

**DECISION**



13660 PL-1 Mr. Lunter  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-194876

**DATE:** May 5, 1980

**MATTER OF:**

Security Assistance Forces & Equipment  
International, Inc.

**DIGEST:**

1. Determination of responsibility need not be made only after offeror's offer has been found acceptable and evaluated as successful offer. Record shows that contracting officer requested preaward survey prior to final evaluation of protester's proposal in attempt to reduce amount of time required to ultimately award contract under solicitation.
2. Determination of nonresponsibility of only offeror under solicitation following negative preaward survey is upheld since there is nothing in record to show it was reached in bad faith or without reasonable basis.
3. Record shows that sole-source award following cancellation of solicitation was reasonable since protester did not have capability to perform contract repair services, and no other firm except manufacturer's representative had such capability. Manufacturer's representative had submitted late proposal under canceled solicitation.

Security Assistance Forces & Equipment International, Inc. (Safe), protests the Army's cancellation of solicitation No. DAJA37-79-R-0164 and the subsequent award of the work on a sole-source basis to ESAG, Executone (ESAG). The solicitation called for the repair of an executive nurse call system at the U.S. Army Hospital, Nuernberg, Germany. The system had been manufactured by Executone, United States, and installed by ESAG.

[Protest Against Solicitation ~~010198~~  
Cancellation] 112245

The solicitation was issued to three potential offerors on February 9, 1979. On the closing date of February 23, 1979, two of the solicited firms declined to offer and no offer had been received from the third firm, ESAG. ESAG subsequently submitted a late proposal. However, the Army did receive an unsolicited proposal from Safe on the closing date. The cover letter to Safe's proposal stated:

"We have written to the equipment supplier and to the European representative of the supplier concerning the spare parts price list, but have not as yet received a reply. Therefore, we cannot furnish you with this list, as required by E-2003 of the solicitation; nevertheless, we have telephoned the supplier and have been advised that the price list is on its way; should we be the successful offeror, we shall furnish a spare parts price list before commencing work on the contract. A copy of our letters to the supplier is enclosed."

During a conversation with the president of ESAG on February 26, 1979, the contracting officer learned that ESAG had not submitted an offer because it thought that the current repair and maintenance contract would be automatically renewed. The president of ESAG also informed the contracting officer that he did not know how another contractor could perform maintenance on Executone systems since only authorized technicians of ESAG or Executone could obtain the repair parts and schematics necessary for proper performance. As a result of this conversation, the contracting officer had serious doubts regarding the ability of any firm other than ESAG to perform the contract work. Therefore, the contracting officer decided to conduct a preaward survey on Safe prior to making a determination whether Safe's nonconforming proposal could be made acceptable.

In accordance with the contracting officer's directions, a preaward survey was conducted on Safe as to whether the failure of Safe's proposal to

have a spare parts list could be remedied through discussions. The negative findings of the preaward survey indicated that Safe would be unable to perform proper maintenance of the nurse call system at the Nuernberg hospital. Based on these findings, the contracting officer determined Safe to be a nonresponsible firm, and the RFP was canceled.

Because of ESAG's position that only ESAG or Executone technicians could obtain spare parts and schematics, the contracting officer resolicited the requirements on a sole-source basis from ESAG. Also, because the dollar amount of the required work was estimated to be under \$10,000, small purchase procedures were used. On April 12, 1979, purchase order No. DAJA37-79-M-0163 was awarded to ESAG for the work. The contracting officer in a letter dated May 2, 1979, notified Safe of the cancellation of the RFP and subsequent sole-source award to ESAG.

By letter dated May 4, 1979, and received by us on May 17, 1979, Safe protested the contracting officer's actions contending that they were in bad faith. The Army responded to the protest in a report to us dated August 2, 1979. In a letter to us dated September 7, 1979, Safe stated that it had received the Army's report but that several documents quoted from and referred to in the report were deleted. Safe further stated that it had requested these documents from the Army and, within 10 days after receiving them, the company would furnish comments on the protest report. By letter dated March 17, 1980, and received by us on March 20, 1980, Safe informed us that it had finally received the requested documents from the Army and asked that we take action to resolve its protest. A copy of Safe's rebuttal to the Army of the findings reached in the preaward survey was enclosed with this letter.

Our Office has consistently ruled that it is the duty of the contracting officer to determine the responsibility of a prospective contractor. While responsibility determinations are generally made after a particular offer has been found acceptable and evaluated as the successful offer, contracting officers are

not precluded from seeking information necessary for such determinations at an earlier point in time. See Adam David Company, B-186053, July 28, 1976, 76-2 CPD 88. Here, it appears that the contracting officer requested a preaward survey on Safe prior to final evaluation of the company's proposal in an attempt to reduce the amount of time required to ultimately award a contract under the RFP.

In making the responsibility determination, the contracting officer is vested with a wide degree of discretion and business judgment. Generally, we will not question a nonresponsibility determination unless the protester can demonstrate bad faith by the agency or a lack of any reasonable basis for the determination. McNally Pittsburg Manufacturing Corporation, B-191221, June 13, 1978, 78-1 CPD 432.

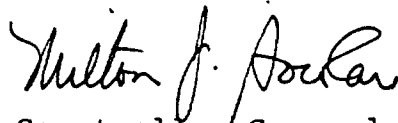
The record discloses that the contracting officer's nonresponsibility determination had a reasonable basis. The negative determination was based, in part, on Safe's refusal to permit an onsite survey of its facility which the contracting officer had requested. Therefore, all information obtained in connection with the preaward survey was obtained by telephone or written letters. Safe asserts that it has never refused an appointment for an onsite visit provided that the requesting Government agency showed a "need to know" that required a personal visit. According to Safe, the Army has never shown such a "need to know."

In any event, the record shows that the contracting officer was able to gather enough data to establish that Safe had made an offer without the benefit of a site view of the installed Executone equipment and that Safe had no spare parts for repair service either in stock or readily available. In this regard, Executone stated, in response to an inquiry made in connection with the preaward survey, that parts and service for Executone systems were sold to and serviced by Executone representatives only in order that the reputation of the original Executone equipment could be maintained. This was in direct conflict with representations made by Safe to the effect that it could provide spare parts.

In addition, the preaward survey indicated that there was no specific information as to the workforce that was to perform the proposed contract. The Army did receive the names of three individuals but they were found to be employed by Safe International in Baltimore, Maryland, and had no German work permits. Moreover, the Baltimore address of Safe was later found to be only the office of a firm of accountants whose function was to receive and forward mail for Safe to an address in New York.

In view of the foregoing, we believe that the Army was justified in procuring the required repair and maintenance services on a sole-source basis since its needs could be satisfied only by the services of a single source. The record is clear that Safe did not have the capability to perform these services and that these services would not have been adequately performed by any firm other than ESAG. ESAG, then, was the only known source having the technical capability to satisfy all the Army's requirements. See Omni Spectra Inc., B-190086, January 24, 1978, 78-1 CPD 61.

The protest is denied.



For The Comptroller General  
of the United States