



Comptroller General  
of the United States  
Washington, D.C. 20548

*Ms. Perry*

## Decision

**Matter of:** Lyntronics Incorporated

**File:** B-241696

**Date:** February 6, 1991

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Anthony Vigliotti for the protester.  
Robert A. Lincoln, Esq., Assistant General Counsel, Library of Congress, for the agency.  
Anne B. Perry, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Bid was properly rejected as nonresponsive where descriptive literature submitted by the protester to establish conformance to the solicitation's specifications indicated that its product failed to conform to the specifications.

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### DECISION

Lyntronics Incorporated protests the award of a contract to Panasonic Industrial Company under invitation for bids (IFB) No. IFB90-3, issued by the Library of Congress for rechargeable, nickel-cadmium batteries to be supplied to the National Library Service to power the playback machines used in the talking book program. Lyntronics challenges the rejection of its bid as nonresponsive on the grounds that its descriptive literature did not take exception to the specifications, and that the tests conducted on its bid samples were flawed.

We deny the protest.

The solicitation required bidders to submit descriptive literature to show that the product offered conformed to the requirements of the solicitation, and provided for the testing of sample batteries. The IFB provided that failure to submit either of these items, or their failure to demonstrate that the batteries would conform to the specifications, would result in rejection of the bid.

After reviewing Lyntronics' descriptive literature and the bid sample test results, the contracting officer concluded that the battery packs offered by Lyntronics failed to meet the specifications. Lyntronics submitted descriptive literature

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from Marathon Power Technologies, Lyntronics' supplier of battery cells, and these data sheets indicated that the battery packs could not be charged over the full range of temperatures as required by the specifications. Specifically, the IFB required the ambient temperature for "charge" of 0 to +45 degrees Celsius, and a "discharge" temperature range of -20 to +45 degrees Celsius. Marathon's specification sheet indicated a "charge" temperature range of 0 to +35 degrees Celsius, and a "discharge" temperature range of 0 to +50 degrees Celsius. In addition to the failure of Lyntronics' descriptive literature to establish that the batteries would charge/discharge over the entire temperature range required by the specifications, one of Lyntronics' bid samples failed to pass the "charge rate" test provided in the solicitation after three charge/discharge cycles.

Lyntronics protests the rejection of its bid as nonresponsive, arguing that the agency miscalculated its descriptive literature and that it failed to follow proper procedures in testing its sample batteries. Lyntronics essentially admits that the temperature data sheet it submitted with its bid does not meet the specification requirements, but argues that "[t]his is [only] true if the specification sheet is read out of technical context," i.e., that the temperature ranges given by its supplier of battery cells, Marathon, were conservatively stated. In support of its position that the required temperature range can in fact be met, the protester, in its comments on the agency report, provides a letter from Marathon that states that its cells can be charged throughout the temperature range required, and that it will modify its data sheet to this effect in the near future.

Where descriptive literature is required by the solicitation to establish that the bidder's product conforms to the specifications, and bidders are so cautioned, a bid must be rejected as nonresponsive if the literature submitted shows that the offered product does not conform to the specifications. BSC Indus., Inc., B-237299, Feb. 5, 1990, 90-1 CPD ¶ 152. The fact that a bid contains a blanket offer to comply is not sufficient to make the bid responsive. Id. Further, the adequacy of a bidder's descriptive literature must be determined on the basis of the material as submitted; a bidder's post-bid opening representation to the agency concerning the acceptability of its product does not overcome the bidder's failure to submit with its bid sufficient information clearly showing that the product conforms to the specifications. Consolidated Bell, Inc., B-237033, Jan. 23, 1990, 90-1 CPD ¶ 96. Since Lyntronics' bid contained descriptive literature which did not establish that the offered product would meet the required charge/discharge temperature range, the agency properly rejected Lyntronics' bid as nonresponsive.

Lyntronics also speculates that the failure of one of its sample batteries to pass a charge rate test was attributable to the lack of a firm contact between the charging apparatus and the battery terminals, despite the affidavit submitted by the Library's Senior Staff Engineer who performed the testing, in which he states that he took special precautions to maintain a tight and secure contact. The protester suggests that the acceptability of its samples be determined by a re-testing to be conducted over a period of days under the supervision of our Office. Apart from the question of whether such a procedure would ever be appropriate, we think no useful purpose would be served by it in this case, since we have determined that Lyntronics' bid was properly found to be nonresponsive based on its descriptive literature alone.

The protest is denied.

  
James F. Hinchman  
General Counsel