



**Comptroller General  
of the United States**

Washington, D.C. 20548

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## Decision

**Matter of:** Thorpe Building Services, Inc.

**File:** B-240831

**Date:** December 17, 1990

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William B. Thorpe for the protester.  
A. R. Dattolo, Esq., General Services Administration, for the agency.  
John Formica, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Agency has a compelling reason to cancel solicitation for janitorial services, issued in anticipation of terminating incumbent contractor, where cancellation is based on an agency's decision not to terminate incumbent contractor because the contractor cured deficiencies in its performance.
2. Claim for bid preparation costs based on an allegation that the agency issued a solicitation for janitorial services under which it had "little or no intent to contract" is denied where agency acted properly in issuing solicitation to ensure the continuous provision of such services in the event the incumbent contractor failed to cure the deficiencies in its performance.

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### DECISION

Thorpe Building Services, Inc. protests the cancellation of invitation for bids (IFB) No. GS-04P-90-EWC-0051, issued by the General Services Administration (GSA) for janitorial services for the GSA Distribution Facility in Palmetto, Georgia. Thorpe argues that the agency did not have a proper ground for canceling the solicitation and that it should have received the award as the low responsive bidder. In the alternative, the protester claims that it should be reimbursed for its costs.

We deny the protest and the claim.

The IFB was issued for the janitorial services on April 9, 1990. According to the record, at the time the IFB was issued the janitorial services for the facility were being performed

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by the firm which had leased the premises to the agency. Since the agency was dissatisfied with both the quality of the services and their cost, the agency contemplated terminating the portion of the lease under which the janitorial services were performed and decided to issue the subject IFB to obtain another contractor for the janitorial services. Six bids were received in response to the IFB, and Thorpe's bid of \$459,276.96 per year for the services was considered the low responsive bid.

Subsequently, the agency reports that the lessor cured the deficiencies in its performance and that Thorpe's bid exceeded the amount being paid to the lessor for the janitorial services under the lease by approximately \$100,000 per year. The agency therefore concluded that because the lessor was now performing the janitorial services in a satisfactory manner there was no longer a need for a new janitorial services contract. The agency thus canceled the solicitation.

Thorpe argues that the cancellation of the solicitation on the basis that the janitorial services are no longer needed was in error. The protester contends that the agency still "needs" the services, as evidenced by the lessor's continued provision of them.

Because of the potential adverse impact on the competitive bidding system of cancellation after bid prices have been exposed, a contracting officer must have a compelling reason to cancel an IFB after bid opening. Federal Acquisition Regulation (FAR) § 14.404-1(a)(1); Pneumatrek, Inc., B-225136, Feb. 24, 1987, 87-1 CPD ¶ 202. The contracting officer has broad discretion to decide whether there is a compelling reason to cancel, and our review is to determine whether the exercise of that discretion is reasonable. Pneumatrek, Inc., B-225136, supra.

Cancellation of a solicitation is proper where the contracting agency no longer requires the supplies or services encompassed by the solicitation. FAR § 14.404-1(c)(3); Pneumatrek, Inc., B-225136, supra. A determination as to whether an agency requires such supplies or services reflects whether it needs to make award under a specific solicitation to fulfill a requirement. It does not, as the protester contends, involve a determination as to whether the agency requires the services in a general sense.

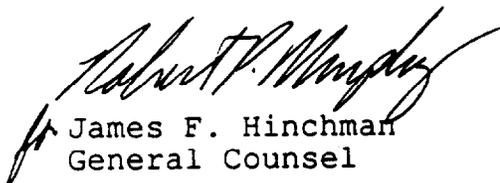
Here, the agency's requirement for janitorial services for the facility is being met by the lessor under an existing agreement. As such, the agency simply does not need the protester's services. Thus, we find that the agency reasonably determined that a compelling reason existed to cancel the IFB.

The protester argues in the alternative that it was improper in the first instance for the agency to issue the solicitation prior to the termination of the janitorial services portion of the lease. The protester maintains that it is entitled to bid preparation costs and anticipated profits because it expended considerable time and expense in preparing a bid in response to a solicitation under which GSA had "little or no intent to contract."

The agency explains that the continuous provision of janitorial services is necessary to maintain a safe working environment for the facility personnel and therefore it issued the solicitation in order to ensure that these vital services would not be interrupted in the event the lessor failed to cure the deficiencies in its performance and was terminated.

In order to permit recovery of bid preparation costs, we must find that there exists a violation of law or regulation. Bid Protest Regulations, 4 C.F.R. § 21.6(d)(2) (1990); WBM Maintenance, Inc., B-238049, Apr. 20, 1990, 90-1 CPD ¶ 405. Here, we find no violation of law or regulation. Rather, it appears that the agency issued the solicitation in good faith in anticipation of needing a contractor to replace the existing janitorial services provider. The fact that the situation changed, obviating the need for an award under the IFB, does not establish that GSA acted improperly. Therefore, there is no basis for allowing the protester its costs.<sup>1/</sup>

The protest and claim for costs are denied.

  
James F. Hinchman  
General Counsel

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<sup>1/</sup> The protester also claims anticipated profits. Anticipated profits may not be recovered, even in the event of wrongful government action. Introl Corp., 64 Comp. Gen. 672 (1985), 85-2 CPD ¶ 35.