

K. Ribaci



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: D.E.W. Management Services, Inc.

File: B-246955

Date: April 10, 1992

Timothy Sullivan, Esq., Dykema Gossett, for the protester.
John Pettit, Esq., Department of the Air Force, for the agency.
Katherine I. Riback, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest against bond requirements in invitation for bids (IFB) for mess attendant services set aside for small disadvantaged businesses is denied where the agency requires bonding in light of its need for uninterrupted performance.

DECISION

D.E.W. Management Services, Inc. protests the bid and performance bond requirements in invitation for bids (IFB) No. F65501-92-B0015, issued by the Department of the Air Force as a small disadvantaged business (SDB) set-aside, to obtain mess attendant services at Shemya Air Force Base (AFB), Alaska. D.E.W. alleges that these bonding requirements are unwarranted and unduly restrict competition by small disadvantaged businesses.

We deny the protest.

The solicitation requires that the contractor provide mess attendant services at Shemya AFB. Some of the services to be provided include preparing and serving food, cleaning the facilities, bussing tables, and cashier services. The base is located 1,650 miles from Anchorage, Alaska, at the end of the Aleutian Islands. The IFB contains requirements for a bid bond in the amount of 20 percent of the contract price and a 100-percent performance bond.

D.E.W. argues that the bonding requirements unduly restrict competition and are inappropriate under an SDB set-aside. In this regard, the protester points out that commercial bond writers may be unwilling to write the bonds for this job due to the lack of adequate transportation services for personnel and supplies at Shemya AFB's remote location.

[R. ...]

054052 / 146360

Although, as a general rule, in the case of nonconstruction contracts agencies are admonished against the use of bonding, Federal Acquisition Regulation (FAR) § 28.103-1(a), such a requirement may be necessary in some cases to secure fulfillment of a contractor's obligations to the government. Grace Indus., Inc., B-220606, Dec. 17, 1985, 85-2 CPD ¶ 682. We will not disturb a contracting officer's determination that bonding is necessary unless we find it to be unreasonable. Id. Further, while D.E.W. may be correct that the bonding requirements will exclude some SDBs from the competition, this possibility alone does not render them improper. Diversified Contract Servs., Inc., B-233620, Feb. 21, 1989, 89-1 CPD ¶ 180.

The agency explains that prior contractors experienced performance problems due to underestimating the cost of labor and supplies required to perform the services at this extremely remote location. Since the failure of these food services would obviously have an adverse impact upon Shemya's mission, the agency decided that it was in the best interest of the government to require bid and performance bonds to ensure the continuous performance of these necessary services.

FAR § 28.103-2(a) enumerates four situations that may warrant bonding. These situations are examples and do not preclude an agency from requiring bonds in other appropriate circumstances. See Professional Window and Housecleaning, Inc., B-224187, Jan. 23, 1987, 87-1 CPD ¶ 84. A finding on the part of the agency that continuous operations are necessary is a recognized basis for requiring a performance bond. Aspen Cleaning Corp., B-233983, Mar. 21, 1989, 89-1 CPD ¶ 289. We therefore conclude that the inclusion of the bonding requirements is not legally objectionable.

D.E.W. also argues that the bonding requirements are unnecessary and that the needs of the Air Force can be similarly met by developing a "reliable government estimate" and conducting a "reasonable preaward survey."

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. Diversified Contract Servs., Inc., supra. Thus, while the Air Force may be able to reduce the risks associated with providing mess attendant services to Shemya AFB by following

D.E.W.'s suggestions, some risk would remain. A performance bond requirement is a legitimate means of reducing this risk.

The protest is denied.

for Ronald Berger
James F. Hinchman
General Counsel