



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

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AUG 27 1973

Jets Services, Inc.  
2721 Park Street  
Jacksonville, Florida 32205

Attention: Mr. Thomas F. Gibbs  
Vice President

Gentlemen:

Reference is made to your letter of July 10, 1973, and prior correspondence, concerning your protests against alleged excessive bonding requirements under Department of the Army invitations for bids (IFB) Nos. DAH33-73-B-0093, DAB19-73-B-0113, and DAB03-73-B-0231, issued by Fort Hood, Texas; Fort Belvoir, Virginia; and Fort Knox, Kentucky, respectively. The Army has advised our Office that it found it necessary to make awards under the subject invitations prior to the resolution of your protests by our Office.

The subject invitations covered the procurement of kitchen police and mess attendant services which were set aside for small business. IFB-0093, before it was amended, contained requirements for a 20-percent bid bond and a 50-percent performance bond. It is reported that on March 27, 1973, the contracting officer reevaluated the performance bond requirement set forth in IFB-0093 and he subsequently determined that such requirement could be reduced to the penal amount of 25 percent for the performance bond. As to the bonding requirements in the other invitations, IFB-0113, contained requirements for a 20-percent bid bond, 50-percent performance bond and 20-percent payment bond; and IFB-0231, contained requirements for a 20-percent bid bond, 50-percent performance bond, and a 50-percent payment bond.

You contend that the bonding requirements in the invitations in question are excessive. You maintain that the necessity for any bonding at all on a kitchen police services contract is open to serious question, but if it is desired that it is virtually impossible to justify more than 10 percent penal value bonding. You state that the Armed Services Procurement Regulation (ASPR) requires that the justification for requiring a performance bond must be fully documented. You assert that the contracting officer's arbitrary opinion cannot be accepted in lieu of the required full documentation. You indicate that you do not agree with

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citation to favor a particular firm because prior solicitations did contain such a requirement.

The record indicates that by a letter dated September 11, 1972, to your Office, with a copy to the Small Business Administration (SBA), you lodged a generalized protest against use of "excessive bonding requirements" by numerous contracting officers in the Army and Air Force. As indicated in our letter of November 3, 1972, to your firm, at the request of SBA, the Air Force conducted a study as to the bonding policies employed by some 77 Air Force bases for other than construction procurements under ASFR 10-104. In a Position Paper dated January 15, 1973, a copy of which was furnished to your firm, the Air Force states that your allegations of last year that excessive bonding requirements had been practiced by numerous contracting officers in the Air Force were not supportable. It is pointed out in the Position Paper that for fiscal year 1972, the data shows there were 56 instances of bonding for three categories of other than construction contracts and that in all 56 contracts, except one, a small business firm was awarded the contract.

In a letter dated April 24, 1973, to you, SBA advised that it did not concur with the views of the Air Force that bonding requirements on food handling contracts are not excessive and that SBA had made a recommendation to the ASFR Committee that the ASFR be changed to require the contracting officer to show the approximate dollar value of the Government interests to be protected as well as requiring a documented statement that bonding is not being used as a substitute basis for determining contractor responsibility. The record indicates that at a meeting held on May 30, 1973, the ASFR Committee considered the recommendation of SBA with respect to bonding for service-type contracts with small businesses. The committee was unable to determine the existence of a substantial problem and it was therefore decided to close the case (No. 73-40) without action and to refer the matter to a Procurement Management Review (PMR) Group which is to submit a report on its findings to the committee in approximately one year.

In this connection, it also is noted that in Army Procurement Information Circular No. 715-2-18, issued on May 16, 1973, the Department of the Army advised contracting offices as follows:

XIV. BID GUARANTEES AND PERFORMANCE AND PAYMENT BONDS.  
Complaints have been received that Department of Army contracting officers are routinely using bid guarantees and

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performance and payment bonds in connection with nonconstruction contracts. It is alleged that these guarantees and bonding requirements are being used to restrict competition. Such requirements are to be included in solicitations, other than for construction, only in strict accord with ASFR 10-104.2.

In view of the foregoing Army instruction to contracting offices, quoted above, and the fact that the IRI Group is now studying the matter of which you complain, and since there is no concrete evidence to indicate that competition has been adversely affected by the bonding requirements, we do not believe it would be appropriate at this time for our Office to make any recommendations to the Department of Defense. See our decision to your firm in B-178530; B-178602; B-178605; and B-178701, July 23, 1973, wherein we denied similar protests under Department of the Air Force procurements.

Accordingly, your instant protests are denied.

Sincerely yours,

Paul H. Debling

For the Comptroller General  
of the United States