

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

60707

FILE: B-185608

DATE: April 2, 1976

MATTER OF: Maintenance Incorporated

99115

DIGEST:

Because negotiating rationale is essentially identical to that cited in Nationwide Building Maintenance, Inc., B-184186, February 3, 1976, 55 Comp. Gen. _____, where it was found that GSA had no legal basis to negotiate janitorial services procurements, and since award of protested contract has been made, no useful purpose in terms of remedy would be served by further considering protest of contract which includes other than janitorial services although janitorial services constitute bulk of contract. In addition, GSA concedes that due to similarity of negotiating rationale, no option will be exercised under protested contract.

By letter dated December 18, 1975, Maintenance Incorporated (Maintenance) protested an award to Allied Maintenance Corporation by the General Services Administration (GSA) under request for proposals (RFP) 4PBO-12. The RFP had been issued for janitorial services and the complete mechanical operation of the United States Courthouse, Orlando, Florida.

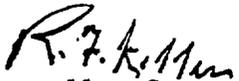
Maintenance protests that it should have been selected for award since it proposed the lowest cost and its proposal was technically acceptable. Maintenance also protests that its proposal was downgraded based upon improper reliance by the Government on its own estimates of man-hours and costs. Maintenance also protests GSA's alleged unstated policy for this type of procurement of selecting for award the offeror who receives the highest technical score so long as the offeror's costs are within a reasonable range of the Government estimate, even though the costs proposed by the other offerors may be substantially lower.

Recently, in a protest involving a janitorial services procurement, we held that GSA's determination to negotiate janitorial services contracts was not rationally founded within the limits of existing law. Nationwide Building Maintenance, Inc., B-184186, February 3, 1976, 55 Comp. Gen. _____, 76-1 CPD 71. Nevertheless, we recognized the difficulties that GSA has been experiencing in administering janitorial services contracts. Because of these difficulties, it was our opinion that GSA should be given time to study alternative solutions within the context of formal advertising. For that reason, we did not disturb the award, but recommended that GSA not exercise any options for janitorial services requirements subsequent to June 1976 under the subject contract or under any similar outstanding negotiated janitorial services contracts.

Although the RFP protested here called for services in addition to janitorial services, e.g., operating and maintaining the building equipment, the bases cited in the Findings and Determination for negotiating the protested contract are essentially identical to those cited by GSA in the Nationwide case. Moreover, janitorial services do make up the bulk of the services called for under the present contract. In any case, GSA, in its report on the protest, clearly regards this case as coming under the Nationwide holding. In this regard, GSA states that it will not exercise any of the options in the present contract due to the similarity of the justifications for negotiating the present contract to those cited in the Nationwide case.

In view of the foregoing, and since award has been made, no useful purpose in terms of remedy would be served by further considering Maintenance's protest. See Three D Enterprises, Inc., B-185745, February 20, 1976, 76-1 CPD 117. This is so because if Maintenance's protest should be determined meritorious, any subsequent award under the subject RFP would be contrary to the Nationwide holding, and award under formal advertising procedures may not be feasible at this time, as recognized in the Nationwide case. However, as noted above, GSA has indicated that no options under the protested contract will be exercised.

Consequently, we will not give further consideration to Maintenance's protest.


Deputy Comptroller General
of the United States