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**DECISION**

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

*[Protest Alleging That Awardee is Not Responsible]*

FILE: B-195846

DATE: February 20, 1980

MATTER OF: Preventive Health Programs

*DLG00148*

**DIGEST:**

1. Whether contractor is capable of providing qualified radiologists to perform required services is matter relating to offeror's responsibility. GAO does not review affirmative determination of responsibility in absence of showing of fraud or allegations that definitive responsibility criteria in solicitation were misapplied. Performance specifications delineating type and quality of services to be provided by contractor do not constitute definitive responsibility criteria.
2. Where contract is awarded to firm without reference to specifically named radiologists, post-award change in radiology staff is controlled by terms of contract, and, as such, is matter of contract administration not for GAO review.
3. Protester's contention that awardee's personnel performing contract are doing so in breach of contracts with protester is not for GAO consideration because it concerns adjudication of rights of protester against another private party.

Preventive Health Programs (Preventive) protests the award of a contract to Health Care Services (HCS) under solicitation No. DABT11-79-R-0041, issued by the Department of the Army, for radiology services at the Eisenhower Army Medical Center, Fort Gordon, Georgia.

*DLG00147*

*DLG0394*

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Preventive contends that paragraph F-12 of the solicitation established definitive criteria of responsibility, all of which must be satisfied in order for a contractor to be declared responsible, and maintains that the personnel HCS intended to provide for the Fort Gordon radiology staff did not satisfy all the requirements of that paragraph. Specifically, Preventive presents evidence that several of the radiologists HCS intended to use had indicated in other Government contracts that they lacked proficiency in certain of the radiology procedures listed in F-12. Consequently, the protester argues that HCS was not responsible and therefore not entitled to award.

The threshold issue here is whether or not the provisions of solicitation paragraph F-12 represent definitive criteria of responsibility. Since 1974, it has been our policy not to review affirmative determinations of responsibility except in cases where actions by procuring officials are tantamount to fraud, Central Metal Products, Incorporated, 54 Comp. Gen. 66 (1974), 74-2 CPD 64, or where the determination of responsibility has been made contrary to the solicitation's definitive criteria of responsibility. Yardney Electric Corporation, 54 Comp. Gen. 509 (1974), 74-2 CPD 376.

In the latter situation, we review the responsibility determination to assure that the terms of the solicitation are being applied in the process of awarding the contract. If, for example, the solicitation requires that offerors or its employees must have a certain degree of experience to qualify for award, our review would be limited to determining whether the awardee has submitted evidence from which the contracting officer could reasonably conclude that the specified experience requirement would be met.

The instant solicitation required offerors to submit only two items of information as part of their proposals in addition to the normal representations and certifications in the request for proposals. These items were: (1) a lump sum monthly price based on providing all required services, and (2) a "Total Compensation

Plan" outlining the proposed salaries and fringe benefits to be paid to the radiologists. The Plan was to be evaluated as an indication of the quality and stability of the work force to be employed and as an indication of the offeror's understanding of the contract requirements. Offerors were not required to submit as part of their proposals and proposals were not to be evaluated on the basis of the names or qualifications of specific radiologists. By submitting a proposal, each offeror committed itself to provide radiologists who could meet the solicitation's requirements. Section "F" of the solicitation, the "Description/Specifications" section, describes those requirements by delineating, as performance specifications, the type and quality of services to be provided. For example, section F requires the contractor to provide radiology services through licensed "board certified or board eligible" radiologists and to "ensure that all radiologists \* \* \* are proficient in all work listed in paragraph F.12; that is, routine exams, fluoroscopy, and special procedures." These provisions clearly do not establish special standards or criteria to measure responsibility; they merely spell out what the contractor must do upon commencing performance. See, e.g., Exide Power Systems Division, ESB, Inc., B-194237, August 6, 1979, 79-2 CPD 83; American Athletic Equipment Division, AMF Incorporated, 58 Comp. Gen. 381 (1979), 79-1 CPD 216. Thus, we do not view anything in section F which establishes definitive criteria with which an offeror had to demonstrate compliance as a prerequisite to award.

Solicitation paragraph C-43, on the other hand, does deal explicitly with matters of responsibility. The clause, entitled "Pre-Award Survey," refers to the general standards of responsibility required of a Government contractor as delineated in Defense Acquisition Regulation § 1-903, and warns prospective contractors that they may be required to demonstrate their ability to perform by providing the following information:

- "(i) The curriculum vitae of the proposed staff together with an outline of each member's educational background.

- (ii) Evidence of board certification or board eligibility of radiologists.
- (iii) Letters of intent from radiologists.
- (iv) Listing of other medical facilities where offeror performs similar radiologic services including name and address of facility, and name and telephone number of individual who may be contacted relative to the offeror's performance."

The record indicates that the agency requested and received from HCS the information listed in paragraph C-43; that the information was evaluated, and that an affirmative responsibility determination was then made. Although the protester questions the Army's reliance on the certificates that were furnished, the relative quality of those certifications and the other data submitted is a matter for the judgment of the contracting officer, not our Office. Mayfair Construction Company, Inc., B-192670, November 28, 1978, 78-2 CPD 372. In short, we find no basis to disagree with the agency's responsibility determination.

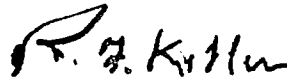
Other issues raised by Preventive concern the radiologists presently performing for HCS under the Fort Gordon contract. Preventive alleges that three of the radiologists are different from the group that HCS originally submitted to be surveyed for responsibility purposes in the preaward proceedings. Furthermore, Preventive alleges that these three radiologists are also under contracts with Preventive which contain provisions precluding them from working at Fort Gordon for any other contractor except Preventive, and Preventive has indicated its intent to enforce these provisions.

The record confirms the fact that, upon entering performance, HCS did indeed change the make-up of the group it submitted for preaward survey by adding three different radiologists. However, the record contains signed certificates from all three "new" radiologists indicating that they had the same required proficiencies

and availabilities as those staff members they replaced. We note that the contract was awarded to HCS without reference to specifically named radiologists, and point out that at this point the qualifications and performance of the HCS radiology staff are matters of contract administration which are not for our consideration under the Bid Protest Procedures. In this regard, we note that the instant contract provides for a "Credentialing Committee" which reviews the qualifications of all radiologists in advance of their performance. Under these terms, individual staff members could be replaced only by qualified radiologists who had successfully passed the review of the contract administrators.

In regard to Preventive's contention that three of the radiologists presently performing for HCS are doing so in breach of contracts with Preventive, our Office is not in a position to adjudicate the rights of a protester against another private party, and until those rights are established in a proper forum we have no justification for disturbing an on-going procurement program. Irvin Industries, Inc. B-187849, March 28, 1977, 77-1 CPD 217.

The protest is denied in part and dismissed as to the remainder.



Deputy Comptroller General  
of the United States