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United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: IPI Graphics

File: B-286830; B-286838

Date: January 9, 2001

Frederic G. Antoun, Jr., Esq., for the protester.

Roy E. Potter, Esq., Government Printing Office, for the agency.

Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably determined that protester was nonresponsible based upon conclusion that protester lacked the capability necessary to perform the contract where protester failed to demonstrate or provide sufficient evidence to show that it has adequate production controls and quality assurance methods to satisfy the quality requirements of the contracts.

DECISION

IPI Graphics, Inc. protests the determinations by the Government Printing Office (GPO) that it is nonresponsible under two invitations for bids (IFB) designated as programs Nos. B315-S and C518-S, for various publications for the National Endowment for the Humanities and the Department of the Interior. IPI argues that the nonresponsibility determinations lack a reasonable basis.

We deny the protests.

Both IFBs contemplated the award of a fixed-price requirements contract for the required printing services. Under program No. B315-S, the contractor is to provide booklets, guide books, and handbooks, estimated at between 2,000 to 40,000 copies per order from November 1, 2000 through October 31, 2001. Under program No. C518-S, the contractor is to provide estimated quantities ranging from 12,000 to 15,000 of a booklet titled "Humanities," on a bi-monthly basis from December 1, 2000 through November 30, 2001.

The IFBs provided that a quality assurance level II (QL II) standard for printing and finishing would apply to items produced under the contracts. Under program No. B315-S, the specifications covered the production of books and pamphlets requiring such operations as “conventional and electronic pre-press, color separation, creation of preliminary film, halftone, duotone, tritone, quadtone, . . . printing on face and back in one to six colors including four color process inks from film or digital files, paper, binding, packing, and distribution.” Agency Report (AR) B315-S, exh. A, at 4. Under program No. C518-S, the specifications covered the production of a “self-cover publication requiring such operations as electronic prepress, color separation, printing in four-color process plus one additional color, binding, packing, and distribution.” Id. C518-S, exh. A, at 5. Both IFBs advised that in order to determine the responsibility of the prime or any subcontractor, the government reserved the right to conduct on-site preaward surveys of the firm’s facilities, or require other evidence of technical, production, managerial, financial, and similar abilities to perform the contract.

In order to determine IPI’s responsibility, the contracting officers (CO) inquired from the GPO’s Quality Assurance Section (QAS) regarding IPI’s ability to produce acceptable QL II work. In addition, with respect to program No. B315-S, on October 17, 2000, a GPO representative completed a preaward survey form in which he noted in the remarks section that as of March 23, 1999, he “recommend[ed] no awards to [IPI] at [QL II] containing all 4 color process for multi sig- pieces (pamphlet and books) . . .”; he also specifically recommended “no award” to IPI under the IFB here. AR B315-S, exh. B, Preaward Survey.

The record shows that IPI had asked that the QAS reassess its recommendation that IPI not be awarded any work involving QL II. In connection with this request, the GPO conducted an on-site inspection of IPI’s press sheets and samples at the firm’s facility on November 3, 2000. The inspection report found several defects in IPI’s products, including “hickies and spots,” “register,” “type quality and uniformity,” “solid or screen tints color match,” and “process control match.” AR C518-S, exh. B, Contractor Quality Level Inspection Report. Based on the results of that inspection, the CO concluded that IPI had “failed to increase their quality to a [QL II] level.” Id., exh. B, Determinations and Findings, Nov. 13, 2000.

Based on the information provided by the QAS, the preaward survey form, and the results of the on-site inspection, the COs both independently determined the firm nonresponsible, and awarded the contracts to the next low bidders.¹ These protests followed.

¹ While IPI’s business size status is not clear from the record, even if the protester is a small business concern, GPO was not required to refer the nonresponsibility determinations to the Small Business Administration because GPO, as a legislative branch agency, is not subject to the referral requirements of the Small Business Act, (continued...)

As to both nonresponsibility determinations, IPI primarily contends that the COs improperly failed to request “typical” pre-award surveys, which, according to IPI, should have included a review of the firm’s many other jobs in progress, past performance, and quality control procedures and production methodology. In particular, IPI maintains that the nonresponsibility determinations were unreasonable given that it has been successfully producing work involving 4-color process for GPO for several years. In addition, IPI argues that it was unreasonable for the COs to rely solely on the QAS recommendation (to not award IPI any QL II work) to determine the firm nonresponsible.

Under the GPO’s Printing Procurement Regulation (PPR), the CO must make an affirmative determination that a firm is responsible before awarding a contract to that firm. PPR I-5.1. In order to receive a favorable responsibility rating, an offeror must meet several minimum standards applicable to the procurement, including having a satisfactory record of performance regarding both quality and timeliness on previously-awarded contracts, and possessing, or having the ability to obtain, the necessary equipment, technical skills, and productive capacity to perform the contract. Id. I-5.4(d). In addition, the PPR requires that the successful contractor have adequate production controls and quality assurance methods to satisfy the quality requirements of the contract. Id. I-5.4(e). The PPR requires that the CO make a nonresponsibility determination if, based on the available information, there is no clear indication that the prospective contractor meets those minimum standards. Id. I-5.6. The CO is required to determine a firm nonresponsible where there is doubt as to the offeror’s productive capability which cannot be resolved affirmatively. Id.

The CO is vested with broad discretion in exercising his or her business judgment in making a nonresponsibility determination. Document Printing Serv., Inc., B-256654, B-257051, July 8, 1994, 94-2 CPD ¶ 13 at 3. Our Office generally will not disturb a nonresponsibility determination unless a protester can show either that the procuring agency had no reasonable basis for the determination or that it acted in bad faith. Id. In our review of nonresponsibility determinations, we consider only whether the negative determination was reasonably based on the information available to the CO at the time it was made. Id. at 4. Based on our review of the record here, we think that the nonresponsibility determinations are reasonably supported.

The COs’ determinations that IPI is nonresponsible were primarily based on their independent finding that IPI lacked adequate production controls and quality assurance methods to satisfy the quality requirements of the programs at issue. Specifically, in their sworn declarations in response to these protests, the COs state that they were aware that IPI had limited capabilities to produce some types of QL II

(...continued)

15 U.S.C. § 637(b)(7) (1994). See Fry Communications, Inc., B-207605, Feb. 1, 1983, 83-1 CPD ¶ 109 at 2-5.

work, and were also aware that IPI had on several occasions failed to produce acceptable QL II work that warranted removal of a long-standing QAS recommendation that the firm not be awarded that type of work. See ARs B315-S and C518-C, exhs. E, COs' Declarations. The COs further state that their independent inquiries to the QAS revealed that IPI had recently requested that its 4-color capabilities be reevaluated, and that office confirmed that IPI had recently failed to produce acceptable full 4-color work as called for under both programs at issue here.

The CO under program No. B315-S states that given the complexity of the work covered by that program, he was particularly concerned with IPI's continued inability to produce acceptable samples of full coverage 4-color process work, or pass press sheet inspections—operations covered by that program. Similarly, the CO for program No. C518-S states that based on the information provided by GPO's QAS—including that IPI had failed to demonstrate its capability to perform the work required by that program as recently as during the on-site inspection conducted on November 3, 2000—he determined that IPI was nonresponsible.

In our view, the COs' nonresponsibility determinations are reasonably supported by the record. The IFBs imposed a quality assurance standard of Level II for the publications, which IPI concedes is an essential element of meeting the minimum contract requirements. Further, contrary to IPI's contentions, the specifications for both programs call for operations that include 4-color processing. The record further shows that the COs were aware that IPI had limited capabilities to perform QL II work, and this was confirmed by the GPO's QAS which has recommended that the firm not be awarded any QL II work. Moreover, an on-site inspection of press sheets and samples recently conducted at IPI's facilities found that IPI had failed to improve its quality to the required QL II level, and specifically concluded that IPI "will not meet the standards required for . . . Program [C]518-S." AR C518-S, exh. B, Contractor Quality Level Inspection Report, Nov. 3, 2000.

The record further shows that although IPI has requested that the GPO reassess the QAS's recommendation that the firm not be awarded QL II work, the firm has been unable to demonstrate to GPO's satisfaction that it can produce work of the required quality. Contrary to IPI's argument, therefore, the record clearly shows that in reaching their determinations, the COs did not rely solely on the QAS's recommendation, but also considered the firm's failure to produce acceptable QL II work during an on-site inspection. In sum, we conclude that based on the information available to them at the time showing that IPI lacked adequate production controls and quality assurance methods required by the respective programs, the COs reasonably determined that IPI was nonresponsible.

IPI's argument that the COs improperly failed to conduct "typical" preaward surveys because they failed to consider the firm's performance on other projects, is without merit. A preaward survey is not a legal prerequisite to a responsibility determination; COs have broad discretion concerning whether to conduct such surveys and may use, as was done here, other information available to them

concerning a firm's responsibility. See Mail Boxes Etc., B-281487, Feb. 16, 1999, 99-1 CPD ¶ 37 at 4. In any event, given the QAS's longstanding recommendation that IPI not be awarded any QL II work, and in view of the fact that IPI failed the GPO's recent on-site inspection of press sheet and samples supplied by IPI, we fail to see, and IPI does not explain, how consideration of IPI's performance on other jobs could have overcome both COs' doubts raised by IPI's failure to meet the quality standards established by the programs at issue here.

The protests are denied.

Anthony H. Gamboa
Acting General Counsel