



Comptroller General  
of the United States

Washington, D.C. 20548

141-48-10

## Decision

**Matter of:** PTR-Precision Technologies, Inc.

**File:** B-243439

**Date:** August 7, 1991

Donald Powers for the protester,  
Geoffrey R. Young for Wentgate Dynaweld Inc., an interested party.

Lt. Col. William J. Holland, Esq., Department of the Air Force, for the agency.

Anne B. Perry, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Whether a contract awardee is capable of complying with a specification requirement to provide a commercial product is encompassed by the agency's affirmative determination of the awardee's responsibility, which generally is not reviewed by the General Accounting Office absent circumstances not present here.

### DECISION

PTR-Precision Technologies, Inc. protests the award of a contract to Wentgate Dynaweld Inc. under request for proposals (RFP) No. F40650-91-R-0001, issued by the Department of the Air Force (USAF) for an electron beam (EB) welding system. PTR contends that Wentgate is not a responsible contractor since its offered product does not comply with the solicitation requirement that the product be a "proven commercial design."

We dismiss the protest.

The solicitation required that "[t]he EB welder with NC control shall be of manufacturer's most current proven commercial design, providing the capabilities and performance specified herein as minimum requirements."

PTR contends that Wentgate's EB welder does not conform to the above requirements. The protester states that it "believes" Wentgate does not have an identical operational EB welding system that incorporates "all of the most critical features" required by the solicitation. In addition, PTR contends that

Wentgate does not meet the definition of a "manufacturer" because Wentgate has not previously assembled this system in the United States.<sup>1/</sup>

PTR bases its challenge to the contracting officer's affirmative determination of Wentgate's responsibility essentially on its "independent" telephone survey of the companies which Wentgate provided as references. The protester contacted each company and in its comments either questions the ability of the reference to make an accurate assessment of Wentgate's responsibility, or draws a conclusion different from the agency's about the implications of what the references stated. PTR concludes that the agency did not conduct an adequate survey on Wentgate to determine its ability to perform this contract. Based on PTR's own assessment, it contends that the agency "has failed to reasonably establish WD [Wentgate Dynaweld] as a responsible manufacturer" of the EB welder.

The offeror's ability to meet the general specification requirement for a current commercial design is, as the protester states, for the contracting officer to consider in making his determination of responsibility. Symtron Systems, Inc., B-242244, Mar. 13, 1991, 91-1 CPD ¶ 282; W.H. Smith Hardware Co., B-228576, Feb. 4, 1988, 88-1 CPD ¶ 110. We generally will not review a contracting officer's affirmative responsibility determination absent a showing of possible fraud or bad faith, or misapplication of a definitive responsibility criterion. Bid Protest Regulations, 56 Fed. Reg. 3,759 (1991) (to be codified at 4 C.F.R. § 21.3(m)(5)). The protester does not explicitly allege fraud or bad faith and we see nothing in the protester's statement that implicitly does so.

We also do not view the RFP requirement as a definitive responsibility criterion. A definitive responsibility criterion is an objective standard established by the agency for a particular procurement to measure an offeror's ability to perform the contract. In effect, such a criterion reflects the agency's judgment that an offeror's ability to perform in accordance with the specifications must be measured not only against the traditional and subjectively evaluated responsibility factors such as adequate facilities and financial resources, but also against a more specific requirement, such as a specific number of years of particular specified

---

<sup>1/</sup> PTR initially alleged that Wentgate's proposal did not meet many of the minimum specification requirements, but the agency report demonstrated in detail that the proposal was compliant, and the protester has not refuted or even addressed the agency's assessment in its comments.

experience, compliance with which can be measured objectively. Zero Mfg. Co.--Recon., B-224923.2, Oct. 28, 1986, 86-2 CPD ¶ 485. The requirement here for a current, proven commercial design is simply one of many design and performance requirements found in the specifications, all of which the contractor must meet, and the contractor's ability to do so is encompassed by the contracting officer's general determination of responsibility. Neither the commercial design provision nor any of the other specification requirements establishes a separate, objectively determinable definitive criterion of responsibility. See Clausing Mach. Tools, B-216113, May 13, 1985, 85-1 CPD ¶ 533. Accordingly, there is no basis for our review.

The protest is dismissed.



Paul Lieberman  
Assistant General Counsel