

J.M.P.M. on
R-I 31245

DECISION



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

FILE: B-217267 **DATE:** May 22, 1985
MATTER OF: Ralph Construction, Inc.

DIGEST:

1. The determination to require performance and payment bonds is reasonable where the contractor will have the use of government property and facilities, and the Navy installation where the contract will be performed is located in an area in which default would result in significant financial loss to the government.
2. Protest against IFB's failure to include historical information on material costs is denied where the protester has not shown that, given the data the IFB does provide, such information in fact is needed for bidders in general, or for the protester in particular, to prepare bids.

Ralph Construction, Inc. (Ralph) protests certain provisions of invitation for bids (IFB) No. N62467-84-B-2787, issued by the Department of the Navy for the maintenance of family housing at the Naval Air Station in Key West, Florida. Ralph contends that the IFB requirement for bonds is unnecessary, and that the IFB is deficient in not providing historical information on material costs and in not stating the square footage to be painted.

We deny the protest concerning both the requirement for bonds and the information about material costs, and we dismiss the protest on the remaining matter.

The IFB required both performance and payment bonds. Ralph first argues that the procurement regulations contemplate bonding requirements only in solicitations for construction contracts. In this respect, Federal Acquisition Regulation (FAR), 48 C.F.R. § 28.103-1 (1984), provides that agencies generally should not require performance and payment bonds for other than construction contracts. The

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protester further contends that, in any case, the bonding level in this IFB is much higher than warranted, and therefore will inhibit competition.

In response, the Navy points out that the regulation also permits the use of bonds as allowed by FAR, 48 C.F.R. § 28.103-2, which concerns situations where they are needed to protect the government's interest, and which cites as an example the case where government property is to be provided to the contractor for use in performing the contract. The Navy states that bonds were needed here to protect the government's interest because the contractor will be using a government plant worth \$50,000 and equipment worth \$20,000. The Navy also alleges its experience has shown that because Key West is a tourist area more than 100 miles from any major city, there are few skilled or semi-skilled maintenance workers in the area, and little affordable off-base housing if military families had to be displaced, so that failure to perform the contract could cause significant financial loss to the government.

Although a requirement for bonds may in some circumstances result in a restriction on competition, it nevertheless is a recognized means of securing to the government fulfillment of a contractor's obligations under his contract. Triple "P" Services, Inc., B-204303, Dec. 1, 1981, 81-2 C.P.D. ¶ 436. The determination to require a performance bond, and the accompanying payment bond, is within the discretion of the contracting officer, and that determination will not be disturbed by our Office in the absence of a showing that the determination was unreasonable or made in bad faith. Space Services International Corp., B-215402.2, Oct. 22, 1984, 84-2 C.P.D. ¶ 430.

Since the firm to be awarded this contract will have use of government facilities and equipment with a total value, according to the Navy, of some \$70,000, the bonding requirement clearly is permitted by the procurement regulations. Further, the penal amounts of the bonds are exactly those required (except in unusual circumstances) by FAR, 48 C.F.R. § 28.102-2. The protester, who has the burden of proof, also has offered no substantive evidence to refute the Navy's assertion that, because of the location of the work in a remote tourist area, bonds are needed in this particular case to protect against the consequences of a default. Accordingly, we have no legal basis to question the Navy's determination in that regard.

Ralph's second complaint is that the IFB does not include historical information on material costs. The Navy responds that it would not be appropriate to reveal historical material cost information, since such information "forms a basis for a portion of the Government estimate." The Navy notes that bidders are provided with historical information concerning service calls and minimum/maximum units of work per order, from which, the Navy suggests, bidders should be able to price necessary materials.

It is not clear to us precisely what the Navy means by its justification for not including the requested information in the IFB. Nevertheless, Ralph simply has offered no evidence to show that such information is necessary for bidders in general, or for the protester in particular, to prepare proper bids given the information the IFB does provide. We therefore will not object to this aspect of the invitation.

Ralph's final point is that square footage quantities should be provided to enable bidders to determine the extent of painting required. The Navy, in its report on the protest, agrees with Ralph, and proposes to issue an amendment to this effect prior to bid opening, which has been postponed indefinitely. The protest on this issue therefore is moot.

We deny the protest in part and dismiss it in part.

for *Seymour Spies*
Harry R. Van Cleve
General Counsel