

K4544



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Flameco Division of Barnes Group, Inc.

File: B-243872

Date: August 2, 1991

C. Stuart Kale for the protester.
Paul J. Seidman, Esq., for Electro-Methods, Inc., an interested party.
John C. Gatlin, Esq., Department of the Air Force, for the agency.
C. Douglas McArthur, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting officer may base a determination of nonresponsibility upon consultation with administrative contracting office and reasonable judgment of inadequate performance under prior contracts for same part.

DECISION

The Flameco Division of Barnes Group, Inc. protests the rejection of its offer under request for proposals (RFP) No. F34601-91-R-03151, issued by the Department of the Air Force. The protester argues that the agency unreasonably determined it to be nonresponsible.

We deny the protest.

On November 27, 1990, the agency issued the solicitation for a firm, fixed-price contract for part number 9343M78G02, a forward centerbody for the F110 engine, used in the F-16. The agency received four proposals from approved sources on December 27, the lowest from Electro-Methods, Inc. On April 2, 1991, the agency asked each of the offerors to submit a best and final offer (BAFO) by April 9, based upon a relaxed delivery schedule. The protester submitted the lowest price.

After consultation with the administrative contracting office and a review of the protester's performance under current contracts for the same item, the contracting officer, on April 16, determined the protester to be nonresponsible for

the purposes of award. On April 25, the agency awarded a contract to Electro-Methods, Inc. as the low, responsible offeror, and this protest followed.

The protester contends that the agency failed to consult with the administrative contracting officer who was cognizant of its current performance. The protester argues that while it previously had a record of delinquency while operating as Flamenco Engineering Inc., the Barnes Group, Inc. acquired the assets of Flamenco in October 1989, after which the protester corrected its performance problems. The protester argues that it has consistently completed its contracts on time, is currently delivering the same forward centerbody for General Electric under other purchase orders, and that its failure to deliver the part to the agency under Air Force contracts is excusable.

As relevant here, we look only to the question of whether a determination of nonresponsibility was reasonable. Tek-Wave, Inc., B-228453.3, Apr. 26, 1988, 88-1 CPD ¶ 402. While the determination requires the exercise of discretion and business judgment on the part of the contracting officer, the record must contain a reasonable factual basis supporting the ultimate determination. See 45 Comp. Gen. 4 (1965). The Federal Acquisition Regulation (FAR) § 9.104-3(c) provides that a prospective contractor which is seriously deficient in contract performance is presumed nonresponsible, unless the contracting officer determines that circumstances were beyond the contractor's control or that the contractor has taken appropriate corrective action. We find that the determination made here was reasonable.

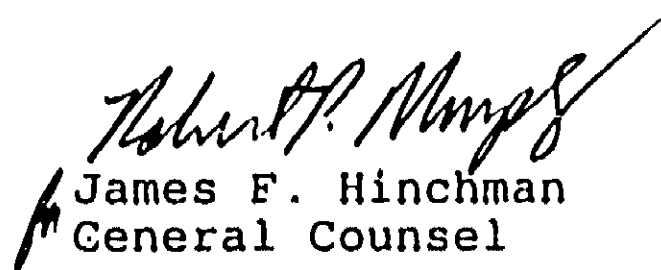
The record shows that on April 23, 1990, the Defense Contract Management Area Operations in Denver completed a preaward survey of the protester, prior to the award of a contract by the same agency for the same part; the survey report declined to recommend award based on the protester's history of delinquency, its lack of production capability, and a recent reduction in its work force. Nevertheless, on May 21, 1990, the agency declined to follow the survey recommendation and awarded contract No. F34601-90-C-1553 to the protester. The protester was 2 weeks late in submitting its first article product, which ultimately failed testing; the protester has not yet submitted an acceptable first article.

The contracting officer found that with regard to the particular item, the forward centerbodies, the contractor had received three awards, including the 1990 contract, and had been unable to provide timely delivery under any of the contracts. The contracting officer, cognizant of the survey done in the previous year, spoke with the preaward survey monitor in Denver, who noted that despite improvement in the

protester's delivery record, problems persisted. The protester argues that the agency performed x-ray tests not required by the specification in rejecting its first article and contends that the Denver preaward monitor is unfamiliar with the firm, particularly its acquisition by the Barnes Group, Inc. The agency disagrees, asserts that the specifications do require x-ray inspection, and advises our Office that the welding defects found in the protester's first article could cause engine failure; in any event, the contracting officer had no evidence from which she could conclude either that the delinquency was excusable or that the protester had taken appropriate corrective action.

The contractor does not dispute or offer an excuse for its failure to make timely delivery under two prior contracts for the centerbodies, other than to argue that its affiliation with Barnes Group has improved its performance. While the record supports the protester's contentions that its record has improved, the contracting officer had a reasonable basis to doubt the protester's ability to deliver the forward centerbodies in accordance with the solicitation schedule. Although the protester attributes its failure to the agency, it is the contracting officer's reasonable judgment of events that must govern. The contracting officer is not required to conduct an independent inquiry to confirm or deny the concerns raised by both the preaward survey monitor in Denver and the first article testing team. See International Paint USA, Inc., B-240180, Oct. 30, 1990, 90-2 CPD ¶ 349.1/ We find therefore that the contracting officer had sufficient information in the record before her to raise reasonable doubts concerning the protester's ability to perform in a timely manner and in accordance with specifications.

The protest is denied.


James F. Hinchman
General Counsel

1/ The April 1990 preaward survey shows that the preaward team was aware that the assets of the Barnes Group were available to the protester; there is no evidence that the preaward monitor was confused as to the protester's identity.