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DECISION

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

FILE: B-213796; B-213810 **DATE:** May 9, 1984

MATTER OF: Crown Laundry and Cleaners, Inc.

DIGEST:

1. Contention that a solicitation seeking bids to provide laundry and dry cleaning services in a government-owned/contractor-operated (GOCO) facility is unduly restrictive because it does not permit bids on a contractor-owned/contractor-operated basis will not be considered because the decision to have the services performed in a GOCO facility is a management/policy determination for the agency to make and is not reviewable under GAO's Bid Protest Procedures.

2. Regulation stating that contractors should furnish all facilities needed for the performance of government contracts applies to contracts normally performed with a contractor's own facilities and is not applicable to contracts for the operation of government facilities, which necessarily requires contractor use of government-owned facilities and equipment. Thus, the regulation does not prevent the government from contracting for the operation of a government-owned laundry and dry cleaning facility.

Crown Laundry and Cleaners, Inc. protests invitation for bids (IFB) Nos. DABT56-84-B-0026 (IFB-0026) and DAKF27-84-B-0004 (IFB-0004) soliciting bids to provide laundry and dry cleaning services in government-owned/contractor-operated (GOCO) facilities. Crown contends that the solicitations are unduly restrictive and contrary to regulation because they do not permit bids on a contractor-owned/contractor operated (COCO) basis. We dismiss the protests in part and deny them in part.

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Crown submitted bids on both IFB-0026, issued by Fort Belvoir, Virginia, and IFB-0004, issued by Fort Meade, Maryland. Crown is the low bidder on IFB-0026 and the second low of two bidders on IFB-0004.

The Army states it intends to award a contract to Crown under IFB-0026 and therefore urges us to dismiss the protest concerning that solicitation. Crown, however, despite its bid on a GOCO basis, obviously prefers award on a COCO basis and alleges that award on a GOCO basis is contrary to regulatory provisions. Under the circumstances, Crown is entitled to a decision on its protest since award to it on a GOCO basis would not resolve its bases for complaint. Thus, we do not believe that the protest regarding IFB-0026 is academic merely because Crown is in line for award under that solicitation.

Crown asserts that the GOCO restriction is unduly restrictive and not in the government's best interest because it would be less expensive for the government to acquire the laundry and dry cleaning services on a COCO basis.

The Army reports that it had conducted cost comparisons in conjunction with the immediately preceding solicitations for these services to determine whether in-house performance or contracting out on a GOCO or COCO basis would be most cost effective. (See Crown Laundry & Dry Cleaners, Inc., 61 Comp. Gen. 233 (1982), 82-1 ¶ CPD 97, dealing with a similar comparison at Fort Benning.) It states that these cost comparisons favored acquiring the services on a GOCO basis and that as a result it modernized and upgraded the on-base laundry and dry cleaning facilities, which would now be idled if a contract were awarded on a COCO basis. The agency also states that acquiring the services on a GOCO basis is necessary to have the laundry and dry cleaning services available to the base hospitals as well as available on a 24-hour basis in the event of mobilization.

The determination of the government's minimum needs and the best method of accommodating those needs is primarily the responsibility of the contracting agencies, and we will not question such a determination absent a

clear showing that it is without a reasonable basis. Contract Services Company, Inc., B-211450, B-211569, July 7, 1983, 83-2 CPD ¶ 67; Joseph Albanese & Associates, B-193677, March 6, 1979, 79-1 CPD ¶ 152. Moreover, certain determinations are purely matters of Executive Branch and individual agency policy and are not protestable under our Bid Protest Procedures, 4 C.F.R. part 21 (1984). See, e.g., Jake O. Black, B-199564, Aug. 6, 1980, 80-2 CPD ¶ 95; Allied Security, Inc., B-198247, April 21, 1980, 80-1 CPD ¶ 281; Standford University, B-196353, May 29, 1980, 80-1 CPD ¶ 370. We have always regarded the basic decision as to whether in-house performance or contracting out was appropriate as such a determination.[1] See 53 Comp. Gen. 86 (1973); Jake O. Black, supra; Allied Security, Inc., supra. Similarly, we think the basic decision involved here, to have performance in government-owned facilities, is one that is purely a management/policy determination which is for the agency to make and which therefore is not cognizable under our protest procedures.

Crown contends, however, that the Army's approach violates Defense Acquisition Regulation (DAR) § 13-301(a)(iii). We disagree. That section provides in part as follows:

> "(a) It is the policy of the Department of Defense that contractors will furnish all facilities required for the performance of government contracts. Facilities will not be provided to contractors . . . except as follows:
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> . . .
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> (iii) when
> (A) . . . (1) the Defense contract cannot be fulfilled by any other practical means, or

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[1] See Crown Laundry and Dry Cleaners, Inc., B-194505, July 18, 1979, 79-2 CPD ¶ 38 for a limited exception to our general rule of not reviewing agency decisions not to contract out.

> (2) it is in the public interest; and
> (B) the contractor, . . . expresses in writing his unwillingness or financial inability to acquire the necessary facilities . . .",

DAR § 13-101.8 defines "facilities" as:

> "industrial property . . . for production, maintenance, research, development, or test, including real property and rights therein, buildings, structures, improvements, and plant equipment . . . ."

We do not believe that DAR § 13-301 is applicable here. First, we do not view equipment used for laundering such things as sheets, towels, and clothing as property for "production, maintenance, research, development, or test." Second, we think it clear that the regulatory provision is concerned with contracts, such as for manufacturing, research and development, and services, that normally would be performed by contractors with their own facilities (see, e.g., Southwest Marine, Inc.; Triple "A" South, B-192251, Nov. 7, 1978, 78-2 CPD ¶ 329); it has no application to contracts for the operation of government facilities for the benefit of the government when, of necessity, government facilities and equipment must be used. Thus, this provision in no way impedes the government from contracting for the operation of entire facilities, see, e.g., 53 Comp. Gen. 401 (1973); 52 Comp. Gen. 198 (1972); Data Test Corporation, B-193205, May 7, 1979, 79-1 CPD ¶ 312; Burns and Roe Tennessee, Inc., B-189462, July 21, 1978, 78-2 CPD ¶ 57, or of elements of larger facilities such as dining halls (through mess attendant services contracts), see, e.g., Palmetto Enterprises, 57 Comp. Gen. 271 (1978), 78-1 CPD ¶ 116, motor pools, see Contract Services Company, Inc., supra, and laundry and dry cleaning plants. See Crown Laundry and Dry Cleaners, Inc., supra.

The protests are denied.

Milton J. Socolar

Acting Comptroller General
of the United States