

**DECISION****THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548****FILE:** B-208571**DATE:** November 16, 1982**MATTER OF:** Spectroscan, Inc.**DIGEST:**

1. GAO will not review objection to agency's affirmative determination of awardee's responsibility absent showing of fraud or bad faith on part of procurement officials, not made here, or failure to satisfy definitive responsibility criteria. Even if Federal Aviation Administration's (FAA) licensing requirement is considered a definitive criterion, there is no evidence that awardee's performance of aerial infrared scanning services would have violated FAA regulations.
2. Contention that award was improper because it was based on allegedly defective solicitation is dismissed as untimely because alleged defect--omission of form--was not raised until after bid opening.
3. Allegations that on mandatory availability date awardee's aircraft was not in condition to respond within 45 minutes as required by contract and that awardee should not have paid for availability during this period raise questions of contract administration not for resolution under GAO's Bid Protest Procedures.

Spectroscan, Inc. (Spectroscan), protests the award of a contract to Aviation Enterprises, Inc. (AEI), by the United States Forest Service (USFS) under invitation for bids (IFB) No. R6-82-121S, for airborne infrared scanning services to detect hot spots in forest fires. Spectroscan contests the award on the basis that AEI lacked the required Federal Aviation Administration (FAA) permits at the time for performance. Spectroscan also challenges the USFS's failure to include certain forms with the solicitation and questions AEI's performance. We deny the protest in part and dismiss it in part.

The IFB required that the contractor provide the services on call and that the contractor's aircraft be airborne within 45 minutes of USFS notice. The IFB established a mandatory availability date (start-date) of July 1, 1982, at 10 a.m., and required the contractor to operate its aircraft in accordance with the Federal Aviation Regulations (title 14, Code of Federal Regulations) issued by the FAA. USFS personnel determined AEI to be responsible. The contract was awarded to AEI on June 30, 1982. The USFS advises that the FAA issued a Restricted Airworthiness Certificate covering AEI's aircraft and infrared camera system on July 1, 1982, at 8:30 a.m., and a Supplementary Type Certificate on July 6, 1982.

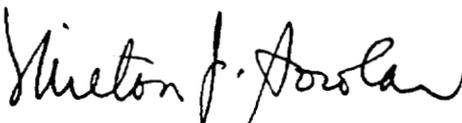
Spectroscan, citing Murray-McCormick Aerial Surveys, Inc., B-181099, December 12, 1974, 74-2 CPD 325 (Murray-McCormick), contends that the award of the contract to AEI was improper because AEI lacked the required permits. In Murray-McCormick, we denied a protest against a finding that the low bidder was nonresponsible because the low bidder had only an experimental certificate which did not authorize the operation of its aircraft in performance of the contract.

Spectroscan's objection here is to USFS's affirmative determination of AEI's responsibility, unlike the finding of nonresponsibility which was challenged in Murray-McCormick. Therefore, reliance on Murray-McCormick is misplaced. Although we will consider challenges to determinations of nonresponsibility in order to prevent the arbitrary rejection of qualified bidders, we will not consider protests against an agency's affirmative determination of responsibility unless there is a showing of fraud or bad faith on the part of procurement officials or a failure to apply definitive responsibility criteria. Central Metal Products Incorporated, 54 Comp. Gen. 66 (1974), 74-2 CPD 64; Haughton Elevator Division, 55 Comp. Gen. 1051 (1976), 76-1 CPD 294; Johnson Graphic Industries Inc., B-205070, May 3, 1982, 82-1 CPD 409; Dineen Mechanical Contractors, Inc., B-204420, June 2, 1982, 82-1 CPD 516. There has been no allegation of either fraud or bad faith. Furthermore, even if the solicitation's licensing requirement is considered a definitive responsibility criterion, there is no evidence that AEI's performance of the contract under its Restricted Airworthiness Certificate would have violated the FAA regulations. Consequently, we find this contention to be without merit.

Spectroscan also contends that the award was improper because the solicitation package did not contain "form 6300-27," without which the contracting officer allegedly could not ascertain the experience or responsibility of bidders. Our Bid Protest Procedures, 4 C.F.R. part 21 (1982), require that protests against improprieties apparent in an advertised solicitation be filed prior to the bid opening date. 4 C.F.R. § 21.2(b)(1). Spectroscan was or should have been aware of this alleged defect in the solicitation prior to bid opening, and Spectroscan's objection, not filed until September 22, 1982, therefore, is untimely and not for consideration. This contention is dismissed.

Spectroscan also charges that on July 1, 1982, AEI's aircraft was in no condition to respond within the 45 minutes required by the contract and that AEI should not have been paid for availability during this period. These matters involve AEI's performance under the contract--rather than matters affecting the legality of the award--and, as such, are matters of contract administration which are not for resolution under our Bid Protest Procedures. Ellsworth Street Associates, B-207292, B-207293, June 2, 1982, 82-1 CPD 528; Humanics, Ltd., B-202418.2, June 2, 1982, 82-1 CPD 514. These contentions are dismissed.

The protest is denied in part and dismissed in part.

for   
Comptroller General  
of the United States