



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: SMC Information Systems

File: B-225815

Date: June 1, 1987

DIGEST

1. In invitation for bids for operation of medical supply depot, contracting agency properly included general liability insurance requirements covering government buildings, equipment and inventory consisting of medical supplies and drugs with a total value of \$35.5 million to be entrusted to contractor, since contractor is principally engaged in government work; government property is involved; and the work is to be performed on a government installation.

2. In cost comparison to determine whether to retain in-house or contract for operation of medical supply depot, the fact that insurance costs included in government cost estimate are considerably lower than premiums for commercial insurance which bidders are required to provide, due to government's self-insurance capability, does not make cost comparison defective or invalidate the insurance requirements.

DECISION

SMC Information Systems protests the insurance requirements in invitation for bids (IFB) No. 794-1-87 issued by the Veterans Administration (VA) for operation of a VA supply depot and associated warehousing services. The IFB was issued for purposes of a cost comparison under Office of Management and Budget (OMB) Circular No. A-76 to determine whether to contract for the services or continue to provide them in-house. We deny the protest.

The services called for under the IFB involve operation of a medical supply depot with an average inventory of \$23 million; in addition, the VA estimates the replacement value of the government buildings and equipment to be used at \$15.5 million. Based on these figures, section H of the IFB, as amended, requires the contractor to provide comprehensive general liability insurance in the amount of \$15.5 million for the buildings and equipment and \$23 million for the contents.

039054 - 133100

The protester contends that the insurance requirements are inconsistent with the government's general policy of acting as a self-insurer and unreasonably restrict competition because of the high cost of the insurance to the bidders. Specifically, SMC estimates the annual premium for the required coverage to be between \$50,000 and \$100,000, an amount representing about 30 percent of SMC's anticipated bid price. SMC also argues that the formula used to calculate the cost of self-insurance to be included in the government's estimate for purposes of the A-76 cost comparison is so low in comparison to the commercial insurance premiums paid by bidders that it gives the government an unfair advantage in the cost comparison.^{1/} We find that SMC has failed to show that it was improper for VA to include the insurance requirements in the IFB.

Although the government is not ordinarily concerned with a contractor's insurance coverage in a fixed-price contract, a contracting agency may specify insurance requirements in special circumstances, including cases where the contractor is engaged principally in government work; government property is involved in the contract; or work is to be performed on a government installation. Federal Acquisition Regulation (FAR), 48 C.F.R. § 28.306(a)(1), (2) and (3) (1986). Here, government property valued at \$38.5 million will be entrusted to the contractor and the work will be performed on a government installation. In addition, VA states that SMC is engaged principally in government work, which SMC does not dispute. Accordingly, VA clearly was authorized by the FAR to include the insurance requirements in the IFB.

With regard to SMC's argument that VA should act as a self-insurer rather than require bidders to provide commercial insurance, there clearly is no requirement that VA do so in light of the specific authority in the FAR authorizing insurance requirements in appropriate cases. In any event, SMC has not shown that VA's decision is unreasonable. According to VA, the insurance requirements were included in the IFB because of the significant dollar value of the medical supplies and drugs involved in the contract, which are particularly susceptible to damage from accidental causes such as fire, which would be covered by the insurance. The fact that the cost of commercial insurance may restrict the field of competitors, as SMC argues, does

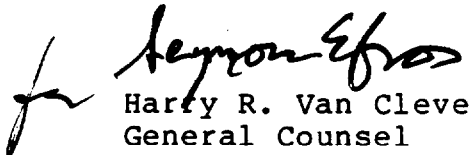
^{1/} SMC also initially objected to other bonding requirements in the IFB which VA subsequently revised to SMC's satisfaction. Consequently, SMC has withdrawn that part of its protest based on those requirements.

not demonstrate, standing alone, that the insurance requirements are unreasonable, where, as here, the agency in good faith determines that they are necessary to protect the government's property interest. See Intelcom Support Services, Inc., B-222560, July 18, 1986, 86-2 CPD ¶ 82.

SMC also argues that the insurance requirements duplicate the protection already afforded the government through the performance bond required by the IFB. We disagree. While performance bonds and insurance both are designed to protect the government's interest, they address different contingencies. Performance bonds secure the contractor's obligation to perform and thus protect the government's interest against substantial failures in performance; in contrast, insurance protects the government against accidental losses which are incidental to performance. Executive-Suite Services, Inc., B-212416, May 29, 1984, 84-1 CPD ¶ 577.

Finally, SMC argues that the A-76 cost comparison will be defective because the insurance cost which will be included in the government's cost estimate is unreasonably low in comparison with the commercial insurance premiums. According to SMC, under the formula in OMB Circular No. A-76, VA's insurance cost would be approximately \$19,000, compared to SMC's estimate of \$50,000 to \$100,000 for commercial premiums.^{2/} We find this argument to be without merit. While the government and the bidders must compete based on the same statement of work when a cost comparison is being conducted, the fact that the government may have a cost advantage by virtue of its self-insurance capability does not make the cost comparison defective or affect the validity of the insurance requirements. See Executive-Suite Services, Inc., B-212416, supra.

The protest is denied.


Harry R. Van Cleve
General Counsel

^{2/} SMC challenges only the factor applied to the value of the property to determine the cost of insurance, not the valuation of the property itself.