



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Intelcom Support Services, Inc.

File: B-222560

Date: July 18, 1986

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### DIGEST

Contracting agency's decision to impose bonding requirements in a procurement for base operating support services at a remote Naval installation was reasonable where contractor will be responsible for a significant amount of government property and contractor's failure to perform would seriously disrupt installation operations and cause financial loss to the government due to remote location of the installation and comprehensive nature of the services to be performed.

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### DECISION

Intelcom Support Services, Inc., protests the award of any contract under request for proposals (RFP) No. N62742-86-R-0514, issued by the Navy for base operating support services at the Naval Air Station, Midway Island. Intelcom contends that the bonding requirements in the RFP unduly restrict competition. We deny the protest.

The RFP, issued on February 28, 1986, calls for comprehensive operating services at Midway Island (a remote atoll approximately 1,100 miles northwest of Hawaii) for a base period from November 17, 1986, to September 30, 1987, with four 1-year options. The services to be provided include custodial services, ground structures maintenance, maintenance and operation of utilities systems, solid and hazardous waste collection and disposal, food services, crash and fire protection services, security, buildings and structures maintenance and repair, airfield operations, port and harbor services, and operation of the petroleum, oil and lubricants system of the island.

The RFP required each offeror to submit a proposal bond equal to 20 percent of the base period price or \$3 million, whichever is less. The successful offeror also is required to furnish a performance bond in an

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amount equal to 100 percent of the base price and a payment bond in an amount varying according to the base price.<sup>1/</sup>

The Navy decided that performance and payment bonds should be required because a large amount of government property was to be used by the contractor. Specifically, the Navy states that the contractor will be responsible for government property with a total value of \$340.2 million, consisting of land and buildings valued at \$321.5 million; civil engineering support equipment valued at \$3.3 million; tug boats valued at \$10 million; and products relating to operation of the petroleum, oil and lubricants system of the island valued at \$5.4 million. Further, the Navy states that the contractor's failure to perform would seriously disrupt the operation of the installation and cause substantial financial losses to the government, since there are few military personnel on the island and no civilian community from which to obtain either temporary replacement services or a new contractor.

The protester maintains that the bonding requirements are unduly restrictive because they effectively exclude most service companies from the competition. According to the protester, only a very large company has sufficient capital to obtain bonds in the amounts required. The protester argues that the adverse impact on competition of the bonding requirements is demonstrated by the fact that the Navy received only one offer under the RFP, from the incumbent contractor. Further, the protester contends, the bonding requirements are not necessary to protect the government's interest, since there is no history of contractor default for the services; much of the government property involved consists of land and buildings unlikely to be damaged by the contractor; and the contractor already is required to have liability insurance. In addition, the protester asserts that the Air Force's general practice in similar procurements is not to require performance or payment bonds.

Under the Federal Acquisition Regulation (FAR), a performance bond may be required for nonconstruction contracts when necessary to protect the government's interest. FAR, 48 C.F.R. § 28.103-2(a) (1985). Similarly, a payment bond may be required when a performance bond is required and its use is in the government's interest. FAR, 48 C.F.R. § 28.103-3. In addition, the regulations authorize the use of a proposal bond where performance and payment bonds are found necessary. FAR, 48 C.F.R. § 28.101-1(a). Although bonding requirements may, in some cases, restrict competition, in appropriate circumstances they may be necessary to secure fulfillment of a contractor's obligations. Rampart Services, Inc., B-221054.2, Feb. 14, 1986, 86-1 CPD ¶ 164. We will not disturb a contracting officer's decision that bonds are required for a nonconstruction contract if the requirements are reasonable and imposed in good faith. D.J. Findley, Inc., B-221096, Feb. 3, 1986, 86-1 CPD ¶ 121.

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<sup>1/</sup> The payment bond is to be for 50 percent of the base price up to \$1 million; 40 percent, if the price is between \$1 million and \$5 million; and a fixed sum of \$2.5 million if the price exceeds \$5 million.

We find that the Navy's decision to impose bonding requirements in this case was reasonable. Use of government property by the contractor is one of the specifically enumerated justifications for requiring a performance bond. FAR, 48 C.F.R. § 28.103-2(a)(1). Here, a significant amount of government property, valued at \$340.2 million, is to be entrusted to the contractor. Further, the Navy reasonably found that due to the location of the installation and the comprehensive nature of the services, the contractor's failure to perform could seriously affect operation of the installation and result in significant financial losses to the government. See Ralph Construction, Inc., B-217267, May 22, 1985, 85-1 CPD ¶ 583.

With regard to the protester's contention that bonds are not necessary to protect the government's interest, there is no requirement, as the protester argues, that there be a history of performance problems before bonds may be required. In addition, since the Navy's decision to require bonds is reasonable, there is no requirement that the Navy follow the Air Force's general practice of not requiring bonds in nonconstruction contracts. The protester also has failed to show that the Navy's concern for protection of government property is unreasonable. To the extent that the protester argues that the Navy should reduce the amount of the bonds to exclude coverage of certain property, such as the government buildings, we see no basis for the protester's conclusion that only some of the property to be used by the protester should be considered at risk. Finally, a contractor's liability insurance coverage is not a substitute for the bonding requirements. Liability insurance protects against accidental losses and expenses incidental to performance of the contract. Performance and payment bonds by contrast secure the contractor's obligation to perform and ensure payment to all persons supplying labor and materials. See Rampart Services, Inc., B-221054.2, supra.

The protester also argues that, in light of the fact that only one offer was received, the bonding requirements effectively eliminated competition and thus are unreasonable. We find this argument to be without merit. First, as noted above, bonding requirements necessary to protect the government's interest are proper even if they result in restricting competition. Second, the protester has not shown that the submission of only one offer was due to the bonding requirements.<sup>2/</sup> In any event, the decision to impose bonding requirements was made before proposals were due. At that time, the Navy concluded that adequate competition could be expected even with the bonding requirements, in view of the fact that 10 offers had been received in connection with the

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<sup>2/</sup> Eight potential offerors participated in the Navy's preproposal briefing. The record shows that four of those potential offerors subsequently notified the Navy that they would not be submitting offers, three because of other commitments and one because of the difficulty perceived in competing with the incumbent.

prior procurement at Midway Island in 1981 and nine offers were received in a similar procurement on the island of Diego Garcia in 1982, both of which had similar bonding requirements. That only one offer actually was submitted does not demonstrate that the Navy's determination, made several months before proposals were due, was unreasonable.

The protest is denied.

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Harry R. Van Cleve  
General Counsel