F.KELLER

Deputy Comptroller General
of the United States