



Comptroller General
of the United States

216283

Washington, D.C. 20548

Decision

Matter of: MPE Business Forms, Inc.

File: B-259432

Date: March 31, 1995

Frederic G. Antoun, Jr., Esq., for the protester.
Kerry L. Miller, Esq., Government Printing Office, for the agency.
Richard P. Burkard, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest against nonresponsibility determination for low bidder is sustained where determination that the protester did not have the production capability to perform the contract is based on a conclusion by agency which lacks any reasonable basis.

DECISION

MPE Business Forms, Inc. protests the determination by the United States Government Printing Office (GPO) that it is nonresponsible under invitation for bids (IFB) No. C484-S for printing services. The determination was based on a finding by GPO that MPE lacked the production capability required to perform the contract. MPE contends that GPO's conclusion regarding its production capability was unreasonable because GPO used a skewed and unrealistic projection of the work which would be required under the contract and the agency failed to consider equipment which MPE anticipated receiving.

We sustain the protest.

The IFB contemplated the award of a fixed-priced, requirements contract for the printing of long-run and short-run single forms and snap-out multiforms for the Department of Health and Human Services, Social Security Administration. Among other things, the IFB sought prices for providing carbon interleaved sets ranging from 2-part sets to 7-part sets, and carbonless sets, also ranging from

2- to 7-part sets.¹ The IFB prohibited subcontracting the production and printing and included the following annual quantity estimates, which were used to determine the offerors' prices:

CARBON INTERLEAVED SETS

2-part sets	4,530,000
3-part sets	4,624,000
4-part sets	1,612,000
5-part sets	3,954,000
6-part sets	187,000
7-part sets	83,000

CARBONLESS SETS

2-part sets	957,000
3-part sets	583,000
4-part sets	215,000
5-part sets	120,000
6-part sets	120,000
7-part sets	120,000

Concerning the placement of orders, the IFB specifications provided as follows:

"FREQUENCY OF ORDERS:

Long-Run Forms: 1-3 orders per month.
Short-Run Forms: 1-15 orders per month.

"Note: The month of September may have as many as 35 orders.

"QUANTITY:

Long-Run Forms: Approximately 200,000 to 750,000 sets per order. An occasional order may be for 1,000,000 to 2,000,000 sets.
Short-Run Forms: Approximately 600 to 200,000 sets per order."

The agency received two bids including MPE's low bid of \$781,908.90 and a bid of \$873,491.53 from Elgin Business Forms, Inc. After finding that MPE was nonresponsible, the

¹A part was defined as one sheet of paper other than carbon.

agency awarded the contract to Elgin.² Performance has been suspended pending resolution of this protest.

The agency's nonresponsibility determination was based on its conclusion that MPE lacked the production capability to perform the contract. GPO's assessment of MPE's production capability was generated by two factors: an on-site pre-award survey, and an analysis of MPE's collator capabilities. First, on November 4, 1994, at the contracting officer's request, the manager of GPO's Chicago regional printing procurement office visited MPE's facility to ascertain whether MPE had the manufacturing capacity to perform the contract. The GPO manager's report states that MPE had only one press and one collator, both in good condition. The survey concluded that "[a]lthough MPE is capable of producing snap sets, their limited equipment and bare-bones facility poses a real risk to the Government for such a substantial requirement. I therefore recommend no award."

Second, on November 8, the GPO quality assurance section chief prepared a production capacity analysis focusing on the speed of MPE's collator. Specifically, the analysis discussed "a scenario of 3 print orders each for 1,000,000 7-part snap-out sets placed within 5 workdays. . . ." The analysis stated that "MPE would be required to produce a total of 3,000,000 7-part snap-out sets and make full delivery within 25 workdays," and concluded that MPE would be unable to collate in a timely manner the 3,000,000 sets required under such a scenario and noted that the scenario is exclusive of short-run orders.

MPE contends that the agency's nonresponsibility determination is unreasonable. MPE argues that the agency used unrealistic projections of the monthly volume of work to be performed under the contract. MPE also asserts that the agency ignored MPE's assurances that it would acquire additional equipment to be used to perform the contract. Finally, MPE contends that, even using only its equipment present at the pre-award site visit and using the

²Despite MPE's 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.

unrealistic work load estimates, it is capable of performing the contract requirements.³

We will not question a negative determination of responsibility unless the protester can establish bad faith on the agency's part or a lack of a reasonable basis for the contracting officer's determination. Alan Scott Indus., B-225210,2, Feb. 12, 1987, 87-1 CPD ¶ 155. While a contracting officer has significant discretion in this area, his determination is unreasonable where it is based primarily on unreasonable or unsupported conclusions reached by the pre-award survey team. R.J. Crowley, Inc., B-229559, Mar. 2, 1988, 88-1 CPD ¶ 220. Here, MPE has demonstrated that the conclusions of the pre-award team were unreasonable. See SPM Mfg. Corp., 67 Comp. Gen. 375 (1988), 88-1 CPD ¶ 370.

We agree with the protester that the agency's approach in ascertaining MPE's production capability was based on a performance scenario which bore no relationship to the estimates contained in the IFB. GPO's analysis focused exclusively on producing 7-part sets and in particular on the protester's capability to collate 7-part sets. The analyst initially described a scenario of three print orders for 1,000,000 7-part sets placed within 5 days. A supplemental analysis prepared by the agency in response to the protest increased the potential orders of 7-part sets to 5,250,000 in a month. Both of these scenarios assume that the agency will order the highest frequency of long-run orders permitted by the "frequency of orders" specification and that each order will be for only 7-part sets. For example, the initial analysis assumed three long-run orders of 1,000,000 sets and, in the supplemental analysis, the 5,250,000 figure assumes 18 orders (3 orders of long-run sets and 15 orders of short-run sets), the maximum number of orders per month.⁴

³MPE advised the agency prior to the nonresponsibility determination that even without the additional collator, it could produce more than 4,000,000 7-part sets in 1 month. It advised further that it could "comfortably" produce more than 5,000,000 sets by adding a shift and that additional quantities could be produced on a weekend shift.

⁴This analysis is based on long-run orders of 750,000 sets and short-run orders of 200,000 sets. The agency notes that its analysis did not take into account the "occasional" long-run order of 1,000,000 to 2,000,000 sets. The analysis also excludes the month of September, during which there may be as many as 35 orders. Other than this statement, there is no indication of the September requirements.

The agency's position is based on unrealistic projections of anticipated monthly orders. The annual estimate of 7-part sets contained in the IFB was only 203,000 (83,000 carbon interleaved sets and 120,000 carbonless sets), or approximately 17,000 sets per month. There is no indication in the record that the need for 7-part sets is other than as stated in the IFB. From this record, it is not remotely plausible that the agency will order anywhere near 3,000,000 or 5,000,000 7-part sets in a year, let alone in a 5-day or 1-month period.⁵

The agency's analysis disregards the fact that orders will be distributed over 12 types of possible sets, 6 carbon interleaved sets and 6 carbonless sets, as opposed to all of the orders for a particular time frame being for 7-part sets. It further disregards the fact that 2-part, 3-part, and 5-part carbon interleaved sets alone constitute more than 75 percent of the total estimated yearly requirements, while all the estimated 7-part sets constitute approximately 1 percent. GPO erred not in assuming that it could order 5,000,000 sets in a particular month;⁶ rather, it erred in failing to make any effort to rationally anticipate how those orders would be distributed over the 12 categories of sets under the contract. Thus, for example, the agency could reasonably have assumed a distribution of those 5,000,000 sets in proportion to the estimated quantities, i.e., 75 percent of the orders would be for 2-part, 3-part, or 5-part carbon interleaved sets. Other reasonable methods which take into account known or anticipated ordering practices are certainly possible. However, the record provides no support for the method which was used. When viewed against the estimates contained in the IFB, the agency's analysis is unsound.⁷

⁵The agency notes that its analyses did not include any "occasional" long-run orders of 1,000,000 to 2,000,000 sets and did not consider the possibility of 35, rather than 18, orders during September. Again, as we explained, the IFB estimated the annual requirement for 7-part sets as only 203,000 and the agency has not demonstrated that the special requirements for "occasional" long-run orders for September would result in orders for 7-part sets beyond the estimates set forth in the solicitation.

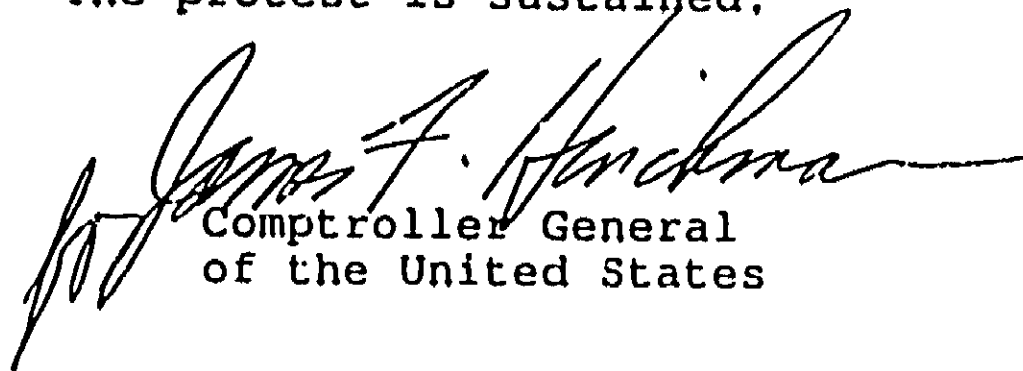
⁶We point out, however, that the annual estimates for all sets was approximately 17,000,000.

⁷In addition, the protester states, and the record shows, that MPE advised the contracting officer in a November 4 letter, transmitted by facsimile, that an additional

(continued...)

We sustain the protest and recommend that the agency conduct a new responsibility determination. Specifically, in assessing MPE's production capability, GPO should devise a method for rationally projecting orders under the contract. If GPO concludes that MPE is a responsible offeror, GPO should terminate Elgin's contract and award to MPE. We also find that MPE is entitled to recover its costs of filing and pursuing its protest, including reasonable attorneys' fees, 4 C.F.R. § 21.6(d)(1) (1995). In accordance with 4 C.F.R. § 21.6(f)(1), MPE's certified claim for such costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision.

The protest is sustained.



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⁷(...continued)
collator would be delivered in the following week. The agency essentially refused to discuss this matter with MPE, insisting that its consideration was limited to the equipment present during the site visit. While GPO argues in its report that, in the absence of a legal commitment to purchase equipment, the agency was not required to consider such equipment, GPO's Printing Procurement Regulation directs agency officials to consider, in determining responsibility, whether the prospective contractor has "the ability to obtain" necessary equipment. GPO Publication 305.3, Chapter I, Section 5.4(iv). The protester has provided an affidavit stating that the collator has been installed and is operating at the facility. The agency's refusal to consider MPE's ability to obtain the necessary equipment exacerbated the prejudice suffered by the protester as a result of the agency's use of an unreasonably inflated number against which to measure MPE's capacity to perform.