

DOCUMENT RESUME

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[Protest against the Inclusion of Bid, Performance, and Payment Bond Requirements in an Invitation for Bids]. B-188330. August 2, 1977. 4 pp.

Decision re: Steamco Janitorial Services, Inc.; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law II.

Budget Function: National Defense: Department of Defense - Procurement & Contracts (058).

Organization Concerned: Department of the Army: Letterman Army Medical Center, Presidio of San Francisco, CA; U.S. Eagle, Inc.

Authority: A.S.P.R. 10-102.2. A.S.P.R. 10-104.1-3. 4 C.F.R. 20.10. B-183847 (1975). B-187628 (1977). B-181154 (1974). B-170069 (1976). B-184157 (1976). P-185103 (1976).

The protester objected to the inclusion of bid, performance, and payment bond requirements in an Invitation for Bids for janitorial services at a hospital. It is within the discretion of a contracting officer to determine whether or not to impose bonding requirements for individual procurements for other than construction work, and the decision to include the bonding requirements was reasonable in procurement for hospital housekeeping services because of the potentially severe financial and medical risks involved. (Author/SC)

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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE: B-188330**

**DATE: August 2, 1977**

**MATTER OF: Steamco Janitorial Services, Inc.**

**DIGEST:**

1. It is within discretion of contracting officer to determine, pursuant to ASPR § 10-104.2(a) (1976 ed.) whether or not to impose bonding requirements for individual procurements for other than construction work.
2. Decision made by contracting officer pursuant to ASPR § 10-104.2(a)(ii) (1976 ed.) that bonding requirements are necessary in procurement for hospital housekeeping services was reasonable because of potentially severe financial and medical risks involved and fact that reprocurement at contractor's expense, in event of default, is not an adequate remedy. In circumstances bonding requirements have not been imposed as a substitute for a determination of bidder responsibility.

Steamco Janitorial Services, Inc. (Steamco) protests the inclusion of bid, performance and payment bond requirements in Invitation for Bids (IFB) No. DAKF-01-77-B-0055. This IFB was issued on May 20, 1977 by the Department of the Army, DIO-Procurement Division, Presidio of San Francisco, California (Presidio) and concerned housekeeping services to be performed at Letterman Army Medical Center (LAMC).

The solicitation resulted from the cancellation of IFB No. DAKF-01-77-B-0013, issued on December 16, 1976, by Presidio, where U.S. Eagle, Inc. (Eagle) was the apparent low bidder. However, protests ensued which, in part, questioned whether the low bidder was responsive to certain requirements set forth in the IFB. The Army reviewed the pertinent IFB provisions and determined that the minimum needs of the Government were not clearly expressed and free and open competition was thereby restricted. Accordingly, the prior solicitation was cancelled. This caused Eagle to file a protest with our Office contending that there was no compelling reason to justify the cancellation.

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Eagle's protest was formally dismissed by our Office on July 16, 1977, B-188330, pursuant to 4 C.F.R. § 20.10 (1976), because it brought suit in the United States District Court (ND, CA), Civil Action No. C77-1320 WAI. Presently, Eagle has been providing the specified housekeeping services on a month-to-month basis pending the outcome of its court proceedings. Our information indicates that Eagle's suit was recently dismissed by the Court. Our decision in this case concerns issues which were not before the Court and are not affected by the Court's action.

Steamco contends the solicitation should be cancelled because it requires bid, performance and payment bonds. The protester believes that such a requirement is legally impermissible in a procurement for housekeeping services, and therefore should be deleted. Steamco notes that Armed Services Procurement Regulation (ASPR) § 10-102.2 (1976 ed.) provides that "bid guarantees shall not be required unless the solicitation specifies that the contract must be supported by a performance bond or performance and payment bonds." Furthermore, ASPR § 10-104.1 specifies that "\* \* \* performance and payment bonds shall not be required in connection with contracts other than construction contracts, other than as provided in 10-104.2 and 10-104.3." Steamco argues that the contracting officer does not have discretionary power to require bonds in procurements for other than construction work except:

1. to protect the Government's interest in its material, property or funds (ASPR § 10-104.2(i), and
2. to protect the interests of the Government for financial reasons (Id. (ii)).

Steamco argues that a performance bond is not proper in this case because the contractor will not use Government material, property or funds and the circumstances are such that the interests of the Government do not need such protection. Should a default occur, Steamco argues, the Government may repro cure and recover any excess costs from the defaulted contractor. Steamco also questions whether, pursuant to ASPR § 10-104.2(b), the appropriate authority determined the necessity for the bonding requirements. Steamco also believes that contrary to the express prohibition in ASPR § 10-104.2(a), the Government is attempting to utilize the bonding requirements here as a substitute for a determination of contractor responsibility.

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As to the contracting officer's authority to require bonds, ASPR § 10-104.2(a) provides that "performance bonds may be required in individual procurements when the contracting officer determines a need therefor" and that justification for the bond requirements must be fully documented. (Emphasis provided). The Army states that the contracting officer made a written determination in this regard and that the requirement in ASPR § 10-104.2(b) for higher level class determinations is not applicable here. Inasmuch as the determination to impose bonding requirements was made for the instant procurement, we agree that there is no need for a determination at a higher level than the contracting officer.

As to the need for bonding, the Army points out that the history of procurement for hospital housekeeping services at LAMC reveals that a default on August 15, 1972 by a previous contractor resulted in a takeover by its surety on August 19, 1972. The Army also argues that the nature of the full hospital housekeeping services to be provided, is not the same as the normal janitorial services associated with cleaning buildings and administrative areas. In support of this, the contracting officer's determination, dated May 19, 1977, states:

"1. If during the performance of the housekeeping services at LAMC, the contractor fails to perform and is terminated for default by the Government, the delay incident and expense due to reprocurement would be prohibitive.

"2. The suspension of housekeeping services for a period greater than 72 hours would compel the employment of essential non-reserve nursing personnel in the operation of cleaning.

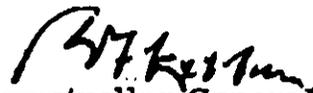
"3. Failure to accomplish essential housekeeping operations would raise rate of hospital acquired infections \* \* \*. Continuous housekeeping services are essential to optimal patient care \* \* \*.

"4. A performance bond is required so that services would be continued by the surety with minimum interruption after default. It is estimated that reprocurement could not be effected until approximately 45 days after default without surety."

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We have long recognized that it is within the contracting officer's discretion to determine whether a need exists for bonding requirements. Abbott Power Corporation and United Power, B-183847, October 2, 1975, 75-2 CPD 207. See also, Willard Company, Inc., B-187628, February 18, 1977, 77-1 CPD 121; Thorpe's Mowing, B-181154, July 17, 1974, 74-2 CPD 37 and B-170069, April 23, 1976. In this connection we look to whether the determination was made in good faith with a reasonable basis. It is the protester's burden to demonstrate that such a decision is unreasonable or arbitrary. See J. H. Rutter Rex Manufacturing Company, Inc., B-184157, February 23, 1976, 76-1 CPD 122 and Reliance Maintenance Service, Inc. --request for reconsideration, B-185103, May 24, 1976, 76-1 CPD 337. In our opinion the Army has made a convincing case to justify the imposition of bonding requirements because of the potentially severe financial and serious medical risks involved and the fact that reprocurement at contractor's expense is not an adequate remedy in the event of default. In these circumstances we believe the contracting officer has exercised his discretion within the criteria enumerated in ASPR § 10104.2 and we are not persuaded that the bonding requirements have been imposed as a substitute for a determination of bidder responsibility.

Accordingly, the protest is denied.

  
Deputy Comptroller General  
of the United States