The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Accurate Industries

File: B-232962

Date: January 23, 1989

DIGEST

1. A contracting officer properly may base a determination of nonresponsibility on a preaward survey without affording an offeror the opportunity to explain or otherwise defend against the survey information.

2. Protest against a negative responsibility determination is denied where the determination was reasonably based on a current negative preaward survey report that found protester did not have an adequate quality control system and did not demonstrate an ability to comply with the agency's specifications.

DECISION

Accurate Industries protests the rejection of its low bid by the U.S. Army Tank-Automotive Command (TACOM) under invitation for bids (IFB) No. DAAE07-88-B-J212, for trash containers. The contracting officer found Accurate nonresponsible and rejected its apparent low bid. The contracting officer based his nonresponsibility determination on a preaward survey report which cited the firm's lack of a written quality manual or policy as well as a lack of complete knowledge of the IFB's basic performance specification as the basis for the nonresponsibility determination.

We deny the protest.

At bid opening Accurate was the apparent low bidder. Since neither TACOM nor the Defense Contract Administration Services Management Area office in Philadelphia, which performed the preaward survey, had any record of Accurate performing on a previous government contract, the

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contracting officer decided that it was necessary to perform a preaward survey in order to determine whether Accurate was responsible. Federal Acquisition Regulation (FAR) § 9.106-1(a).

Accurate claims that the contracting officer was wrong in finding it nonresponsible, and complains that it was not given an opportunity to explain or rebut the findings upon which the determination was made. We will not question a negative responsibility determination unless the protester shows bad faith on the part of the agency or that the determination lacks any reasonable basis. Oertzen & Co., GmbH, B-228537, Feb. 17, 1988, 88-1 CPD ¶ 158. Accurate has not alleged or shown bad faith on the agency's part; therefore, it must show that there was no reasonable basis for the contracting officer's determination.

The contracting officer may base a nonresponsibility determination on the evidence in the record without affording the offeror an opportunity to explain or otherwise defend against the evidence. Omneco, Inc.; Aerojet Production Co., B-218343, B-218343.2, June 10, 1985, 85-1 CPD ¶ 660. The contracting officer here primarily based his determination on the survey team's finding of Accurate's lack of a written quality control manual or policy. The firm disputes this finding. Accurate claims it provided a checklist to the preaward survey team as proof of its quality control procedures which it uses on every order. To ensure quality control, Accurate asserts that it formulates a quality control plan for each order and then its employees perform necessary inspections. Accurate believes these procedures are adequate because the product is not highly technical or complex and the checklist has been sufficient to produce thousands of containers for the commercial market.

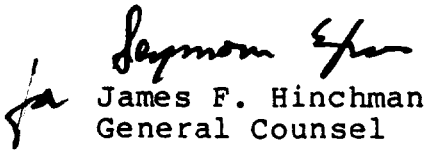
Contrary to Accurate's position that because the containers are not complex its quality control procedure is adequate, the agency believes that since the containers are to transport hazardous material it is important that they be manufactured in accordance with the applicable military specification and that the quality control plan be sufficient to assure this. The contracting officer, however, did not believe that the checklist showed evidence of an acceptable quality inspection system to assure compliance with the specifications. The checklist was determined to be insufficient because it was seemingly an end item inspection system only with no provision for in-process inspection. The contracting officer was also troubled by the checklist's failure to mention painting procedures, particularly in-process requirements such as cleaning, sandblasting,

sanding or priming. We believe the agency reasonably concluded that Accurate's quality control system was deficient. Oertzen & Co., GmbH, B-228537, supra. This is so because it is clear that the protester's existing quality control system is rudimentary and that any additional quality control procedures it believes are necessary are created on an ad hoc basis after an order is received. While this apparently has proven sufficient for the containers sold commercially the agency reasonably has determined that compliance with its specifications cannot be assured in this manner.

The survey team was further skeptical of Accurate's ability to perform the contract because of its inability to produce a complete copy of the solicitation's basic performance specification, MIL-T-46701E. According to the agency, Accurate could only produce two of the specifications 36 pages. The missing pages covered, among other things dimensional requirements, steel gauge requirements and the quality assurance provisions. Accurate claims to have had the necessary pages "on hand" but they were not shown to the survey team. Since the offeror has the burden of demonstrating its responsibility at the time of a preaward survey, we agree that the survey team could reasonably assume that Accurate's failure to have a complete copy of the main government specifications or to show any knowledge of their contents, along with the lack of a quality manual or policy, cast doubt on Accurate's ability to perform the contract in accordance with the specifications. Products Research and Chemical Corp., B-214293, July 30, 1984, 84-2 CPD ¶ 122.

Finally, Accurate is concerned that the present nonresponsibility determination will act as a de facto debarment from future procurements or in some way prejudice government agencies against it. Accurate's concern is misplaced. The responsibility determination was based on Accurate's lack of responsibility at the time of the preaward survey. The determination clearly focused on the survey team's perception of Accurate's current misunderstanding of the government's specifications and its lack of an acceptable quality plan policy. Future determinations will be based on the firm's capability at the time of the procurement. The Aeronetics Division of AAR Brooks & Perkins, B-222516; B-222791, Aug. 5, 1986, 86-2 CPD ¶ 151.

The protest is denied.



for James F. Hinchman
General Counsel