



Decision

Matter of: Shepard Printing

File: B-260362; B-260363; B-260373; B-260387;
B-260814; B-260816; B-260891

Date: June 6, 1995

Daniel M. Campbell for the protester.
Kerry L. Miller, Esq., United States Government Printing Office, for the agency.
Linda S. Lebowitz, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In procurements for printing services, agency reasonably determined that the protester, the low bidder in each procurement, was nonresponsible where the firm's recent performance of contracts for similar services was deficient and where the determinations of nonresponsibility were based on current circumstances.

DECISION

Shepard Printing protests the rejection of its firm as nonresponsible by the United States Government Printing Office (GPO) under solicitation Nos. B-439-S; B-640-S; C-726-S; A-814-M; D-81-S; B-836-S; and B-615-M. The solicitations were issued for printing services for various federal agencies. Shepard maintains that GPO's nonresponsibility determinations are unreasonable.

We deny the protests.

Print quality is critical to GPO's mission of providing printed products for use by government agencies. Accordingly, GPO has implemented regulatory requirements to ensure that products printed by contractors satisfy objectively measured quality levels. Relevant to these protests is GPO's Quality Assurance Through Attributes Program (QATAP) which describes quality attributes for printing and provides objective criteria to determine whether printed products conform with these quality

063843/154484

attributes. The program includes 30 attributes, e.g., extraneous marks, text and illustration image position, type quality and uniformity, rub resistance of printed image, trim size, folding position and skewness, damaged pages, and damaged edges. The program provides evaluation standards and ranges of acceptable tolerances.

GPO's QATAP contains the following five product quality levels (PQL), which generally are based on the intended end use of the printed product: best quality--level I; better quality--level II; good quality--level III; basic quality--level IV; and functional quality--level V. As the quality levels decrease from level I to level V, additional deviations from the quality attributes may be deemed acceptable.

In solicitations for printed products, GPO identifies the applicable PQL. In making responsibility determinations, GPO classifies each contractor on its solicitation mailing lists according to the highest quality level the contractor has consistently maintained based on inspections of the contractor's work under previous GPO contracts.

The seven solicitations, which all required work at level IV, were issued between November 1994 and February 1995.¹ Shepard, which had a quality rating of level V, was the low bidder under each solicitation. However, GPO rejected Shepard as nonresponsible for each procurement based upon its recent performance history of not providing quality printing services for GPO.

Shepard, which requests that GPO raise its quality rating from level V to level IV, maintains that GPO unreasonably determined the firm nonresponsible for these seven level IV procurements. Shepard contends that GPO improperly based these nonresponsibility determinations on a rejected level III print order. Shepard also maintains that GPO's seven determinations of nonresponsibility and its assignment of a level V quality rating to the firm effectively constitutes a de facto debarment, particularly since GPO requires only a small percentage of printing services at level V.

The GPO Printing Procurement Regulations (PPR) require the contracting officer to make an affirmative determination that a firm is responsible before awarding a contract to that firm. PPR § 5.1. In determining a prospective

¹Solicitation Nos. A-814-M and B-615-M contemplated multiple, fixed-price awards. The other five solicitations contemplated single, fixed-price awards. Awards were made from January through March 1995.

contractor's responsibility, the contracting officer is required to consider whether the contractor's record of performance is satisfactory. PPR § 5(4)(iii). The contracting officer 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. 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. The nonresponsibility determination may be based upon a reasonable perception of inadequate prior performance even where the contractor disputes the agency's interpretation of the facts or has appealed the agency's adverse determination. Id. In our review of nonresponsibility determinations, we consider only whether the negative determination was reasonably based on the information available to the contracting officer at the time it was made.² Id.

In the agency reports for these protests, GPO has furnished a detailed chronology supporting its determinations that Shepard is not a responsible contractor due to recent deficient performance of similar requirements. Specifically, the record shows that by letter dated November 3, 1994, GPO reminded Shepard that in July 1994, it conducted a pre-award survey and raised Shepard's quality rating to level III based upon assurances from Shepard that it would make and maintain quality improvements. However, subsequent to raising Shepard's quality rating, GPO notified Shepard of 18 rejected print orders due to defects in most phases of the firm's printing production process which involved over 60 percent of GPO's quality attributes. In the November 3 letter, GPO also reminded Shepard that since November 1990, on two other occasions, GPO reduced, but subsequently reinstated, Shepard's quality rating. GPO concluded, on the basis of the number of rejected orders since July 1994, and the number of quality attributes involved, that Shepard had failed to correct previously

²Despite Shepard's status as a small business concern, the nonresponsibility determinations were not referred to the Small Business Administration (SBA) because GPO is a legislative agency and is not subject to the Federal Acquisition Regulation, which requires such a referral. See Custom Printing Co., 67 Comp. Gen. 363 (1988), 88-1 CPD ¶ 318; Fry Communications, Inc., 62 Comp. Gen. 164 (1983), 83-1 CPD ¶ 109. Rather, GPO conducts its procurements under its own PPRs, which do not require that nonresponsibility determinations concerning small businesses be referred to the SBA. Id.

identified printing problems. GPO concluded that Shepard "lacks the management perseverance to ensure that [the quality] problems are resolved." Accordingly, GPO reduced Shepard's quality rating to level V and specifically advised that contracting officers could determine Shepard nonresponsible in future procurements. GPO also specified that before it would raise Shepard's quality rating for the third time in a 4-year period, significant assurance from Shepard that it had implemented quality control procedures would be required, and after a review of these procedures, GPO would make a complete on-site inspection.

On December 20, Shepard implemented a quality program. This program included changes in job duties in many production areas where "holes" previously existed; training of personnel to make them aware of GPO's QATAP; and a commitment to print each order, even a level V order, as if it were a level I order.

By letter dated January 17, 1995, GPO advised Shepard that examination of random copies of a level III project--jacket No. 387-295, solicitation No. B-615-S, print order No. 00009 (a job which Shepard accepted on December 21, the day after it implemented its quality program)--revealed defects for four quality attributes requiring rejection of the order. In addition, GPO advised Shepard of defects for six other quality attributes; however, these defects were not part of the basis for the rejection of the order. GPO requested a written explanation of why these defects occurred, and the steps being taken by Shepard to ensure that these defects would not appear in future print orders.

By follow-on letter dated January 20, GPO stated that Shepard continued to experience production problems involving its failure to satisfy GPO's quality attributes, and that the firm's most recent efforts to correct these problems had not been successful. GPO referenced its November 1994 letter in which it reduced Shepard's quality rating to level V. GPO explained that after a thorough review of Shepard's most recent written assurances concerning its implementation of quality control procedures, GPO's quality assurance section examined four randomly selected orders produced by the firm. These orders were identified by Shepard as work completed after implementation of its quality control procedures. However, of these four orders, print order No. 00009 under solicitation No. B-165-S, which was examined against quality standards for both level III and level IV, was rejected as defective for a number of quality attributes. Because of the rejection of

this order, GPO stated that it could not reasonably expect Shepard to successfully print orders above level V. Accordingly, GPO stated that Shepard's quality rating would remain at level V, and that contracting officers could determine the firm nonresponsible in future procurements.

In the January 20 letter, GPO specified the process which Shepard would have to successfully complete prior to GPO again raising the firm's quality rating. First, GPO required Shepard to fully explain how its quality control procedures failed on one of the randomly selected orders for numerous quality attributes. Second, GPO pointed out that the failure of Shepard's quality control procedures represented a failure at three separate personnel levels within the firm--production, quality control, and management, and GPO required an explanation of how these personnel failed to perform their responsibilities as outlined in Shepard's quality program. Third, GPO required Shepard to discuss changes which it would implement to avoid continuation of the quality defects. Fourth, in light of the quality assurances given by Shepard since November 1990, GPO wanted Shepard to explain on what basis the agency could develop any confidence in the firm and its ability to successfully perform above level V. Fifth, upon receipt of satisfactory written answers to the above-stated concerns, GPO stated it would randomly sample orders produced after Shepard's implementation of necessary quality procedures to correct previously identified quality problems. Finally, if the random samples were deemed satisfactory, GPO would conduct a pre-award survey, including a comprehensive review and on-site inspection of Shepard's quality program.

By letter dated January 26, Shepard explained that there were two reasons for the quality defects in the randomly selected order which was rejected by GPO--poor quality of the furnished materials and poor printing. Shepard stated that upon receipt of the print order, it verbally reported the poor quality of the furnished materials to GPO.³ In addition, Shepard conceded that "[t]he poor printing of this [order] was due to our rushing it through the plant, running it on second shift (where the pressman was ill-equipped to handle it), and not taking the time to inspect the press sheets or the final pieces."

³The record shows that GPO considered the quality of the furnished materials in its evaluation of this order. Contrary to Shepard's view, GPO states that many of the quality defects were independent of the furnished materials, and often were the result of improper ink/water balance, poor press work, and improper trimming, all of which were matters within Shepard's control.

By letter dated February 16, Shepard stated the following with respect to the poor quality of the randomly selected order which was rejected by GPO:

"[t]he poor quality printing on this project should have stopped [the order] prior to its being delivered. The rush nature of this job, and the fact that it ran almost exclusively on second shift, caused the quality program to be bypassed. Everyone here at Shepard has been made aware of this slip, and additional training has taken place. The second shift pressm[a]n has had more training by both the first shift pressm[a]n and the production manager. He has also been given additional quality instruction by quality control personnel. Additionally, in the past, there has been no 'supervisor' on the second shift. It has now been made mandatory that if GPO work is being run on second shift, one of the daytime managers will be available to check press sheets in the evening hours. Bindery employees have been instructed that no matter how little time is left on a schedule, they will still take the time to review materials received and inspect the job carefully."

Shepard continued that it could "offer no further excuses or explanation for this print order, except that each problem found by [GPO's] inspection has caused a review of the quality program to prevent recurrence in the future."

By letter dated February 23, GPO responded to Shepard by stating that it did not understand how a poorly printed order "could have slipped through [the firm's] total quality program [which was implemented prior to Shepard accepting the job] twice[.]" GPO pointed out that Shepard's explanation for the rejection of the randomly selected order, as contained in its letter of February 16, did not correspond to the commitments it announced in its December 20 quality program. GPO reiterated that it would not raise Shepard's quality rating until the firm explained how the second shift operated without proper quality assurance training and supervision and how the randomly selected order could have numerous quality problems when it was supposed to be printed in accordance with Shepard's quality program. GPO stated that random orders would be inspected after Shepard remedied the additional quality problems which had been identified. GPO further agreed to subsequently conduct a pre-award survey, including a

comprehensive review and on-site inspection of Shepard's quality program. GPO emphasized that until these matters were resolved, Shepard's quality rating would remain at level V and the firm could be determined nonresponsible in future procurements.

By letter dated March 1, Shepard stated that when GPO begins its random sampling of the firm's work, "all work delivered after January 20, 1995, will meet the quality standards for both quality level III and IV."

By letter dated March 8, GPO advised Shepard that examination of random copies on jacket No. 387-198, solicitation No. C-460-S, print order No. 00053, revealed defects for one quality attribute requiring rejection of the order. By letter dated March 13, Shepard stated that "although [the firm has] taken the steps necessary to install a top flight quality assurance program . . . a job has slipped through the cracks." Shepard continued that it was "at a loss to explain why it occurred." Shepard concluded by stating that "[t]he only assurance [it could] give [GPO] is that [the firm is] diligently inspecting all phases of production."

By letter dated March 21, GPO advised Shepard that examination of copies on jacket No. 388-421, solicitation No. A-421-M, print order No. 02449, revealed defects for three quality attributes requiring rejection of the order. GPO also pointed out an additional quality defect, which was not, however, a basis for rejection of the order.⁴

In light of this record of Shepard's recent deficient performance of printing requirements similar to the procurements at issue here covering the period from November 1994 through March 1995, a period which is concurrent with GPO's conduct of these seven procurements, we believe that GPO had a reasonable basis for the seven determinations of nonresponsibility. In this regard, while the primary basis for these nonresponsibility determinations was GPO's rejection of a level III print order, the record shows that this order was evaluated for both level III and the more relaxed level IV quality standards. In fact, Shepard concedes that its performance of this order was deficient despite its implementation of a quality program 1 day before accepting the job. In addition, the record shows that even after Shepard's quality program had been implemented for several weeks, GPO rejected additional orders printed by the firm because of quality problems.

⁴The record also shows that in March, GPO rejected four other print orders from Shepard. Shepard states that these orders are currently subject to negotiations.

Again, Shepard concedes that its performance of at least one of these subsequently rejected orders was inexplicably deficient. On this record, we have no basis to question the reasonableness of GPO's determination for each of these procurements that Shepard was nonresponsible.

Finally, although Shepard maintains that these seven nonresponsibility determinations, along with GPO's assignment of a level V quality rating to the firm, constitute a de facto debarment, we believe that the concurrency of these determinations simply reflects the fact that for each procurement, GPO's conclusion that Shepard was nonresponsible was reasonably based on the same current quality performance information. See Government Contract Advisory Servs., Inc., B-255918; B-255919, Mar. 8, 1994, 94-1 CPD ¶ 181.

The protests are denied.

\s\ Michael R. Golden
for Robert P. Murphy
General Counsel

⁵We expect that GPO will afford Shepard an opportunity to demonstrate that it has successfully implemented a quality program which corrects its past performance problems, thereby allowing GPO to reinstate a quality rating for Shepard above level V for later acquisitions. See Firm Erich Bernion GmbH, B-234680; B-234681, July 3, 1989, 89-2 CPD ¶ 1.