



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: IBI Security, Inc.

File: B-235857

Date: September 27, 1989

DIGEST

1. Protest against use of clauses similar to those in the General Services Administration Acquisition Regulation in a Department of Defense (DOD) procurement is denied where protester does not show that clauses deviate from Federal Acquisition Regulation (FAR) or DOD FAR Supplement.

2. Protest of bonding requirement in a solicitation for security guard services is denied since it is within agency's discretion to require bonding even in a small business set-aside and the agency's requirement for uninterrupted performance of security guard services is itself a reasonable basis for imposing bonding requirements in a solicitation where prior experience indicated problems in performance.

DECISION

IBI Security, Inc., protests alleged solicitation defects in invitation for bids (IFB) No. MDA946-89-C0036, a 100 percent small business set-aside, issued by the Department of Defense (DOD), Washington Headquarters Services Procurement and Contracts Office (PACO), for security guard services at the Defense Mapping Agency's headquarters, Fairfax, Virginia. IBI states it also protests all other guard service solicitations issued by DOD.

The protest is denied.

IBI alleges that the solicitation incorporates rules and regulations of the General Services Administration (GSA) which have no application to DOD procurements. IBI also protests the solicitation's requirement for bid and performance bonds. IBI states that such bonds have not been

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required by DOD agencies for the past 3 years as they are costly to the government and are counterproductive. Finally, IBI alleges that the quality assurance program in the solicitation is not in accordance with DOD or Department of the Army regulations.

The agency report states that PACO was created when GSA shifted the responsibility for operating and maintaining certain federal facilities to DOD on October 1, 1987. Under the delegation, DOD is now responsible for day-to-day operations of certain buildings while GSA retains oversight, policy and capital improvement responsibility.

DOD admits that many of the IFB's non-mandatory or supplemental clauses bear a close resemblance to clauses found in the GSA Acquisition Regulation (GSAR). DOD states that many of the procurement personnel now working for PACO are former GSA employees who were transferred to DOD as a result of the delegation. DOD contends, however, that the use of these clauses is not improper because they do not deviate from the prescribed Federal Acquisition Regulation (FAR) and DOD FAR Supplement (DFARS). DOD argues that other than pointing to the similarity between the supplementary clauses in the IFB and certain GSAR clauses, IBI has failed to indicate how these clauses violate the FAR or DFARS. Moreover, DOD states that in every instance in which a non-FAR or DFARS clause has been used, the clause has been printed in full, thus eliminating any chance of misinterpretation.

The mere fact that the IFB contains clauses which are not taken from the FAR or DFARS by itself does not render the IFB improper. IBI has not shown how any of the IFB's clauses deviates from the FAR. In the absence of substantive variation from the FAR's provisions there is no basis to find that the IFB's provisions are improper.

With regard to the requirement for a bid and performance bond, the contracting officer determined that the government must have continuous protection of the classified documents and materials located at this defense mapping facility and that any interruption in security guard service at the facility could cause lapses in security coverage or emergency reprocurement costs. The contracting officer states that there had been past performance problems and therefore bid and performance bonds were deemed necessary to protect the government's interest. Further, PACO points out that eight small business firms bid on this solicitation.

IBI responds that the delegation of authority from GSA to DOD does not include the authority to impose bonding requirements. IBI also contends that a bonding requirement will not guarantee a bid has been correctly calculated or that the contractor will perform. Finally, IBI points to the fact that 49 solicitations were mailed to prospective bidders but only 8 bidders responded. IBI alleges that this is proof that the bonding requirement was too restrictive.

We have held that although a bond requirement may result in a restriction of competition, it nevertheless can be a necessary and proper means of securing to the government the fulfillment of the contractor's obligation under the contract in appropriate situations. D.J. Findley, Inc., B-221096, Feb. 3, 1986, 86-1 CPD ¶ 121. While generally contracting agencies should not require performance bonds for other than construction contracts, 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, 28.103-2(a) (FAC 84-40). A bid bond may be required where a performance bond is required. FAR § 28.101-1 (FAC 84-12); Govern Serv., Inc., 68 Comp. Gen. 204 (1989), 89-1 CPD ¶ 92.

In reviewing a challenge to the imposition of a bonding requirement, we look to see if the requirement is reasonable and imposed in good faith; the protester bears the burden of establishing unreasonableness or bad faith. We have held that a finding on the part of the agency that continuous operations are absolutely necessary is itself a sufficient basis for requiring a performance bond. PBSI Corp., B-227897, Oct. 5, 1987, 87-2 CPD ¶ 333. In addition, we have sanctioned the imposition of bonding requirements in small business set-asides. Id.

Here, the government's interest in ensuring continuous security service coverage for an installation containing classified documents and materials is of such importance that the contracting officer could reasonably find that a bonding requirement was necessary. Although a bonding requirement will not necessarily guarantee performance, the government, through the FAR, has provided the option of using this requirement as a tool to heighten the chances of satisfactory performance in certain situations. We see no reason why the contracting officer here should not be allowed to exercise her discretion under the FAR to require the submission of bid and performance bonds where prior performance problems have been noted and where continuous

service is essential. Moreover, with regard to IBI's contention that the bonding requirement was too restrictive, we find that the submission of 8 bids is sufficient to have provided competition.

With regard to IBI's protest against the IFB's quality assurance program, PACO has pointed out that this requirement has been deleted by amendment 0001; therefore, this issue is academic.

The protest is denied.



James F. Hinchman
General Counsel