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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Automated Datatron, Inc.

File: B-225621.5

Date: October 27, 1987

DIGEST

General Accounting Office will not question a contracting officer's determination that the low bidder is not responsible where the determination is reasonably based on the bidder's performance record.

DECISION

Automated Datatron, Inc. (ADI), protests the award of a contract to Infoconversion, a division of Grumman Data Information Services, Inc., under invitation for bids (IFB) No. D24-S, issued by the United States Government Printing Office (GPO) for data capture, digital composition and micropublishing of Department of the Army publications. ADI contends that the contracting officer acted in bad faith in finding ADI nonresponsible and rejecting the firm's low bid. ADI argues that the contracting officer was motivated, in large part, by the fact that ADI had filed a protest in our Office of the issuance of an earlier version of the solicitation, which the firm argued unduly restricted competition, and which GPO then decided to cancel.^{1/}

We deny the protest.

The IFB contemplated the award of a separate requirements contract in each of two categories. The first category was for the production of microfiche, including diazo duplicates (which are produced for distribution purposes), from source documents such as bound books. The protested contract is for the second category, which involves the production of

^{1/} We denied Grumman's protest of the cancellation in our decision in Grumman Corp., B-225621.2, et al., May 20, 1987, 87-1 C.P.D. ¶ 528, aff'd, Grumman Corp.--Reconsideration, B-225621.4, July 15, 1987, 87-2 C.P.D. ¶ 46.

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graphics quality computer output microfiche, scanning of artwork, duplication using silver and diazo film, packing and distribution.

ADI contends that the contracting officer predetermined not to award the contract to ADI, as evidenced by the fact that the nonresponsibility finding was made prior to the preaward survey, which ADI maintains merely was used to buttress the finding. ADI also contends that the nonresponsibility determination was improper because it was based on erroneous rejections of print orders under GPO's contract with ADI for Program D-154S, which is similar to the protested contract. ADI admits that from August of 1986 until July of 1987, an average of 10 percent of all orders under that contract were late, but maintains that, with the correction of equipment problems, its average percentage of late deliveries was only 5 percent from May until early July.

GPO responds that the final determination of ADI's nonresponsibility was made after a review of the preaward survey report (undertaken upon advice of GPO counsel), which recommended against award to ADI based on ADI's current poor quality assurance capability, poor performance, and inability to meet the required delivery schedule on Program D-154S. The preaward survey report indicated that ADI had an overall quality rejection rate of 12 percent for the previous 12 months, and GPO states that the survey team reinspected specific orders ADI had identified as having been rejected improperly and found that the rejections had been proper. In order to assess ADI's current performance capability independently, GPO states, the survey team randomly selected five print orders and inspected them in accordance with MIL-STD-105D (which is the standard applicable to both Program D-154S and the protested contract) and found that the orders were rejectable under the standard. Finally, GPO states ADI failed to explain its failure to timely re-manufacture and re-deliver previously rejected print orders.

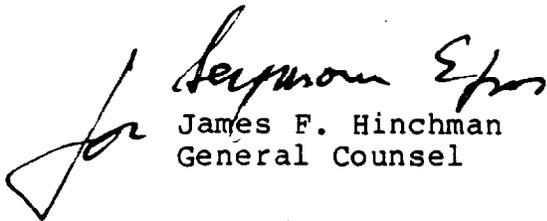
The determination of a prospective contractor's responsibility is the duty of the contracting officer, who is vested with a wide degree of discretion and business judgment. We therefore will not question a nonresponsibility determination unless the protester shows bad faith on the part of contracting officials or that the determination lacks a reasonable basis. Becker and Schwindenhammer, GmbH, B-225396, Mar. 2, 1987, 87-1 C.P.D. ¶ 235.

Although the record confirms ADI's contention that an initial nonresponsibility determination was reached prior to the preaward survey, the record also is clear that it was not until after the survey, and a subsequent finding of

nonresponsibility by yet another contracting officer, that ADI's bid actually was rejected. In addition to referencing the survey findings as summarized above, this second determination specifies that ADI was awarded 1,888 print orders from April through June and that 13.6 percent of the orders were delivered late; that ADI was sent multiple cure notices for these late deliveries; that GPO's Quality Assurance Section rejected 800 print orders in whole or in part within the 12-week period prior to the nonresponsibility determination on July 8; that 272 of the 800 rejected print orders remained uncorrected as of that date; that the contractor had a long history of poor contract compliance; and that ADI was defaulted on contracts for programs C90-S and C151-S within the 7 months prior to the determination for continuing failure to comply with delivery and quality assurance requirements.

Under the circumstances, there is no basis for ADI's contention that GPO has acted in bad faith in finding the firm nonresponsible. On the contrary, it appears that GPO was conscientious in its efforts to assure that the initial nonresponsibility determination was proper by requiring a preaward survey and a second responsibility determination. Moreover, even if GPO did incorrectly reject some print orders, we think the late deliveries and other defects in ADI's contract performance that are evident in the record provided a reasonable basis for the nonresponsibility determination. Firm Reis GmbH, B-224544, et al., Jan. 20, 1987, 87-1 C.P.D. ¶ 72.

The protest is denied.


James F. Hinchman
General Counsel