

*r. Williams*



**Comptroller General  
of the United States**

**Washington, D.C. 20548**

# Decision

**Matter of:** Griffin Services Inc.

**File:** B-237268.2; B-237271.2; B-237272.2; B-237274.2

**Date:** June 14, 1990

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Karl Dix, Jr., Esq., Smith, Currie & Hancock, for the protester.  
Gary E. Wint, Esq., General Services Administration, for the agency.  
Paula A. Williams, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protests challenging cancellation of four related solicitations, each of which was to be awarded to a different offeror as part of a plan to decentralize certain building maintenance services, is sustained since the record does not provide a reasonable basis for cancellation of the four solicitations.

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## DECISION

Griffin Services Inc. protests the cancellation of request for proposals (RFP) Nos. GS-07P-89-JWC-0101, -0102, -0103, and -0104, issued by the General Services Administration (GSA) for operation and maintenance services at numerous buildings at the Denver Federal Center (DFC), and GSA's subsequent determination to perform those services in-house. Griffin contends it was improper for GSA to cancel the solicitations after receipt of proposals only from Griffin and then decide to do the work itself, because canceling the solicitations was based on an improper finding that Griffin lacked the capacity to perform the work which should have been referred to the Small Business Administration (SBA) under the certificate of competency (COC) procedures. Griffin seeks award of "the contract" as the sole responsible offeror under all four solicitations, or resolicitation of the requirements and payment of its proposal preparation costs.

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We sustain the protests.

GSA issued the four solicitations, which for purposes of convenience we will refer to as RFP Nos. 1, 2, 3, and 4, on September 11, 1989, for maintenance management, operation, maintenance, and repair of the mechanical, electrical, plumbing, and utility systems at the DFC. In response to an agency-level protest, GSA amended each solicitation to restrict the procurements to small businesses only. By amendment No. 02 to each solicitation, issued on October 23, GSA incorporated a provision which stated that the agency would award only one contract to any one contractor resulting from these four solicitations and it therefore requested that each offeror indicate in order of preference the solicitation it prefers to be awarded in case the offeror was deemed to be the successful offeror on more than one solicitation.

The RFPs were sent to 141 potential offerors. Griffin was the sole offeror responding to the four solicitations by the November 7 due date. Griffin indicated its award preference was RFP Nos. 1, 2, 3, and 4, in that order. Griffin protested to our Office after it was notified that the four solicitations were canceled.

Griffin asserts that by canceling the solicitations, GSA made an unwarranted de facto determination that Griffin could not perform the required services. Griffin contends that since GSA did not refer its negative determination of responsibility to the SBA for possible issuance of a COC, as it is required to do, GSA's cancellation of the solicitations was unreasonable and improper. The protester further contends that GSA "camouflaged" its nonresponsibility determination by deciding to perform the services in-house. Under these circumstances, the protester argues, GSA should be precluded from justifying the cancellation of the solicitations simply by later deciding to perform the services itself.

Under FAR § 15.608(b)(4), a procuring agency may reject all proposals received in response to an RFP if cancellation is "clearly in the Government's interest." The determination that cancellation is clearly in the interest of the government must have a reasonable basis. See G.K.S., Inc., 68 Comp. Gen. 589 (1989), 89-2 CPD ¶ 117. As a general matter, we do not review agency decisions to cancel solicitations because the work is to be performed in-house, since these decisions are matters of executive branch policy. E.g., RAI, Inc., B-231889, July 13, 1988, 88-2 CPD ¶ 48 (allegation that decision to perform services in-house failed to comply with Office of Management and Budget

Circular No. A-76). Where, as here, the protester argues that the agency's rationale is a pretext--that the agency's actual motivation was to avoid awarding it a contract, we will examine the reasonableness of the agency's justification. H. David Feltoon, B-232418, Jan. 5, 1989, 89-1 CPD ¶ 10; Judith White, B-233853.2, June 9, 1989, 89-1 CPD ¶ 544.

The contracting officer's determination to cancel the solicitation, dated December 27, 1989, provided as follows:

"Only one firm submitted a proposal in response to the solicitation. Since receipt of this proposal, it has been determined that due to the magnitude of the services required under the subject solicitations, and the performance problems encountered with the present contractor attempting to perform these same services including the ultimate price of services paid by the Government under the present contract, performance of the services by in-house Government employees is in the best interest of the Government."

In an information memorandum to the GSA Commissioner of the Public Buildings Service (PBS) dated January 12, 1990, the Assistant Regional Administrator for the PBS explained that if GSA had received "adequate competition" it would have awarded contracts under the protested solicitation, and that the work would be performed in-house until a cost comparison analysis under OMB Circular No. A-76 could be performed. The Assistant Regional Administrator stated:

"As previously indicated, we received sufficient responses on three contracts to be in a position to make awards; however, on the remaining contracts [those protested here], we received inadequate competition to make awards."

We conclude from this record that GSA did not have a reasonable basis to cancel the solicitations. GSA contends that it received insufficient competition for award of the four contracts. Under the ground rules established in the solicitation, the protester could only receive one award out of the four solicitations and, consequently, GSA did have insufficient competition to award all four. However, we find no basis for its failure to award one to Griffin. Griffin's offers were not found unacceptable or unreasonably priced.

The contracting officer's citation of the "magnitude" of the services required, performance problems with the current contractor and the cost of that contract do not in themselves provide a basis to reject Griffin's offers. Griffin was not found nonresponsible--incapable of performing any of the services, which had been set-aside for performance by small business. Finally, the January 12, 1990, memorandum to the Commissioner of the PBS discusses the importance of maintaining an in-house core capability to provide services in the event of contractor default. This necessary core capability apparently does not encompass all four solicitations at issue here, since they would have been awarded if more offers had been received and the work is scheduled for a cost comparison to determine whether to contract out again for the services in the future. In addition, the four solicitations describe almost the same services for different collections of buildings. GSA offered no explanation of how it determined that it needed to perform services in all of the buildings in order to develop a core in-house capability. In sum, the record does not provide a reasonable basis for GSA's cancellation of all four solicitations.

The appropriate remedy where an agency improperly cancels a solicitation is for the agency to reinstate the canceled solicitation and conduct discussions. GSA has returned Griffin's proposals. We recommend that GSA reinstate the solicitations, obtain Griffin's proposals, and proceed with the evaluation. Griffin is not entitled to its claimed proposal preparation costs since it will have an opportunity to compete for a contract. However, Griffin is entitled to reimbursement of its costs of filing and pursuing the protests. 4 C.F.R. § 21.6(a)(1) (1990).

The protests are sustained.

*for*   
Comptroller General  
of the United States