

Perry



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Master Power, Inc.

File: B-238468.2

Date: November 28, 1990

J.R. Spotswood for the protester.
Roger D. Waldron, Esq., General Services Administration, for
the agency.
Anne Perry, Esq., Paul Lieberman, Esq., and John F.
Mitchell, Esq., Office of the General Counsel, GAO, par-
ticipated in the preparation of the decision.

DIGEST

1. Where solicitation provides that qualification of product may be completed up to time of award, bidder entry of erroneous Qualified Products List test number does not provide basis for rejecting the bid since compliance with the requirement is a matter of responsibility, not responsiveness, and information on product qualification may be provided to agency any time before award.
2. Whether a product should be kept on the Qualified Products List (QPL) without being retested is a matter for the determination for the agency responsible for the QPL, and the General Accounting Office will not question the agency's judgment unless it is shown not to have a reasonable basis.

DECISION

Master Power, Inc. protests the award of a contract to Ingersoll-Rand Company, for two sizes of pneumatic wrenches under invitation for bids (IFB) No. FCEP-BT-890066-S, issued by the General Services Administration (GSA). Master Power alleges that for one of the wrenches, line item No. 46, Ingersoll-Rand specified a different size of impact wrench than that specified in the item description, and that for the other, line item No. 48, Ingersoll-Rand's bid was ambiguous.

We deny the protest.

The IFB was issued on May 3, 1990, for various pneumatic, hydraulic and swaging tools. The solicitation contained 50 line items, and provided that requirements contracts would

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be awarded to the low bidders on an item-by-item basis. Master Power's protest of the award of item Nos. 46 and 48 is based on the fact that under the IFB both were required to be qualified under the appropriate testing requirements for inclusion on their respective Qualified Products Lists (QPL). Line item Nos. 46 and 48 were straight drive, pistol grip handle, pneumatic impact wrenches, with 3/8-inch and 1/2-inch drives, respectively. National Stock Numbers (NSN) were listed for the two items, and both were required to be made in accordance with Federal Specification 00-W-891. The solicitation contained Federal Acquisition Regulation (FAR) clause 52.209-1, which provides that testing or other quality assurance must be completed before award of a contract. This clause also provides that bidders offering products which were already qualified should furnish the manufacturer's name, the item name, and the qualification test number, to the extent known.

Two bids were received for item Nos. 46 and 48 by the June 5 bid opening date, one from Ingersoll-Rand and the other from the protester. Ingersoll-Rand was the apparent low bidder for each of the items. In its bid, Ingersoll-Rand listed itself as the offeror, manufacturer and source for the items and, in a cover letter incorporated in its bid, Ingersoll-Rand identified the items by appropriate NSN and listed QPL qualification test number TT-361 for both.

Master Power protested to our Office that any award to Ingersoll-Rand for these items would be improper because its bid is nonresponsive. The protester alleges that Ingersoll-Rand's bid for item 46 is nonresponsive because it listed a qualification test number applicable to a 1/2-inch drive wrench instead of a 3/8-inch drive wrench. Master Power alleges that Ingersoll-Rand's bid for item 48 is ambiguous, since the qualification test number it provided covers two different models of Ingersoll-Rand's 1/2-inch drive wrench.

Responsiveness involves a determination of whether a bidder has unequivocally offered to provide supplies or services in conformity with all the material terms and conditions of the IFB. Gardner Zemke Co., B-238334, Apr. 5, 1990, 90-1 CPD ¶ 372. Only where a bidder provides information with its bid that reduces, limits or modifies a material requirement of the solicitation may the bid be rejected as nonresponsive. Id. Responsibility, on the other hand, refers to a bidder's apparent ability and capacity to perform all contract requirements, and is determined, not at the time of bid opening, but rather, at any time prior to award, based on any information received by the agency up to that time. Id.

Ingersoll-Rand provided the correct QPL test number for the 3/8-inch drive wrench it bid under item 46 during the pre-award survey. This change in the test number is permissible since, except for the promise to provide a product meeting QPL requirements, information pertaining to a firm's QPL eligibility concerns the firm's ability to meet the contract terms--a matter of responsibility. Syllor, Inc., and Ease Chem., B-234723, B-234724, June 6, 1989, 89-1 CPD ¶ 530. Thus, the agency properly may allow the awardee to change the test number where the bid as originally submitted was responsive. Id.

We have examined Ingersoll-Rand's bid and find nothing in it which takes exception to any of the IFB requirements, including the requirement to obtain product qualification prior to award. Ingersoll-Rand completed the bid schedule for the items on which it was bidding and signed its bid, thereby obligating itself to furnish products conforming to the specifications, descriptions and qualification requirements, and its bid was therefore responsive, notwithstanding the fact that the firm may have misidentified a test number. Id.

To the extent that Master Power is alleging that Ingersoll-Rand is not able to furnish pneumatic wrenches which fully comply with the agency's requirements, including the qualification requirement, it is challenging the agency's affirmative determination of responsibility. The General Accounting Office (GAO) will not review an agency's affirmative determination of responsibility absent a showing of possible fraud or bad faith on the part of procurement officials, or that definitive responsibility criteria were misapplied. 4 C.F.R. § 21.3(m)(5) (1990); Automated Power Sys., Inc., B-224203, Feb. 4, 1987, 87-1 CPD ¶ 109. Neither of these elements is present in this case.

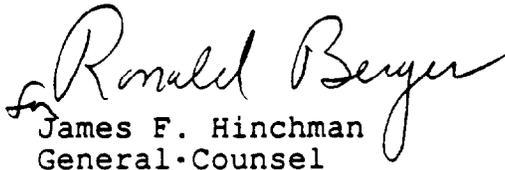
Master Power next argues that Ingersoll-Rand's offer for item 48 was nonresponsive because the referenced QPL number lists two different model numbers for the 1/2-inch drive wrench. The record demonstrates, however, that both of these models under the QPL fully satisfy the stated requirements of the IFB, and thus, Ingersoll-Rand has promised to supply a compliant item which renders its bid responsive.

Master Power also alleges that with respect to item No. 48 Ingersoll-Rand's product should not be included on the QPL because the relevant test was completed in 1973, before one of the models listed was produced. Master Power contends that this product should not be included on the QPL until it is retested. The protester surmises that the inclusion of this model on the QPL must have been requested by Ingersoll-Rand on the basis of its alleged identity with the previously

qualified model. Master Power does not dispute that the performance specifications for the two models are, in fact, identical.

Whether to require retesting for the purposes of QPL listing is a discretionary matter, see FAR § 9.207(b), and we will not object to the agency's exercise of discretion absent a showing that it lacked a reasonable basis. Automated Power Sys., Inc., B-224203, supra. In view of the apparent identity of the two models, we have no basis to conclude that the agency's evaluation of the new model number and its determination to include it on the QPL were not reasonably based.

The protest is denied.


James F. Hinchman
General Counsel