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DECISION



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

FILE: B-220606 **DATE:** December 17, 1985

MATTER OF: Grace Industries, Inc.

DIGEST:

Protest that bid guarantee, performance and payment bond requirements unfairly and unreasonably restrict competition is denied where the contracting officer reasonably determined that bonding requirements were necessary to protect the government's interest.

Grace Industries, Inc. (Grace), protests the bonding requirements of invitation for bids (IFB) No. DABT56-85-B-0062, a total small business set-aside issued by the United States Army Engineer Center (Army), Fort Belvoir, Virginia, for custodial services. Grace contends that the bonding requirements unfairly and unreasonably restrict competition.

We deny the protest.

The IFB was issued on September 3, 1985, with bid opening set for October 3, 1985, and did not contain any bonding requirements. Amendment No. 0001, issued on September 20, 1985, required a bid guarantee, a performance bond, and a payment bond. The contracting officer considered 13 days adequate time for bidders to obtain bonds. The Army also issued three more amendments which, among other things, extended bid opening until November 13, 1985. Grace's protest was filed here prior to the initial bid opening date.

The solicitation consolidated certain custodial contracts at Fort Belvoir. In the past, these custodial contracts had been divided between two contractors, Centennial One, Inc., and Grace which performed as subcontractors under the Small Business Administration (SBA) 8(a) program. The contracting officer determined that the bonds were necessary because the contractor would have extensive access to government property and the contractor's nonperformance could have a detrimental effect upon the entire installation. Also, the contracting officer reasoned that since consolidation of the custodial contracts resulted

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in a much larger contract, which was being solicited as a small business set-aside instead of an 8(a) contract, bonding requirements were necessary.

Grace argues that in light of its successful performance under the 8(a) program, the bond requirements are unreasonable because the Army never required bonds in the past. Grace alleges that the decision to require bonds was made in bad faith to eliminate Grace from the competition. The Army responds that in the past, SBA, as the prime contractor, determined whether to require bonds. Grace further argues that the bond requirements violate the "full and open" competition requirement set out in the Competition in Contracting Act of 1984, 41 U.S.C. § 253, et seq. (West Supp. 1985), because it is a responsible source, which by virtue of the bonding requirements, will not be permitted to compete. Grace, in the alternative, contends that given the size of the bonding requirements, the bid opening time should have been extended.

While bonding requirements may in some circumstances restrict competition, we have found that it may be necessary to secure fulfillment of a contractor's obligations to the government. Harris System International, Inc., B-219763, Oct. 18, 1985, 85-2 C.P.D. ¶ 423. The Federal Acquisition Regulation (FAR), 48 C.F.R. § 28.103 2(a), provides that performance bonds may be required when government property is used by the contractor in performing the contract. The FAR further provides that a payment bond is required only when a performance bond is required and it is in the government's best interest to do so. We have held that we will not disturb a contracting officer's determination that bonding requirements are needed if the decision is reasonable and made in good faith because under the regulations the agency is accorded discretion to determine the need for bonds. See Harris System International, Inc., supra; Renaissance Exchange, Inc., B-216049, Nov. 14, 1984, 84-2 C.P.D. ¶ 534. In order for our Office to question the requirement, the protester must establish that the determination to require bonds was unreasonable. Id.

The record shows that the contracting officer made the decision to require bonds after determining that the contractor would have extensive access to government property, that nonperformance would detrimentally affect the operation of the installation, and that there was no history of past performance by small businesses. In light of these considerations, we cannot conclude that the contracting officer acted unreasonably in deciding to require bidders to submit bid bonds. While Grace attempts to rely on its successful

past performance, as the Army points out that performance occurred under the SBA 8(a) program. There was no past history in connection with small business set-asides. Accordingly, we find the contracting officer could reasonably conclude that bonds were necessary. Grace has failed to show bad faith establishing the bonding requirements.

Regarding Grace's contention that the bid opening should have been extended, the Army advises that seven bidders submitted bids by the scheduled bid opening, that competition was not affected by the bid preparation time, and that the amendment extending bid opening to November 13, 1985, in effect renders this aspect of the protest academic. Since the decision whether to extend or not to extend bid opening is within the discretion of the contracting officer and we have held that an amendment of a solicitation which allowed 14 days for transmittal, consideration and return was reasonable, we do not find that the contracting officer abused his discretion here. Spede Tool Manufacturing Company, B-214622, Sept. 11, 1984, 84-2 C.P.D. ¶ 282; Infinity Corporation, B-202508.3, July 17, 1981, 81-2 C.P.D. ¶ 45. Following the issuance of the additional amendments, Grace had a month and a half before bid opening to secure the bonds.

The protest is denied.

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