

DECISION

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

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FILE: B-213440**DATE:** March 20, 1984**MATTER OF:** Falcon Research**DIGEST:**

An agency's determination that the protester was not a responsible prospective contractor is not legally objectionable where there is no allegation of agency bad faith and the record shows that the determination was based on facts disclosed by a preaward survey that, taken together, created uncertainty as to the protester's ability to comply with the contract's delivery schedule.

Falcon Research, a subsidiary of Whittaker Corporation, protests the award by the Defense Mapping Agency's Hydrographic/Topographic Center of a contract to Teledyne Geotronics under request for proposals (RFP) No. DMA800-83-R-0019. The contract is for 347 cells of digital terrain elevation data (DTED). Basically, DTED is the end product of a process that converts graphic data on source maps to digital data on computer tapes. The protester challenges the agency's determination that the protester was not a responsible prospective contractor for this procurement. We deny the protest.

The protester submitted the lowest-cost, technically acceptable proposal. A team of agency specialists conducted a preaward survey of the protester's and its proposed subcontractors' facilities and reported the following: (1) the protester was more than 90 days late in completing three of its contracts during the previous year; (2) one of the computers that the protester proposed to use on this contract had not been in use for 2 years and would not be operational until after award; (3) only one of six software applications had been completed and the system as a whole had not yet been tested; and (4) the protester's production personnel

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were inexperienced. Based on this information, and on advice from agency technical representatives that a contractor would need to have "an adequate means for production" available at the time of award in order to comply with the contract's delivery schedule, the contracting officer determined that the protester was not responsible because it did not appear capable of timely performance of the contract.

The solicitation required delivery of a first article from each of two lots no later than 110 days after issuance of the notice to proceed, with delivery of the balances of the two lots no later than 240 and 437 days, respectively, after notice to proceed. The solicitation did not require that the successful offeror be capable of full production at the time of contract award. Falcon argues that it was therefore improper for the agency to base a nonresponsibility determination on its preceived lack of such capability. In addition, the protester notes that before a notice to proceed would be issued, the contractor would have to obtain security clearances. Thus, argues the protester, there would be sufficient time after award of the contract for it to cure the deficiencies noted by the preaward survey team, specifically the lack of an experienced staff, before commencement of full production. The protester contends further that it would have no problem in developing the remaining required software and that it had received assurances from the manufacturer that its second computer could be activated, if needed. Finally, the protester contends that the agency cannot base its nonresponsibility determination on the protester's late performance of last year's contracts because those delays were caused, at least in part, by the government.

The regulations provide that agencies shall award contracts only to responsible prospective contractors. Defense Acquisition Regulation (DAR) § 1-902. Responsibility refers to a prospective contractor's ability to perform the contract and encompasses such factors as financial resources, integrity, record of prior performance, and the ability to comply with the contract's delivery schedule. Id. A determination of responsibility is essentially a forecast based on the contracting

officer's good faith exercise of his business judgment. See Community Economic Development Corporation, B-211170, August 23, 1983, 83-2 CPD 235. A contracting officer has broad discretion in determining a prospective contractor's responsibility, and this Office will not question a nonresponsibility determination unless the protester demonstrates bad faith by the agency or a lack of any reasonable basis for the determination. S.A.F.E. Export Corporation, B-209491; B-209492, August 2, 1983, 83-2 CPD 153.

From our review of the record, there is no evidence of bad faith by the agency and we find that its nonresponsibility determination was rationally based.

The contracting officer indicated that the preaward survey had failed to show that the protester "could be prepared to start production at the time of contract award as would be required" or would be in a "production posture at time of award to meet either the first article or final production requirements of the contract." As we read these statements, we believe the contracting officer was concerned with the protester's ability to commence performance of the contract at the time of award in order to assure compliance with the first article and final delivery schedules. Contrary to the protester's contention, the contracting officer's nonresponsibility determination does not appear to have been based on the protester's lack of full production capability at the time of contract award. Rather, it appears that, based on the facts disclosed by the preaward survey team, coupled with advice from agency technical representatives, the contracting officer simply decided that, in his judgment, the protester's then current production capability was so far below that which ultimately would be required that timely performance could not be assured. Although the protester contends that the deficiencies noted by the preaward survey team could be cured, and that its prior record of late performance was excusable, we conclude that, taken together, all of these factors created enough of an uncertainty regarding the protester's ability to comply with the delivery schedule that the determination that the protester was not responsible was reasonable.

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B-213440

We deny the protest.

for *Milton J. Aroslan*
Comptroller General
of the United States