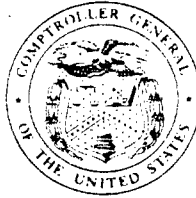


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**DECISION**



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

FILE: B-200466

DATE: February 20, 1981

MATTER OF: Johnson Controls, Inc.

**DIGEST:**

*[Protest Involving]*

GAO does not review affirmative determination of responsibility in absence of showing of fraud or allegation that definitive responsibility criteria in solicitation were misapplied. Performance specifications requiring that repair and maintenance services be provided by certified service personnel do not constitute definitive responsibility criteria.

Johnson Controls, Inc. protests the award of a contract to Comfort Control, Inc. (CCI) under invitation for bids No. DAKF48-80-B-0068, issued by the Department of the Army, for the repair and maintenance of an energy management and control system at Fort Hood, Texas.

The solicitation contained a section C entitled "Description/Specifications" detailing the types of services to be performed (preventive/recurring maintenance, etc.) and the specific tasks which comprised those services ("replace defective tubes [and] replace ribbon in the printer when required"). Paragraph 6.0 of section C provided as follows:

"SERVICE PERSONNEL. Service personnel employed by the Contractor shall be certified by the manufacturer's representative to be qualified to maintain the completely installed energy management and control system  
\* \* \*."

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Johnson contends that CCI does not comply with the "contract requirements that the successful bidder must have, on its staff, a certified manufacturer's representative." Johnson explains that the work required to be performed under the contract is of a highly complex nature requiring the services of highly trained personnel and that CCI does not have an employee who is certified to work on the particular equipment installed at Fort Hood.

To the extent that Johnson is questioning CCI's ability to perform the contract in accordance with its terms, the threshold issue is whether or not the provisions of solicitation paragraph 6.0 represent definitive criteria of responsibility. 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.

In the present case, it is our view that paragraph 6.0 is not a definitive responsibility criterion. It is, rather, part of the general specifications concerning performance. See, e.g., Auto Discount Rent-N-Drive Systems, Inc; Jerry's U-Drive, Inc; and George Corporation, B-197236; B-197236.2; B-197236.3, July 28, 1980, 80-2 CPD 73. Provisions such as paragraph 6.0 which state how and

by whom the work is to be accomplished are performance requirements and are to be distinguished from requirements which are preconditions of award. See, e.g., Data Test Corporation, 54 Comp. Gen. 499 (1974), 74-2 CPD 365. Descriptions of how the work is to be accomplished do not become definitive responsibility criteria just because they are stated in detail. Since the protest does not concern definitive responsibility criteria and since Johnson has not contended that the actions of the agency were tantamount to fraud, the protest is not for our review.

In any event, even if paragraph 6.0 of section C were a definitive responsibility criterion, we note that CCI submitted various certifications concerning one of its employees to satisfy the requirements of that clause. The contracting officer found these certifications to be acceptable. We have repeatedly held that the quality of the evidence submitted to satisfy a definitive responsibility criterion must be left largely to the sound discretion and subjective judgment of the agency. Westinghouse Air Brake Company, B-191537, February 15, 1979, 79-1 CPD 109.

The protest is dismissed.

*Harry R. San Clene*  
For Milton J. Socolar  
General Counsel