

DECISION



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

50975

FILE: B-183679

DATE: August 5, 1975

MATTER OF: American Safety Flight Systems, Inc.

97308

DIGEST:

1. Where preaward survey stated that protesting firm did not have sufficient time to manufacture first production units on schedule (240 days), but protester indicates that there was considerable discussion with survey team that protester would not only submit first article test report within required 180 days but would also continue production without interruption to meet 240-day schedule, even though not specifically stated in preaward survey, team apparently did not approve of protester's plan to maintain production before Government approval of a first article and hence concluded that 240-day schedule could not be met. Accordingly, contracting officer had reasonable basis for determination that protester was nonresponsible.
2. There is no requirement in ASPR that bidders be notified in advance of award as to the rejection of their bids.
3. In view of our finding that contracting officer's determination that protester was nonresponsible was founded on reasonable basis, agency's initial failure to properly state reason for rejection of protester's bid was not prejudicial.
4. Preaward survey is required only when information available to contracting officer is insufficient to make responsibility determination.

Invitation for bids (IFB) No. DSA700-75-B-1206 was issued by the Defense Construction Supply Center, Columbus, Ohio, on November 11, 1974. The IFB requested bids for a total of 295 F-5 aircraft survival kit containers.

Upon bid opening, February 10, 1975, the following three bids were received:

<u>Bidder</u>	<u>Unit Bid Price</u>		
	<u>Items 1-4</u>	<u>Items 5-16</u>	<u>Item (First article 17 testing)</u>
American Safety Flight Systems, Inc. (ASFS)	\$1,221.09	\$1,245.31	No charge
U. S. Steel Corp. Chemical Division	1,735.00	1,750.00	\$13,525.00
H. Koch and Sons	1,975.00	1,975.00	No charge

Thereafter, the contracting officer sought and received verification of ASFS's bid price. The contracting officer also requested that a preaward survey be performed. The preaward survey dated March 5, 1975, recommended that no award be made to ASFS based upon unsatisfactory findings in connection with ASFS's performance record and its ability to meet required schedules. On April 10, 1975, the contracting officer, based on this survey, determined that ASFS was not a responsible bidder. Award was made to the second low bidder, United States Steel Corporation, on April 11, 1975.*

By a form letter dated April 14, 1975, ASFS was advised by the procurement agency that its bid was not eligible for award for all items. The reason set forth in the letter was that ASFS's bid was not low after consideration of all evaluation factors. DSA admits that the letter failed to reveal the true reason for ASFS's rejection. Upon receipt of this letter, ASFS promptly protested to our Office on the basis that (a) the contracting officer failed to advise the low bidder of his intent to award a contract to the next highest bidder prior to making contract award; and (b) since ASFS was the low responsive, responsible bidder, the award to United States Steel was improper.

On April 22, 1975, the contracting officer sent a letter to ASFS indicating that the earlier letter of April 14 was in error and that the basis for the rejection of ASFS's bid was that the contracting officer was not able to determine that the protester was responsible with respect to meeting the required delivery

* Note: First article testing was waived on United States Steel product.

schedule. The contracting officer's written determination of nonresponsibility also reported that the preaward survey team had found that ASFS had a substantial past delinquency rate.

The preaward survey team had also concluded, however, that ASFS did not have sufficient time to manufacture the first production units on schedule (240 days after award). ASFS had indicated in its bid that the first article approval report would be furnished to the Government within 180 days of award. The preaward survey concluded that if the Government took the full 30 days (allowed it under the contract) to approve ASFS's first article only 30 of the original 240 days would remain in which to manufacture the first production run of 40 units.

The protester states that there was considerable discussion with the survey team and ASFS intended not only to submit the first article test report within the required 180 days but also continue production without interruption to meet the initial delivery requirement of 40 units within 240 days of award. Although not stated specifically in the report, the preaward survey team apparently did not approve of ASFS's plan to maintain production before Government approval of a first article and hence concluded that the 240-day schedule could not be met.

ASFS also contends that the preaward team erroneously used 140 days instead of 120 days in computing the leadtime for certain necessary components. However, even using the lower figure, the projected delivery schedule would still be 270 days or 30 in excess of the schedule requirements. Moreover, we note that using the lower figure the days necessary to complete the first article report by using the survey team's figures would still have exceeded the stated 180, even though the time required would drop from 207 days to 187 days.

Accordingly, without need for consideration of the other alleged erroneous finding of the preaward survey, we believe that the contracting officer did have a reasonable basis for his conclusion that ASFS was nonresponsible and, as such, there is no basis to object to the contracting officer's determination. Raycomm Industries, Inc., B-182170, February 3, 1975; see Development Associates, Inc.; American Institutes for Research, B-181826, January 27, 1975.

With regard to the contention that the contracting officer improperly failed to notify the protester of the rejection of its bid, we note that Armed Services Procurement Regulation (ASPR) § 2-408.1 (1974 ed.) states that:

"* * * In the case of all unclassified formally advertised contracts, the purchasing office shall as a minimum (subject to any restrictions in Section 1, Part 6), (i) notify unsuccessful bidders promptly of the fact that their bids were not accepted, and (ii) extend the appreciation of the purchasing office for the interest the unsuccessful bidder has shown in submitting a bid. Notification to unsuccessful bidders may be either orally or in writing through the use of a form postal card or other appropriate means. When award is made to other than a low bidder, the contracting officer shall state the reason for rejection in the notice to each unsuccessful low bidder.
* * *"

In interpreting this provision, we have held that there is no requirement in ASPR that bidders be notified in advance of award as to the rejection of their bids. Gary Construction Company, Incorporated, B-181751, December 17, 1974; Sheffield Building Company, Incorporated, B-181242, August 19, 1974. Moreover, in view of our finding above, we do not believe that the agency's initial failure to properly state the reason for the rejection of ASFS was prejudicial.

ASFS also argues that the contracting officer acted improperly in awarding a contract to United States Steel at a price of "over \$160,000" in excess of its total bid price, since no preaward survey was performed on that company.

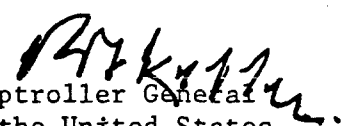
The record does not indicate that a preaward survey was conducted on United States Steel. However, ASPR § 1-905.4(b) (1974 ed.) indicates that a preaward survey is required only when the information available to the contracting officer is insufficient to make a responsibility determination. The signing of the contract constituted a determination by the contracting officer that United States Steel was a responsible prospective contractor. ASPR § 1-904.1 (1974 ed.). That subsection further provides that the contracting officer must, before he signs the contract, assure himself that the minimum standards of responsibility set out in ASPR § 1-903 (1974 ed.) have been met by the prospective contractor. We have no basis to conclude that United States Steel was not a responsible prospective contractor or that the contracting officer did not assure himself

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that United States Steel was responsible before signing the contract.

In effect, ASFS is protesting against the affirmative responsibility determination necessarily made in the case of United States Steel. Our Office does not, however, review protests against such affirmative determination unless fraud on the part of procurement officials is alleged or the solicitation contains definitive responsibility criteria. See Central Metal Products, Inc., 54 Comp. Gen. 66 (1974); Yardney Electric Co., B-180988, December 24, 1974. Such factors are not present in the instant case and accordingly we must decline to rule. This Office will, however, continue to consider protests against determination of nonresponsibility to provide assurance against the arbitrary rejection of bids.

For the reasons stated above, ASFS's protest is denied.


Deputy Comptroller General
of the United States