

MAKING NEGS ON GPO JOBS—IS THERE A RULE—WHAT IS IT?

By Frederic G. Antoun, Jr., Esq. April 1999

For many years GPO vendors have been furnishing either the GPO or its agency customer with the negatives (film) that they had to produce to print products under contracts with the GPO. My understanding was that this practice was initiated so that the government (and thus the taxpayers) would save money the next time the product was reprinted, as new negatives would not have to be made. In addition, with the government being the owner of the negatives used in the printing process, the vendor who did the first printing had no competitive advantage when the product was reprinted.

This system made sense at a time when all offset printing was produced using negatives. However, with advances in technology, printers using digital printing or direct-to-plate systems, no longer use a negative in the printing process. Requiring a printer to produce negs he does not need wastes his time and the taxpayers money.

Many agencies no longer find negatives to be a desirable commodity. Negatives cost a great deal to store, they are difficult to change, and they lose clarity and fidelity over time. On the other hand, a digital file is easy and inexpensive to store, does not lose reproduction quality over time, and can easily be utilized in other information dissemination technologies such as CD-ROM, an agency network, and the Internet. As a result, the percentage of digital copy increases daily.

PIA has had several meetings with GPO's Bo Arneson, Tom Sullivan and Scott Stovall to discuss the industry's desire to have the GPO implement a new rule that would require the printer to furnish negatives *only* if it produces negatives to print the job. If the job is produced on digital presses or direct-to-plate, we suggested the printer would provide an "as printed" digital file, unless the agency customer specifically requested negatives. This digital deliverable would be in the format requested by the agency, or a standard format established by the JCP or GPO, such as Adobe PDF.

The GPO has been considering this request for almost two years. Now that GPO has gone direct-to-plate, the issue many finally be addressed (they finally understand you don't make film for a job you take direct to plate!).

However, in the meantime, there is a misimpression that some rule or regulation requires the contractor to produce negatives on all GPO jobs (except those where "electrostatic" copying is permitted) and supply those negatives to the government as a deliverable. I have reviewed Contract Terms, as well as the standard small purchase form, and can find no requirement that a GPO contractor furnish negatives to the government as a deliverable, even if the contractor did not use negatives in the production of the work.

Contract Terms, Section 9(b), "Reproduction Media," sets standards for "films required to be delivered to the government". However, neither that section nor any other that I could find in Contract Terms specifically requires the contractor to make films. Section 9, "Reproduction Media," Subsection (b)(5) does indicate that films, *whether made by the contractor or furnished by the government*, must be prepared in a certain way and packed

flat, seeming to indicate that these films should be returned to the government. It does not, however, require that the contractor actually produce negatives if it does not use them in the printing process.

I asked the GPO Office of General Counsel to point out any general requirement that required the production and delivery of negs or film on GPO contracts. They could not.

This does not mean that some Jackets and Programs do not have specific clauses requiring the contractor to deliver a complete set of negatives with the job—many do. So contractors have to read the specs. Some specs provide that “all furnished materials *and films made by the contractor* must be returned to”. This language simply states that furnished material and films made by the contractor are the property of the government, and indicates where they should be returned upon completion of the work. It does not impose a requirement that the contractor must make films if it is not using films in the production of the work.

On the small purchase form, GPO employees are *assuming* that the check block—“Return original and/or films to:”—imposes a requirement that the contractor produce films. My reading of this section is that since it utilizes the word “return” and is discussing the “original and/or films,” it refers to government furnished materials—not to negatives to be made by the contractor. Other than the check block relating to the return of GFM, I can see no requirement that the vendor *must* make negatives and furnish them as a deliverable under a small purchase contract (unless the specs require negs to be delivered to GPO or the agency). Everyone seems to accept that *if* the printer makes negs for the job, they belong to GPO.

Here are some guidelines that may be helpful until GPO drafts new language that addresses requirements for negatives and digital deliverables:¹

Printers must follow the negative requirements in their GPO contracts.

If a printer is not making negatives to produce work on a particular GPO contract, and there is no specific requirement in the specs that it make negatives and furnish them as a deliverable, there is no reason to do so.

Printers must continue to return all government furnished materials (film or other).

Printers should continue to treat negs they produce to print the job as the property of the government, and deliver the same to the agency or the GPO as directed.

Where films are not used, most printers who contract with the government believe it is appropriate to furnish a digital deliverable, if requested by the GPO.

We hope that GPO will get input from its own plant staff and agency customers, and develop a workable policy.

¹ This memo is intended to provide general information, not legal opinions or legal advice relating to any specific contract or factual situation. Consult your attorney for advice about specific contracts or questions.