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**DECISION**



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

*[Protest Alleging IFB Was Defective]*

FILE: B-197190

DATE: July 28, 1980

MATTER OF: Power Testing, Incorporated

**DIGEST:**

1. Objections regarding failure of IFB to include wage determination under Service Contract Act are untimely because they were not filed with GAO within 10 working days of initial adverse agency action on protest filed with agency.
2. Allegation that bid is nonresponsive because bidder does not have personnel necessary to comply with specifications requiring contractors to utilize personnel having certain minimum experience is denied since nothing on face of bid takes exception to experience requirements and therefore awardee is obligated to meet those requirements.
3. Protest challenging awardee's ability to satisfy specification requiring use of personnel having certain experience levels will not be considered since GAO does not review affirmative determinations of responsibility absent showing of fraud or allegation that definitive criteria of responsibility have not been applied. Experience provisions establish performance requirement rather than one which bidder must satisfy prior to award and therefore are not definitive criteria of responsibility.

Power Testing, Incorporated (Power Testing) protests the award of a contract to Energy Systems Maintenance, Inc. (ESMI) under invitation for bids (IFB) No. 3-87091 issued by the National Aeronautics and Space Administration (NASA) for the maintenance and repair of high

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as a journeyman high voltage electrician plus a minimum of one (1) year [experience] as a foreman" and electricians with five years experience as "high voltage electricians."

We do not agree that ESMI's bid was nonresponsive. A bid is responsive if, as submitted it constitutes an offer to perform without exception, the exact thing called for in the IFB, and upon acceptance will bind the bidder to perform in accordance with all the material terms and conditions of the IFB. See 49 Comp. Gen. 553, 556 (1970). Here, ESMI's bid did not take exception to any material terms of the IFB. Hence, ESMI's bid was responsive and that firm is obligated to perform in accordance with the material terms of the IFB, including Section F of the Statement of Work.

To the extent Power Testing is questioning ESMI's ability to perform the contract in accordance with its terms, i.e., ESMI's responsibility, that portion of the protest is dismissed as we do not review affirmative determinations of responsibility except where actions by procuring officials are tantamount to fraud or where the solicitation contains definitive responsibility criteria which allegedly have not been applied. Preventive Health Programs, B-195846, February 20, 1980, 80-1 CPD 144. There is no indication here of fraud on the part of NASA and the requirements of Section F of the Statement of Work do not constitute definitive criteria of responsibility. Definitive criteria of responsibility are those requirements which a contractor is required to establish that it meets prior to the award of a contract. Preventive Health Programs, supra. The experience provisions of Section F are performance requirements; they do not establish an experience standard with which the bidder, as a condition of award, must demonstrate compliance. Accordingly, Power Testing's allegations regarding ESMI's ability to perform the contract in accordance with Section F of the Statement of Work will not be considered.

The protest is dismissed in part and denied in part.



For the Comptroller General  
of the United States