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Comptroller General  
of the United States

Washington, D.C. 20848

## Decision

**Matter of:** Certified Investigations

**File:** B-249812

**Date:** September 28, 1992

Joseph Esse for the protester,  
Captain Gerald P. Kohns, Department of the Army, for the  
agency.

Aldo A. Benejam, Esq., and Andrew T. Pogany, Esq., Office of  
the General Counsel, GAO, participated in the preparation of  
the decision.

### DIGEST

Protest challenging, as unduly restrictive of competition, a requirement for bid, performance, and payment bonds, in an invitation for bids for security guard services, is denied since it is within the agency's discretion to require bonding to protect the government's interest; the agency's requirement for uninterrupted performance of the security guard services is a reasonable basis for imposing the bonding requirement, especially where the previous contractor had a history of not paying wages due employees, thus risking interruption of guard services.

### DECISION

Certified Investigations protests the terms of invitation for bids (IFB) No. DAHA51-92-B-0012, issued by the Department of the Army to provide security guard services at the Kulis Air National Guard Base, Alaska. The protester contends that the IFB's requirements for bid, performance, and payment bonds unduly restrict competition.

We deny the protest.

The Army issued the IFB on July 17, 1992, as a total small business set-aside for a 1-year base period with up to two 1-year options. The IFB required bidders to submit a bid bond in the amount equal to 20 percent of the bid price for the base year. The IFB also required the successful bidder to submit a performance bond and a payment bond. Of the five bids the agency received by the time set on August 17 for bid opening, the agency rejected the two lowest bids as nonresponsive for failure to include the required bid bond. The three remaining bids, submitted by small businesses,

included the required bid bonds; the protester did not submit a bid.

Certified Investigations protested to our Office on August 12, prior to bid opening, challenging the IFB's bid, payment and performance bond requirements as excessive and unduly restrictive of competition. The protester specifically argues that the IFB's bonding requirements are burdensome on small businesses and limit the number of eligible firms which could otherwise compete for the contract absent the bonding requirements.

Federal Acquisition Regulation (FAR) § 28.101-1 requires bid guarantees whenever a performance bond or payment bond is required by a solicitation. The Miller Act, 40 U.S.C. § 70a(a) (1988), requires performance and payment bonds in construction contracts. The imposition of a requirement for performance and payment bonds is not limited, however, to construction contracts. Rather, the FAR recognizes that there are situations in which bonds may be necessary for nonconstruction contracts in order to protect the "government's interest." See FAR §§ 28.103-1(a), 28.103-2(a); Remtech, Inc., B-240402.5, Jan. 4, 1991, 91-1 CPD ¶ 35 (IFB for security guard services properly required payment bond); IBI Sec., Inc., B-235857, Sept. 27, 1989, 89-2 CPD ¶ 277 (bid and performance bonds were properly required in IFB for security guard services); Professional Window and Housecleaning, Inc., B-224187, Jan. 23, 1987, 87-1 CPD ¶ 84 (requirement for bid, performance, and payment bonds was proper in IFB for custodial and general housecleaning services).

Here, the contracting officer determined that the government must maintain continuous armed security services at the base, which is located adjacent to a busy international airport and within the boundaries of the state's largest city. The contracting officer states that she experienced numerous difficulties with the previous contractor providing security services related to the contractor's lack of financial capability. The agency states that although the contractor received timely payments from the government, the agency received numerous complaints from contractor employees unable to cash paychecks.<sup>1</sup> The agency concludes that any interruption of services due to the financial instability of the contractor, or absenteeism due to

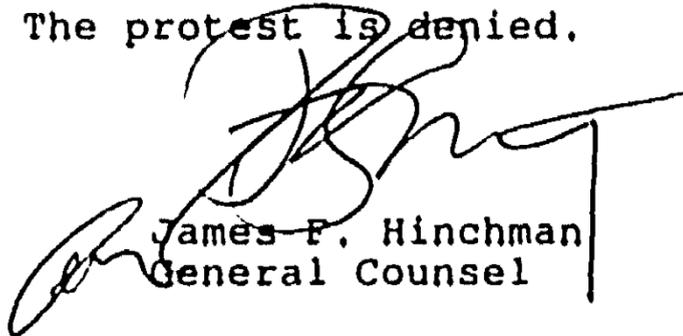
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<sup>1</sup>The agency also states that the contractor was found by the Department of Labor to have violated labor laws, resulting in \$24,256 due its employees for back wages. Because of these problems, the agency notified that contractor that it would not be exercising the remaining option on the contract.

employees not being paid in a timely manner could cause lapses in security coverage at the facility. Further, the Army points out that of the five bids received by the time set on August 17 for bid opening, three bids contained the required bid bonds.

Given the history of nonpayment of contractor employees, and the risk of unsatisfactory performance as a result of unpaid employees, the agency, in our view, properly was concerned about ensuring that guards are compensated for their work, and that the security guard services are performed without interruption. In light of the government's interest in ensuring continuous guard services for a facility located next to a busy international airport and within city boundaries, requiring a constant level of security, we think the contracting officer reasonably found that bonds should be imposed.<sup>2</sup>

The protest is denied.



James F. Hinchman  
General Counsel

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<sup>2</sup>With regard to Certified Investigations' contention that the bid bond requirement unduly restricted competition, the agency in fact received five timely bids from small business concerns, three of which included the required bid bond. Thus, it does not appear that requiring bid, performance, and payment bonds discriminated against small businesses. See Space Servs. Int'l Corp., B-215402.2, Oct. 22, 1984, 84-2 CPD ¶ 430.