



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

Decision

Matter of: Premiere Building Services, Inc.
File: B-255858
Date: April 12, 1994

Bernard Greenspan for the protester,
A.R. Dattolo, Esq., and Gabriel N. Steinberg, Esq., General
Services Administration, for the agency.
Katherine I. Riback, Esq., Guy R. Pietrovito, Esq., and
James A. Spangenberg, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

In a procurement for janitorial and recycling services, a
procuring agency may properly provide that a contractor will
be liable for the government's actual costs of reinspection,
after the government's initial inspection and first
reinspection, that are directly related to the contractor's
unsatisfactory performance or nonperformance of the contract
requirements.

DECISION

Premiere Building Services, Inc. (PBS) protests the terms of
invitation for bids (IFB) No. GS-04P-93-RYC-0027, issued by
the General Services Administration for janitorial and
recycling services for the Federal Building, Jacksonville,
Florida.

We deny the protest.

The IFB, issued as a total small business set-aside, sought
bids for janitorial services for a base and 4 option years.
The IFB included Federal Acquisition Regulation (FAR)
§ 52.246-4 entitled "Inspection of Services--Fixed-Price,"
which reserves the government's right to inspect all
services at all times during the contract and, when defects
in service cannot be corrected by reperformance, to reduce
the contract price for services that do not conform with the
contract requirements. In this regard, the IFB set forth a
"deduction table" that specified liquidated damages to be
applied when required services were not satisfactorily
performed. The IFB also provided that the government's
initial inspection of services and first reinspection of
services due to a contractor's unsatisfactory performance or
nonperformance would be at no cost to the contractor, but

that the reinspection costs incurred by the government for second and, if required, subsequent reinspections would be charged to the contractor.

The IFB also provided that:

"The Government will institute a customer complaint program as a means of assisting in documenting certain kinds of service problems. The Occupant Complaint Program will be considered in evaluating the Contractor's performance and in taking deductions."

PBS challenges the IFB's provision for contractor liability for second and subsequent government reinspection costs, arguing that charging the contractor for reinspection costs, in addition to the liquidated damages for unsatisfactory performance, amounts to "double dipping." PBS does not protest the IFB's provision for liquidated damages.

Generally, a procuring agency may contractually provide for deductions from the contract price for losses and administrative costs, such as reinspection costs, associated with a contractor's delivery of nonconforming supplies or services. FAR §§ 12.202(a), 46.407(b), 52.246-4; see also Oakland Constr. Co., Inc., General Services Board of Contract Appeals No. 3557, Sept. 14, 1972, 72-2 BCA ¶ 9675 (contract deductions for reinspection costs). An agency may assess a deduction for reinspection costs unless it is unreasonable or constitutes an improper penalty.

Contrary to the protester's argument, the provision for liquidated damages in this case does not compensate the government for its reinspection costs. Liquidated damages provisions compensate the government for the reduced value that it receives as a result of services performed in an unsatisfactory manner, even when the services are satisfactorily reperformed. See Sunrise Maintenance Sys., B-219763.2, Nov. 26, 1985, 85-2 CPD ¶ 603. Contract deductions for administrative costs, such as reinspection costs, associated with unsatisfactory performance are intended to reimburse the government for its increased costs beyond what was contractually contemplated.

'Reinspection costs are defined by the IFB as costs incurred by the government directly related to the reinspection of services due to the contractor's unsatisfactory performance or nonperformance of contract requirements. "Reinspection costs typically include travel costs and labor costs (overtime paid or the cost of diverting labor from normal duties)."

We find reasonable the solicitation's assessment of a deduction for reinspection costs associated with the contractor's continued unsatisfactory performance or nonperformance. As noted above, the IFB provides that the government will bear the costs of the initial inspection and first reinspection; it is only the second and subsequent reinspections if required by continued unsatisfactory performance, which will result in contract deductions. Since it is not disputed that there will be additional costs associated with performing second or subsequent government reinspections, and given that these costs are not part of the damages included in the liquidated damages, we know of no reason that the government cannot contractually assess these additional costs to the contractor, whose unsatisfactory performance or nonperformance required the reinspections. See Oakland Constr. Co., Inc., supra.

The protest is denied.'


For Robert P. Murphy
Acting General Counsel

²PBS also objects to the establishment of a customer complaint program for documenting contractor performance, asserting that building tenants are not trained as contract inspectors. Contracting agencies are required to verify whether supplies and services conform to contract quality requirements and to maintain records regarding a contractor's performance. See FAR § 46.104. There is no basis to object to this program, which merely establishes a system for collecting tenant complaints regarding the contractor's performance.