



Comptroller General
of the United States

1208197

Washington, D.C. 20548

Decision

Matter of: Computer Support Systems, Inc.

File: B-261166

Date: July 18, 1995

Joseph P. Hornyak, Esq., Sonnenschein Nath & Rosenthal, for the protester.

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

Katherine I. Riback, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester was properly found nonresponsible where contracting officer reasonably determined that the firm lacked the resources and ability to comply with the solicitation's short delivery schedule based upon observations and information obtained during a pre-award survey. The contracting officer was not required to provide the bidder with advance notice of the nonresponsibility determination in order to give the bidder an opportunity to dispute the survey information.

DECISION

Computer Support Systems, Inc. (CSS) protests the rejection of its bid by the United States Government Printing Office (GPO) under invitation for bids (IFB) No. C454-S for floppy diskette reproduction services. GPO found CSS nonresponsible because it lacked the production capability and the labor resources required to perform the contract.

We deny the protest.

The IFB, issued on February 2, 1995, contemplated the award of a fixed-priced, requirements contract for a 1-year term, beginning March 1, for the reproduction of 3-1/2" and 5-1/4" floppy diskettes. The agency stated in the IFB that it expected to place approximately 5 to 10 orders a year of between 5,000 and 8,500 sets, with up to 3 diskettes per set, for a maximum per-order quantity of 25,500. The IFB requires that the contractor complete delivery of the diskettes within 13 workdays of notification of the order; within that time, the contractor has 7 workdays to reproduce

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the diskettes after receiving approval of the preproduction samples.

The GPO received six bids by the February 23 bid opening. On March 14, the agency conducted a pre-award survey to determine whether CSS was a responsible bidder to perform the work in question.¹ Based on an inspection of CSS' facilities, the pre-award survey team found that CSS had inadequate production capability and labor resources, and therefore recommended against award; subsequently, the contracting officer determined CSS to be nonresponsible.² On March 20, the contract was awarded to Megasoft, Inc. On March 22, CSS filed an agency-level protest against GPO's determination that it lacks the production capability and the labor resources to perform the requirements. CSS' agency-level protest was accompanied by a letter from an equipment dealer concerning its willingness to rent to the protester, on short notice, certain necessary equipment. The agency denied the agency-level protest, and CSS filed this protest in our Office, raising substantially the same objections to the agency's nonresponsibility determination.

A contracting agency has broad discretion in making responsibility determinations, since it must bear the brunt of difficulties experienced in obtaining the required performance. Although responsibility determinations must be based on fact, and reached in good faith, they are of necessity a matter of business judgment. Automated Datatron Inc., 68 Comp. Gen. 89 (1988), 88-2 CPD ¶ 481. We will not question a nonresponsibility determination unless the record shows that there was no reasonable basis for the determination. EPCo Assocs., B-238015, Apr. 13, 1990, 90-1 CPD ¶ 388. Here, GPO had a reasonable basis for its determination that CSS is nonresponsible.

¹CSS was the third-low bidder, however, for reasons which are not relevant to this protest, neither of the two lower bids was acceptable.

²Despite CSS' status as a small business concern, the nonresponsibility determination was 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 Printing Procurement Regulations, which do not require that nonresponsibility determinations concerning small businesses be referred to the SBA. Id.

GPO's Printing Procurement Regulation directs agency officials to find a prospective bidder nonresponsible if there is no clear indication that the prospective contractor meets certain minimum standards, such as possessing, or having the ability to possess, the necessary equipment and productive capacity to perform the contract. GPO Publication 305.3, Chapter I, Section 5.6. The pre-award survey team found that CSS was a company with two full-time persons, which hired temporary employees on an as needed basis, and that CSS possessed two 3-1/2" duplicators and one 5-1/4" duplicator. CSS informed the pre-award survey team that it could rent additional equipment if needed. The pre-award survey team determined that CSS currently lacked the necessary equipment and personnel to perform this size contract in the required time frame.

CSS takes the position that, contrary to this determination, CSS could produce the maximum per-order quantity of 25,500 diskettes with its current equipment and personnel. According to CSS, by having its two full-time employees working on two duplicators for two full shifts (16 hours) per day for 9 calendar days (7 workdays), it could produce approximately 34,650 diskettes, an amount which exceeds the 25,500 maximum per order quantity. Using CSS' ambitious production scenario, if CSS had no other extant production orders and no equipment problems, it could produce the maximum per order quantity of the 3-1/2" diskettes by utilizing its two 3-1/2" duplicators. However, CSS possesses only one 5-1/4" duplicator; hence, even using its own hourly production projection, CSS would not be able to produce the required maximum per order quantity of 5-1/4" diskettes. While CSS might be able to procure rental equipment and additional temporary personnel, the agency was not required to assume the risk that CSS could obtain whatever additional resources it might need to perform as required. See Pathlab, P.A., B-235380, Aug. 4, 1989, 89-2 CPD ¶ 108. In these circumstances, GPO reasonably concluded that CSS had not demonstrated to the pre-award survey team that it either had adequate production capacity or was committed to and capable of furnishing additional equipment and personnel in time to meet the IFB's delivery schedule.³ See System Dev. Corp., B-212624, Dec. 5, 1983, 83-2 CPD ¶ 644.

CSS also argues that the contracting officer was required to discuss the results of the pre-award survey with it before finding the firm nonresponsible. Although the contracting

³The letter from the equipment dealer, expressing its willingness to rent additional equipment to CSS on short notice, was submitted to the agency after the pre-award survey and after the agency had made award to Megasoft.

officer may discuss pre-award survey information with the prospective contractor before making his determination, such discussions are not required. Pathlab, P.A., supra. Here, the pre-award survey was completed just 6 days prior to the award of the contract. Where the information on file with the agency appears to reasonably reflect the position of a prospective contractor, the contracting officer may properly base a nonresponsibility determination on the evidence of record, without supplementing the evidence or affording the prospective contractor with an opportunity to explain or otherwise defend against the evidence. See Oertzen & Co. GmbH, B-228537, Feb. 17, 1988, 88-1 CPD ¶ 158. Since the contract was to commence immediately, the contracting officer was not required to delay his determination or award, to allow CSS the opportunity to persuade GPO to find it responsible.⁴ Nova Int'l, Inc., B-227696, Sept. 21, 1987, 87-2 CPD ¶ 284.

In sum, the agency was not obligated to accept CSS' assurances that it could expeditiously obtain whatever additional resources it might need to perform as required, and GPO reasonably concluded that CSS is nonresponsible based upon its lack of adequate production capacity and labor resources to perform the contract.

The protest is denied.

Christine S. Melady
for Robert P. Murphy
General Counsel

⁴CSS also objects to a statement by the contracting officer, in his determination that CSS was nonresponsible, that CSS had never performed any work for the GPO. CSS points out that in 1991, it performed a similar contract for reproducing diskettes for GPO. We note that CSS' prior contract with GPO was for approximately 1,500 diskettes, an amount that is far less than any one order that may be placed under this contract. Therefore, we do not view as significant the contracting officer's apparent failure to consider this contract. Similarly, the protester's objection that the contracting officer did not contact references who allegedly could have confirmed CSS' previous performance of comparable contracts is unobjectionable in view of CSS' lack of current production capability.