

DECISION



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

PL-11

[Protest Concerning Awardee's Responsibility] 10,975

FILE: B-194237

DATE: August 6, 1979

MATTER OF: Exide Power Systems Division,
ESB, Inc.

DIGEST:

1. Whether contractor will deliver item in accordance with specifications contained in IFB is not matter of responsiveness but is a matter relating to bidder's responsibility. GAO does not review affirmative determination of responsibility in the absence of showing of fraud or allegations that definitive responsibility criteria in solicitation were misapplied.
2. Requirement in IFB specification that product offered satisfy certain life cycle tests does not constitute definitive responsibility criterion the application of which would be reviewed by GAO.

DL 602543
DL 602544
Exide Power Systems Division, ESB Incorporated (Exide) protests the award of a contract to Ramak Industries, Division of Equipment Engineering Company (Ramak) under Invitation for Bids (IFB) DLA 400-79-B-0604 for storage batteries. For the reasons stated below the protest is dismissed.

The IFB provided that the required batteries should be in accordance with Federal Specification WB-113B dated August 7, 1970 and Military Standard MS15367, Rev. B, dated June 29, 1964, part number MS15367-1. The specification required the batteries to pass certain life cycle tests.

Ramak, as part of its low bid, stated that it was the manufacturer of the item offered as "Ramak Model 18-75-13 450 AH." The IFB incorporated by reference a "Master Solicitation." Clause C1 thereof, entitled "Compliance with Specifications", provides:

~~000099~~

"Where items are described in the Schedule of this solicitation by detailed specifications, any reference by the bidder/offeror to brand or trade names or model numbers or to bid or offer samples not solicited by this solicitation will be assumed to mean that the item so referenced conforms to the specification or will be modified to conform to the specification, unless it is clear from the bid/offer or the accompanying papers that the bidder/offeror intends to qualify the bid/offer. Products delivered under any resulting contract shall conform to the specifications cited in this solicitation."

In addition, Section I of the IFB entitled "Mandatory Contractor Inspection System" clause 2 provides:

"Contractor Inspection Responsibility

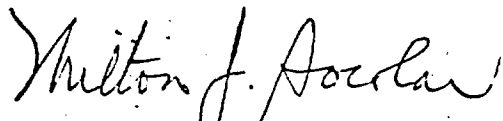
The contractor is responsible for controlling product quality and for offering for acceptance to the Government only those items or lots of items conforming to contractual requirements. * * * "

Exide first contends that Ramak is incapable of supplying a battery which will pass the life cycle tests and therefore, that Ramak's bid was nonresponsive in that the item offered would not meet the performance specifications of Specification WB-113B. We do not agree.

By submitting its unqualified bid, Ramak became bound, if awarded the contract, to provide items which would meet the requirements of WB-113B. Unless something on the face of the bid limits, reduces or modifies the obligation of a prospective contractor to perform in accordance with the invitation, the bid must be considered responsive. Science Applications, Inc., B-193479, March 8, 1979, 79-1 CPD 167. Thus Ramak's bid must be considered responsive.

The protester's allegation actually relates to Ramak's responsibility, and in this respect Exide contends that the life cycle testing requirements of the specifications constituted definitive responsibility criteria which Ramak cannot meet. By so contending, ESB seeks to bring its protest within an exception to our general policy of not reviewing affirmative determinations of responsibility by an agency. Interstate Commerce Commission - Reconsideration, B-193693, June 11, 1979, 79-1 CPD 409. However, definitive responsibility criteria are solely concerned with the qualifications of a bidder, not of the item offered. Such special standards of responsibility limit the class of bidders to those meeting specified qualitative and quantitative qualifications necessary for adequate contract performance, e.g., minimum experience requirements. American Athletic Equipment Division, AMF Incorporated, B-193283, March 29, 1979, 79-1 CPD 216. In the present case, the specification's testing requirements concern qualification of the battery, not the supplier. Thus we cannot agree with Exide that definitive responsibility criteria are present.

Here the contracting officer, after receiving advice from his technical personnel that Ramak's battery had previously met the testing requirements of specification WB-113B, determined that Ramak could be expected to furnish batteries as required by the specifications and was otherwise a responsible bidder. Since there are no circumstances present under which we would review that determination, the protest of Exide is dismissed.



Milton J. Socolar
General Counsel