

DECISION

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

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FILE: B-214014

DATE: January 30, 1984

MATTER OF: Virginia Trane Service Agency, Inc.

DIGEST:

Protest questioning contracting officer's affirmative determination of responsibility is dismissed because GAO will not review affirmative determination of responsibility in absence of showing of possible fraud or misapplication of definitive responsibility criteria in solicitation, circumstances not present here.

Virginia Trane Service Agency, Inc. protests the award of a contract to CII Service of Tidewater, Inc. under solicitation No. 590-23-84 issued by the Veterans Administration (VA) for inspection of a Trane chiller at the VA Medical Center, Hampton, Virginia.

Virginia Trane states that the solicitation requires that the work be performed by personnel who "have training covering repair of Trane's chillers" and that the completed work result in a unit which will "perform as close to Trane's original tolerance and specifications as is practical." The protester alleges that CII cannot satisfy these requirements because that firm does not have any personnel trained in the repair of Trane's chillers nor the information necessary to complete the work so that the unit will perform in the manner required.

Virginia Trane's allegations represent a challenge to the contracting officer's determination that CII is able to perform the work as required by the solicitation. Whether a firm has the ability to perform a contract in accordance with its terms is a matter of the firm's responsibility, which must be determined prior to award. Our Office does not review protests against affirmative determinations of responsibility unless either possible fraud on the part of the procuring officials is shown or the solicitation contains definitive responsibility criteria

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which allegedly have been misapplied. Liberty Excavators, Inc., B-212520, August 22, 1983, 83-2 CPD 224. The protester has not alleged, much less made any showing, that the award to CII involves possible fraud on the part of procuring officials. In addition, although it was not apparent from the protester's initial submission, further development of the case has shown that the solicitation provisions to which the protester refers are in the project specifications stating how the work is to be accomplished after award and differ from requirements that are a precondition of award. These provisions, therefore, do not constitute definitive responsibility criteria. See Delta Elevator Service Corporation, B-208252, March 23, 1983, 83-1 CPD 299 and cases cited therein.

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel