

13113 PL-1 Request

DECISION



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

[Protest Against Nonresponsibility Determination]

FILE: B-196008

DATE: March 14, 1980

MATTER OF: Security Assistance Forces &
Equipment International, Inc.

DIGEST:

1. Determination of low offeror's nonresponsibility following negative preaward survey based, in part, on refusal of offeror to permit on-site visit is upheld since there has been no showing it was reached in bad faith or without reasonable basis.
2. Protester's exclusive remedy under Freedom of Information Act for agency denial of access to documents is appeal to courts.

Security Assistance Forces & Equipment International, Inc. (SAFE), has protested the award of a contract to Motorola, Inc., under request for proposals (RFP) DAJA37-79-R-0193, issued by the United States Army Contracting Agency, Europe (USACAE), for the maintenance and repair of Motorola alarm reporting systems in Wiesbaden, Germany. SAFE contends that, although it submitted the low offer, the contracting officer erroneously determined it to be nonresponsible "based on questionable judgment and negligence."

The requirement was solicited on a sole-source basis from Motorola. The procuring activity reports that a similar requirement had been solicited previously on a competitive basis, and the services performed were considered "very poor and unsatisfactory." Thereafter, the contracting officer determined that Motorola, as the manufacturer of the equipment, was the only known source having the technical expertise, parts availability, and the ability to respond to maintenance and emergency calls. Prior to the issuance of the RFP, engineering personnel advised the contracting officer that, if a contract was to be awarded to a firm other than Motorola, a preaward survey was recommended.

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Although SAFE was not solicited, the firm submitted a proposal which was evaluated and determined to be the low offer. However, the contracting officer determined that SAFE was nonresponsible because it did not demonstrate affirmatively its responsibility to perform the requirements of the RFP.

The record discloses that the nonresponsibility determination was based, in part, on SAFE's refusals to permit an on-site survey of its facility which the contracting officer had requested. SAFE's responses to the contracting officer's requests indicated that it wanted questions pertaining to a preaward survey to be submitted in writing. SAFE alleged that a survey team member in a previous survey had made misleading and false reports on written records of telephone conversations. SAFE was of the opinion that the questions of the team member would be of the "trick, leading on entrapment-type." SAFE contends that a preaward survey of its firm was not required because its:

"* * * history of performance on U.S. Government contracts, its experience in the field, its having installed the systems (not all of them, but most of them) under consideration were sufficient for the contracting officer to have waived a pre-award survey, which was made solely as a harassment to perform a 'fishing expedition' on our premises; it was superfluous."

SAFE also contends that it did not "refuse to allow an inspection" but requested the contracting officer to specify what she wanted and justify what SAFE considered to be an "over-inquisitory manner."

The procuring activity contends that SAFE's refusal to permit an inspection of its facility to assist in determining its technical ability to perform the required work prevented the contracting officer from gathering information essential to establish that SAFE was responsible.

The record shows that, in determining SAFE to be nonresponsible the contracting officer relied on Defense Acquisition Regulation § 1-902 (1976 ed.) which states that "A prospective contractor must demonstrate affirmatively his responsibility, * * *." SAFE's refusal to allow an on-site inspection of its plant contributed greatly to the determination that its technical, personnel, facility and other requisite qualifications to perform the requirements of the RFP were lacking. The contracting officer has denied SAFE's allegations of any improper motive in insisting on an on-site inspection and the record supports that denial.

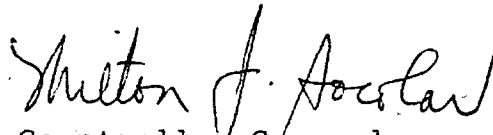
Our Office has consistently ruled that it is the duty of the contracting officer to determine the responsibility of a prospective contractor. In making the determination, the contracting officer is vested with a wide degree of discretion and business judgment. Generally, we will not question a non-responsibility determination unless the protester can demonstrate bad faith by the agency or a lack of any reasonable basis for the determination. McNally Pittsburgh Manufacturing Corporation, B-191221, June 13, 1978, 78-1 CPD 432; Inflated Products Company, Incorporated, B-188319, May 25, 1977, 77-1 CPD 365.

We agree with the contracting officer that SAFE failed to adequately demonstrate its responsibility and that SAFE unreasonably refused to cooperate in the preaward survey. A contracting officer is not required to provide a firm with written justification for or specific questions to be covered by a preaward survey. Contrary to SAFE's contentions, we believe that the decision of the contracting officer to request an on-site survey was reasonable in view of the stated fact that the maintenance of the alarm system is vital to national security, the unsatisfactory performance of the previous contractor, and the apparent sole-source nature of the acquisition. The record indicates that the general procedures for conducting preaward surveys were explained to SAFE by the preaward monitor, and a genuine attempt was made to overcome SAFE's alleged concern that its

submission to an on-site visit by the preaward survey (PAS) member would constitute nothing more than an unjustified "fishing expedition." SAFE's contention that it is a woman-owned company is irrelevant to the determination of a firm's responsibility.

The protest is denied.

SAFE requests our Office to overrule the Army's partial denial of its request for certain information relevant to the nonresponsibility determination under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1976). SAFE's request is denied. We have held in prior decisions that where records sought to be disclosed are agency records, our Office is without authority under the FOIA to determine what records must be released by other Government agencies and therefore the request must be made to the agency. Once a party has requested disclosure from the agency and such request has been denied, its sole remedy is by suit in the United States District Court. See Systems Research Laboratories, Inc. - Reconsideration, B-186842, May 5, 1978, 78-1 CPD 341. However, we considered the information in reaching our conclusion.



For the Comptroller General
of the United States