

Protest of)
GOOD FOOD SERVICE, INC.) Date: April 8, 1988
Solicitation No. 169991-88-B-0171) P.S. Protest No. 88-21

DECISION

Good Food Service, Inc., protests the terms of solicitation 169991-88-B-0171, issued by the Chicago, IL, Procurement and Materiel Management Service Office.

The solicitation calls for the provision of cafeteria food services at the Chicago Main Post Office. The solicitation indicates that the estimated annual food sales under the contract will be \$1,500,000. Attachment A to the solicitation is a four page list of equipment items which the Postal Service will provide the contractor. General Provision 17 on PS Form 7287, included in the solicitation, requires the successful contractor to furnish upon notification of acceptance of its offer, a performance bond in the amount specified in block 12 of PS Form 7286. On that form in this solicitation, the amount of the bond is set at \$567,241.

In its protest, addressed to the contracting officer, Good Food Service objects to the amount of the bond, asserting that it will be "most difficult, if not impossible, for small businesses, minorities, and Vietnam Era Veterans" to participate in the solicitation if the bond remains at that amount. Good Food Service requests the reduction of the bond amount to \$25,000 "to allow more competitive bidding by small, disadvantaged businesses." It asserts, without citation, that precedent exists for this request.

The contracting officer has forwarded the protest to this office for resolution. In her statement accompanying the protest, she notes that the incumbent food service contractor for the Chicago Main Post Office exercised its contractual right to terminate its contract on ninety days' notice, a termination which will be effective May 17. This solicitation was issued to provide replacement service. To date, bid packages have been furnished to 21 prospective bidders. Given the need to have a replacement contractor to succeed the incumbent, the contracting officer is maintaining the bid opening schedule set in solicitation; bids will be opened April 13.

The contracting officer states that the contract will be performed in a postal facility which was renovated in 1986 at a cost of \$2.1 million, including \$709,000 of food service equipment. Further, she indicates that the contract of a previous contractor was terminated for default in 1987, at which time much of the food service equipment was found to be lost or stolen, requiring its replacement by the Postal Service.

The contracting officer notes that the food service solicitation contemplates the inclusion of a performance bond, as does Postal Contracting Manual (PCM) 10-104.2(b) when a contract provides for the contractor to have the use of postal property. Similarly, she notes that when a performance bond is to be required, that section requires the contracting officer to determine its penal amount. The contracting officer states that the amount of the performance bond here was calculated on the current value of the food service equipment to be provided the contractor, and that reducing the penal amount to \$25,000 as requested would not adequately protect the Postal Service's interest.

PCM 2-407.8, pursuant to which this office deals with bid protests, provides at 2-407.8 f. (12), that protests which are clearly without legal merit or are otherwise unreviewable may be disposed of summarily. This protest is appropriate for such treatment.

In dealing with similar challenges to the requirements for performance and other bonds in non-construction contracts, the Comptroller General has noted that:

Performance and payment bond requirements, although they may result in restriction of competition, are a necessary and proper means of providing to the government fulfillment of a contractor's obligations under his contract. ... [T]he use of bonding requirements is permissible where the bonds are needed to protect the government's interest, whether or not the agency's rationale therefor comes within the [reasons articulated for bonds in the applicable procurement regulations.] 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 and bad faith.

Professional Window and Housecleaning, Inc., Comp. Gen. Dec. B-224187, January 23, 1987, 87-1 CPD & 84. (Citations omitted.) Cantu Services, Inc., Comp. Gen. Dec. B-208317, November 2, 1982, 82-2 CPD & 401, involved an Air Force contract for food services which was set aside for small businesses. The protester objected to the requirement that the successful contractor supply a performance bond. The Comptroller General denied the protest, finding the bonding requirement reasonable, noting specifically the contracting officer's discretion to require such bonds where the contractor would have the use of considerable government property.

Here, the contracting officer has set out a basis for requiring a performance bond consistent with the requirements of the Postal Contracting Manual (the contractor's use of postal equipment) and a justification for a penal amount consistent with the value of that equipment. While the protester has set out its objection to the requirement and its reasons therefor,^{1/} it has not alleged, let alone established, any breach of the

^{1/}Although asserting concerns on behalf of disadvantaged small-businesses and Vietnam Era veterans,

contracting officer's discretion and good faith in the establishment of the bonding requirement. Accordingly, there is no basis on which the protest could be sustained.

The protest is denied.

William J. Jones
Associate General Counsel
Office of Contracts and Property Law

[checked against original JLS 2/24/93]

the protester's written submission does not explicitly set out its inclusion within that class. The contracting officer's report, however, indicates that the protester identified itself as a minority business enterprise in its earlier expressions of concern about the bonding requirement. Given our resolution of the protest, there is no reason to dispute the protester's self-categorization.