

DECISION



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

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FILE:

B-217140

DATE: January 22, 1985

MATTER OF:

Consolidated Maintenance Co.

DIGEST:

1. Protest against toilet-cleaning provision in General Services Administration solicitation is denied where GAO has previously upheld validity of provision.
2. Protest against room-cleaning provision in General Services Administration (GSA) solicitation is dismissed as academic where GSA has informed GAO that provision is being amended to conform with views expressed in our prior decision which concluded that provision was defective.

Consolidated Maintenance Co. (Consolidated) protests the toilet and room-cleaning provisions of invitation for bids No. GS-06P-57509-01, issued on November 6, 1984, by the General Services Administration (GSA). The protester alleges that the provisions impose allegedly unfair monetary deductions for inadequate performance.

Without obtaining a report from GSA, we deny the protest against the toilet-cleaning provision and dismiss the protest against the room-cleaning provision under authority of our recent decision in Environmental Aseptic Services Administration, B-214405, et al., Nov. 7, 1984, 64 Comp. Gen. _____, 84-2 C.P.D. ¶ 510.

In the cited decision, we decided the propriety of the provisions in question here. As we said in this decision:

"The [GSA] solicitation provision authorizing a deduction for an entire toilet room where the rooms 'are not satisfactorily cleaned or policed and serviced' is not inconsistent with the [legal standard against which the propriety of monetary deductions for inadequate performance are measured]. The provision leaves a determination of what proportion of the tasks renders the entire room unsatisfactory to the inspector's discretion, which presumably will be exercised in good faith and in compliance with procurement laws and

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regulations. If GSA administers the provision by taking deductions without regard to whether the deficiencies are of such a proportion as to render the toilet room unsuitable for the government's purpose, that would involve a matter of contract administration, which the contractor could challenge pursuant to the contract's disputes clause, but not before this Office. The room-cleaning provision goes further than the toilet-cleaning one, however, stating that in instances 'where room cleaning has not been satisfactorily performed, or where any portion or portions of work have been omitted or inadequately performed, a deduction for the entire room shall be made. . . .' This could be interpreted as authorizing a deduction for a large room containing, for example, 20 work stations because of the contractor's failure to clean one station adequately. Absent circumstances where the unsatisfactory cleaning of one station would render the entire room unsuitable for the government's purpose, the provision would impose damages without regard to the proportion of satisfactory performance and deny the contractor credit for substantial performance. We believe that such an application of the provision would result in a penalty."

We therefore recommended in that decision that GSA amend the room-cleaning provision for future solicitations to permit credit for substantial performance of the work, "in order to prevent the adverse effect a penalty provision can have on competition."

Given our recent decision which upheld the validity of GSA's toilet-cleaning provision, we deny Consolidated's protest against that provision. GSA has also informed us that it has amended the room-cleaning provision in IFB-06P-57509-01 so that the provision is now considered to be in accordance with the views expressed in our cited decision. Consequently, and since the protester has not taken issue with the revised room-cleaning provision, we consider this part of the protest to be academic, and we therefore dismiss it.

Milton J. Aroslan
for Comptroller General
of the United States