



Decision

Matter of: Colonial Press International, Inc.

File: B-403632

Date: October 18, 2010

Anthony W. Hawks, Esq., for the protester.
Roy E. Potter, Esq., and Julie Kelley Cannatti, Esq., Government Printing Office, for the agency.
Cherie J. Owen, Esq., and Glenn G. Wolcott, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

An agency may properly exclude a defaulted contractor from a reprourement for the remaining work in the defaulted contract, even where the contractor is in the process of challenging the default.

DECISION

Colonial Press International, Inc., of Miami, Florida, protests the award of a contract to Vision Print Communications, of Brooklyn Park, Minnesota, under solicitation No. 679-216 by the U.S. Government Printing Office (GPO) for the production of 75,000 brochures requisitioned by the Department of Agriculture, and titled "North Umpqua Trail Brochure." Colonial Press contends that the agency improperly determined that the protester was nonresponsible for purposes of this procurement.

We deny the protest.

BACKGROUND

The protester here was the previous awardee for the requirement, awarded on March 15, 2010. The subject reprourement began after the protester's contract was terminated for default on August 11, 2010. Agency Report (AR), Tab 2, Notice of Termination, at 1. The agency contends that the original contract was terminated when the protester refused to reprint the brochure, despite numerous quality issues.

AR at 1-2. The protester has challenged this determination before GAO's Contract Appeals Board.¹

After the termination of the protester's contract, the agency issued solicitation No. 679-216 on August 13 to attempt to reprocur the requirement. Id. at 2. The protester submitted the lowest-priced quote, but was determined to be nonresponsible due to its default on the original contract, and the agency awarded to the second lowest-priced acceptable vendor. Id. This protest followed.

DISCUSSION

The protester contends that the agency's determination of nonresponsibility was improper, given that the protester is currently challenging the termination for default before GAO's Contract Appeals Board. Further, the protester attempts to challenge the grounds of its termination for default, and contends that a decision from our Office should be stayed pending a decision by the Contract Appeals Board regarding whether the termination for default was justified. The agency contends that the determination of nonresponsibility was a reasonable exercise of the contracting officer's discretion.

Generally, the statutes and regulations governing federal procurements are not strictly applicable to reprocurements of defaulted requirements. Essan Metallix Corp., B-310357, Dec. 7, 2007, 2008 CPD ¶ 5 at 2. In particular, under the standard termination for default clause incorporated into GPO solicitations and contracts, the contracting officer may reprocur "under the terms and in the manner the Contracting Officer considers appropriate" for the repurchase. GPO Contract Terms, Pub. No. 310.2, Contract Clauses § 20(a)(2)(b).² We will review a reprocurement to determine whether the agency acted reasonably under the circumstances. Bluff Springs Paper Co., Ltd./R.D. Thompson Paper Products Co., Inc. Joint Venture, B-286797.3, Aug. 13, 2001, 2001 CPD ¶ 160 at 2. With regard to determinations of nonresponsibility, we generally will not question a negative determination of responsibility unless the protester can demonstrate bad faith on the part of the agency or a lack of any reasonable basis for the determination. Bilfinger Berger AG Sede Secondaria Italiana, B-402496, May 13, 2010, 2010 CPD ¶ 125 at 3. Further, our Office has specifically held that an agency may properly exclude a defaulted contractor from a reprocurement for the remaining work in the defaulted contract. Essan Metallix Corp., supra, at 3; Montage, Inc., B-277923, Dec. 29, 1997, 97-2 CPD ¶ 176 at 3 ("although 'competition to the maximum extent practicable' must be obtained in the reprocurement, that standard does not, in our view, mean that an

¹ Colonial Press Int'l, Inc., GAO CAB 2010-10.

² The March 15 purchase order issued to Colonial Press stated that GPO Pub. 310.2 applies to this contract. AR, Tab 1, March 15 Purchase Order, at 1.

agency must consider an offer from a defaulted contractor for the reprocurement of the very work for which it was defaulted”). This view is consistent with various Board of Contract Appeals decisions reviewing agency’s default terminations, which have long held that the contracting officer’s broad discretion in conducting reprocurements includes the discretion to exclude the defaulted contractor from the repurchase. See Zan Mach. Co., Inc., ASBCA No. 39462, June 4, 1991, 91-3 BCA ¶ 24,085 at 120,542; Morton Mfg., Inc., ASBCA No. 30716, Oct. 31, 1988, 89-1 BCA ¶ 21,326 at 107,553; see also Edwards v. U.S., 22 Cl. Ct 411, 417 n.6 (1991). This reasoning applies despite the fact that the protester has appealed the default termination to a Board of Contract Appeals. See Automated Datatron Inc., B-232048, 88-2 CPD ¶ 481 at 3; S.A.F.E. Export Corp., B-209491, Aug. 2, 1983, 83-2 CPD ¶ 153 at 3 (terminations for default are proper matters for consideration in determining a contractor’s responsibility despite pending appeals with a Board of Contract Appeals).

In accordance with our prior holdings in Essan Metallix Corp. and Montage, Inc., the agency’s decision to exclude Colonial Press from the reprocurement does not provide a basis for sustaining the protest.³

The protest is denied.

Lynn H. Gibson
Acting General Counsel

³ To the extent that the protester contends that a decision from our Office should be stayed pending a decision by the Contract Appeals Board, we note that under the statutory time-frame set forth in the Competition in Contracting Act, 31 U.S.C. § 3554(a)(1), GAO is required to issue a final decision concerning this protest within 100 days after the date the protest was submitted to GAO. The 100-day deadline for issuing a decision on this protest is November 29, 2010. In contrast, GAO’s Contract Appeals Board is not subject to a statutory deadline for issuance of its decision. Further, the applicable rules for expedited small claims procedure at the Contract Appeals Board state that, whenever possible, the Board shall resolve an appeal under this procedure within 120 days from the Board’s receipt of the election. The protester’s Contract Appeals Board case is expected to be resolved by January 27, 2011, nearly 2 months after the statutory deadline for the issuance of a decision on the instant protest.