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DECISION

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

FILE: B-190237

DATE: October 28, 1977

MATTER OF: Damuth-Trane Service Agency, Inc.

DIGEST:

Protest that three lower bidders are not capable of performing contract as required is dismissed, since determination of bidder's responsibility is for contracting agency. GAO reviews such determination only under circumstances not applicable here.

Damuth-Trane Service Agency, Inc., protests that the three low bidders under solicitation No. N62470-77-B02155, issued by the Department of the Navy for the maintenance and service of air-conditioning and heating systems, lack the experience and facilities to provide the required services. Damuth-Trane suggests that, to "verify conformance," certain information be obtained from those firms concerning their backgrounds and capabilities, which allegedly will demonstrate the merit of the protest. Damuth-Trane contends that all three should therefore be rejected as "non-responsive."

The ability to perform in accordance with the terms of a contract involves "responsibility," not "responsiveness." See City Ambulance of Alabama, Inc., B-187964, January 13, 1977, 77-1 CPD 29; 52 Comp. Gen. 389 (1972); Armed Services Procurement Regulation §§ 1-902 and 1-903 (1976 ed.). The determination whether a bidder is responsible is 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. In this connection, although our Office will consider a protest concerning a determination of nonresponsibility in order to provide assurance against the arbitrary rejection of a bid, we consider a protest concerning a determination that a particular prospective contractor is responsible only if there is a showing of fraud by the agency, or it is alleged that definitive responsibility criteria set forth in the solicitation were not properly applied. See, generally, ENSEC Service Corporation, 55 Comp. Gen. 494 (1975), 75-2 CPD 341.

The protest is dismissed.

Paul G. Dembling
Paul G. Dembling
General Counsel