



United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Thorner Press, Inc.

File: B-283545

Date: November 4, 1999

Anthony W. Hawks, Esq., for the protester.
Thomas T. Kelly, Esq., Government Printing Office, for the agency.
Andrew T. Pogany, Esq., and John M. Melody, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest challenging geographical restriction in solicitation for printing services limiting bids to firms whose production facilities are within a 75-mile radius of the agency, is denied where--because government representatives must conduct press inspections at the contractor's facility and be prepared to respond promptly in the event of problems--agency reasonably determined restriction was necessary to ensure print quality of final publications.

DECISION

Thorner Press, Inc. protests (1) the Government Printing Office's (GPO) cancellation of an invitation for bids (IFB) for Program 1666-S, under which Thorner submitted the low bid, and (2) GPO's issuance of a second solicitation for basically the same requirement with a production area restriction that makes Thorner ineligible to compete.

We deny the protest.

GPO is tasked with manufacturing or procuring printed products for the use of the government. 44 U.S.C. §§ 501, 502 (1994). Program 1666-S contemplates a contract for a duration of 1 year, with 2 option years, on behalf of the Defense Automated Printing Service for procurement of the Military Review, a periodical issued by the Department of the Army. Agency Report (AR) at 1-2 and Tab 1, Solicitation, at 1. On May 24, 1999, GPO issued the original solicitation, including the specifications, with bid opening set for June 21. The specifications called for the production of six bimonthly editions in English, six bimonthly editions in Spanish, and four quarterly

editions in Portuguese. Bidders were also informed that a total of 16-21 orders would be issued per year.¹ AR, Tab 1, at 6. Under the heading “Production Area,” the specifications stated “[i]t is assumed that all production facilities used in the manufacture of the product(s) . . . will be located within a [75-mile] radius of Fort Leavenworth, Kansas.” AR, Tab 1, at 1. The IFB also stated that travel expenses and per diem incurred by the government for press sheet inspections would be a factor in determining award. AR, Tab 1, at 12.

Thorner, with production facilities in Buffalo, New York, submitted the low bid. Per diem and travel estimates for two government employees to conduct press sheet inspections at Thorner’s production facility increased its bid by \$11,232, AR at 2, but Thorner’s bid remained low (\$139,920, compared to the next low bid of \$143,572) even when increased by this amount. AR, Tab 7, Memorandum from Contracting Officer to Contract Review Board (July 22, 1999). GPO then determined that the original specifications did not reflect the customer agency’s intentions. The Army had intended that the “assumed production area” language in the original solicitation would result in a contract being awarded to a local firm. The Army thus decided that the solicitation should be canceled and reissued with the inclusion of an “area restriction.” AR at 2 and Tab 7. On July 27, the contracting officer, with the approval of GPO’s Contract Review Board, canceled the solicitation and reissued the 1666-S solicitation with the following area restriction: “All production facilities used in the manufacture of the product(s) ordered under this contract must be located within [a 75-mile] radius of Fort Leavenworth, Kansas.” AR, Tab 8, Revised Solicitation, at 1.

Thorner received the reissued IFB on July 30. Protest at 7. Thorner filed an agency-level protest on August 11, arguing that the cancellation was improper and, alternatively, that the geographic restriction in the reissued IFB--which would prevent Thorner from competing--was improper. GPO denied the protest on August 23, concluding as follows:

Given the complexity of [Program 16661-S], quality control and inspections are of vital interest to the customer agency. However, the Army’s travel funds for this procurement are limited, and the time constraints upon Army personnel involved with this publication are extensive. Consequently, the Army requires its personnel to be able to drive to the production site to make press sheet inspections and return to their offices in Fort Leavenworth, Kansas on the same day. Given that your client’s production facility is located in Buffalo, New York, Army personnel would require a day of travel each way to make press sheet inspections, costing the Army far more time and money by comparison.

¹The quantities to be ordered were (1) English edition--5,000 to 10,000 copies; (2) Spanish edition--approximately 7,000 copies; and (3) Portuguese edition--approximately 3,300 copies. AR, Tab 1, at 6.

AR, Tab 11, Letter from Contracting Officer to Protester (Aug. 23, 1999). This protest, in which Thorner reiterates the arguments in its agency-level protest, was filed in our Office on August 31. The protest is without merit.

CANCELLATION

Thorner's challenge to the cancellation of the original solicitation is untimely. Our Bid Protest Regulations provide that protest bases such as this, which concern a matter other than an alleged solicitation deficiency, generally must be raised in a protest filed in our Office within 10 calendar days after the basis of protest was or should have been known. 4 C.F.R. § 21.2(a)(2) (1999). Where, as here, an agency-level protest raising particular grounds has been filed, a subsequent protest to our Office on the same grounds will be deemed timely only if (1) the agency-level protest was filed with the agency within the 10 calendar day period, "unless the contracting agency imposes a more stringent time for filing, in which case the agency's time for filing will control," 4 C.F.R. § 21.2(a)(3), and (2) the protest with our Office is filed within 10 days of actual or constructive knowledge of initial adverse agency action on the protest. The GPO Printing Procurement Regulation (PPR), Chapter XV, § 2.4(a)(2), provides that protests must be filed with GPO within "10 workdays." Since this is a more lenient filing period than the 10 calendar day period under our Regulations, the 10 calendar day period applies here. Therefore, notwithstanding GPO's filing requirements, in order for any subsequent protest to our Office to be timely, Thorner was required to file its agency-level protest concerning the cancellation by August 9, that is, 10 calendar days after it was apprised of its basis of protest on July 30. Thorner did not file its agency-level protest until August 11; accordingly, this basis of protest is dismissed as untimely.

GEOGRAPHIC RESTRICTION

Thorner's protest concerning the alleged restrictiveness of the second solicitation concerns a solicitation impropriety. Such a protest ground may be raised until the closing time for receipt of proposals in response to the solicitation. 4 C.F.R. § 21.2(a)(1). Since Thorner protested to GPO on this ground prior to that time, and then filed in our Office within 10 calendar days of the agency's denial of its protest, this aspect of the protest is timely.

Thorner maintains that the use of a geographic restriction here is inconsistent with the PPR, which states that "[r]estricted solicitation areas should be used only when absolutely necessary." PPR, Chapter VIII, § 1.7(f)(2). Thorner does not believe that the Army's need for a geographic restriction qualifies as "absolutely necessary."

Thorner's argument is based on a selective reading of the PPR, one that ignores the provision that defines the "absolutely necessary" language for purposes of the case here. Specifically, the PPR also states that "[i]f the agency insists on retaining the restriction due to the need for onsite inspections and time or budgetary constraints,

and properly justifies its request,” the geographic restriction may be imposed.
Id.

The justification here falls within the terms of this provision. The Army determined that, in order to assure print quality through a visual press inspection--necessary to insure that the publications are error free--it will need to have agency representatives present at the contractor’s production facility for each of the 16 press runs. Letter from GPO to GAO (Oct. 21, 1999). This need would potentially pose problems for the agency in dealing with a distant printer, and the agency concluded that these problems were not eliminated by the insertion of a price evaluation factor in the original IFB. Commenting on the necessity for restricting the production area, the Army Editor states that “[t]his organization cannot afford to lose a manager for two days every time an issue goes to press.” AR, Tab 6, Memorandum from Acting Editor in Chief to GPO 2 (June 30, 1999). Further, the personnel at this relatively small Army facility would have less flexibility in scheduling meetings with a distant printer and, the Army states, would be less able to respond to an emergency. In this latter regard, the agency states:

[T]he ability to ‘reach out and touch someone’ is prudent when two of your three magazines are printed in a foreign language--Portuguese and Spanish. By having a local printer, if an emergency presents itself and none of the printer’s workers can read the language, a Military Review translator can always work with the printer face-to-face to resolve a potential problem.

Id. We find that the agency’s justification is reasonable on its face, and the protester has presented no evidence or argument establishing otherwise. We conclude that the agency reasonably determined that traveling to a remote vendor’s facility would increase unproductive travel time during work hours for agency personnel, see Pamela A. Lambert, B-227849, Sept. 28, 1987, 87-2 CPD ¶ 308, and limit the agency’s ability to respond in case of emergency, and that, as a result, contracting with a firm with a remote facility would be detrimental to the mission of the agency. The geographic restriction therefore is unobjectionable.

The protest is denied.

Comptroller General
of the United States