



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Bara-King Photographic, Inc.

File: B-226408.2

Date: August 20, 1987

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### DIGEST

1. Protest challenging proposal guarantee and performance bond requirements in solicitation for audiovisual services is sustained where contracting agency fails to show that the bond amounts are reasonable, in view of the fact that the value of the government-furnished equipment, on which the performance bond requirement is based, is significantly lower than the required bond amount, and agency offers no explanation for amount of the proposal guarantee.

2. Cost comparison to determine whether to contract out for audiovisual services or continue to perform them in-house is not defective even though the government, as a self-insurer, does not include bonding costs in its own cost estimate.

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### DECISION

Bara-King Photographic, Inc. (BKP) protests the bonding requirements in request for proposals (RFP) No. 101-2-87, issued by the Veterans Administration (VA) for audiovisual services. The RFP, a total small business set-aside, was issued as part of a cost comparison under Office of Management and Budget Circular No. A-76/ between contracting out for the services and continuing to perform them in-house. Because we find that VA has not shown that the bond amounts are reasonable, we sustain the protest.

The RFP, issued December 19, 1986, calls for offers to provide all management, personnel, equipment, tools, materials, and other items and services necessary to perform audiovisual services for the VA for a 6-month base period and 5 option years. The RFP listed certain production equipment and other general office furnishings which VA would provide to the contractor; the contractor was required to furnish all other equipment required for performance. VA

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also agreed to provide a 60-day supply of assorted audiovisual materials and supplies such as tapes, art supplies and lightbulbs; the contractor was responsible for providing supplies and materials for the remaining contract period. In addition, the RFP provided that the contractor would occupy approximately 19,000 square feet of VA warehouse and office space in two locations.

Amendment No. 1 to the RFP, dated February 19, 1987, added requirements for a proposal guarantee in the amount of \$250,000, to be submitted with the offeror's proposal, and a performance bond equal to the contract price for the base period and the first option year, to be submitted within 10 days after award. The due date for receipt of proposals ultimately was extended to May 13. BKP was the only offeror to submit a proposal; it did not include the required proposal guarantee.

BKP contends that the bonding requirements in the RFP effectively preclude any small business firms from competing because they generally lack sufficient financial capacity to obtain bonds in the amounts required in the RFP. In its report on the protest, VA states that the bonding requirements are necessary because it will be furnishing an extensive amount of equipment to assist the contractor in performing the contract. As discussed further below, although VA was authorized to require bonds because some government property is being provided, we find that VA has failed to show that the amount of the bonds is reasonable.

Under Federal Acquisition Regulation (FAR), 48 C.F.R. § 28.103-2 (1986), the contracting officer has the discretion to determine whether bonds are needed to protect the government's interest in a particular procurement. Space Services International Corp., B-215402.2, Oct. 22, 1984, 84-2 C.P.D. ¶ 430. Although requiring bonding may in some circumstances restrict competition, it is nevertheless a proper means of securing to the government fulfillment of a contractor's obligations. Rampart Services, Inc., B-221054.2, Feb. 14, 1986, 86-1 C.P.D. ¶ 164. Thus, when the decision to require bonds is found to be reasonable and made in good faith, we will not disturb the contracting officer's determination. Space Services International Corp., B-215402.2, supra.

FAR, 48 C.F.R. § 28.103-2(a)(1), specifically authorizes agencies to require performance bonds in nonconstruction contracts when government property is to be used by the contractor. The use of a proposal guarantee is authorized where a performance bond is required. FAR, 48 C.F.R. § 28.101-1(a). Thus, in this case, VA was authorized to

require both a performance bond and a proposal guarantee since the contractor is to have the use of government property. VA does not discuss how the amount of the bonds was calculated, however; VA states only that an "extensive amount of government equipment" is to be furnished to the contractor.

As noted above, the equipment to be provided consists of audiovisual production equipment and office furnishings, listed in Technical Exhibits G and Q in the RFP. The RFP also included a complete inventory of VA's audiovisual equipment showing the purchase date and price of the items to be provided by VA to the contractor under the RFP. As BKP points out, the total purchase price of the equipment, most of which was bought before 1984, is approximately \$92,000. The office furnishings are not included in the VA inventory; BKP estimates their worth at no more than \$10,000, which we see no reason to question based on the type and quantity of items to be provided. Thus, the total value of the government equipment at most is approximately \$102,000. In comparison, according to BKP, the RFP would require it to furnish a performance bond in the amount of \$1.9 million.<sup>1/</sup>

VA does not address the disparity between the value of the government equipment and the bond amount. In addition, although the contractor also will be using VA workspace, it appears that the performance bond requirement was based solely on the government equipment to be provided; in any event, there is no indication that the value of the workspace or the miscellaneous supplies to be provided by VA is reasonably related to the bond amount. With regard to the proposal guarantee, VA does not indicate how it determined the required amount (\$250,000). Finally, it appears that the bond requirements have had an adverse impact on competition. VA received only one offer, from BKP, who conceded that it could not comply with the bonding requirements. In addition, in a prior protest concerning the same RFP, two potential offerors other than BKP objected to the bond amounts. BPC, Inc., B-226408 (dismissed on procedural grounds, Apr. 23, 1987).

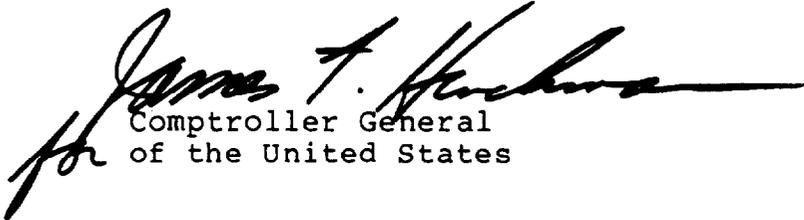
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<sup>1/</sup> The RFP requires the performance bond to be in an amount equal to the contract price for the base period and first option year. Although VA has informed us that BKP's offer under the RFP has not been opened pending resolution of the protest, BKP states that its proposed price for the base period and first option year is \$1.9 million.

In view of the disparity between the performance bond amount and the value of the government property to be provided to the contractor, and in the absence of any justification by VA for the amount of the proposal guarantee, we find that VA has failed to show that the bond amounts are reasonable. Accordingly, we recommend that VA cancel the RFP and reissue a new solicitation with bond amounts reasonably related to the need to protect the government's interest in the procurement. In addition, we find that BKP is entitled to recover the costs of filing and pursuing the protest. See Bid Protest Regulations, 4 C.F.R. § 21.6(e) (1987); Southern Technologies, Inc., B-224328, Jan. 9, 1987, 66 Comp. Gen. \_\_\_\_\_, 87-1 CPD ¶ 247. BKP should submit its claim for such costs directly to VA. 4 C.F.R. § 21.6(f).

BKP also argues that the cost study will be defective because VA does not have to include bonding costs in its own cost estimate. This argument is without merit. While the government and the offerors must compete based on the same statement of work when a cost comparison is being conducted, the fact that the government may have a cost advantage due to its self-insurance capability does not make the cost comparison defective. See Executive-Suite Services, Inc., B-212416, May 29, 1984, 84-1 CPD ¶ 577.

The protest is sustained.

  
for Comptroller General  
of the United States