DECISION

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

FILE: B-192287 DATE: October 19, 1978

MATTER OF: Orthopedic Equipment Company, Inc.

DIGEST:

1. Objection to affirmative determination of offeror's responsibility is not considered by GAO where neither fraud nor noncompliance with definitive criteria is alleged.

2. Allegation that contract award was improper because contracting officer knew or should have known, at time of award, that awardee could perform only if specifications were relaxed is without merit where record indicates that no such relaxation has been requested and does not otherwise establish validity of allegation.

3. Acceptability of contractor's First Article Test Report, furnished under the contract, is matter of contract administration for resolution by contracting parties, not GAO.

Orthopedic Equipment Company, Inc. (OEC) has protested through its counsel the award of a contract on June 15, 1978 to Airline Instruments, Inc. (Airline) for the production and delivery of folding cots under solicitation No. DLA400-78-R-1348, issued by the Defense Logistics Agency (DLA), Defense General Supply Center (DGSC), Richmond, Virginia.

OEC's protest is that Airline, which submitted the low acceptable offer under the solicitation, should not have been determined a "responsible" prospective contractor within the meaning of Armed Services Procurement Regulation (ASPR) 1-900 et seq. (1976 ed.). OEC contends that Airline lacks the financial resources, facilities, tooling and equipment (or the ability to obtain them), experience and capacity to possibly perform the contract at its offered price without a relaxation of

the specifications that would reduce the quality of the cots. OEC states that the contracting officer therefore "should have known" that Airline could perform only if the specifications were relaxed, and that the award to Airline under circumstances where relaxation of requirements is anticipated, was improper. OEC points to an extension of the original delivery requirements as an example of specification relaxation, and also refers to Airline's First Article Test Report which OEC contends is incomplete, defective, and nonconforming to contract requirements.

Concerning the issue of Airline's responsibility, the record shows that a pre-award survey was performed on Airline pursuant to ASPR 1-905, and DLA advises that the preaward survey team found Airline to be satisfactory with regard to all responsibility factors.

As a general rule, we do not consider protests concerning a determination that a prospective contractor is responsible. See Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64. Affirmative determinations of responsibility are largely a matter of subjective judgment within the sound discretion of contracting agency officials, who must bear the brunt of any difficulties experienced by reason of a contractor's inability to perform. 39 Comp. Gen. 705 (1960). We will review such determinations only in certain limited circumstances--if there is a showing of fraud by the agency, or if it is alleged that definitive responsibility criteria such as a requirement that a contractor possess a particular certification set forth in the solicitation were not properly applied by the agency. See Data Test Corp., 54 Comp. Gen. 499 (1974), 74-2 CPD 365. Since the affirmative determination of Airline's responsibility is not challenged on the basis of fraud or alleged misapplication of definitive responsibility criteria, OEC's objection to such determination will not be considered.

With regard to OEC's allegation that Airline will require a relaxation of the specifications to perform the contract, DLA advises that the contracting officer has authorized no change in the contract specifications nor has Airline requested any modifications. DLA concedes that there has been one 15-day extension for the first of a number of scheduled deliveries, but explains that the extension was not intentional but rather was the result of an error on the part of contracting agency personnel made during preparation of the award documents. The record supports DLA's explanation and the protester does not take exception to it. Accordingly, we find no basis for concluding that the contracting officer knew or should have known, at the time of award that Airline's successful performance would necessitate a modification of the specifications for Airline's benefit.

With regard to the acceptability of Airline's First Article Test Report, we need only point out that such acceptance is a matter of contract administration properly for resolution by the contracting parties and not by this Office under our Bid Protest Procedures, which are reserved for considering whether an award or proposed award of a contract complies with statutory, regulatory or other legal requirements. See C.G. Ashe Enterprises, Inc., B-191848, May 19, 1978, 78-1 CPD 388; Mars Signal Light Company, B-189176, November 3, 1977, 77-2 CPD 342.

The protest is denied.

Deputy Comptroller General
of the United States