

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

FILE: B-208317

DATE: November 2, 1982

MATTER OF: Cantu Services, Inc.

DIGEST:

1. Protest against requirements for performance and payment bonds in dining facility attendant services solicitation is without merit since contracting officer has discretion to determine whether need exists for bonding requirements. Record shows that bonds were considered necessary because contractor would have use of Government-owned property and because interruption in service would be detrimental to health and well-being of Air Force personnel. We conclude that these were reasonable bases for bonding requirements.
2. Protest that agency should waive requirements for performance and payment bonds with regard to protester is not for consideration on merits, because such determination must be made after award and, therefore, is a matter of contract administration.

Cantu Services, Inc. (Cantu), protests against the requirement for performance and payment bonds in solicitation No. F41613-82-B0033, issued by the Department of the Air Force. The invitation for bids, a 100-percent small business set-aside, was issued on July 2, 1982, for mess attendant services at Carswell Air Force Base, Texas. Cantu filed its protest prior to bid opening. Cantu argues that the solicitation requirement for performance and payment bonds is improper and represents a violation of section 10-104 of the Defense Acquisition Regulation (DAR) (1976 ed.), which governs the use of performance and payment bonds in other than construction contracts. Cantu also suggests that it would be appropriate for the contracting officer to waive the bonding requirement so as not to prejudice Cantu, which has not been able to obtain such bonds.

We conclude that the protest is without merit.

023826

The protested bonding requirement is contained in section "L," paragraph 25, of the invitation for bids, which states:

"Within ten (10) days after the prescribed forms are presented to the bidder to whom award is made for signature, a written contract in the form prescribed by the specifications shall be executed and two bonds, each with good and sufficient surety or sureties acceptable to the Government, furnished; namely, a Performance Bond (Standard Form 25) and Payment Bond (Standard Form 25A). The penal sum of the bonds will be as follows: (i) Performance Bond. The penal sum of the Performance Bond shall equal (50%) fifty percent of the contract price. (ii) Payment Bond. The penal sum of the Payment Bond shall equal (50%) of the contract price. Any bonds furnished will be furnished by the contractor to the Government prior to commencement of contract performance."

The contracting officer justified the bonds as being in the Government's best interest because:

"Contracts of this nature have required very close surveillance, particularly with contractors whose geographical locations have made overseeing the contract difficult. Due to the mission requirements of this base, it is essential that Alert crews and all supporting organizations have uninterrupted services at all times. Another reason a bond is considered necessary is that in the event the contractor fails to perform, reprourement can be accomplished expeditiously and services could continue uninterrupted. The health and well-being of personnel using the dining facilities would not be jeopardized."

In its report to our Office on this protest, the Air Force further justified the need for performance and payment bonds. The Air Force reports that any successful bidder will have extensive use of Government material, property,

and funds. The Air Force points out that "all the food prepared is government property, prepared in government facilities, on government equipment," and that "virtually the entire contract is descriptive of the specified handling involved." The Air Force also points out that the contract calls for providing cashier services which involves collecting cash and that the present contractor handles approximately \$200,000 of Government funds a year.

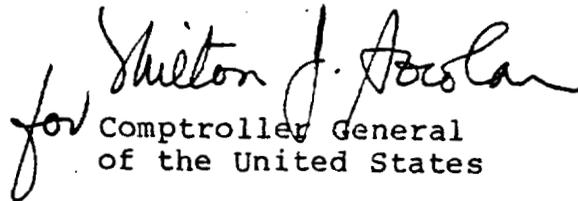
Contracting officers have the discretion to determine whether a need exists under DAR §§ 10-104.2 and 10-104.3 for performance and payment bonds requirements in a particular procurement. 52 Comp. Gen. 640, 644 (1973). Although performance and payment bonds may in some circumstances result in a restriction of competition, they are nevertheless a necessary and proper means of securing to the Government fulfillment of a contractor's obligations under his contract. Thus, where the decision to require bonds is found to be reasonable and made in good faith, we will not disturb the agency's determination. See Triple "P" Services, Inc., B-204303, December 1, 1981, 81-2 CPD 436, and cases cited therein.

Our examination of the invitation for bids shows that a considerable amount of Government-owned equipment will be used by the contractor selected to perform the required services. Use of Government-owned equipment is one of the justifications specifically enumerated in DAR § 10-104.2 as support for bonding requirements. Furthermore, the contracting officer's finding that these services must be provided on an uninterrupted basis so that "[t]he health and well-being of personnel using the dining facilities would not be jeopardized" is a reasonable basis for the bonding requirement. See Triple "P" Services, Inc., supra.

Regarding Cantu's argument that it is prejudiced by the bonding requirement, there is no evidence that adequate competition was not obtained. Even though such requirements do somewhat restrict competition, as stated above, such requirements are necessary and proper in certain circumstances. In view of the reasonableness of the determination here, we find nothing improper in use of bonding requirements in these circumstances.

Finally, Cantu's suggestion that the bonding requirement should be waived in its behalf is not for our consideration. Paragraph L25 states that the bonds will be provided by the contractor to the Air Force after award. Since the bonding requirement becomes the contractor's obligation under the contract, the determination whether to waive the requirement is a matter of contract administration and is not for review under our bid protest function. See Hi-Grade Cleaning, B-190889, April 14, 1978, 78-1 CPD 287.

The protest is denied.

for 
Comptroller General
of the United States