



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Mico Phototype, Inc.

File: B-223756

Date: October 9, 1986

DIGEST

1. Contracting officer has broad discretion in determining bidder's responsibility. The General Accounting Office will not question a negative determination of responsibility absent a showing of bad faith or lack of any reasonable basis for the determination.

2. Contracting officer's negative responsibility determination of protester following preaward survey is not unreasonable where it is based upon finding that one of protester's proposed subcontractors, which would perform a substantial portion of the contract, has no established quality assurance program, and upon an unsatisfactory rating in the area of financial responsibility, absent a showing by the protester to the contrary or allegation of bad faith on part of agency.

DECISION

Mico Phototype (Mico), a typesetting service, protests the rejection of its bid under a Government Printing Office (GPO) Program 15225 solicitation, conducted for the United States Postal Service. Mico contends that the GPO improperly determined it to be nonresponsible for the performance of the procurement. We deny the protest.

The solicitation called for a requirements contract for the production of an 8-12 page monthly newsletter for the United States Postal Service in an estimated quantity of 9,500 copies per order. The invitation for bids (IFB) specified job operations to include copy pickup, composition, proofs, films, folding, packing and delivery. The IFB warned bidders that the contractor must strictly adhere to the requirement that orders be completed and delivered within 5 workdays after notice of approval to print.

Mico was the low bidder of the six bidding firms, but a preaward survey of the company resulted in a recommendation

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of no award based on the contracting officer's finding that the company could not "fulfill all the requirements of the contract and has not demonstrated the ability to perform at the required quality level." Mico received a preaward survey rating of unsatisfactory in the areas of technical and production capability and financial capacity.

According to the preaward survey report, it was determined that Mico's typesetting capability was satisfactory and that the company has produced an item "identical or similar to" what is required under the subject solicitation. The survey report also states, however, that with the exception of typesetting, all production requirements, including the production of negatives (proofs), would be performed by subcontractors. The report further states that the printing subcontractor has no in-house photographic capabilities and no established quality assurance program. It further appears that the survey officer was, upon his inquiry, informed by the printing subcontractor's plant manager that no provisions had been made for producing negatives as required by the solicitation.

Mico's plant facilities are described in the survey report as a 9- by 12-foot room in a private residence, and its current production obligation as "primarily . . . a small job shop." The protester's "unsatisfactory" rating in the area of financial capability was apparently based at least in part on the survey officer's finding that the company has no credit account in its name and that its "financial position appears to be insufficient to perform on [the] contract."

Mico states that at the time the preaward survey was conducted, the survey officer expressed satisfaction with its capability to produce the preprinting product and indicated concerns only with the company's financial responsibility and the "supposed limitations" of the printing equipment used by Mico's printing subcontractor. The protester maintains that the reasons stated by the agency in explanation of its rejection of Mico as nonresponsible are inconsistent with the bidder's capabilities demonstrated at the time the survey was conducted. Mico further argues that the lay-out sample by which the agency determined its subcontractor's quality levels was, in fact, not prepared by its subcontractor, Illinois Press, but by one of Illinois Press' other clients. Mico also contends that the observation in the survey report that its plant is a 9- by 12-foot room in a private residence

has no relevance to its ability to perform as required under the solicitation.

The determination of a prospective contractor's responsibility is the duty of the contracting officer, who is vested with a wide degree of discretion and business judgment in making that determination. Pauline James & Associates, B-220152, B-220152.2, Nov. 20, 1985, 85-2 C.P.D. ¶ 573. Although the contracting officer's determination of responsibility should be based on facts and conclusions reached in good faith, it is appropriate that the final decision be left to the administrative discretion of the contracting agency involved since it must bear the effect of any difficulties experienced in obtaining required performance. Martin Electronics, Inc., B-221298, Mar. 13, 1986, 86-1 C.P.D. ¶ 252.

For these reasons, our Office generally will not question a contracting officer's negative determination of responsibility unless the protester can demonstrate bad faith on the agency's part or the lack of any reasonable basis for the determination. Lithographic Publications, Inc., B-217263, Mar. 27, 1985, 85-1 C.P.D. ¶ 357. The protester has not alleged bad faith on the part of the GPO, and upon examination of the record, we find that Mico has not shown that the nonresponsibility determination, generally, lacked a reasonable basis.

As stated in the survey report, the survey officer based the determination that Mico was not responsible to perform the contract on the following statement of findings:

". . . the contractor was unable to demonstrate their ability to perform on this program as follows:

1. Contractor has made no provisions for providing composite proofs as required by the contract.
2. Contractor would sub-contract the printing. An inspection of the subcontractor indicated an inability to provide a product that would meet the required quality levels of this contract (printing, level IV and halftones level III)."

In his letter to Mico informing the company of the nonresponsibility determination, the contracting officer stated that the survey showed Mico "did not have the capabilities to provide composite proofs as required by the specifications and that the firm you intended to use to do the printing did not meet the required quality levels."

We note, initially that both the survey officer's statement of findings and the contracting officer's letter informing Mico of the reasons for the determination of nonresponsibility, on one hand, fail to state clearly and completely the deficiencies discovered during the preaward survey and, on the other hand, miscommunicated its objection concerning the production of proofs required by the solicitation. In this regard, the statements that Mico did not have the capabilities to provide composite proofs and that it had made no provisions for producing them appear to have been based upon the survey officer's stated belief that Mico could not produce the proofs, and upon the statement of the printing subcontractor's plant manager that Mico had made no provisions for producing them. As previously stated, however, according to the survey report Mico's "subcontractors" were to provide all production requirements except typesetting, and ". . . Negatives would be produced by yet another contractor." Thus, it appears that the protester had perhaps made some provisions to produce the composite proofs, although in view of the required quality levels for the publication and the strict time limits for completion and delivery of orders, the agency may have looked adversely upon Mico's reliance on several subcontracting arrangements to perform the contract.

In any event, in this case the propriety of the agency's determination of nonresponsibility need not turn upon the issue of the protester's capability of producing the composite proofs, since even if this aspect of the protester's capability was improperly evaluated, that fact would not necessarily render invalid the agency's ultimate nonresponsibility determination. Omneco, Inc., et al., B-218343, June 10, 1985, 85-1 C.P.D. ¶ 660.

As previously stated, the survey report reveals that an inspection of the printing subcontractor's plant and sample products indicated an inability to provide a satisfactory product and that the printing subcontractor has no established quality assurance program. In response to these findings, Mico only argues that the expressed concern about the limitations of its printing subcontractor's equipment

is "without merit" because the survey officer based his determination on a work sample which he obtained at the subcontractor's office but which was not prepared by the subcontractor.^{1/} The protester does not address the survey officer's conclusion that the printing subcontractor has no established quality assurance program.

A prospective contractor must affirmatively demonstrate its responsibility, including, when necessary, the responsibility of its proposed subcontractors. See the Federal Acquisition Regulation (FAR), 48 C.F.R. § 9.103(c) (1984). When, as in this instance, a prospective contract involves substantial subcontracting, the contracting officer may directly determine a prospective subcontractor's responsibility using the same standards by which a prime contractor's responsibility would be determined. FAR, 48 C.F.R. § 9.104-4(b).

Notwithstanding Mico's submission to our Office of samples of its work printed by its subcontractor, it has not challenged, much less disproved, the survey officer's conclusion that its printing subcontractor has no established quality assurance program; nor has the protester shown a lack of any reasonable basis for the agency's conclusion on this point. We conclude, therefore, that Mico did not affirmatively demonstrate, at the time of the survey or subsequent thereto, the responsibility of its printing subcontractor in the area of quality assurance.

Furthermore, while the protester insists that it is capable of producing a product of the quality required by the solicitation, in view of its proposed procedure and resources for performing the contract, we think the basis of the dispute on this issue is the difference of opinions between the agency and the protester. However, the protester's challenge to the discretion and business judgment of the contracting officials does not meet its burden of proving that the nonresponsibility determination was unreasonable. Omneco, Inc., et al., B-218343, supra, 85-1 C.P.D. ¶ 660.

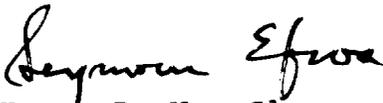
We further note that Mico did not address the survey officer's expression of "concern" and subsequent negative evaluation of the company with respect to its financial

^{1/} Mico also provided our Office with several typesetting and layout samples which it says it produced and its subcontractor printed.

responsibility. There is also no indication in the record that the protester provided the agency evidence that would support an affirmative finding on this element. For a prospective contractor to be determined responsible, it must have adequate financial resources to perform the contract, or the ability to obtain those resources. FAR, 48 C.F.R. § 9.104-1(a) (1984). In the absence of a showing by the protester that the contracting officer lacked a reasonable basis for finding the firm financially nonresponsible to perform the contract, we will not question that determination. Manufacturing Systems International, Inc., B-212173, May 30, 1984, 84-1 C.P.D. ¶ 586.

Finally, in its comments on the agency's report responding to the protest, Mico complains that "the nuance" inherent in the survey report statement describing its plant as a 9- by 12-foot room in a private residence is "highly discriminatory" in that it suggests that the size and location of the work place would impact negatively on its productivity and work product. We note that the survey report rated Mico satisfactory in the areas of "Plant Facilities and Equipment" and "Total [space] for Manufacturing" with specific reference to the work that Mico would perform--that is, typesetting. We find, therefore, that the record does not support the protester's allegation that the description in the survey report of the physical size and nature of the company's facilities reflects negatively on its production or technical capability.

The protest is denied.

for 
Harry R. Van Cleve
General Counsel