

Matter of: Iowa-Illinois Cleaning Co.; Patco Industries

File: B-254805; B-254805.2; B-255089

Date: January 18, 1994

Michael S. Kelly for Iowa-Illinois Cleaning Co.; and Rick Tanner for Patco Industries, the protesters, Gabriel N. Steinberg, Esq., and Howard L. Hardegree, Esq., General Services Administration, for the agency. Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly imposed bonding requirements under solicitations for janitorial services where the agency reasonably determined that the bonds were necessary to ensure continuous service, and to protect the government from losses of government property or that would result from contractor default.

DECISION

Iowa-Illinois Cleaning Co. and Patco Industries protest the bond requirements in invitation for bids (IFB) No. GS-04P-93-RYC-0016, a total small business set-aside, issued by the General Services Administration (GSA), for janitorial services at various federal buildings in Tampa, Florida. Patco also protests the bond requirements in IFB No. GS-07P-93-HTC-0048/7ADB, issued by GSA, for custodial and related services at a building in Waco, Texas.

We deny the protests.

The Tampa IFB included requirements for bidders to furnish a bid guarantee in the amount of 20 percent of the base year bid price or \$3 million, whichever is less, and for the awardee to furnish a performance bond in an amount equal to 20 percent of the contract base term price. The Waco IFB included a requirement for a bid guarantee in the amount of 10 percent of the base year bid price or \$3 million, whichever is less, and for the awardee to furnish performance and payment bonds in amounts equal to 10 percent of the contract base year price.

Iowa-Illinois and Patco both contend that the bonding requirements unduly restrict competition and are unfair to small businesses. They argue that GSA is not authorized to impose bonding requirements in contracts involving janitorial services as opposed to construction services.

While bonding requirements may result in a restriction of competition, an agency has the discretion to impose bonding requirements in appropriate circumstances as a necessary and proper means to secure fulfillment of the contractor's obligations. See Roger L. Herbst, B-244773, Nov. 19, 1991, 91-2 CPD ¶ 476; Aspen Cleaning Corp., B-233983, Mar. 21, 1989, 89-1 CPD ¶ 289. While agencies generally should not require performance bonds in non-construction contracts, they may be required on any type of contract when necessary to protect the government's interests. Federal Acquisition Regulation (FAR) §§ 28.103-1; 28-103-2(a); Maintrac Corp., B-251500, Mar. 22, 1993, 93-1 CPD ¶ 257. Contrary to the protesters' arguments, such bonds can be required where justified in contracts for janitorial or custodial services. See, e.g., Aspen Cleaning Corp., *supra*; Professional Window and Housecleaning Inc., B-224187, Jan. 23, 1987, 87-1 CPD ¶ 84. An agency may require a bid guarantee whenever there is a requirement for a performance bond. FAR § 28.101-1. In reviewing the bond requirements contained in a particular solicitation, we look only to see if they are reasonable and imposed in good faith. Roger L. Herbst, *supra*.

GSA explains that the bonding requirements in these IFBs were necessary to ensure continuous performance of the custodial services contracts so the buildings can be continuously operated. GSA reports that any disruption in janitorial services in these buildings would jeopardize the health and safety of federal agency personnel. GSA also explains that the contractors will have full access to government property, which could be damaged by unsatisfactory performance. Finally, GSA notes that the bonds protect the government from losses which may result from contractor default.

Neither Iowa-Illinois nor Patco disputes the justifications advanced by GSA for requiring bonds in these procurements. Instead, the protesters essentially contend that the requirements will restrict competition from small businesses by reducing the number of overall competitors. While the protesters may be correct, this does not show that GSA acted improperly in imposing the bond requirements. See Maintrac Corp., *supra*. Moreover, GSA reports that similar procurements historically have produced adequate competition notwithstanding bonding requirements. Indeed, 22 bids were submitted in response to the Tampa IFB and 15 bids in response to the Waco IFB.

Patco alleges that GSA is imposing bonding requirements in lieu of performing a comprehensive pre-award survey. GSA responds that it intends to conduct thorough pre-award surveys on the potential awardees. In any event, this complaint does not provide a basis for objecting to GSA's otherwise proper decision to impose bonding requirements. While a pre-award survey may serve to reduce some risk associated in making an award, it does not provide the agency the legal protection provided by bonding requirements. See PBSI Corp., B-227897, Oct. 5, 1987, 87-2 CPD ¶ 333.

Iowa-Illinois argues that bonds are unnecessary because GSA allegedly is always 60 days behind in making payments under awarded contracts, which gives the government adequate leverage to assure that it is not damaged if the contractor defaults. This argument also does not provide a basis for objecting to the otherwise proper decision to impose bonding requirements, since an agency is not required to assume the risks that bonds protect against because it may have other legal recourses against a defaulting contractor.

Based on the record, there is no basis to question the agency's justification for imposing the bonding requirements.

The protest are denied.

Robert P. Murphy
Acting General Counsel