

**DECISION**

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

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FILE: B-182967

DATE: May 23, 1975

MATTER OF: Struthers Electronics Corporation

**DIGEST:**

In absence of preaward survey for instant procurement contracting officer properly relied upon other recent preaward surveys and oral advice regarding bidder's current contract delinquencies which were received from Preaward Survey Monitor two days prior to determination of nonresponsibility.

Invitation for bids (IFB) F04606-75-B-0110 was issued on August 28, 1974, by the Sacramento Air Logistics Center (AFLC), McClellan Air Force Base, California for a quantity of 13 each Coupler, FSN 5840-872-7239.

Struthers Electronics Corporation (Struthers) has protested the rejection of its low bid, contending that the contracting officer's determination of nonresponsibility is erroneous.

The record shows that this firm has received the last eight awards for this item, extending back into 1970. However, Struthers had been the subject of two negative preaward surveys dated August 9 and November 24, 1974. Because of uncertainty as to Struthers' responsibility, a Contract Responsibility Review Request was forwarded to the Contractor Evaluation Section of the Production and Operations Division at Sacramento Air Logistics Center. The reply to the request was that no award was recommended based on the contractor's current high delinquency rate. A preaward survey was considered unnecessary in view of two recent negative preaward surveys, which showed the contractor's past performance record to be unsatisfactory, and since the Preaward Survey Monitor, Defense Contract Administrative Services District, Garden City, was contacted on December 16, 1974, to validate the accuracy of Struthers' delinquency rate. The contracting officer made a determination of nonresponsibility on December 18, 1974, which provides, in part, as follows:

"a. DCASD Garden City reports contractor's overall performance is considered unsatisfactory as the second quarter reflects a 60% delinquency. Currently the contractor has 33 contracts, 13 of which are due and six are delinquent."

Furthermore, a preaward survey on Struthers dated December 19, 1974, performed by DCASD, Garden City in connection with another procurement, confirms the past performance record which the contracting officer considered to be unsatisfactory. The survey shows that during October and November of 1974, Struthers completed 12 contracts and was delinquent in 6. The delinquencies were attributed to vendor delays and poor planning.

Approval to reject Struthers' low bid and make award to the next low bidder was given by the chief of the Commodities Procurement Division in accordance with Directorate of Procurement and Production Operating Instruction 70-204(400). Because of the relatively low dollar amount of the low bid (\$2,860), the matter was not referred to the Small Business Administration (SBA). This decision was made in accordance with Armed Services Procurement Regulation (ASPR) 1-705.4(c) (1974 ed.), which leaves the matter of SBA referral to the discretion of the contracting officer where the proposed procurement exceeds \$2,500 but does not exceed \$10,000.

Contract No. F04606-75-C-0837 was awarded to the second low bidder on December 20, 1974.

In commenting on the administrative report Struthers states that it has completed over 300 contracts in the year 1974, and that 80 percent were delivered on time. It is alleged that its delinquencies, current and past, for the most part, were due to Government caused delay. Struthers also comments that the determination of nonresponsibility on this procurement is not based on a preaward survey for the instant procurement but on earlier surveys of questionable validity. Struthers states that notwithstanding the negative preaward survey in August 1974, it was awarded the contract for which the survey was performed and it delivered five months ahead of schedule. As to the November survey Struthers states that it withdrew its bid for that procurement because of a bid error and did not wish to be surveyed. (Our review of the November survey confirms that the "no award" recommendation was based "primarily on the bidder's failure to support the preaward survey.") As to the December survey, Struthers alleges that it was eventually awarded a contract for that procurement on the basis of a Certificate of Competency issued by SBA.

Determinations concerning the qualifications of prospective Government contractors require the exercise of independent judgment by the administrative agency. Our Office does not independently determine whether or not a firm is responsible but will review negative agency decisions in such matters to ascertain whether the information relied upon by the contracting officer can be considered to reasonably support the conclusion reached. B-155738, April 5, 1965; 37 Comp. Gen. 430 (1957); 52 Comp. Gen. 783 (1973).

Generally, a preaward survey is required if the information available to the procuring activity is not sufficient to enable the contracting officer to make a determination regarding the bidder's responsibility. ASPR 1-905.4(b) (1974 ed.). Minimum standards for responsible prospective contractors require, in part, a satisfactory record of performance. ASPR 1-903.1(iii) (1974 ed.). The contracting officer's reliance upon the Preaward Survey Monitor's oral advice of December 16 regarding Struthers' delinquent status on current contracts, in our opinion, was proper even though the firm contests the validity of this advice. Orlotronics Corporation, B-180340, May 14, 1974. Information concerning current contractor delinquencies are properly for consideration pursuant to ASPR 1-902 (1974 ed.). Halo Optical Products, Inc., B-178573, B-179099, May 17, 1974.

We think the record in this case indicates that a reasonable basis exists in support of the agency's negative determination of Struthers' responsibility.

Accordingly, the protest is denied.

  
Deputy Comptroller General  
of the United States