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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Bluff Springs Paper Company, Ltd./R.D. Thompson Paper Products Company, Inc. Joint Venture

File: B-286797.3

Date: August 13, 2001

Anthony W. Hawks, Esq., for the protester.

Scott P. Pavelle, Esq., for Esselte Corporation, an intervenor.

Jennifer R. Fantuz, Esq., Government Printing Office, for the agency.

David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably determined to reprocure defaulted requirement from other than protester, a joint venture that was the evaluated next low bidder on the original procurement, where preaward survey information indicated that protester and component companies had performed late on numerous recent contracts, while awardee had recently performed similar work successfully.

DECISION

Bluff Springs Paper Company, Ltd./R.D. Thompson Paper Products Company, Inc. Joint Venture protests the award of a contract to Esselte Corporation pursuant to the Government Printing Office's (GPO) reprocurement of modular disability folders under program No. C684-S. The joint venture asserts that GPO improperly found it nonresponsible, and thus ineligible for award.

We deny the protest.

The reprocurement followed the termination for default of a contract for the requirement that had been awarded to Thom-Tex Paper Converting Corporation. The contracting officer, reprocurring without resoliciting, first considered the feasibility of an award to the joint venture, since it had been the evaluated next low bidder after Thom-Tex under the original competition. However, based upon October 19, 2000 preaward surveys of Bluff Springs and R.D. Thompson individually, GPO determined that the joint venture was nonresponsible due to unacceptable past performance, and therefore issued a purchase order to Esselte on October 23.

Agency Report, June 1, 2001, at 1-2; Reaward of Program C684-S, Oct. 20, 2000; Repurchase of Program C684-S, Oct. 20, 2000. On October 31, in response to an agency-level protest from the joint venture, GPO reaffirmed the determination not to negotiate with the joint venture, based in part on a new, October 30 preaward survey, which indicated significant late performance by the joint venture. Reevaluation of Repurchase After Default, Program C684-S, Oct. 31, 2000.

The joint venture argues that GPO failed to recognize that the performance record of the joint venture itself was the most relevant responsibility information, and also improperly failed to look behind the numerical data and consider information—such as the reasons for any delays, and whether the contractors had taken corrective action—that might bear on the likelihood of successful performance. The protester notes that GPO’s Printing Procurement Regulation (PPR), chapter I, section 5, subsection 6, requires the contracting officer to base nonresponsibility determinations on “all available information.”

Generally, the statutes and regulations governing federal procurements are not strictly applicable to repurchases of defaulted requirements. Montage, Inc., B-277923.2, Dec. 29, 1997, 97-2 CPD ¶ 176 at 2. In particular, under the standard termination for default clause incorporated into GPO solicitations and contracts, the contracting officer may reprocure “under the terms and in the manner the Contracting Officer considers appropriate” for the repurchase. GPO Contract Terms, Pub. No. 310.2, Contract Clauses § 20(a)(2)(b). We will review a repurchase to determine whether the agency acted reasonably under the circumstances. Marvin Land Sys., Inc., B-276434, B-276434.2, June 12, 1997, 97-2 CPD ¶ 4 at 3.

GPO’s determination to eliminate the joint venture from consideration for the repurchase was reasonable. The October 2000 preaward surveys, based on the most recent 13 months of contractor compliance data, represented the data most relevant to assessing the likelihood of successful performance. The October 19 preaward surveys indicated that the joint venturers individually had performed late on numerous jobs, with Bluff Springs late on 16 of 31 jobs, or 52 percent, and R.D. Thompson late on 6 of 25 jobs, or 24 percent. Likewise, the October 30 preaward survey indicated that the joint venture itself had been late on 8 of 31 jobs, or 26 percent.¹ In contrast, the October 19 preaward survey indicated that Esselte had been late on only one job (of the three jobs reflected in the data), and Esselte had satisfactorily performed a contract for modular disability folders as recently as April 2000. This information fairly indicated that the joint venture and its constituent parts had experienced more significant performance problems than Esselte; even though Esselte’s late percentage was 33 percent (1 out of 3 contracts),

¹ GPO reports that the records in the database of contractor compliance are maintained for only 13 months and thereafter are purged. Agency Report, June 1, 2001, at 9 n.6.

we think the agency reasonably could consider the volume of contracts on which the joint venture was late as an indicator that its performance had been more problematic than Esselte's, and that it more likely would experience performance problems if awarded the contract here. Further, since there was nothing on the face of the preaward survey information that brought its validity into question, we think the agency reasonably could rely on it without further investigation. See generally Lynwood Machine & Eng'g, Inc., B-285696, Sept. 18, 2000, 2001 CPD ¶ __ at 7 (where agency was not otherwise required to communicate with vendors regarding past performance information, and there was no reason to question the validity of the information, contracting officer reasonably relied on the information without seeking to verify it or permitting the protester to rebut it). Under these circumstances, GPO reasonably made award to Esselte, which had recently successfully performed work the same as that being procured, and did not have an extensive record of late performance.

In any case, it does not appear that further investigation would have warranted a different result. The protester has suggested that late delivery on one of a related, or "strapped," group of jobs may have resulted in the entire group being marked as late in the contractor compliance database, thus inflating its overall late percentage. However, GPO had generated Contractor Performance Histories for the joint venturers on August 30, 2000, and these detailed reports confirm, even after adjustment for possible instances of strapped jobs, that the joint venturers had performed late on numerous jobs. Specifically, the report showed that Bluff Springs had been late on 14 of 32 jobs (approximately 44 percent) in the immediately preceding 13 months. GPO calculates that, while 2 of the late jobs were for a single strapped job, eliminating this double-counting leaves Bluff Springs late on 13 of 32 jobs, or approximately 41 percent. Likewise, the August report indicated that R.D. Thompson had been late on 8 of 31 jobs (approximately 26 percent) for the immediately preceding 13 months, and that there was no possibility that the overall lateness rate had been inflated by strapped jobs. Agency Report, June 1, 2001, at 9. Although GPO never obtained a detailed history for the joint venture itself, and the protester asserts that the joint venture's preaward survey late rate may have resulted from cancellation of a number of strapped jobs, it remains that the individual joint venturers each had recent performance records characterized by numerous instances of late performance; agencies generally may consider the individual venturers' performance in assessing a joint venture's past performance. See Arctic Slope World Servs., Inc., B-284481, B-284481.2, Apr. 27, 2000, 2000 CPD ¶ 75 at 11 n.6.

We conclude that the agency reasonably made award to Esselte under the repurchase.

The protest is denied.

Anthony H. Gamboa
General Counsel