

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

FILE: B-186068

DATE: September 7, 1976

MATTER OF: A&amp;M Reinforced Plastics Corporation

## DIGEST:

1. Contracting officer's determination of nonresponsibility on the basis of information before him, including negative preaward survey, was not unreasonable.
2. Referral of nonresponsibility determination to SBA for Certificate of Competency was not required where record shows that items being procured were urgently needed and contracting officer obtained approval of his urgency determination from higher authority.

A&M Reinforced Plastics Corporation (A&M), the low offeror under request for proposals (RFP) No. N00102-76-R-0588, issued by the Portsmouth Naval Shipyard, Portsmouth, New Hampshire (PNSY), protests PNSY's determination that A&M is nonresponsible due to past failure to perform successfully on a contract for similar equipment. Additionally, A&M asks that a review be made of the circumstances under which award was made by PNSY to the next low bidder, the Warco Division of Albany Industries, Inc. (Warco).

The subject RFP, issued November 24, 1975, called for the production of 10 AN/BRA-8 buoy shells. Best and final offers were submitted by A&M and Warco prior to the January 30, 1976, closing date. Since A&M, the low offeror, had come into existence in November 1975 following the merger of its predecessor, Atkins & Merrill, Inc., no in-house information concerning the responsibility of A&M was available to PNSY. Accordingly, PNSY determined that a preaward survey should be undertaken regarding A&M's capability to perform under the terms of the proposed contract. At this time, however, a similar procurement for 18 of the same buoy shells, with an option for 9 additional shells, was being conducted by the Philadelphia Naval Regional Procurement Office (NRPO). As A&M had also been the low offeror under the NRPO solicitation, that office, on January 27, 1976, had already requested the Defense Contract Administration Service District (DCASD), Boston, to conduct a partial preaward survey. Consequently, it was determined that the results of this preaward survey would be utilized by PNSY as well as by NRPO.

DCASD's partial preaward survey, completed February 6, 1976 and received at PNSY on February 17, 1976, recommended that no award be made to A&M. A&M was found unsatisfactory in three categories: technical capabilities, performance record, and ability to meet the required schedule. The report was based on A&M's performance as a subcontractor in connection with an Atkins & Merrill, Inc. contract for AN/BRA-7 buoy shells. It was also noted that many of A&M's employees had been employed by Atkins & Merrill, Inc. prior to the creation of A&M.

The results of the partial preaward survey were thereafter referred by PNSY to its own in-house technical evaluators. Their evaluation, completed February 19, 1976, concurred with the findings of the preaward survey team that no award be made to A&M because A&M had been unable to produce an acceptable first article as a subcontractor for AN/BRA-7 buoy shells. Thereafter, on February 25, 1976, the contracting officer made a determination that A&M was non-responsible in accordance with ASPR § 1-904.1 (1975 ed.) because of A&M's failure to perform successfully on a contract for similar equipment. On the same day a Certificate of Urgency was executed by the PNSY contracting officer and the chief of the purchasing office in accordance with ASPR § 1-705.4(c)(iv) (1975 ed.). On March 2, 1976, PNSY made award to Warco, the second low bidder.

A&M contends that PNSY acted "precipitously" on March 2, 1976, in making award to Warco. In this regard A&M first points out that PNSY made no effort to advise A&M of its intentions to make award of this contract. It is also pointed out that NRPO, after being advised that A&M, a small business concern, would seek a Certificate of Competency (COC) review from the Small Business Administration (SBA), agreed to postpone a decision on awarding its contract until SBA completed its review of A&M. In this connection A&M notes that SBA completed a plant survey on March 3, 1976, and issued a COC to A&M on March 12, 1976 (The NRPO contract was subsequently awarded to A&M.). A&M also indicates that PNSY knew or should have known of the pending SBA report, that there was apparently no coordination on this matter between PNSY and NRPO, and that had there been a need for an immediate decision from SBA, inquiry could have been made to either NRPO or SBA in order to determine the due date of the report. Additionally, A&M asserts that there is no evidence establishing either that the urgency of one procurement was more compelling than the other, or that the urgency was of such a nature that PNSY could not afford a 10-day delay in order to obtain SBA's decision.

With regard to A&M's assertion that PNSY acted precipitously ASPR § 1-705.4(c) (iv) (1975 ed.) provides that a referral of nonresponsibility need not be made to SBA where the contracting officer certifies his determination in writing, and his certification is approved by the chief of the purchasing office, that award must be made without delay. We have stated that our Office will not question the administrative determination of urgency of a procurement where a review of the entire record affords no basis for concluding that the contracting officer's decision to make an award without referral to SBA was unreasonable or unjustified. Cal-Chem Cleaning Company, Incorporated, B-179723, March 12, 1974, 74-1 CPD 127.

Here the record indicates that the determination to make award without referral to SBA was not unreasonable. At the time the Certificate of Urgency was signed, PNSY documented that it was of critical importance to enter into a contract with a proven manufacturer without delay. Specifically, PNSY indicated that the Antenna Restoration Program, which had previously suffered increased loss rates, could not withstand delays incident to further examination as to A&M's responsibility. Moreover, PNSY points out that this procurement was negotiated pursuant to the public exigency provision of 10 USC § 2304(a)(2) (1970) and that the procurement carried a Uniform Material Movement and Issue Priority System designator of 02. PNSY also has supplemented the record with a chart demonstrating that delay would have caused critical deficits in the timeframe for supplying this type of buoy shell. In this connection, PNSY has also indicated that its award to Warco allowed NRPO to extend its delivery dates, thereby differentiating NRPO's and PNSY's timetables for AN/BRA-8 buoy shells.

A&M has also asserted that the contracting officer's determination of nonresponsibility was incorrect, because it was improper for PNSY to examine A&M's record with respect to the AN/BRA-7 buoy shell in determining A&M's ability to successfully manufacture the AN/BRA-8 buoy shell. In support of this contention A&M offers an analysis to demonstrate that the two shells differ in buckling load capability. Moreover, A&M indicates that the fact that PNSY had recently expressed satisfaction with AN/BRA-8 buoy shells earlier produced by Atkins and Merrill, Inc., establishes A&M's proven ability to produce that item and indicates that A&M is responsible.

It is our view that the record does establish the similarity between AN/BRA-7 and AN/BRA-8 buoy shells. The partial preaward survey, the two reports accompanying this survey, and PNSY's own in-house evaluation, all referenced the similarity between the two

buoy shells. Moreover, NRPO has presented a supplemental report further establishing this relationship. NRPO points out that the buckling load analysis presented by A&M is based upon calculated design rather than actual test requirements. PNSY also emphasizes that the major point of comparison and similarity is that both models are required to withstand the same external pressure.

Although the record does establish the similarity between the AN/BRA-7 and the AN/BRA-8, we emphasize that the purpose of the partial preaward survey was not to show these similarities but rather to provide the contracting officer with information on which to rely in making a determination with respect to A&M's responsibility. We have consistently held that the question of a prospective contractor's responsibility is a matter for determination by the contracting officer involved. 45 Comp. Gen. 4 (1965); 51 Comp. Gen. 439, 443 (1972). Our Office does not make independent determinations as to a bidder's responsibility to perform a Government contract. Because reasonable men may well disagree as to a company's capability to perform a particular contract, our Office has adopted the rule that we will not substitute our judgment for that of the contracting officer unless it is shown that the determination of nonresponsibility was made in bad faith or lacked any reasonable basis. 37 Comp. Gen. 430 (1957); 49 Comp. Gen. 553 (1970).

ASPR § 1-905.1(a) (1975 ed.) stipulates that a contracting officer, prior to making a determination of responsibility, shall have in his possession or obtain information sufficient to satisfy himself that a prospective contractor meets the minimum standards set forth in ASPR § 1-903.1 (1975 ed.). Under ASPR § 1-903.1 (1975 ed.) a prospective contractor must:

"(ii) be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments, commercial as well as governmental. \* \* \*"

"(iii) have a satisfactory record of performance \* \* \*."

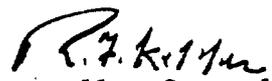
Where, as in the instant case, the information obtained by the contracting officer does not indicate clearly that the prospective contractor is responsible a determination of nonresponsibility is required. See ASPR § 1-902 (1975 ed.).

Based on our review of the partial preaward survey of A&M, we believe the contracting officer's determination that A&M was non-responsible was not unreasonable. See RIOCAR, B-180361, May 23, 1974, 74-1 CPD 282; Western Ordnance, Inc., B-182038, December 23,

1974, 74-2 CPD 370. Accordingly, no basis exists for our Office to object to the contracting officer's action in determining A&M to be nonresponsible.

Finally, while A&M has referenced NRPO's expression of satisfaction with respect to an earlier produced AN/BRA-8 buoy shell, for the following reasons we believe that this information does not alter the fact that the contracting officer's determination of non-responsibility was based on reasonable grounds. The preaward survey team was very much aware of the earlier production of AN/BRA-8 buoy shells. The partial preaward survey report pointed out that the contract for these buoy shells had been undertaken not by A&M but by Atkins & Merrill, Inc. Additionally, this contract had been completed in 1974 and had been terminated for noncompliance and then reinstated with a design change. In light of this information, we concur with NRPO's assessment that this information would not have been useful in assessing A&M's ability to perform under the subject contract.

In view of the foregoing, A&M's protest is denied.

  
Acting Comptroller General  
of the United States