

GPO's Latest Contract Terms Places Tighter Restrictions on Subcontracting; GPO Considers Allowing Brokers to Bid on Government Printing Jobs

By: Frederic G. Antoun, Jr., Esq.

Hopefully, you're not the only one that found the headline for this article confusing! For years, GPO has steadfastly held to its "no subcontracting" rule. GPO's subcontracting clause provides that the contractor may not subcontract the *predominant production function* which, if not defined in the contract, is presumed to be presswork or printing. In the May 1999 revisions to Contract Terms, GPO expanded the definition of "presswork" or printing to include digital imaging, laser imaging, ink jet, and bubble jet. In other words, they made the type of work that can be subcontracted out without special written permission even more restricted.

Under the new rules, unless the contract states otherwise, a printing job which also required variable imaging would have to be done by the same contractor. In the good old days (earlier this year!) printers were able to subcontract out variable imaging, unless the contract specifically prevented them from doing so.

A further tightening of the subcontracting situation also occurred in May, when GPO revised its Printing Procurement Regulations to provide that all parties to a joint venture or "contractor team arrangement" (which have been used for years to avoid the subcontracting clause restrictions) must perform at least one of the production functions required by the contract. In other words, a non-producing broker or management company cannot now team up with a printer to acquire a GPO contract.

At the same time GPO was tightening down subcontracting and joint venture rules, it received a request to allow brokers to bid on GPO contracts. Surprisingly, the GPO was (and may still be) under substantial pressure to accept bids from brokers. It should come as no surprise that PIA, the country's largest association of printers, has long been opposed to allowing brokers to bid on GPO work. PIA has supported the GPO's position that only an actual producer should be allowed to bid. PIA's reasoning mirrored that of GPO:

1. Since GPO awards are based on not only low price, but also quality level rating, past performance, and on-time delivery, it would be impossible to evaluate those factors when dealing with a broker who might pass the job through to any printer with the lowest price;
2. GPO contract bidding is already unbelievably competitive, and brokers are not needed to bring low prices to the government;
3. When the GPO deals with a printer on behalf of an agency customer, if it has to go back against the printer for procurement costs or damages, it is dealing with the manufacturing facility with a plant, hardware, employees, etc. – while a broker may only have a laptop computer and a telephone in a rented office.

4. Since the GPO's system already provides substantial isolation between the end user and the printer, adding a broker into the mix would merely create another step or point of contact which could increase the likelihood for miscommunication, and delay action.

To date, no one has changed this position.

It seems clear that the printing industry does not believe it is appropriate for GPO to be dealing with brokers. In addition, GPIC believes that GPO should allow printing companies more latitude in choosing subcontractors and joint venture partners – not less. Allowing printers to put together a package which provides the best quality, service, delivery at the lowest price would certainly seem to benefit the GPO and its agency customers.

Hopefully GPO will abandon any plans to replace its printer-contractor pool with brokers.

As a final note, it has recently been suggested that GPO Printing Procurement Regulations do not permit joint ventures or contractor team arrangements for contracts under \$25,000. While this would seem to be logical conclusion from a quick reading of GPO PPR CH. I, Section 4.13, it is not actually correct. That section now provides that the government “will” recognize contractor team arrangements for contracts valued in excess of \$25,000, provided all the other requirements of the section are met. It does not, however, indicate that only those contracts in excess of \$25,000 may involve contractor team arrangements. The May 1999 changes to this section leave open the possibility of continuing to enter into contractor team arrangements for contracts under \$25,000. Given the GPO's openness to contractor team arrangements which provide a good price/quality/service combination, it seems likely that contracting officers may continue to accept joint ventures or contractor team arrangements on small purchases.

If you would like a copy of GPO's latest rules and regulations on subcontracting and contractor team arrangements (joint ventures) e-mail jvinyard@printing.org or antoun@printlaw.com.

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