



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Diversified Contract Services, Inc.

File: B-233620

Date: February 21, 1989

DIGEST

Protest that bonding requirements in an invitation for bids are unduly restrictive of competition is without merit where the protester fails to establish that the determination to require bonds was unreasonable or made in bad faith; contractor operation of government-owned warehouse and the agency's requirement for the uninterrupted, efficient performance of warehouse services in support of a medical center provided a reasonable basis for imposing bonding requirements.

DECISION

Diversified Contract Services, Inc., protests the bonding requirements in invitation for bids (IFB) No. 515-15-89, issued by the Veterans Administration (VA) pursuant to Office of Management and Budget Circular A-76 to determine whether it would be more economical to contract for warehouse services at the VA Medical Center in Battle Creek, Michigan, or to have the services performed in-house, by government personnel. The solicitation requires bidders to furnish a bid guarantee in the amount of 20 percent of their bids, and requires the awardee to provide a performance bond in the amount of 100 percent of the contract price and an employee fidelity bond in an amount equivalent to the value of the inventory in the warehouse (but not to exceed \$300,000). Diversified alleges that these bonding requirements are unwarranted and unduly restrict competition by small disadvantaged businesses.

We deny the protest.

The solicitation provides for the contractor to operate a government-owned warehouse; the warehouse contains prescription drugs, narcotics, other pharmaceuticals, food, clothing and equipment, valued at approximately \$360,000, for use at a hospital, nursing home, and outpatient clinics

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associated with the medical center. The VA has concluded that the performance bond is necessary to assure the continuous and efficient operation of the warehouse; without its continued operation, the medical center would be at a virtual standstill and patient care would be severely and adversely affected. The agency required the bid guarantee to assure that the low bidder will not withdraw its bid during the required acceptance period and will execute the contractual documents and furnish the required bonding and insurance if it receives award. The VA also determined that an employee fidelity bond (under which the issuer will reimburse the government if property being used by the contractor disappears, or is destroyed or stolen) is necessary to protect the government from the potential financial loss resulting from the theft or disappearance of inventory because the warehouse contains narcotics and other items that are easily convertible to cash.

Diversified contends that the agency can assure continued satisfactory performance, without incurring the additional costs of bonding, by procuring the services under a request for proposals and requiring offerors to demonstrate their qualifications and understanding of the specifications in their technical proposals. By opting instead for bonding requirements, Diversified contends, the VA will essentially preclude small disadvantaged business from competing, since most such firms allegedly are unable to obtain bonds.

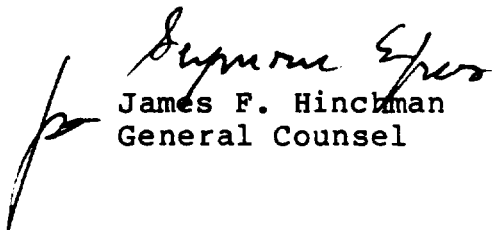
While Diversified may be correct that the bonding requirements will exclude some small disadvantaged businesses from the competition, this possibility alone does not render the requirements improper. See RCI Management, Inc., B-228225, Dec. 30, 1987, 87-2 CPD ¶ 642. We have previously recognized that, while a bond requirement may result in a restriction of competition, it nevertheless can be a necessary and proper means of securing to the government the fulfillment of the contractor's obligations under the contract in appropriate situations. Id.; PBSI Corp., B-227897, Oct. 5, 1987, 87-2 CPD ¶ 333. In reviewing a challenge to the imposition of a bonding requirement in a particular solicitation, we consider whether the requirement is reasonable and imposed in good faith; the protester bears the burden of establishing unreasonableness or bad faith. Id.

We find that Diversified has not demonstrated that the VA acted unreasonably or in bad faith in imposing the bonding requirements here. The Federal Acquisition Regulation (FAR) specifically provides that a performance bond may be necessary to protect the government's interest where, as here, government property will be provided to the contractor

for use in performing the contract, FAR § 28.103-2(a)(1), and our Office has recognized the reasonableness of imposing performance bond requirements where, also as here, continuous operation of critically needed services is absolutely necessary. RCI Management, Inc., B-228225, supra (maintenance and repair of family housing); Professional Window and House Cleaning, Inc., B-224187, Jan. 23, 1987, 87-1 CPD ¶ 84 (custodial and general housekeeping services). Moreover, we have specifically rejected arguments that the same government interest a performance bond is designed to protect is adequately protected by other elements of the procurement process or by contract administration. See Express Signs International, B-225738, June 2, 1987, 87-1 CPD ¶ 562. Thus, while the VA might be able to reduce the risks involved in turning over the warehouse facility to a contractor by carefully reviewing offerors' qualifications in a negotiated procurement, some risk would remain. A performance bond requirement is a legitimate means of reducing this risk. Accordingly, we will not object to the requirement for a performance bond. Also, since bid guarantees may be required where performance bonds are required, the bid guarantee requirement is proper as well. See generally FAR § 28.101-1(a); see Express Signs International, B-225738, supra.

Finally, we find no basis for objecting to the employee fidelity bond requirement. As indicated above, the warehouse contains a valuable inventory, including narcotics and other items easily convertible to cash. We think the agency reasonably determined that the additional security provided by the fidelity bond was necessary to protect the government's interest due to the unusual risk of theft associated with these items. See FAR § 28.105 (bonds in addition to bid and performance bonds may be required).

The protest is denied.


James F. Hinchman
General Counsel