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DECISION



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

FILE: B-207937

DATE: July 1, 1982

MATTER OF: C.R. Daniels, Inc.

DIGEST:

1. Protest against contracting agency's affirmative responsibility determination, based upon bidder's status as a qualified source in lieu of conducting preaward survey, is dismissed since GAO no longer reviews a contracting agency's affirmative responsibility determinations except for reasons not present here.
2. Whether awardee fulfills its contractual obligations is a matter for the contracting agency in the administration of the contract and does not affect the validity of the award.

C.R. Daniels, Inc. (Daniels), protests the award of a contract to Newgard Industries (Newgard) under request for proposals (RFP) No. F41608-82-R-1772, issued by the Department of the Air Force (Air Force), Kelly Air Force Base, Texas.

The RFP solicited offers for 3,672 troop seats for use in the C-130 and C-141 aircraft. According to Daniels, the two main subassemblies of the troop seat are the metal frame and the nylon seat, and an integral component of the nylon seat is a zipper which is used to join together individual troop seats in an aircraft and permit easy replacement of the seats when necessary. Daniels disagrees with the Air Force's determination that Newgard is a responsible contractor, based upon a 1981 approval of Newgard as a qualified source, and argues that the Air Force's procedures for determining Newgard's responsibility were defective.

We dismiss the protest.

Our Office no longer reviews a contracting agency's affirmative determination of responsibility unless either fraud is shown on the part of the procuring agency or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Nedlog Company, B-204557, September 21, 1981, 81-2 CPD 235. Daniels does not argue that either of these exceptions is present here. Rather, Daniels argues that Newgard lacks the experience, the facilities and the skilled personnel to perform this contract, and that a preaward survey would have confirmed these contentions. As indicated above, such an argument provides us with no basis for reviewing a contracting agency's affirmative responsibility determination.

Recognizing that we generally do not review protests against affirmative responsibility determinations, Daniels also argues that the Air Force's procedures for making the responsibility determination in this case were deficient. In Daniels' opinion, the Air Force did not have adequate data to make an affirmative determination and should have conducted a preaward survey of Newgard. If this preaward survey had been conducted, Daniels believes that the Air Force would have discovered that Newgard lacks the capacity to perform the contract. In effect, Daniels is asking us to conclude that the affirmative responsibility determination was based on inadequate data and that a preaward survey should have been conducted.

Daniels cites our decision in the matter of Numax Electronics, B-202042, May 15, 1981, 81-1 CPD 378, for the proposition that the contracting officer must base his determination on data that is "substantial, credible, and objective." In holding that there was no basis to question the contracting officer's decision that the low bidder met the solicitation's definitive responsibility standard, we also stated that the "relative quality of the evidence" in such an affirmative determination is "a matter for the judgment of the contracting officer, not our Office." In the present case, we are unable to conclude that the contracting officer abused his discretion in finding Newgard responsible on the basis of available information, that is, the 1981 approval of Newgard as an approved source, rather than on the basis of a preaward survey.

Daniels also cites our decision in the matter of Decision Sciences Corporation, B-205582, January 19, 1982, 82-1 CPD 45, in support of its argument that the Air Force should have conducted a preaward survey. However, this decision holds that a preaward survey is not a legal prerequisite to an affirmative determination of a prospective contractor's responsibility and, furthermore, recognizes that the contracting officer has broad discretion in determining whether to conduct a preaward survey or not. In light of this, we find no merit in Daniels' argument that, in making its responsibility determination, the Air Force should have investigated Newgard's production capability, financial resources, and labor force rather than merely relying on the fact that Newgard had already been approved as a qualified source. As indicated above, Daniels' disagreement with the contracting officer's discretionary decision provides us with no basis to question an affirmative responsibility determination.

Finally, insofar as Daniels is arguing that Newgard will not be able to fulfill its contractual obligations, we note that this is a matter for the contracting agency in the administration of the contract and does not affect the validity of the award. Impact Instrumentation, Inc., B-198704, July 28, 1980, 80-2 CPD 75.

Protest dismissed.

Harry R. Van Cleve
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Acting General Counsel