

DECISION



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

60616

FILE: B-183893

DATE: March 9, 1976

MATTER OF: International Harvester Company

98508

DIGEST:

1. Allegation of unreasonable inconsistencies in negative and affirmative preaward survey reports issued on consecutive days has no basis where evidence of record indicates that following first negative preaward survey, second survey team looked at different set of facts indicating that protester had taken steps to correct the untimely delivery of software and concerning different items of hardware as to which protester was deemed able to meet delivery schedule.
2. Negative preaward survey provided reasonable basis for contracting officer's determination that protester was nonresponsible as to bulk of procurement.
3. Contracting officer's determination that protester was responsible only as to two items on schedule, and nonresponsible as to remaining items, was not inconsistent despite contracting officer's expectation that delivery would be late. Where Government had failed to obtain any bids in prior year for items awarded to protester, protester was sole bidder for those items under instant IFB, and there was no assurance that situation would be improved by a readvertisement, contracting officer's determination was reasonable.

On September 25, 1974, invitation for bids (IFB) DAAEO7-75-B-0008 was issued by the United States Army Tank-Automotive Command (TACOM), Warren, Michigan. Under the solicitation, the following items, gross vehicle weight (GVW), and quantities of truck wreckers were to be built in accordance with designated specifications:

<u>Item</u>	<u>GVW</u>	<u>Quantity</u>
1	14,000 lbs	2
3	16,000 "	5
5	24,000 "	5
7	34,000 "	1
9	44,000 "	22
11	44,000 "	20

The even-numbered items in the solicitation described the data and publications required for the vehicle described in the immediately preceding item.

Bids were received from International Harvester Company (IHC), Chrysler Corporation (Chrysler), and General Motors Corporation, Truck and Coach Division (GMC - T & C). IHC bid on all items, submitted the only bid received on Items 1 and 2, and was low bidder on Items 3, 5, 9 and 11. Chrysler bid only on Item 3. GMC - T & C bid on all items except 1 and 2, and submitted the lowest bid on Item 7.

Preaward surveys were conducted on the three bidders, and the report submitted by Defense Contract Administration Services Office (DCASO), Fort Wayne, Indiana, on February 25, 1975, recommended that no award be made to IHC. The survey rated IHC unsatisfactory in the areas of performance record and ability to meet the required performance schedule. Based upon the report of the survey team, the contracting officer concluded that IHC was a nonresponsible bidder. Award was subsequently made to Chrysler of Item 3, and to GMC - T & C of Items 5, 7, 9 and 11. However, the contracting officer determined that award of Items 1 and 2 should be made to IHC. Since IHC had submitted the only bid on the two 14,000-pound trucks and no bids had been received a year earlier for the same quantity, type and size trucks, the contracting officer decided to override the negative preaward survey and found IHC responsible. On March 14, 1975, award of Items 1 and 2 was made to IHC.

In its protest filed with our Office, IHC seeks the setting aside of the awards of Item 3 to Chrysler and of Items 5, 9 and 11 to GMC - T & C. In essence, IHC protests that it is incongruous that the contracting officer should find IHC nonresponsible as to some items in the solicitation and responsible as to other items in the same solicitation. IHC suggests that if a determination is made that the sole bidder for an item is nonresponsible, then the Government should not award that item rather than make an award to a nonresponsible contractor. Conversely, IHC states, an affirmative determination of responsibility as to one item in the solicitation should apply to the entire solicitation, and IHC, as low bidder on Items 1, 3, 5, 9 and 11 should have received the award for all of them. IHC has also pointed out that in connection with a subsequent procurement of different items, DCASO issued an affirmative preaward survey report dated February 26, only one day after the negative preaward survey of February 25.

In the preaward survey dated February 25, IHC was rated unsatisfactory in two areas: Factor 12 - Performance Record,

and Factor 13 - Ability to Meet Required Schedule. IHC's performance record was considered unsatisfactory because 22 out of 31 production surveillance Category 1 contracts were delinquent; 7 of the delinquent Category 1 contracts were delinquent because of IHC's failure to deliver the Recommended Spare Parts List in accordance with the contract delivery schedule; and 21 of 22 contracts administered by DCASO Fort Wayne with IHC in the past 12 months were delinquent without excusable cause. IHC's ability to meet required schedule was determined unsatisfactory for the following reasons: IHC furnished no planning on contract data items in support of hardware items on this IFB; IHC's production planning did not provide pilot planning for Items 5, 9, and 11; IHC did not provide the planning for Items 3 and 7 as required by the IFB.

Initially, the preaward survey of February 26 also recommended "no award" to IHC based on unsatisfactory ratings for Factors 12 and 13. However, a supplement to the administrative report indicates that while conducting another preaward survey, the Industrial Specialist was provided with evidence that IHC had shipped the Recommended Spare Parts Lists on four data delinquent contracts and advised that the balance of contracts delinquent for this type of data would be shipped by February 28. IHC also stated that it was assigning a person to monitor data on all Government contracts. This information was given to the Preaward Survey Review Board before the review of the February 26 survey was completed. Based upon IHC's positive action of submitting data on four delinquent contracts and the intent to eliminate future data delinquencies by the assignment of a data monitor, the Preaward Survey Review Board of February 26 rated IHC's ability to meet the data requirements as "satisfactory."

Since IHC was rated unsatisfactory only in its performance record, the survey team referred to Defense Supply Agency Manual 8300.1 Chapter 3, section 2-103e(1)(a), which states:

"If in the judgment of the surveyor, the offeror can and will produce on the instant proposed award, by virtue of the offeror's having taken positive remedial actions to correct the reasons for past and current delinquencies, * * * the offeror should be evaluated as satisfactory * * *."

This judgment was applied to the February 26 survey resulting in a recommendation of complete award.

We also note that in the February 25 report concerning the IFB under protest, the Preaward Survey Review Board stated:

"Specific information was not supplied by the bidder to support his ability to meet the delivery requirements of the IFB for several larger sizes of the wrecker trucks being procured." In contrast, the February 26 report does not question IHC's ability to timely deliver the truck tractors being procured under that solicitation.

It therefore appears that the negative preaward survey report was issued because there were doubts as to IHC's ability to timely deliver software and some of the hardware items being procured through the IFB under protest. By the time the subsequent affirmative preaward survey report was issued, IHC had taken steps to assure the timely delivery of software and it was deemed able to meet the delivery schedule for the different hardware items then being procured.

In view of these factual distinctions, we do not believe that it was arbitrary for the Defense Contract Administration Services Office to have issued negative and affirmative preaward survey reports one day apart. Furthermore, we conclude that the negative preaward survey report issued with respect to the protested procurement provided a reasonable basis for the contracting officer's determination of nonresponsibility.

IHC has also argued that it was improper for the contracting officer to have found it nonresponsible as to the bulk of the procurement yet responsible as to Item 1, consisting of two of the smallest trucks. The contracting officer concedes that he anticipated IHC to be late in delivering Item 1. However, he observed that this was the second consecutive year in which the Government had attempted to buy these vehicles, and in his determination of responsibility he noted that IHC was the sole bidder for these trucks; that there was no assurance that a resolicitation would produce competition, and even if it did, prices would be higher and further delay in delivery would occur; and that the preaward survey team had considered as satisfactory the production capabilities of IHC and its subcontractor. In view of these circumstances, we do not regard the contracting officer's determination of responsibility as unreasonable or inconsistent with his determination of nonresponsibility as to other items on the IFB.

Accordingly, IHC's protest is denied.


Acting Comptroller General
of the United States