

6025

DECISION



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

FILE: B-190869

DATE: April 14, 1978

MATTER OF: Hi-Grade Cleaning

DIGEST:

Protest of agency's determination to waive requirement for performance bond rather than terminate contract where contractor failed to provide bond is not for consideration because such determination is matter of contract administration.

Hi-Grade Cleaning Company (Hi-Grade) protests against the failure of the Air Force to terminate its contract for janitorial services with Multi-Service Maintenance Corporation (Multi-Service) because Multi-Service has not provided a performance bond. Hi-Grade was the second low bidder on this procurement.

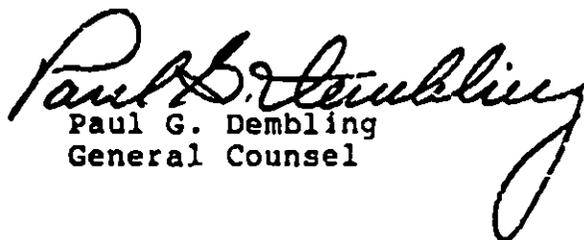
IFB F19650-77-B-0128 under which the subject contract was awarded on September 28, 1977, required that a 100 percent performance bond be furnished by the successful bidder five days after contract award. Multi-Service failed to submit the required bond and the Air Force has decided to waive the performance bond requirement and to negotiate an equitable adjustment in the contract price. In this regard the agency explains that since the contractor has endeavored to secure the necessary bonding and had been encouraged to do so by the agency a default termination was not deemed appropriate.

The protester objects to the Air Force's categorization of its actions charging that they were not motivated by the equities of the situation but by the interference of a Member of Congress on behalf of Multi-Service. In this regard Hi-Grade claims that it was promised by Air Force officials that the Multi-Service contract would be terminated but that higher level personnel directed that no termination order be issued. It is Hi-Grade's position that the waiver of the performance bond was prejudicial to it because

had it known that such a bond would not be required it could have bid less and might have been the low bidder.

We have held in situations as the instant one, where the solicitation provides that a performance bond is to be obtained subsequent to award that a valid contract comes into existence at the time of award despite the failure of the awardee to submit the bond. 49 Comp. Gen. 431 (1970); 47 Comp. Gen. 1 (1967). The bonding requirement becomes the contractor's obligation under that contract. The question of whether the contracting agency should terminate that contract because of the contractor's failure to fulfill its contractual obligation is a matter of contract administration which is not cognizable under our Bid Protest Procedures. 4 C.F.R. Part 20 (1977); 47 Comp. Gen. 1, supra; Armour Electric Company, B-189249, September 22, 1977, 77-2 CPD 218.

The protest is not for our consideration.


Paul G. Dembling
General Counsel