

**DECISION**

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

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**FILE:** B-213166**DATE:** March 5, 1984**MATTER OF:** Xtek, Inc.**DIGEST:**

1. Contracting agency was not required to reject low offeror's initial proposal as nonresponsive since concept of responsiveness generally is not applicable to negotiated procurements.
2. Contracting officer has discretion not to conduct a preaward survey and, in the absence of a showing of fraud or the failure to apply a definitive responsibility requirement, GAO will not review a decision not to conduct a preaward survey or the contracting officer's affirmative determination of responsibility.
3. Whether specification requirements are met during performance of a contract is a matter of contract administration which GAO will not consider.

Xtek, Inc. (Xtek), protests the award of a contract by the Naval Regional Contracting Center, Long Beach, to Star Iron and Steel Division of Washington Iron Works, Inc. (Star Iron), for the manufacture of a travel truck for a 25-ton Pennsylvania crane.

For the reasons stated below, we dismiss in part and deny in part the protest.

Request for proposals (RFP) No. N00123-83-R-0794 stated that award would be made to the low offeror agreeing to meet the required January 2, 1984, delivery date and that award might be made without discussions. Offers were received from Xtek (\$397,900) and from Star Iron (\$339,565). Xtek offered to comply with the delivery schedule, and Star Iron took exception to the schedule by offering a delivery date of approximately January 23, 1984. The procuring agency decided to negotiate with both offerors and amended the RFP to include a provision for liquidated damages. In the best and final offers, both offerors agreed to the required delivery date and to the liquidated damages provision. An Xtek alternate proposal which did not provide for liquidated damages was not low. Therefore, a contract was awarded to Star Iron after a determination, without a preaward survey, that the firm was a responsible offeror.

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Xtek contends that the award was improper because Star Iron was nonresponsive to the following RFP provision:

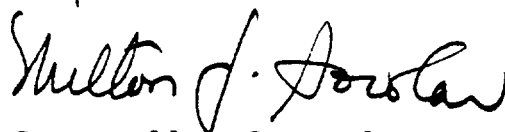
"Bids offering delivery of a quantity under such terms or conditions that delivery will not clearly fall within the applicable delivery period specified above will be considered nonresponsive and will be rejected and offers on such basis may be deemed unacceptable."

The concept of "responsiveness" generally does not apply to negotiated procurements as it applies in formal advertising procurements. The above-quoted provision clearly provides for this distinction. Therefore, since the agency was not required to award on an initial proposal basis, there was nothing improper with the Navy decision to conduct negotiations with Star Iron rather than to reject the proposal as nonresponsive. See Galaxy Aircraft Instruments Co., Inc., B-194356, May 28, 1980, 80-1 CPD 364; see Century Industries, Inc., B-197302.2, May 21, 1981, 81-1 CPD 397.

Xtek also questions Star Iron's responsibility and the Navy's failure to conduct a preaward survey. In accordance with Defense Acquisition Regulation § 1-904 (Defense Acquisition Circular No. 76-25, October 31, 1980), the contracting officer determined Star Iron to be a responsible firm. The contracting officer states that although Star Iron had been late in delivery on some prior contracts, the firm had satisfactorily performed other prior contracts and agreed to accept the liquidated damages clause. We have held that a preaward survey is not a legal prerequisite to an affirmative determination of responsibility. Contracting officials have broad discretion regarding whether to conduct a preaward survey, and we will not review such a decision or an affirmative determination of responsibility absent a showing that the contracting officer acted fraudulently or in bad faith or that definitive responsibility criteria in the IFB were not met. See Paramatic Filter Corporation, B-210138, February 24, 1983, 83-1 CPD 187; Domar Industries, B-209861, December 30, 1982, 82-2 CPD 589. The protester has not alleged fraud or bad faith and specific responsibility criteria were not established for this procurement.

Xtek's final contention concerns Star Iron's alleged lack of compliance with the delivery provisions and alleged deviations from specifications granted Star Iron by the contracting agency during performance of this contract. These matters do not affect the validity of the award, but involve contract administration, which is the responsibility of the procuring agency and not this Office. Control Technology Co., Inc., B-210860, March 14, 1983, 83-1 CPD 254; Tenavision Inc., B-208857, September 21, 1982, 82-2 CPD 256. Parenthetically, we note that the agency has advised that Star Iron delivered an acceptable item 8 days late and the appropriate liquidated damages were assessed.

Xtek's protest is dismissed in part and denied in part.

*for*   
Comptroller General  
of the United States