

# DECISION



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

**FILE:** B-221054.2                      **DATE:** February 14, 1986  
**MATTER OF:** Rampart Services, Inc.

## DIGEST:

1. Protest alleging that requirements for performance and payment bonds in solicitation for vehicle operation and maintenance unduly restrict competition and burden small businesses is without merit, since awardee will have the use of government-owned property and any interruption in service would be detrimental to operation of installation, due to the critical nature of the services being procured.
2. Proposal bond requirement is valid where performance and payment bonds are also required and the services covered are essential to operation of government installation.

Rampart Services, Inc. (Rampart), protests the bonding requirements of request for proposals (RFP) No. F41800-86-R-A388, a small business set-aside covering operation and maintenance of motor vehicles at Kelly Air Force Base, Texas. Rampart contends that the requirements for proposal, performance, and payment bonds unduly restrict competition and burden small businesses.

We deny the protest.

The RFP, issued November 1, 1985, requires each offeror to submit a proposal bond of 20 percent of the offered price or \$3 million, whichever is less. It also requires the successful offeror to provide performance and payment bonds, each in an amount equal to 100 percent of the contract price.

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Rampart maintains that the bonding requirements do not comply with the FAR, 48 C.F.R. § 28.103-1, which provides that agencies should generally not require performance and payment bonds for other than construction contracts. According to the protester, competition will be restricted because small businesses will be unable to obtain bonding to minimum net worth requirements that are related to the value of the contract, here approximately \$3.5 million annually or \$9.6 million over the proposed 33-month contract period. Rampart maintains that surety companies consider the total contract, including the option periods, in determining the bonding amount. Also, the protester contends that the Small Business Administration (SBA) is precluded from assisting since it cannot bond contracts in which the total price, including option years, exceeds \$1 million.

Further, Rampart argues that the bonding requirements are unwarranted since there is no past history of default on similar contracts at Kelly Air Force Base. The protester maintains there are better avenues to protect the government, such as a preaward survey and contract provisions covering default, payment deductions, and general liability insurance.

The Air Force responds that bonding is necessary to protect its interest in a large inventory of government-owned tools, equipment, facilities, and motor vehicles with an estimated value of \$6 million. The awardee will use these in performing the contract. Additionally, the agency justifies the bonding on the basis that uninterrupted service is critical to the operation of the base. The agency reports that the awardee will operate and maintain vehicles for the motor pool, as well as taxis, bus lines, freight lines, and wrecker services. According to the agency, default in performance would result in an estimated loss to the government of \$350,000 a month, and reprocurement would take approximately 4 months.

Although bonding requirements may in some cases restrict competition, in appropriate circumstances they can be necessary to secure fulfillment of a contractor's obligations. Galaxy Custodial Services, Inc., et al., B-215738 et al., June 10, 1985, 64 Comp. Gen. \_\_\_\_\_, 85-1 CPD ¶ 658. Performance and payment bonds are generally required by statute for construction contracts, see Federal Acquisition Regulation (FAR), 48 C.F.R. § 28.102-1 (1984), and performance bonds may be required for nonconstruction contracts when necessary to protect the government's interest. FAR, 48 C.F.R. § 28.103-2. Payment bonds are required only when

performance bonds are required and it is in the government's interest. FAR, 48 C.F.R. § 29.103-3. In addition, the regulations authorize use of a proposal bond where performance and payment bonds are found necessary. See FAR, 48 C.F.R. § 28.101-1. We will not disturb a contracting officer's determination that bonding requirements are needed in a nonconstruction procurement if the requirements are reasonable and imposed in good faith. Galaxy Custodial Services, Inc., et al., B-215738, et al., supra; Wright's Auto Repair & Parts, Inc., B-210680.2, June 28, 1983, 83-2 CPD ¶ 34. The protester bears the burden of establishing that the determination is unreasonable or in bad faith. Id.

Use of government property is one of the specifically enumerated justifications for a performance bond requirement. FAR, 48 C.F.R. § 28.103-2. Further, performance and payment bonds are a reasonable means of securing the fulfillment of a contractor's obligations where the contract requires use of substantial government property and the services are essential to the operation of an installation. See, e.g., Executive-Suite Services, Inc., B-212416, May 29, 1984, 84-1 CPD ¶ 577; Technical Services Corp., B-195838, Dec. 18, 1979, 79-2 CPD ¶ 415. These circumstances are present here, and the essential nature of the services also provides an adequate justification for a proposal bond. See Executive-Suite Services, Inc., B-212416, supra.

Further, we do not agree with the protester that a preaward survey or contract provisions concerning default, payment deductions or liability insurance make the bonding requirements unnecessary. A preaward survey is an evaluation of a prospective contractor's capability to perform a proposed contract; it does not offer an agency any legal protection after award is made. The default clause provides a method for the government to terminate a contract if the contractor fails to perform, and it makes the contractor liable for the excess costs of reprocurement; it does not protect the government's interest in continued performance in the event of default. The provisions for payment deductions and the requirement for insurance are indeed designed to protect the government's interest during performance, but not against the same contingencies as performance and payment bonds. Deductions and insurance protect the government against accidental losses and expenses that are incidental to performance of the contract, but not against the substantial and serious failure of a contractor to perform essential services. Performance and payment bonds, by contrast, secure the contractor's obligation to perform and assure payment to all persons supplying labor and materials.

The parties differ over whether surety companies include option periods in determining the bonding amount. The agency maintains that it contacted two surety companies on the list established and maintained by the Department of Treasury, see FAR, § 28.202-1, and was assured by both that option years would not be so included. The protester, however, maintains that the SBA and surety companies which it contacted include option year prices in the total contract price when calculating bonding amounts. Here, the matter is resolved by the RFP itself, which requires the bonding amount for the performance and payment bonds to be computed for the base year only.

Finally, the record indicates that this requirement has been contracted out twice previously as a small business set-aside with the same bonding requirements. Three contractors submitted bids on the previous contract and seven submitted proposals on the current RFP. In our opinion, this indicates that the bonding requirements here will not unduly restrict small businesses competition. We find the bonding requirements justified and not unduly restrictive of competition.

The protest is denied.

*for* *Seymour E. Gre*  
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 General Counsel