



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Cobra Technologies, Inc.

**File:** B-238031; B-238034; B-238036

**Date:** February 27, 1990

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Joseph John Mack, for the protester.  
S. Lane Tucker, Esq., Office of the General Counsel,  
General Services Administration, for the agency.  
Sylvia Schatz, Esq. and John M. Melody, Esq., Office of the  
General Counsel, GAO, participated in the preparation of the  
decision.

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### DIGEST

Protests that bonding requirements in solicitations are unduly restrictive of competition are without merit where agency required bonds to assure continuous provision of mechanical and operating services in buildings occupied by federal agencies, and protester does not establish that the determinations to require bonds were unreasonable or made in bad faith.

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### DECISION

Cobra Technologies, Inc., protests the performance bond requirements in invitation for bids (IFB) Nos. GS-01P-90-BWC-0003, GS-02P-89-CTC-0074, and GS-02P-89-CTC-0114, issued by the General Services Administration (GSA) as total small business set-asides for the operation, maintenance, and repair of all mechanical systems and equipment in certain government-owned and -leased buildings.

We deny the protests.<sup>1/</sup>

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<sup>1/</sup> As a preliminary matter, the GSA argues that Cobra lacks the necessary direct and substantial interest to qualify as an "interested party" eligible to bring this protest under our Bid Protest Regulations, 4 C.F.R. § 21.0(a) (1989), because Cobra was the fourth low bidder on one solicitation and did not bid on the other two. Cobra clearly is an interested party, however, since, if we sustained the protest, the appropriate remedy would be cancellation of the  
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The three solicitations require each awardee to provide a performance bond in the amount of 25 percent of the contract price for the 36-month period (including options). Cobra contends that it was improper to include bonding requirements in these IFBs because (1) the bonding requirements unduly restrict competition, since the additional, substantial expense of obtaining the bonds makes it difficult for small businesses to compete; notwithstanding a particular firm's good reputation and financial capability, a small business cannot submit a bid when the firm has reached its bonding limits; and (2) the circumstances here are different from those listed in Federal Acquisition Regulation (FAR) § 28.103-2(a)(1) as warranting a performance requirement bond.

Although, as a general rule, in the case of nonconstruction contracts, agencies are admonished against the use of bonding requirements, FAR § 28.103-1(a), and we previously have recognized that performance bonds may in some circumstances restrict competition, we nevertheless have held that bonding may be necessary to secure fulfillment of a contractor's obligations to the government. Grace Indus., Inc., B-220606, Dec. 17, 1985, 85-2 CPD ¶ 682. This is so even where a small business set-aside solicitations is involved. Aspen Cleaning Corp., B-233983, Mar. 21, 1989, 89-1 CPD ¶ 289. We will not disturb a contracting officer's determination that bonding is necessary unless it is shown to be unreasonable. Id.

We find GSA reasonably imposed the bonding requirements here. The agency explains that the performance bonds were required to insure the continuous provision of mechanical and operation services in the government-owned and -leased buildings. Specifically, GSA states that a contractor's failure to operate and maintain all mechanical, electrical, and utility apparatus, including the heating, air conditioning, emergency lights, and fire protection systems in these buildings could make the buildings unsafe or uninhabitable for the various agency personnel occupying the buildings. We have specifically held that a determination by the contracting officer that continuous building operations are absolutely necessary is itself a sufficient basis for requiring a performance bond. Aspen Cleaning Corp., B-233983, supra; Diversified Contract Servs., B-233620, Feb. 21, 1989, 89-1 CPD ¶ 180.

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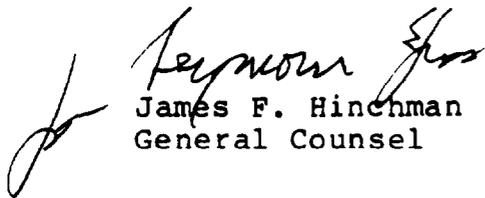
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IFBs and resolicitations. K.H. Servs., B-212172, Sept. 15, 1983, 83-2 CPD ¶ 329. Cobra then would have the opportunity to improve its competitive position.

The fact that the circumstances here are different from those listed in FAR § 28.103-2(a)(1) does not preclude the agency from requiring bonding; we have held that the contracting officer is permitted to require bonds where needed to protect the government's interest, whether or not the agency's rationale for imposing the requirement comes within the four examples of bond situations articulated in the FAR § 28.103-(2)(a). Professional Window and House cleaning, Inc., B-224187, Jan. 23, 1987, 87-1 CPD ¶ 84. Further, while Cobra may be correct that the bonding requirements here could exclude some small businesses from competing, where the bonding requirements are shown to be justified, this possibility alone does not render the requirements improper. Diversified Contract Servs., Inc., B-233620, Feb. 21, 1989, 89-1 CPD ¶ 180.

Cobra finally argues that the bonding requirements are unreasonable because other government agencies have acquired virtually identical building operation and mechanical services under contracts without performance bond requirements. Each procurement however stands on its own; Cobra's assertion does not establish the unreasonableness of GSA's imposition of the bonding requirements here, given our conclusion that the agency was justified to ensure continuity of important operations. See Govern Serv., Inc., 68 Comp. Gen. 204 (1989), 89-1 CPD ¶ 92.

The protests are denied.

  
James F. Hinchman  
General Counsel