



# CONTRACT LAW DIVISION

Office of the Assistant General Counsel for Finance & Litigation

## A Lawyer's View of Pre-Award Surveys

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### The Pre-Award Survey

A useful tool

by Roxie Jamison Jones

Consider these questions. Before award, do you know whether the awardee's technical staff plans to perform in accordance with their company's technical proposal? Does the potential awardee have enough buying power to place orders immediately? Are there knowledgeable employees available and ready to provide the support services you need? The answer to these questions is readily available to you if, as part of a responsibility assessment, you conduct a pre-award survey of your prospective awardee's plant, financial records, staffing, and other relevant areas.

#### Pre-Award Survey

A preaward survey is an evaluation by a surveying activity of a prospective contractor's capability to perform a proposed contract. FAR §9.101. Its purpose is to determine the contractor's ability to perform before that company becomes a Government contractor. Standard Forms 1403 - 1408 (found in FAR Part 53) are a valuable guide to conducting an effective survey. Generally, pre-award surveys cover five major areas: (1) technical capability, (2) production capability, (3) quality assurance capability, (4) financial capability, and (5) quality assurance capability. During a survey, the prospective contractor must demonstrate affirmatively its responsibility. FAR §9.103(c). Pre-award surveys either confirm that the potential awardee is an acceptable candidate for contract award or they identify potential deficiencies before they become the Government's problem.

#### A Gray Area

The distinction between evaluation criteria and matters of responsibility has been grayed by the routine inclusion of traditional responsibility criteria in technical evaluation factors of negotiated procurements. Consequently, an offeror's ability to perform is being considered within the parameters of the bid and proposal evaluation process. Accompanying this trend seems to be an reduction in the number of in-depth, post-BAFO,

responsibility investigations. Yet, an adequate proposal response or a sound technical approach does not always guarantee that an offeror can perform the job. The following smattering of examples describe pre-award survey results disclosed about seemingly acceptable offerors. As you read, consider the delay and the correction cost if these deficiencies were discovered after award.

#### Production and Technical Capability

A potential awardee's proposal contained no indication of any undue reliance on a Government-supplied prototype design (the solicitation warned that the prototype required further design and had undergone no qualification testing). Nonetheless, Government engineers on a three day pre-award survey learned from the contractor's engineers that they intended to produce the required product without further design, development or testing. Those remarks coupled with the absence of a device which should have been standard equipment at an experienced offeror's testing facility revealed to the survey team that the selectee lacked the requisite capability to produce the solicited product. Based upon these pre-award survey results, the CO found the offeror nonresponsible and GAO upheld the determination based upon a lack of capability and understanding to implement its proposed approach to meeting the specifications requirements. *TAAS-Isreal Industries, Inc.*, B-251789.3, 94-1CPD 197. In another case, the potential awardee's previous failures to deliver satisfactory products at the scheduled dates or to provide corrective action plans were discovered and considered to be past performance indicators that the offeror lacked the production capa-

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**A Lawyer's View** is a periodic publication of the Contract Law Division designed to give practical advice to the Department's procurement officers. Comments, criticisms, and suggestions for future topics are welcome.—Call Jerry Walz at 202-482-1122, or via e-mail to Jerry Walz@FinLit@OGC or jwalz@doc.gov.



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bility to perform the current contract requirements. *Aydin Vector Division*, B-244838, November 13, 1991, 91-2 CPD 455.

### Accounting System

In the *Continental Maritime of San Diego, Inc.* case, the selectee's acceptable proposal stated that it would use its cost/schedule control system to satisfy a contract requirement to segregate costs by line item. Yet, a DCAA audit disclosed that the selectee's cost/schedule control system did not contain the necessary detail to perform as the proposal indicated. GAO stated that this deficiency reached both contractor responsibility and the accuracy (and quality) of the contractor's business proposal. *Continental Maritime of San Diego, Inc.*, B-249858.2; B-249858.3, Feb. 11, 1993, 93-1 CPD 230.

### Financial Capability

A technically qualified architect and engineering firm was rejected after a pre-award survey of the potential awardee's finances revealed a lack of available working capital, a negative balance sheet, and extensive debt. *Benard Johnson, Inc.*, B-252481, June 21, 1993, 93-1 CPD 476. In another case, a construction contractor's bid was rejected after a pre-award survey disclosed a lack of working capital, deficit retained earnings, negative net worth, interim losses and heavy debt burden. *Capitol Contractors, Inc., and Baker Roofing Company*, B-2489944.2, 92-2 CPD 267. General financial information from a Dunn and Bradstreet report and from the firm itself was the basis for rejection in *Harvard Interiors* where the agency concluded that there was substantial doubt about the potential awardee's ability to continue as a going concern. *Harvard Interiors Manufacturing Co.*, B-247000, May 1, 1992, 92-1 CPD 413.

### Summary

It is not improper to consider responsibility factors in both evaluation criteria and during pre-award surveys, just focus on purpose. Responsibility information provided in bids or offers is used to determine compliance with contract requirements and for proposal evaluation purposes. During a pre-award survey, responsi-

bility data are used to determine whether the potential awardee has affirmatively demonstrated an ability to perform in the manner described in its proposal. And, if relevant information obtained from outside the proposal for determining responsibility requires a reassessment of the technical merits of an offeror's proposal, an agency may perform the reassessment. *Continental Maritime of San Diego, Inc.*, B-249858.2; B-249858.3, Feb. 11, 1993, 93-1 CPD 230.

Most importantly, remember there's nothing like a visit to a business' plant to confirm that the contractor has the capability to perform. It's reassuring—and sometimes revealing—to review a company's financial records. Lastly, it is better to learn of performance problems from a survey than to experience them first-hand. Pre-award surveys are an effective and useful tool—use them often.

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