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DECISION



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

FILE: B-209766

DATE: March 7, 1983

MATTER OF: Consolidated Maintenance Company

DIGEST:

Protest of cancellation of solicitation for custodial services is dismissed as academic where the Congressional Joint Resolution making further continuing appropriations and providing for productive employment for the fiscal year 1983, and for other purposes, prohibits the obligation or expenditure of funds for the services in question.

Consolidated Maintenance Company [protests] the action of the General Services Administration (GSA) in [rejecting] its bid to provide custodial cleaning services at the Federal Building, U.S. Post Office, Fort Collins, Colorado, under invitation for bids (IFB) 82-09-045. For the reasons that follow, the protest is dismissed.

The IFB, which was issued on June 15, 1982 and opened on September 16, sought bids on a 12-month contract with two 1-year options to provide the custodial services currently being performed by GSA employees at Fort Collins. Award was to be made to the lowest responsible bidder for the total 3-year period.

Consolidated became the low bidder after the apparent low bidder was allowed to withdraw because of a mistake in its bid. Thereafter, GSA compared Consolidated's and the other bids to the Government estimate, determined that all bids were excessive and canceled the solicitation. Consolidated protests the cancellation because it believes that GSA's estimate is understated.

Although GSA resolicited for the custodial services, it has now advised us that it intends to cancel the resolicitation because of a provision in the Joint Continuing Resolution of December 21, 1982, Pub. L. No. 97-377, 96 Stat. 1830, 1913 (Second Continuing Resolution), which prohibits obligating funds for the custodial services involved here. Section 120 of the Joint Resolution provides that:

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"Notwithstanding any other provision of this joint resolution, none of the funds made available to the General Services Administration under this Act shall be obligated or expended after date of enactment of this Act for the procurement by contract of any service which, before such date was performed by individuals in their capacity as employees of the General Services Administration in any position described in section 3310 of title 5, United States Code."

The positions described in 5 U.S.C. § 3310 include custodians.

Therefore, the prohibition on contracting out for custodial services renders the protest academic because even if we sustain the protest GSA could not award a contract under the solicitation. International Business Investments, B-209051, January 10, 1983, 83-1 CPD _____.

The protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel