

Cunningham



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** CVD Equipment Corporation

**File:** B-237637

**Date:** March 8, 1990

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Leonard A. Rosenbaum, for the protester.  
Edward J. Korte, Esq., Department of the Army, for the agency.  
James M. Cunningham, Esq., Paul Lieberman, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. General Accounting Office will not review an affirmative determination of responsibility absent a showing of possible fraud or bad faith on the part of contracting officials, or that definitive responsibility criteria contained in the solicitation were misapplied.
2. Whether a bidder can perform at its proposed facility is a matter of responsibility which is not for review by our Office.
3. Contracting agency is not required to conduct a pre-award survey if the contracting officer believes he has sufficient information available to allow him to make a responsibility determination.
4. Absence of corporate seal on bid does not affect bid's validity since evidence of signer's authority may be presented after bid opening.

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### DECISION

CVD Equipment Corporation protests the award of a contract to Pyrotechnic International, Inc., by the McAlester Army Ammunition Plant, McAlester, Oklahoma, under invitation for bids (IFB) No. DAAA31-89-B-0067, for two "Portable Quick React Deluge Systems."

CVD contends that the Army should have found Pyrotechnic nonresponsible because Pyrotechnic listed the residence address of its company president as its proposed place of

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contract performance and Pyrotechnic could not manufacture the solicited items at this location. CVD argues that Pyrotechnic did not supply certain required references, allegedly constituting a definitive responsibility criterion under the IFB. CVD also asserts that the Army failed to conduct a pre-award survey to determine whether Pyrotechnic was responsible. Finally, CVD contends that the Pyrotechnic bid should be found nonresponsive because of the company's failure to attach its corporate seal to its bid, and because the Army failed to evaluate certain descriptive literature included with Pyrotechnic's bid, which allegedly evidences noncompliance with the IFB requirements.

We dismiss the protest.

On October 3, 1989, CVD filed its initial protest with our Office stating only that the award was not made to the lowest, responsive, responsible bidder, because the Army failed to evaluate descriptive technical literature which Pyrotechnic was required to submit with its bid. In response to this protest, the Army filed a report stating that the descriptive literature was not required under the IFB, that Pyrotechnic had not provided any indication that the literature was meant to qualify its bid and, further, that Pyrotechnic's literature specifically indicated that the listed specifications could be varied depending on customer needs. Accordingly, the Army asserted that it was entitled to disregard the literature since the bid was otherwise responsive. Federal Acquisition Regulation §§ 14.202-5(f) and 14.202-4(g); Millipore Corp., B-234979, July 11, 1989, 89-1 CPD ¶ 31. Moreover, the Army stated that it had, in fact, evaluated the technical information which Pyrotechnic had submitted with its bid and that it found Pyrotechnic's bid to be responsive.

In its comments on the agency report, CVD did not rebut the Army's position, or even make any reference to the Army's evaluation of the technical information which Pyrotechnic had submitted with its bid.<sup>1/</sup> Instead, CVD raised the other specific issues, noted above. However, none of these issues are for consideration on the merits by our Office.

Most of CVD's allegations pertain to the agency's determination that Pyrotechnic is responsible. Absent a showing of fraud or bad faith, or misapplication of

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<sup>1/</sup> Accordingly, in our view CVD has abandoned this issue, and we will not consider it further. See OptiMetrics, Inc.; NU-TEK Precision Optical Corp., B-235646; B-235646.2, Sept. 22, 1989, 89-2 CPD ¶ 266.

definitive criteria contained in the solicitation, we will not review an affirmative responsibility determination since it is based in large part on subjective business judgments of the contracting officer. 4 C.F.R. § 21.3(m)(5) (1989); Pan Am World Servs., Inc., B-235976, Sept. 28, 1989, 89-2 CPD ¶ 283. Here, there is no allegation of fraud or bad faith.

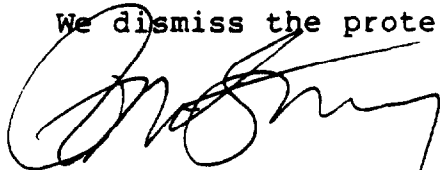
CVD states that the solicitation contained definitive responsibility criteria which it alleges were misapplied. However, the IFB requirement in question is that the bidder list references for all projects done in the past year, accompanied by an indication that this information would be used to assist the contracting officer in determining responsibility. A definitive responsibility criterion is a specific and objective standard established by an agency for a particular procurement to measure the bidder's ability to perform the contract. Management Eng'rs, Inc.; KLD Assocs., Inc., B-233085; B-233085.2, Feb. 15, 1989, 89-1 CPD ¶ 156. The mere requirement to list references does not constitute a standard that can be reviewed objectively, which is necessary to establish a definitive responsibility criterion reviewable by our Office. Id.; MDT Corp., B-236903, Jan. 22, 1990, 90-1 CPD ¶ \_\_\_\_.

Regarding the agency's alleged failure to conduct a pre-award survey, the Army determined that since it had available sufficient information to find Pyrotechnic responsible, it did not require a survey. A pre-award survey is not a legal prerequisite to an affirmative determination of responsibility; contracting officials have broad discretion concerning whether to conduct such surveys and may use other information available to them concerning a bidder's responsibility. Hoteli Donuts & Pastries, B-227306, Sept. 18, 1987, 87-2 CPD ¶ 75. Accordingly, the decision not to conduct a pre-award survey does not establish any impropriety on the agency's part and does not provide a valid basis for protest. Automated Data Management, Inc., B-234549, Mar. 2, 1989, 89-1 CPD ¶ 229.

CVD also asserts that the place of performance listed by Pyrotechnic is actually the home of the company's president, which CVD asserts is an inadequate site for manufacture of the item required under the IFB. However, the requirement that a bidder indicate the place of performance is only an informational matter relating to bidder responsibility. Cam Indus., B-230597, May 6, 1988, 88-1 CPD ¶ 443. Whether the listed facility is adequate for performance is within the scope of the agency's affirmative responsibility determination, and is not for consideration by our Office. Baldt, Inc., B-235102, May 11, 1989, 89-1 CPD ¶ 445.

Finally, CVD alleges that the awardee's bid should not have been accepted because its corporate seal was not affixed to the certificate of authority to sign bids. However, the failure of a bidder to furnish a corporate seal with its bid does not constitute a valid basis for protest as the omission may be waived or cured after bid opening as a minor informality. Siska Constr. Co., Inc.--Request for Reconsideration, 64 Comp. Gen. 384 (1985), 85-1 CPD ¶ 331.

We dismiss the protest.



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