

**United States Government Accountability Office
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Decision

Matter of: Colonial Press International, Inc.

File: B-408031; B-408055

Date: May 6, 2013

Anthony W. Hawks, Esq., Law Office of Anthony W. Hawks, for the protester. Roy E. Potter, Esq. and Melissa A. Pachikara, Esq., Government Printing Office; and John W. Klein, Esq., and Kevin R. Harber, Esq., Small Business Administration, for the agencies. Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency wrongly rejected protester's low bids for printing after determining that the company was not responsible is denied where the record, as a whole, shows that the agency's nonresponsibility determination was reasonable.

DECISION

Colonial Press International, Inc., of Miami, Florida, a small business, protests the award of two contracts by the Government Printing Office (GPO). The first contract was awarded to Fry Communications, Inc., of Mechanicsburg, Pennsylvania, under invitation for bids (IFB) No. 199-S for printing of a Medicare handbook for the Centers for Medicare and Medicaid Services. The second contract was awarded to Monarch Litho, Inc., of Montebello, California, under IFB No. 379-975 for printing of a healthy eating booklet for the Food and Nutrition Service. Colonial Press argues that in both cases it submitted the lowest bid, but the GPO rejected both bids after unreasonably determining that Colonial Press was not a responsible contractor.

We deny the protests.

BACKGROUND

Competition for Medicare Books (B-408031)

The GPO issued IFB No. 199-S on January 24, 2013, seeking bids to print 63 versions of separate-covered, perfect-bound books for the Centers for Medicare and Medicaid Services, titled "Medicare and You" (English versions) and "Medicare

y Usted" (Spanish versions). Contracting Officer's Statement (B-408031) at 1; IFB No. 199-S at 6. The IFB contemplated award of a single fixed-price, with economic price adjustment, indefinite-delivery/indefinite-quantity (ID/IQ) contract for a 1-year base period and up to four 1-year option periods. Id.

At the bid opening on February 4, 2013, Colonial Press submitted the bid that offered the lowest evaluated price (after applying its prompt payment discount) of \$2.4 million. The second-lowest bid (including its prompt payment discount) of \$2.5 million, was submitted by Fry Communications. Agency Report (AR) (B-408031), Tab F, Contract Review Board Memorandum, Feb. 13, 2013, at 1.

Competition for Healthy Eating Booklets (B-408055)

The GPO issued IFB No. 379-975 on February 13, 2013, seeking bids to print 560,000 copies of a booklet titled "Two Bite Club" for the United States Department of Agriculture, Food and Nutrition Service. Contracting Officer's Statement (B-408055) at 1; IFB No. 379-975 at 1. The IFB contemplated award of a fixed-price contract. Id.

At the bid opening on February 15, 2013, Colonial Press submitted the bid that had the lowest evaluated price (including a prompt payment discount) of \$222,000. The second-lowest bid (including its prompt payment discount) of \$250,000, was submitted by Monarch Litho. AR (B-408055), Tab F, Contract Review Board Memorandum, Feb. 19, 2013, at 1.

Nonresponsibility Determinations

After determining that Colonial Press had submitted the low bid in each procurement, the contracting officer considered the firm's responsibility, particularly its delivery history under GPO contracts since November 2012. Since the two responsibility determinations were made within days of each other, they were the same in all material respects. Thus, in both cases, the contracting officer noted that Colonial Press had made late deliveries in three of the 18 orders that it had performed since November. The contracting officer also concluded that Colonial Press had not shown since then that its underlying performance problems had been resolved. AR (B-408031), Tab E, Nonresponsibility Determination & Findings, at 1; AR (B-408055), Tab E, Nonresponsibility Determination & Findings, at 1.

Accordingly, the contracting officer notified Colonial Press that it had been found to be not responsible, and its bids had not been accepted. AR (B-408031), Tab G, Letter from Contracting Officer to Protester, Feb. 14, 2013, at 1; AR (B-408055), Tab G, Letter from Contracting Officer to Protester, Feb. 19, 2013, at 1. Accordingly, the contracting officer awarded the contracts by issuing purchase orders to the second-lowest bidders under the IFBs, Fry Communications and Monarch Litho. AR (B-408031), Tab H, GPO Purchase Order No. 96813, at 1; AR (B-408055),

Tab H, GPO Purchase Order No. 78979, at 1. After receiving the letters notifying it of the rejection of its bids, Colonial Press filed these protests.

ANALYSIS

Colonial Press argues that, as a small business, concerns over its responsibility should have been referred to the Small Business Administration (SBA) for consideration under that agency's certification of competency (COC) process. Colonial Press also argues that, even if the GPO is not subject to the SBA's COC process, the nonresponsibility determinations were unreasonable. As explained below, we disagree with Colonial Press on both points, and deny the protest.

First, our Office has consistently held that GPO, as a legislative branch agency, is not subject to the COC referral requirements of the Small Business Act, 15 U.S.C. § 637(b)(7) (2006 & Supp. V 2011). Downtown Legal Copies, B-289432, Jan. 7, 2002, 2002 CPD ¶ 16 at 4; Shepard Printing, B-260362 *et al.*, June 6, 1995, 95-2 CPD ¶ 119 at 3 n.2; Computer Support Sys., Inc., B-261166, July 18, 1995, 95-2 CPD ¶ 30 at 2 n.2; Fry Commc'nns, Inc., B-207605, Feb. 1, 1983, 83-1 CPD ¶ 109 at 2-5. Although Colonial Press argues that the Small Business Act should not be interpreted as exempting the GPO, we have consistently rejected essentially the same argument.¹ See, e.g., Fry Commc'nns Inc., *supra*, at 5. Accordingly, the GPO was not required to refer its nonresponsibility determinations of Colonial Press to the SBA.

Second, we conclude that the contracting officer reached a reasonable determination that Colonial Press's late deliveries rendered the firm not responsible. The GPO awards contracts under the authority of the GPO Printing Procurement Regulation (PPR). In a policy analogous to the Federal Acquisition Regulation responsibility requirements, the PPR provides that GPO contracts may be awarded

¹ Our decision in Fry Communications cited Gray Graphics Corp. v. United States Gov't Printing Office, No. 82-2869, 1982 U.S. Dist. LEXIS 18378 (D.D.C. Dec. 20, 1982), which concerned the question whether the GPO was subject to the COC referral requirements. The court held that the GPO was not subject to that statute because the SBA itself "does not now and has never regarded the GPO to be subject to [SBA's] jurisdiction," citing an affidavit from an SBA official as support. *Id.* at *8. The SBA made a similar representation to our Office on the record in Fry Communications. Letter from SBA Associate General Counsel to GAO, July 28, 1982, at 1 (citing S. Rep. No. 95-1140, at 12 (1978)). In comments submitted to our Office in this matter, the SBA does not assert that it has changed its position. Rather, the SBA states that the COC referral process "could, arguably" apply to the GPO and other non-Executive Branch agencies. SBA Comments, at 1. Neither the SBA's statement, nor the protester's related argument, has persuaded our Office to reverse our longstanding view on the question.

to “responsible prospective contractors only.” PPR chapt. I, § 5.1. The PPR also establishes the minimum standards of responsibility which include the ability to “comply with the proposed delivery schedules” and possession of a “satisfactory record of performance in regard to both quality and timeliness on previously awarded contracts.” Id. at § 5.4.

Colonial Press concedes that it made late deliveries under three printing contracts, but it argues that those contracts are distinguishable from the work under these IFBs (such as a shorter delivery time in one case, and a longer time in another). Colonial Press also states that the late deliveries were excusable, and the reasons for them have been corrected. As a result, Colonial Press argues, the GPO’s nonresponsibility determinations were unreasonable. Protester’s Comments (B-408055) at 3-5.

A 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 at 3. 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. 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. IPI Graphics, B-286830, B-286838, Jan. 9, 2001, 2001 CPD ¶ 12 at 3 (protest denied where record of protester’s failures to meet printing quality requirements in recent contracts were a reasonable basis for nonresponsibility determination by GPO).

The record here supports the reasonableness of the contracting officer’s determination, with respect to Colonial Press’s bid under each IFB, that the firm was not responsible because its recent performance on printing contracts had shown an inability to meet delivery requirements. Although Colonial Press argues that it successfully delivered on time on other GPO contracts, this does not render the contracting officer’s judgment that late deliveries on 16 percent (three out of 18) of its contracts represented an unsatisfactory record of recent performance. Also, while Colonial Press argues that each of the late deliveries was distinguishable from the work required under these IFBs²--and that Colonial Press was not at fault³--the firm does not dispute that each delivery was late. We do not think that the

² For instance, Colonial Press argues that one contract involved a shorter delivery time than the schedule here, and argues that another had a longer delivery time.

³ Colonial Press argues that one late delivery was caused by the customer submitting faulty computer image files, one was caused by faulty printing equipment, and the third was “only partially late” due to an “internal misunderstanding.” Protester’s Comments (B-408055), at 3-5.

contracting officer was limited to considering only contracts that were effectively indistinguishable from the scope of work here in considering whether Colonial Press was responsible. Rather, the contracting officer reasonably considered multiple late deliveries in relatively recent GPO contracts for printing, and concluded that Colonial Press's explanations left doubt as to whether the firm had the capability to fulfill the delivery requirements of the contracts under consideration. Those facts provide a reasonable basis for the contracting officer's nonresponsibility determination.

The protest is denied.

Susan A. Poling
General Counsel