



Comptroller General  
of the United States  
Washington, D.C. 20548

## Decision

**Matter of:** Triple P Services, Inc.

**File:** B-249443

**Date:** October 30, 1992

F.D. Bowden for the protester.  
Craig E. Hodge, Esq. and Walter A. Baker, Esq., Department of the Army, for the agency.  
Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Agency properly included bonding requirements in solicitation for food services set aside for small disadvantaged businesses where the agency reasonably determined that bonding was necessary to ensure that its need for uninterrupted performance would be satisfied.

### DECISION

Triple P Services, Inc. protests the bid and performance bond requirements in request for proposals (RFP) No. DAAH03-92-R-0047, issued by the Department of the Army as a small disadvantaged business (SDB) set-aside for food services at Redstone Arsenal, Alabama. Triple P alleges that the bonding requirements are unwarranted and unduly restrict competition by SDB's.

We deny the protest.

The solicitation requires all prospective offerors to provide a bid guarantee in the form of a bid bond equal to 20 percent of the total price offered for the basic year contract and a performance bond equal to 100 percent of the price offered for the base year contract. The agency determined that bonding is necessary to prevent a break in the performance of the food services which "would seriously disrupt the operation of the Army's troop training mission and cause substantial financial losses to the government." The Army relies on contractor support to provide approximately 2,100 meals daily and "[i]nterruption of this service would result in lost productivity, extensive transportation costs, and higher meal expenses if [the Army] were forced to bus troops to restaurants . . . ."

Triple P argues that the bonding requirement unduly restricts competition and is inappropriate under an SDB set-aside. Triple P contends that the agency is already assured of uninterrupted satisfactory performance, without the additional costs of bonding, because it is procuring the services on a negotiated basis which requires offerors to demonstrate their qualifications, their understanding of the specifications, and their ability to perform the services. According to the protester, the Army should be able to eliminate contractors "who may be poor risks" and preclude "the selection of an incompetent firm" by properly evaluating proposals. Triple P points out that other agencies "routinely procure food services in excess of those at Redstone, yet none require bonds for negotiated procurements." Triple P argues that, by opting instead for bonding requirements, the Army will essentially preclude small disadvantaged business from competing, since the requirement for bonding is "a hurdle which many SDB firms cannot clear."

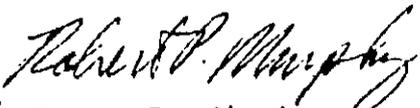
While Triple P may be correct that bonding requirements will exclude some SDB's from the competition, this possibility alone does not render the requirements improper. D.E.W. Mgmt. Servs., Inc., B-246955, Apr. 10, 1992, 92-1 CPD ¶ 358; Diversified Contract Servs., Inc., B-233620, Feb. 21, 1989, 89-1 CPD ¶ 180. We have recognized that, while 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 obligations under the contract in appropriate situations. Diversified Contract Servs., Inc., supra.

Here, the Army reasonably imposed the bonding requirements; a determination by the contracting officer that continuous operations are necessary is itself a sufficient basis for requiring a performance bond. D.E.W. Mgmt. Servs., Inc., supra. While Triple P argues that the needs of the Army can be similarly met by careful evaluation of proposals, we do not believe that the same government interest which a performance bond is designed to protect is adequately protected by other elements of the procurement process or by contract administration. Id. While the Army may be able to reduce the risks associated with providing food services at Redstone by carefully reviewing offerors' qualifications and proposals, some risk would remain. A performance bond requirement is a legitimate means of reducing this risk.

As for Triple P's assertion that other agencies have not included bonding requirements in their negotiated procurements for food services, each procurement stands on its own and the fact that other agencies' judgment as to the necessity for bonding may have been different under the particular circumstances of other procurements does not

establish the unreasonableness of the bonding requirements here. See Cobra Technologies, Inc., B-238031 et al., Feb. 27, 1990, 90-1 CPD § 242; Commercial Energies, Inc., B-238208, Apr. 5, 1990, 90-1 CPD § 368.

The protest is denied.

  
for James F. Hinchman  
General Counsel