

DECISION



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

FILE: B-182821

DATE: June 30, 1975

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97129

MATTER OF: Illinois Glove Company

DIGEST:

1. Determination by contracting officer that low bidder was nonresponsible for lack of capacity to timely deliver portion of quantity in reliance on information furnished by bidder's knowledgeable and authoritative employee and subscribed to by preaward survey, without further investigation, did not lack reasonable basis in view of absence of contradictory information notwithstanding preferability to have computed production capacities of two plants of low bidder in actual number of workdays per delivery month. Although bidder had additional capacity in plants over contract period, IFB's pro rata delivery provision caused award of reduced quantity.
2. Low bidder found nonresponsible for half of quantities bid upon is denied claim for 50 percent of bid preparation costs since contracting officer acted reasonably in determining bidder partially nonresponsible.

On August 21, 1974, the Defense Personnel Support Center (DPSC), Philadelphia, Pennsylvania, issued invitation for bids (IFB) No. DSA100-74-B-1781 for 226,800 pairs of work gloves with various quantities to be delivered to six destinations.

Illinois Glove Company (IGC) was the low bidder on item 0002 (94,320 pairs delivered to Memphis, Tennessee) and item 0004 (58,560 pairs delivered to Ogden, Utah)--a total of 152,880 pairs-- at a bid price of \$3.165 per pair. As a result of a preaward survey, IGC was found responsible for, and was awarded on November 26, 1974, only 76,440 pairs. The remaining quantity on which IGC was the low bidder was awarded to the second low bidder, Steinberg Brothers, Inc. (Steinberg).

IGC protests the partial finding of nonresponsibility and requests that the contract awarded to Steinberg be terminated and the items improperly awarded to Steinberg be awarded to IGC as the low responsible bidder.

IGC was found to be nonresponsible because of an inability to meet the required delivery schedule for the two items, which was:

Table I

<u>Month</u>	<u>Item 0002</u>	<u>Item 0004</u>	<u>Total</u>
March	23,400	14,640	38,040
April	23,640	14,640	38,280
May	23,640	14,520	38,160
June	23,640	14,760	38,400
TOTAL	94,320	58,560	152,880

The contracting officer had requested the Defense Contract Administration Service Region (DCASR) in Chicago, Illinois, to conduct a preaward survey on IGC at the two facilities which IGC had listed under clause B10.70, "Place of Performance" in the IFB. IGC had indicated that 50 percent of the contract would be performed at its Beardstown, Illinois, plant and 50 percent at its Effingham, Illinois, plant.

The preaward survey team found that the Beardstown plant had a daily production capacity of 960 pairs and that the Effingham plant could produce 1,700 pairs a day. Using these figures and a standard of 20 working days in a month, the preaward survey originally recommended award of 76,440 pairs to be produced at Beardstown and that only 36,000 pairs be awarded for production at Effingham because of prior contract commitments at that facility, or a total award to IGC of 112,440 pairs, based on the following monthly production schedules at the two plants:

Table II

<u>Beardstown</u>	<u>Monthly</u>	<u>Accumulative</u>
March	19,020	19,020
April	19,140	38,160
May	19,140	57,300
June	19,140	76,440
<u>Effingham</u>	<u>Monthly</u>	<u>Accumulative</u>
March	0	0
April	0	0
May	2,000	2,000
June	34,000	36,000

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Upon review of the preaward survey, the contracting officer found that DCASR had not considered clauses D22.80 or #10.11(b) of the IFB, which read as follows:

"D22.80 DELIVERY OFFER CONDITION (DPSC 1969 May)
(Applicable to Advertised (IFB) Solicitations Only)

"Completion of delivery by the time specified in this solicitation is an important factor and will be considered in making awards. Offers, whether for the total quantity or for less than the total quantity of any item or sub-item, must offer deliveries in each of the delivery periods specified herein. Offers for the total quantity must indicate deliveries in accordance with the specified schedule. Offers for less than the total quantity must indicate pro rata delivery based on the specified delivery schedule. (Failure to indicate will be deemed as offering for either, delivery in accordance with the specified delivery schedule or delivery on a pro rata basis, as applicable). Any offers made on the basis of an alternate schedule will be rejected as non-responsive."

"E10.11(b) PRO RATA DELIVERY REQUIREMENT:
(Applicable to advertised (IFB) solicitation only) If the Government elects to take a different quantity from that advertised or bid upon, pro rata delivery based on the delivery schedule specified in the bid form will be required."

These two clauses, when read in conjunction, require that a bidder must be able to conform to a pro rata delivery of the required schedule if awarded less than the total quantity bid upon. IGC bid for all or any part of the 152,880 pairs on which it submitted a bid and, therefore, if award was made on the amount originally recommended by the survey team, delivery would have to have been made in four equal deliveries of 28,110 pairs (112,440 ÷ 4).

As can be seen from Table II, by the first delivery date, IGC would be able to produce 19,020 pairs, all from Beardstown

as Effingham had no open production capability. After considering the above IFB clauses, DCASR revised its recommendation for award to IGC to only 76,440 pairs (4 x 19,020) to be produced at Beardstown with no award at Effingham.

Therefore, on November 7, 1974, the contracting officer found IGC to be nonresponsible for half of the total quantity upon which it was low bidder (76,440 pairs) under § 1-903.1(ii) of the Armed Services Procurement Regulation (ASPR) (1974 ed.). Award was made to IGC under item 0002 for 76,440 pairs and the remainder of item 0002 and all of item 0004 was awarded to Steinberg.

IGC has raised numerous objections to the preaward survey and the reliance thereon by the contracting officer in concluding that IGC was partially nonresponsible.

Award of the contract was anticipated by October 16, 1974, but award was not made until November 26, 1974. Therefore, under clause H10.83 of the IFB, the required delivery dates were extended by the number of days award was delayed. The new delivery dates were April 10, May 10, June 9 and July 9, 1975.

IGC takes issue with the failure of the contracting officer to take into account the extension of the delivery dates in determining the responsibility of IGC, especially as regards the Effingham facility. This extra month for delivery, it is contended, would allow Effingham to produce gloves for delivery under the final two delivery dates as opposed to only the last delivery date under the dates as originally set out in the IFB. By allowing for delivery in July, Effingham (based on the figures in the preaward survey--Table II) could produce another 34,000 pairs for a total of 70,000 pairs instead of 36,000 pairs. We believe that the revised delivery schedules should have been considered to obtain a truer picture of IGC production capability. The effect the use of the later revised schedule would have had will be discussed below.

The preaward survey used a standard of 20 workdays per month in computing the capability of IGC to meet the delivery schedule. IGC claims that the production capacity should have been based on 23 workdays a month, which would have resulted in a capacity finding of an additional several thousand pairs. The contracting officer has stated that the 20 workdays in a month were arrived at through the following calculations. The average month contains 21.7 normal workdays obtained by subtracting 104 weekends from the number of days

in a year and dividing the result by 12. This figure is reduced by the number of holidays in a year whereupon the survey team arrived at 20 workdays. The agency says this is more realistic than the 23 workdays upon which IGC bases its capacity.

The use of an average number of workdays in a year would appear to be unobjectionable when considering production capacity under a contract which requires delivery over a long period of time, e.g. a full year. However, where, as here, only a few actual delivery months are known, we believe it would have been more realistic to use the actual workdays in the months involved. For the delivery schedule in the instant IFB, as extended, these are:

March 10 - April 9	23
April 10 - May 9	22
May 10 - June 8	20
June 9 - July 8	20

The impact of the failure to use the actual working days in the computation of IGC's capacity will be discussed below.

IGC argues that the preaward survey did not give adequate consideration to the fact that Beardstown was open for production from the date of award until the first delivery date. Therefore, IGC contends that, prior to the first required delivery (April 10, 1975), it could have produced 58,560 pairs instead of the 19,020 pairs shown in the survey which was arrived at by allowing only 1 month's production prior to the April 10, 1975, delivery date.

The Defense Supply Agency states that these monthly production figures were supplied to the survey team by the IGC plant superintendent and DCASR had no reason to question the amount of time allocated by IGC to completing this contract. We believe DCASR had a right to rely on these figures and did not have to go behind them in arriving at the capability of IGC.

The major contention advanced by IGC is that the contracting officer in reviewing the information contained in the preaward survey could have found IGC responsible for the entire quantity bid if he had been more diligent. IGC states that the preaward survey showed a capacity at Beardstown of 960 pairs per day and if the contracting officer had computed the full amount of time between award and the first delivery, Beardstown could have produced 58,560 pairs. This, plus allowing the extra month for delivery from the

Effingham plant and using the actual working days in each month would have produced the following production output by IGC:

Table III

	<u>Beardstown</u>	<u>Effingham</u>
April 10	58,560	0
May 10	20,160	2,000
June 9	22,080	34,000
July 9	<u>19,020</u>	<u>34,000</u>
TOTAL CAPACITY	119,820	70,000

While the above quantity exceeds substantially the quantity bid upon by IGC, the only manner in which IGC obtains this quantity is by the buildup in production at Beardstown, a portion of which could be withheld for later delivery. If the capacity is not computed on this buildup, IGC was not responsible for the total quantity bid because the required pro rata deliveries as shown in Table I would not be met for the first delivery (Beardstown would only produce 19,020 pairs for the first delivery rather than the 38,040 pairs required). Even allowing an extra month for Effingham production would not change this situation because that plant still would have had no production capabilities for this contract along with Beardstown to meet the April 10 delivery date.

In addition, IGC contends that the contracting officer improperly limited the preaward survey to only 50 percent of IGC's offer for each plant rather than asking for a survey based on the entire capacity of each plant during the period of performance. The survey report showed a capacity of 960 pairs per day and 1,700 pairs per day at Beardstown and Effingham, respectively. This represented the total capacity of these plants and only when the pro rata delivery clause was brought to the attention of DCASR did it decrease the quantity originally recommended for award. This action was necessitated by the failure of Effingham to have any open capacity for the first two deliveries which meant that Beardstown alone would have had to produce the entire 38,040 pairs due for the initial delivery which it could not do based on the figures contained in the survey. Therefore, we do not find that the contracting officer improperly limited the scope of the survey.

We have stated that the question of a prospective contractor's responsibility is a matter for determination by the contracting officer and our Office will not substitute our judgment for that

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of the contracting officer unless it is shown that the determination lacked a reasonable basis or was made in bad faith. 49 Comp. Gen. 553 (1970).

As stated previously, IGC contends that the contracting officer should have made his own computations as to the capacity of IGC. However, a contracting officer is entitled to rely on the information and results of a preaward survey. Section 1-905.4 of ASPR (1974 ed.). Where, as here, a preaward survey subscribed to a production plan furnished by a bidder's knowledgeable and authoritative employee, we believe the contracting officer has a right to rely on this information in the absence of contradictory information. See Alaska Barge & Transport, Inc., B-182345, March 4, 1975. Therefore, based on the above, we cannot say that the contracting officer's determination lacked a reasonable basis and the protest against such determination is denied. While, as mentioned above, it would have been preferable to utilize the actual workdays in the delivery months in computing delivery capacity, we cannot say that the reliance by the contracting officer on the DCASR standard of 20 days was unreasonable.

Finally, IGC has made a claim for 50 percent of its bid preparation costs if our Office fails to grant the relief it requests, namely termination of a portion of Steinberg's contract and award to IGC for an additional 76,440 pairs. In view of the above holding that the contracting officer acted reasonably in determining IGC partially nonresponsible, the claim is denied. Keco Industries, Inc., 54 Comp. Gen. 215 (1974) and Aerospace America, Inc., 54 Comp. Gen. 161 (1974).


Deputy Comptroller General
of the United States