

DECISION



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

60547

FILE: B-185745

DATE: February 20, 1976

MATTER OF: Three D Enterprises, Inc.

98577

DIGEST:

1. Because negotiated janitorial services contract which is subject of protest has been awarded and because negotiating rationale employed by GSA was same as was cited in protest involved in National Building Maintenance, Inc., 55 Comp. Gen. _____, B-184186, February 3, 1976, no useful purpose in terms of remedy would be served by further considering subject protest. However, as recommended in Nationwide case, options under contract should not be exercised.
2. Unless RFP contains specific evaluation factor giving preference to minority-owned concerns, it would be improper to give concern higher evaluation score because of its minority status.

On January 16, 1976, a protest was received from Three D Enterprises, Inc. (Three D), alleging that the General Services Administration (GSA) had improperly awarded a contract to another concern under request for proposals (RFP) No. GS-05BB-41842. The RFP had been issued for janitorial services at the Federal Building and Courthouse, Dayton, Ohio.

Three D's protest raised specific complaints about the way GSA evaluated the "operation plan" and "cost" factors of the RFP. Additionally, Three D alleged that its status as a minority-owned firm was not given proper recognition by GSA in selecting the successful contractor.

Recently, in a protest involving a similar 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., 55 Comp. Gen. _____, B-184186, February 3, 1976. Nevertheless, we recognized the the difficulties that GSA has been experiencing in administering

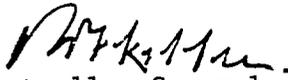
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janitorial services contracts. Because of these difficulties, it was our opinion that GSA should be given time to study alternative solutions within the context of formal advertising. For that reason, we did not disturb the award but recommended that 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.

Because the negotiated janitorial services contract which is the subject of Three D's protest has been awarded and because the negotiating rationale employed by GSA here is the same as was cited in the Nationwide decision, supra, no useful purpose in terms of remedy would be served by further considering Three D's protest relative to evaluation of the "operation plan" and "cost" factors. This is so because if Three D'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 was recognized in the cited case, no options under the subject contract should be exercised.

Concerning Three D's complaint that its minority business status was not given proper recognition by GSA in selecting the successful contractor, we observe, for Three D's information, that unless an RFP (unlike the case here) contains a specific evaluation factor giving preference to minority-owned concerns it would be improper to give a minority concern a higher evaluation score because of its minority status. See Phelps Protection Systems, Inc., B-181148, November 7, 1974, 74-2 CPD 244.

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


Deputy Comptroller General
of the United States