

118552

DECISION



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

FILE: B-206531

DATE: June 1, 1982

MATTER OF: Cain Brothers, Inc.

DIGEST:

GAO does not review affirmative determinations of responsibility absent circumstances not present here.

Cain Brothers, Inc. (Cain), protests the Army's award of a contract for packing and crating services to Consultores Panamericanos, S.A. (CP), under request for proposals No. DAKF71-82-R-0241 issued by the Contracting Division, 193d Infantry Brigade, Panama. Cain contends that the award is improper because CP lacked the necessary trucks, personnel, and storage facilities called for in the solicitation.

This Office does not review protests involving affirmative determinations of responsibility absent an allegation of fraud on the part of procuring officials or an allegation that the procuring agency has failed to apply definitive responsibility criteria set out in the solicitation. Unitron Engineering Co., B-185175, April 7, 1976, 76-1 CPD 231.

Provisions which state how the work is to be accomplished are performance requirements which are distinguishable from requirements which are preconditions of award. Contra Costra Electric, Inc., B-190916, April 5, 1978, 78-1 CPD 268. Only provisions which establish specific and objective responsibility criteria, compliance with which is a necessary prerequisite to award, are definitive responsibility criteria. J. Baranello and Sons, 58 Comp. Gen. 509 (1979), 79-1 CPD 322.

The solicitation only mentions trucks in one section which generally describes the type of trucks to be used when moving furniture as opposed to containerized personal property. With regard to personnel, the solicitation generally requires that the

"labor employed * * * shall be competent" and that pickup and delivery crews included at least one employee "qualified to speak, read, and write English." We do not view these requirements as definitive criteria of responsibility, but rather as performance requirements.

Although the solicitation provides line items for storage and warehouse handling and the solicitation specifies minimum qualifications for a contractor's warehouse, the Army points out that there is no requirement that the contractor have and maintain such facilities--only that the contractor be able to obtain them if required.

Since Cain has not alleged fraud and the solicitation lacks any definitive responsibility criteria, we are dismissing the protest.

The protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

B-206531

June 1, 1982

The Honorable John O. Marsh
The Secretary of the Army

Dear Mr. Secretary:

Reference is made to our letter of March 2, 1982, and prior correspondence from the Office of the Judge Advocate General dated May 11, 1982, reporting on the protest of Cain Brothers, Inc., under request for proposals No. DAKF71-82-R-0241 issued by the Contracting Division, 193d Infantry Brigade, Panama.

Enclosed is a copy of our decision of today dismissing Cain's protest on the ground that we do not review affirmative determinations of responsibility absent circumstances not present in Cain's protest.

Notwithstanding our dismissal of the protest, we wish to point out that the contracting officer, following his denial of Cain's protest to the Army, directed Cain to file its subsequent protest to our Office through the contracting officer instead of directly with the General Accounting Office as is provided by our Bid Protest Procedures (4 C.F.R. § 21.2(a) (1981)) and Defense Acquisition Regulation § 2-407.8 (1976 ed.). As a consequence, although the protest was sent by letter of February 12, 1982, it was not received until February 24, 1982. We believe this procedure results in unnecessary delay and may deprive other interested parties of a timely opportunity to participate in the proceeding. We therefore recommend that the contracting division be instructed to conform with our Bid Protest Procedures so that protests to our Office might be handled in a more expeditious manner.

Sincerely yours,

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel

Enclosure