



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Taina U.S. Inc.
File: B-240892
Date: December 21, 1990

Donald R. Head for the protester.
Lt. Col. William J. Holland, Department of the Air Force, for the agency.
Stefanie G. Weldon, Esq., Robert C. Arsenoff, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that performance bond requirement is restrictive of competition is denied where agency reasonably required a bond to assure continuous provision of custodial services and record does not disclose that this determination was unreasonable or made in bad faith.

DECISION

Taina U.S. Inc. protests the inclusion of a performance bond requirement in invitation for bids (IFB) No. F02601-90-B-0014, issued by the Department of the Air Force as a total small business set-aside for custodial services in 115 buildings at Davis-Monthan Air Force Base, Arizona. The protester argues that the requirement is unnecessary, restrictive of competition and will raise the price of the services to the government.

We deny the protest.

The IFB was issued on June 29, 1990, contemplating a fixed-price contract with a base period of 1 year with 2-option years. On July 20, the IFB was amended to require a performance bond in the event of default in the amount of 50 percent of the contract price. (Although not directly at issue in the protest, the amendment also added a payment bond requirement and required the submission of a bid bond.)

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The performance bond requirement was included in the IFB based on a determination made by the Chief of Operational Contracting at Davis-Monthan, which cited a history of two defaults and two other instances of substandard performance precluding the exercise of contract options for custodial services at the

The record does not disclose that the Air Force acted unreasonably or in bad faith in imposing the bond requirement. As the agency notes, Air Force Federal Acquisition Regulation Supplement § 28.103-1 permits the imposition of a performance bond in nonconstruction contracts where there is a documented history of prior default in the particular type of work to be required, and that is precisely the situation in this case. Consequently, it is not relevant that other military bases may not have required performance bonds for custodial services contracts or that the protester speculates that more careful responsibility checks would be adequate to fully protect the government's interests in light of the documented history of default and substandard performance cited by Davis-Monthan's contracting chief in his determination to require performance bonds. See Diversified Contract Servs., Inc., B-233620, supra. Likewise, the fact that more bidders may have participated and lower prices might have been received had the bond requirement not been included is irrelevant because if, as here, bonding is reasonably determined to be necessary, it may be required notwithstanding the resulting restriction on competition. Id.

The protest is denied.



for James F. Hinchman
General Counsel