



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Accurate Mechanical Inc.

File: B-227847.2

Date: June 22, 1988

### DIGEST

1. Agency was not required to conduct a preaward survey on an offeror not in line for award since such a survey is used to establish the responsibility of a prospective awardee, but is not generally used in the technical evaluation of proposals.
2. A protest that an agency did not conduct oral discussions is without merit because the requirement that discussions be held permits either written or oral discussions.
3. A protest based on solicitation defect filed after the closing date for receipt of initial proposals is untimely.

### DECISION

Accurate Mechanical Inc. (AMI), protests the award of a contract to any other offeror under request for proposals (RFP) No. DAAA09-87-R-0543, issued by the Army Armament, Munitions and Chemical Command for suspension lugs. We deny the protest.

The Army issued the RFP on April 30, 1987, with a closing date for receipt of proposals of June 15, 1987. The RFP stated that evaluation of offers would be based essentially upon the total evaluated price for all items. In other words, offers that took no exception to the specifications or other terms and conditions of the solicitation would be technically acceptable, with award then based solely on price. The Army reviewed the offers received to determine the prices offered and whether the offers agreed to the terms, conditions, and specifications of the RFP. The Army found that two offers were unacceptable, but susceptible to being made acceptable, and therefore it opened negotiations by sending messages to all offerors advising that all proposals must be based on the terms of the RFP, and requesting best and final offers (BAFOs) by August 4. This request for BAFOs was the sum and substance of the initial round of negotiations.

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Sixteen firms, including the protester, submitted BAFOs. During a preaward survey performed on the low offeror, it was discovered that the offer was mistakenly based on a lower quality forging than required by the solicitation. Since the mistake could not be corrected without holding discussions with all offerors, a new round of BAFOs was requested, resulting in a new low offeror. After review of the second round of BAFOs, the agency discovered errors in the technical data which required yet another round of BAFOs.

The Army then performed a preaward survey on the low, technically acceptable offeror, in order to determine the offeror's responsibility. Based on the survey, the offeror was declared nonresponsible, and the Small Business Administration declined to issue a certificate of competency. The Army then examined the second and third low offers and found that since neither took exception to any terms of the RFP, they were technically acceptable. The Army scheduled preaward surveys for the second low offeror and for the protester (the next low offeror) in case the second low offeror was found to be nonresponsible. However, before the preaward survey was performed on AMI, the second low offeror was found to be responsible so that the survey on AMI was not required. AMI was, in fact, never the low offeror. No award has been made.

AMI protests that its proposal was not properly evaluated because the Army did not conduct a preaward survey to examine the technical aspects of the proposal. AMI believes it was treated unfairly because the Army conducted preaward surveys of other offerors but did not conduct one for AMI. The Army reports that the technical evaluations did not go beyond ensuring that the proposals met the minimum requirements of the RFP, and that the preaward surveys that were performed were solely to determine the offerors' responsibility in accordance with Federal Acquisition Regulation (FAR) § 9.106.

AMI misunderstands the purpose of a preaward survey. FAR § 9.106-1 states that a "preaward survey is normally required when the information on hand or readily available to the contracting officer is not sufficient to make a determination regarding responsibility." Thus, an agency may at its discretion conduct a preaward survey for the purpose of establishing the responsibility of an offeror that has ostensibly won the competition for the contract.

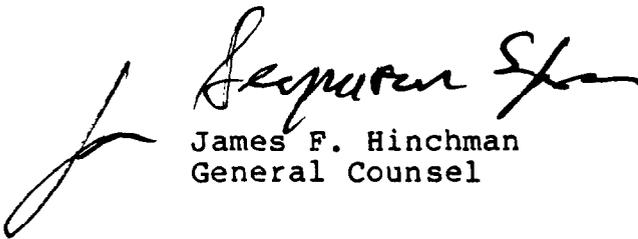
A preaward survey, however, is not generally used in connection with the technical evaluation of proposals. Intelcom Support Services, Inc., B-225600, May 7, 1987, 87-1 CPD ¶ 487. Accordingly, once the Army determined that it had a technically acceptable, responsible low offeror, it had no reason to conduct preaward surveys on other offerors, and was not required to conduct one on AMI.

AMI also argues that the Army did not conduct oral discussions as required by FAR § 15.610(b). That regulation, however, contains no requirement for oral discussions, but states that except as otherwise provided, the contracting officer shall conduct written or oral discussions with all responsible offerors who submit proposals within the competitive range. Thus, the Army was not required to conduct oral discussions and did not do so with any offeror.

AMI further argues that the Army did not notify the protester of the deficiencies in its proposal or that AMI was no longer eligible for the award. However, the record indicates that AMI's proposal had no deficiencies. Moreover, AMI is still technically eligible for award if award is not ultimately made to the current low offeror.

AMI also asserts that the Army should have set aside the solicitation for small disadvantage businesses. This protest issue is untimely since it is based on a solicitation defect that was not protested to this Office or to the agency before the closing date for receipt of initial proposals. 4 C.F.R. § 21.2 (1988).

The protest is denied.



James F. Hinchman  
General Counsel