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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-212172

DATE: September 15, 1983

MATTER OF: K. H. Services

DIGEST:

1. GAO will consider protest by sixth low bidder against the solicitation's bid bond requirement because the requirement is a material one and appropriate remedy might be cancellation and resolicitation were GAO to rule that it was unreasonably restrictive of competition.
2. Protest against requirement for a bid bond in a commissary shelf-stocking and custodial service solicitation is without merit since the contracting agency has discretion to determine whether the need exists for such a requirement. The record shows that a bid bond was considered necessary because the contractor would be handling a considerable amount of Government property and because the agency considered the shelf-stocking service essential to the operation of the military base.

K. H. Services protests the requirement for a bid bond in invitation for bids (IFB) No. F11602-83-B-0012 issued by Chanute Air Force Base, Illinois. The IFB is for commissary shelf-stocking and related custodial services at Chanute Air Force Base. No award has been made.

K. H. Services contends that the IFB's bid bond requirement is unfair to small business in that it restricts competition by adding a burdensome "extra cost" in order for a small business to compete in the procurement.

We conclude that the protest is without merit.

The Air Force asserts that K. H. Services lacks the necessary direct and substantial interest to be regarded as an interested party under our Bid Protest Procedures, 4 C.F.R. § 21.1(a) (1983), because the company is the sixth.

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low bidder. In this regard, the Air Force refers to prior decisions where we held that a protester's interest was insufficient where the protester would not be eligible for award, even if the protest issues were resolved in the protester's favor. See Ven-Tel, Inc., B-204233, March 8, 1982, 82-1 CPD 207; International Business Investments, B-202164.2, June 8, 1981, 81-1 CPD 459.

The Air Force's position fails to consider that the appropriate remedy might be cancellation of the IFB and resolicitation of the requirements if we sustain the protest. A bid bond requirement is one of the material terms of an invitation. Baucom Janitorial Services, Inc., B-206353, April 19, 1982, 82-1 CPD 356. Moreover, even where the bid bond requirement is justified, we have recognized that the requirement may still result in a restriction of competition. See Triple "P" Services, Inc., B-204303, December 1, 1981, 81-2 CPD 436. In view of the fact that K. H. Services would have the opportunity to improve its competitive position in any resolicitation, we find that the company is an interested party.

The Air Force states that the bid bond requirement is in the Government's best interest because:

1. The terms of the IFB provide for the contractor to have the use of Government property and further provide for the handling of such property in a specified manner.
2. The Air Force considers the commissary shelf-stocking service to be "mission essential" so that there must be a firm assurance that a binding contract will be obtained.
3. A bid bond is required by regulation where, as here, the solicitation specifies that the contract must be supported by performance bond.

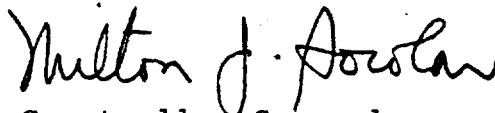
Contracting officers have the discretion to determine whether a need exists under Defense Acquisition Regulation (DAR) §§ 10-104.2 and 10-104.3 (1976 ed.) for performance and payment bonds requirements in a particular procurement. 52 Comp. Gen. 640, 644 (1973); Steamco Janitorial Services, Inc., B-188330, August 2, 1977, 77-2 CPD 69. We have held that performance and payment bonds are a necessary and proper means of securing to the Government fulfillment of a contractor's obligations under its contract. Cantu Services, Inc., B-208316, October 25, 1982, 82-2 CPD 366.

Thus, we will not disturb an agency's decision to require bonds where the decision is found to be reasonable and made in good faith. Triple "P" Services, Inc., supra.

The record shows that a considerable amount of commissary goods will be handled by the contractor. Use of Government property is one of the justifications for bonding requirements specifically enumerated in DAR § 10-104.2. In addition, the Air Force's determination that the IFB's services are essential to Chanute Air Force Base is a reasonable basis for the bid bond requirement. See Cantu Services, Inc., supra.

Finally, we note that 11 bidders responded to the IFB, which is nearly the same number as the Air Force received in its previous procurement. Thus, while the bonding requirement may have been a burden for some bidders, we find that adequate competition was obtained.

We deny K. H. Services' protest.

for 
Comptroller General
of the United States