

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

27404

**FILE:** B-213519; B-213519.2      **DATE:** February 14, 1984**MATTER OF:** Elco Elevator Corporation**DIGEST:**

1. Where resumes are to be used to determine whether the bidder and its employees satisfy specified experience requirements, a bidder may submit the resumes after bid opening, even though the solicitation required their submission with the bid, since satisfaction of bidder experience requirements involves bidder responsibility, not bid responsiveness.
2. Where the protester does not specify why it believes that the solicitation's definitive responsibility criteria have not been met, and the agency's affirmative responsibility determination is reasonably supported by the record, GAO has no basis for questioning that determination.

Elco Elevator Corporation protests the award of a contract for elevator maintenance services to Elevator Technologies, Inc. (Eltec) under invitation for bids No. GS-00Z-39B49 issued by the General Services Administration. The protester contends that Eltec's bid was nonresponsive because it did not include required resumes of the bidder's elevator mechanics. The protester contends further that Eltec was not responsible because the resumes that it subsequently provided indicated that neither the contractor nor its mechanic satisfied the experience requirements stated in the solicitation. We deny the protest.

08-1925

The solicitation sought bids to provide all labor and materials needed to maintain 12 elevators at the GSA Central Office Building in Washington, D.C. for 3 years. The solicitation stated that the contractor must have at least 5 years of successful experience in servicing the kind of elevators to be maintained under the contract and that its maintenance personnel must have at least 4 recent years of such experience. The solicitation directed bidders to submit as part of their bids detailed resumes describing the recent employment history of the journeyman elevator mechanics they would employ and indicated that the resumes would be used to determine the bidder's responsibility.

When bids were opened, Eltec was the low bidder. Elco was second low. Eltec did not provide any resumes with its bid, and the protester contends that this rendered the bid nonresponsive. As indicated by the solicitation, however, the mechanics' resumes were to be used in determining the bidder's responsibility--that is, its ability to perform the contract--and not the responsiveness of the bid. Although the terms of a solicitation are not conclusive with regard to whether a matter is one of responsiveness or responsibility, see TECOM Incorporated, B-211899, June 27, 1983, 83-2 CPD 28, a solicitation provision requiring the submission of information necessary to determine a bidder's compliance with specified experience requirements pertains solely to the bidder's responsibility. See Science Applications, Inc., B-193479, March 8, 1979, 79-1 CPD 167. Such information need not be submitted with the bid, even though required by the solicitation, but may be submitted any time prior to award. See Thermal Control Inc., B-190906, March 30, 1978, 78-1 CPD 252.

The protester contends also that the resumes Eltec ultimately submitted did not show that either the firm or its mechanic satisfied the solicitation's experience requirements. In essence, the protester challenges the contracting officer's determination that Eltec was a responsible bidder by arguing that definitive responsibility criteria contained in the solicitation were not met. Definitive responsibility criteria are specific

B-213519; B-213519.2

and objective standards established by an agency in a particular procurement for measuring a bidder's ability to perform the contract. See Keco Industries, Inc., B-204719, July 16, 1982, 82-2 CPD 16.

The scope of our review in cases involving an allegation of misapplication of definitive responsibility criteria is limited to determining whether the agency had before it information from which it reasonably could have determined that the criteria were met. Power Systems, B-210032, August 23, 1983, 83-2 CPD 232.

In this case, the solicitation required the contractor and its mechanics to have 5 and 4 years, respectively, of experience servicing the kind of elevators to be maintained under this contract. The solicitation indicated that by "kind" it meant "number, hydraulic, electric, solid state, group supervisory controls." It described the ten Westinghouse and two Otis elevators to be maintained as gearless, automatic passenger elevators with a capacity of 3,000 pounds and a speed of 600 feet per minute. These elevators travel between either eight or nine floors. Based on the materials Eltec submitted after bid opening, the contracting officer determined that (1) Eltec's two principal owners each had lengthy experience with gearless, traction elevators with relay logic controls in buildings of at least nine floors, (2) although Eltec itself had been in existence only since January 4, 1982, the experience of its principal owners satisfied the contractor's experience requirement, and (3) the mechanic that Eltec intended to use under this contract had the necessary recent experience with elevators more complex than those in the GSA Central Office Building.

The protester does not specify why it believes that the experience requirements were not met; it states only that the contracting officer "did not reasonably determine that Elevator Technologies and its mechanics possessed the specified experience." From our review of the record, however, we believe the agency had before it sufficient information from which it reasonably could have concluded that the solicitation's experience requirements were satisfied. See Watch Security, Inc., B-209149, October 20, 1982, 82-2 CPD 353.

B-213519; B-213519.2

Finally, Elco complains that the agency awarded the contract to Eltec notwithstanding the pendency of Elco's protest with this Office. Elco contends that none of the conditions described in Federal Procurement Regulations (FPR) § 1-2.407-8(b)(4) permitting an award in the face of a protest existed. We note, however, that the record contains a written statement by the contracting officer indicating that because of the imminent retirement of the incumbent elevator mechanic, coupled with the poor condition of the elevators, further delay in awarding a maintenance contract could not be tolerated. This certainly seems to meet the condition set forth in FPR § 1-2.407-8(b)(4)(i) that procurements for urgently needed requirements may be awarded notwithstanding a pending protest. In any event, a deficiency involving the requirement to withhold award pending resolution of a protest is procedural and does not affect the validity of an award. Martin Tool and Die, Incorporated, B-208796, January 19, 1983, 83-1 CPD 70.

We deny the protest.

*for*   
Comptroller General  
of the United States