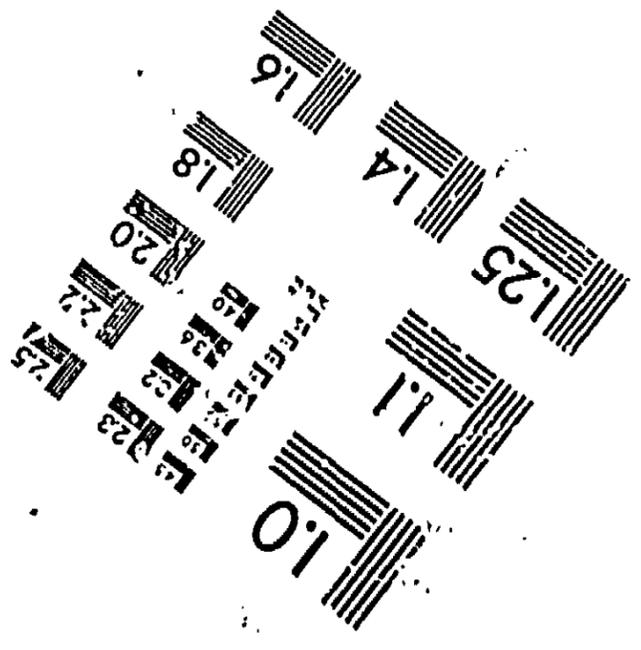
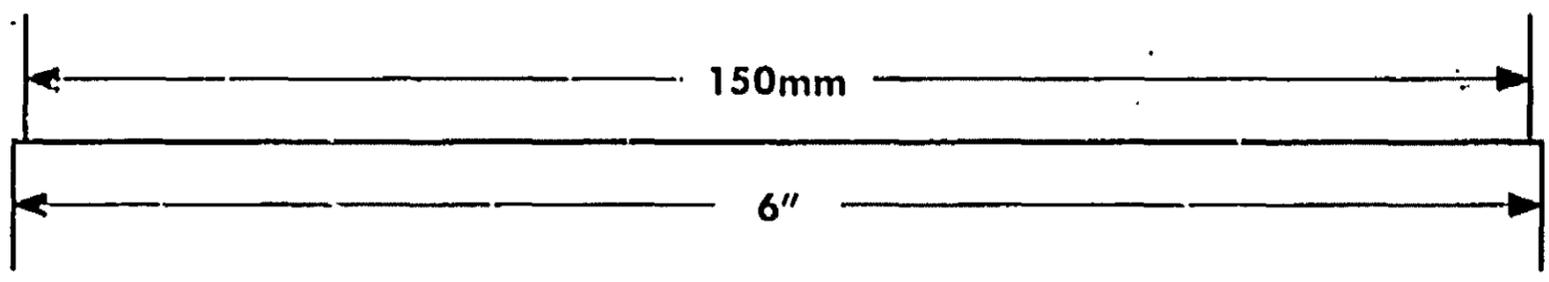
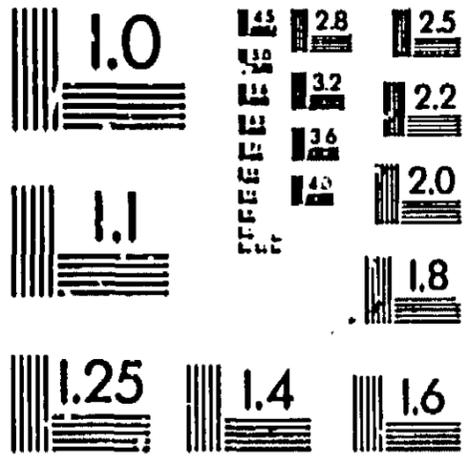
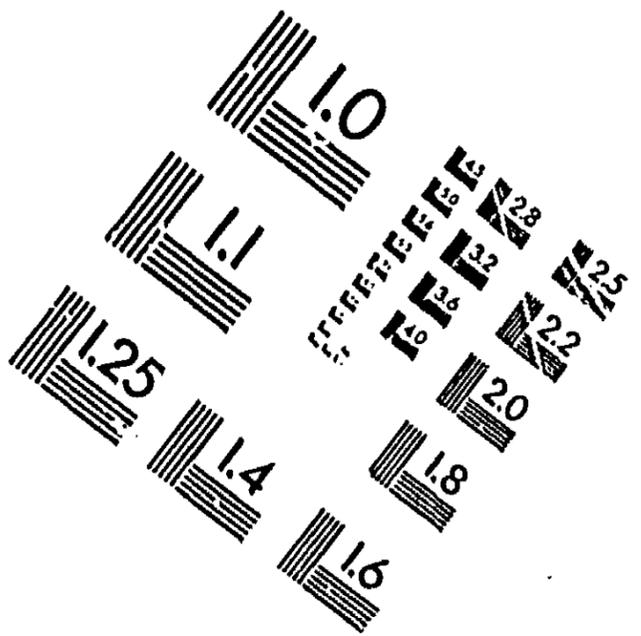
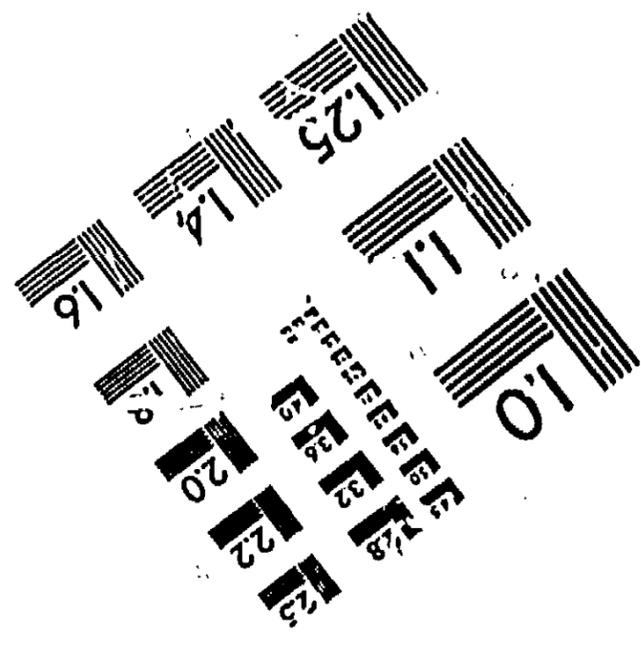


**IMAGE EVALUATION
TEST TARGET (MT-3)**



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UNITED STATES

GENERAL

ACCOUNTING OFFICE

DECISION

25090 118589
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-206006

DATE: June 2, 1982

MATTER OF: Gaffny Plumbing and Heating Corporation

DIGEST:

1. Contention that VA waived the solicitation's first responsibility criterion concerning bidder's experience in successfully installing fire sprinkler systems will not be considered because the information requested was general in nature and not sufficiently specific and objective to constitute a definitive responsibility criterion.
2. Second responsibility criterion stipulating that bidder have at least three prior projects for "similar types of renovations * * * which have been constructed to the satisfaction of the owners for one year or more" does constitute a definitive responsibility criterion. The VA properly determined that the low bidder complied with this criterion based on the contracting officer's personal knowledge of the bidder's prior work at a VA facility. Moreover, it was proper for the VA to determine the low bidder's compliance with this requirement based on information obtained after bid opening regardless of the solicitation language requiring submission of the information with the bid.

Gaffny Plumbing and Heating Corporation (Gaffny) protests the award of a contract to Henry Bourbeau, Inc. (Bourbeau), under invitation for bids (IFB) No. 608-13-82 issued by the Veterans Administration (VA) Medical Center, Manchester, New Hampshire, for the design and installation of a sprinkler system. Specifically, Gaffny argues that the IFB's requirements as to experience and competency were ignored and waived by the contracting officer in awarding the contract.

Based upon our review of the record, we dismiss, in part, and deny, in part, the protest.

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The requirements in question were set forth in the IFB, as follows:

"GR-3. * * *

* * * * *

"3. All work on this contract shall be done by a firm who can demonstrate experience in successfully installing fire sprinkler systems.

* * * * *

"GR-5. COMPETENCY OF BIDDER

"A. The bidder shall have been the prime Contractor on at least three (3) prior projects for similar types of renovations which are comparable to those required for this project and which have been constructed to the satisfaction of the owners for one year or more.

"1. A list of the comparable installations previously made by the bidder, together with the names and addresses of the buildings, names of the building owners or managers and any other pertinent information shall be submitted with the bid. Non-compliance with this request may cause the bid to be considered non-responsive."

The contracting officer found that Bourbeau complied with both these clauses. Specifically, the contracting officer found that Bourbeau's proposed subcontractor, Hampshire Fire Protection Company, which was to perform approximately 85 percent of the work in conjunction with

Bourbeau, which would perform "in excess of 15%" of the work, was "highly qualified" to do the design and installation of the sprinkler system; consequently, Bourbeau was considered to be in compliance with provision GR-3.3, above. As to provision GR-5, above, the VA states that the "contracting officer had personal knowledge that Bourbeau had accomplished as prime contractor at least three jobs on the VA Administration Medical Center premises of a nature as that required by" the provision. Consequently, and since Bourbeau's low bid was otherwise considered to be acceptable, the VA awarded the contract to the company.

As a general rule, affirmative determinations of responsibility are not reviewed by this Office unless fraud on the part of the procuring officials is shown or, as is alleged in this protest, the solicitation contains definitive responsibility criteria which allegedly have been misapplied. Proficiency Associates, Inc., B-198844.2, January 19, 1981, 81-1 CPD 29.

Compliance with the above IFB clauses concerns the issue of responsibility, not responsiveness, since the purpose of requesting this information was directed at the bidder and not the performance history of the item being purchased. Compare, B-164885, January 15, 1969, 48 Comp. Gen. 291 (1968), cited by the protester, which involved product experience clauses. This is so regardless of solicitation language (of the type used in this IFB) requiring submission of information concerning experience with the bid, because a contracting agency cannot make a matter of responsibility into a question of responsiveness by the terms of the solicitation. Science Applications, Inc., B-193479, March 8, 1979, 79-1 CPD 167. Therefore, the VA was free to accept information bearing on a bidder's compliance with these clauses even after bid opening.

IFB clause GR-3 requested general information and is not sufficiently specific and objective to be considered a definitive responsibility criterion. See Biospherics, Inc., B-203419, December 31, 1981, 81-2 CPD 518. Consequently, we will not review Bourbeau's compliance with this provision. However, in our view, GR-5 does constitute a definitive responsibility criterion; thus, we will consider Bourbeau's compliance with this provision.

Since the VA was free to accept information bearing on these clauses after bid opening, we consider it unobjectionable that information regarding compliance with provision GR-5, above, was generated from the contracting officer's "personal knowledge" rather than from the bidder's own representations so long as that personal knowledge was accurate. Finally, we note that Gaffny has not questioned the accuracy or the adequacy of the information which the VA considered in determining Bourbeau's compliance with provision GR-5. Thus, we cannot question the VA's determination that Bourbeau complies with this provision and is a responsible bidder.

We dismiss, in part, and deny, in part, the protest.

for Milton J. Jordan
Comptroller General
of the United States

IE N D