**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Sprint Communications Company, L.P.

File: B-271495

Date: April 26, 1996

David S. Cohen, Esq., Carrie B. Mann, Esq., and G. Brent Connor, Esq., Cohen & White, for the protester.
Thomas C. Papson, Esq., and David Kasanow, Esq., McKenna & Cuneo, for AT&T Communications, Inc., an intervenor.
George N. Barclay, Esq., and Michael J. Ettner, Esq., General Services Administration, for the agency.
David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest against reallocation of telephone service requirements between FTS 2000 contractors is dismissed where reallocation process was provided for under the FTS 2000 contracts and is a matter of contract administration; General Accounting Office generally does not exercise jurisdiction to review matters of contract administration, which are within the discretion of the contracting agency and for review by a cognizant board of contract appeals or the Court of Federal Claims.

DECISION

Sprint Communications Company, L.P. protests the General Services Administration's (GSA) determination to reallocate 40 percent of Sprint's share of the FTS 2000 contract requirements to AT&T in the Year 7 Price Redetermination/Service Reallocation (PR/SR). Sprint challenges the conduct of the PR/SR process and the evaluation of proposals.

We dismiss the protest.

In 1987, GSA issued solicitation No. KET-JW-87-02, requesting proposals to furnish long-distance telecommunications services to federal agencies. As amended, the solicitation contemplated the award of two 10-year, indefinite delivery/indefinite quantity contracts--one for Network A for 60 percent of the requirement (with a guaranteed minimum of $270 million) and another for Network B for 40 percent (with a guaranteed minimum of $180 million). The solicitation divided the 10-year contract term into three periods--an initial 4-year period, followed by two successive 3-year periods--and provided GSA with the right to request revised prices and

reallocate service requirements between the contractors prior to commencement of the second and third contract periods. The solicitation stated that proposals for price redetermination--repricing--would be requested during the fourth and seventh contract years; GSA would select service requirements for potential reallocation using a target of 40 percent of each network's estimated revenue over the remaining life of the contract. The service requirements selected for reallocation were to be awarded based on consideration of two factors of equal weight: (1) cost and (2) quality of service during the preceding contract phase and effectiveness of the most recent transition.

In December 1988, GSA awarded the Network A contract (for 60 percent of the requirement) to AT&T and the Network B contract (for 40) percent to Sprint. The Year 4 PR/SR (undertaken in 1992) resulted in a determination to maintain the 60/40 percent split.

On April 4, 1995, GSA issued to AT&T and Sprint a set of instructions--the "Year 7 Price Redetermination/Service Reallocation Document"--for the conduct of the Year 7 PR/SR. Contractors were required to submit technical and cost proposals. The instructions listed two evaluation factors of equal weight--technical and cost (including service/feature prices and transition costs). Based on the results of the evaluation, GSA was to select one of three scenarios: (1) the Network A contractor (AT&T) wins 40 percent of the Network B's (Sprint) target revenue split, (2) the Network B contractor wins 40 percent of the Network A's target revenue split, or (3) no change in the 60/40 percent target revenue split.

On June 30 and July 10, Sprint and AT&T, respectively, filed protests with the General Services Board of Contract Appeals (GSBCA), arguing that the conduct of the PR/SR was not in accordance with the Competition in Contracting Act of 1984, the Federal Acquisition Regulation and the PR/SR instructions. In particular, Sprint argued that GSA had added disproportionate transition costs to Sprint's evaluated cost, used understated traffic volumes for Sprint, used an irrational "average pricing" approach to compute the evaluated cost, and improperly deleted certain Department of Defense traffic from the PR/SR process.

On July 30, GSBCA dismissed the protests on the basis that the PR/SR process was a matter of contract administration, not contract formation, and therefore was not protestable under GSBCA's bid protest jurisdiction as set forth in 40 U.S.C. § 759(f) (1994). Sprint Communications Co., L.P., GSBCA No. 13,323-P, 13,333-P, 95-2 BCA ¶ 27,811, 1995 BPD ¶ 144. In reaching its decision in this regard, GSBCA rejected Sprint's and AT&T's argument that the PR/SR process was analogous to limited competitions which are conducted between parallel development/production contractors to determine which contractor's option should be exercised and which

our Office has found to be subject to bid protest review. Mine Safety Appliances Co., 69 Comp. Gen. 562 (1990), 90-2 CPD ¶ 11; Westinghouse Elec. Corp., 57 Comp. Gen. 328 (1978), 78-1 CPD ¶ 181; Honeywell, Inc., B-244555, Oct. 29, 1991, 91-2 CPD ¶ 390. The GSBCA distinguished such limited competitions as involving additional work beyond that expressly awarded at the time the original contracts were entered into. In contrast, according to the GSBCA, GSA was

> "at most, reshuffling existing requirements already awarded within the initial ten-year span of the FTS 2000 contracts. . . . . [N]o new procurement action will occur. The PR/SR will do nothing more than reallocate the Government's purchases of the same requirements already subjected to full and open competition under the original solicitation, as the FTS 2000 contracts fully entitle it to do. As such, the contemplated action is more properly categorized as a matter of contract administration, rather than formation and does not constitute a protestable event. GSA's choice of procurement-like procedures to determine reallocation of work between existing contractors does not transform the reallocation into a 'procurement.' To the extent that GSA's PR/SR process is mishandled, the remedy is provided under the Contract Disputes Act."

Sprint Communications Co., L.P., supra. On August 22, Sprint's and AT&T's motions for reconsideration were denied by the GSBCA. Sprint Communications Co., L.P., GSBCA No. 13,323-P-R, 13,333-P-R, 95-2 BCA ¶ 27,898, 1995 BPD ¶ 170. On September 29, Sprint's and AT&T's motions for full board consideration likewise were denied. Sprint Communications Co., L.P., GSBCA No. 13323-P-R, 13333-P-R, 96-1 BCA ¶ 27,987, 1995 BPD ¶ 191. AT&T appealed the GSBCA's decisions to the Court of Appeals for the Federal Circuit, but subsequently withdrew the appeal.

In November, at the conclusion of discussions, Sprint and AT&T made their final submissions to the agency under the PR/SR process. On December 1, GSA announced that it would reallocate 40 percent of Sprint's target revenue--specifically, all of the requirements of the Department of the Treasury--to AT&T. On December 22, following a December 12 debriefing, Sprint wrote to GSA to complain that the Year 7 PR/SR process was "flawed." According to Sprint, the agency had (1) improperly publicly disclosed the relative standing of the contractors after submission of the first revised price proposals and prior to submission of the second (final) revised price proposals, (2) unreasonably assumed in calculating costs that the Treasury requirements would immediately transition--"flash cut"--to AT&T on the December 7, 1995 effective date for the Year 7 PR/SR, (3) improperly accepted AT&T's offer of a transition cost fund, and (4) improperly accepted

AT&T's unbalanced offer. When GSA, by letter of March 7, 1996, found Sprint's arguments to be without merit, Sprint filed this protest with our Office raising the same arguments raised in its December 22 letter to GSA.

GSA and AT&T argue that Sprint's protest should be dismissed on the basis that it raises a matter of contract administration over which our Office does not exercise jurisdiction.

Our Office considers bid protests challenging the award or proposed award of contracts. 31 U.S.C. §§ 3551, 3552. Therefore, we generally do not exercise jurisdiction to review matters of contract administration, which are within the discretion of the contracting agency and for review by a cognizant board of contract appeals or the Court of Federal Claims. See Bid Protest Regulations, section 21.5(a), 60 Fed. Reg. 40,737, 40,742 (Aug. 10, 1995) (to be codified at 4 C.F.R. § 21.5(a)); Specialty Plastics Prods., Inc., B-237545, Feb. 26, 1990, 90-1 CPD ¶ 228. The few exceptions to this rule include such situations as where it is alleged that a contract modification improperly exceeds the scope of the contract and therefore should have been the subject of a new procurement, CAD Language Sys., Inc., 68 Comp. Gen. 376 (1989), 89-1 CPD ¶ 364; where a protest alleges that the exercise of a contractor's option is contrary to applicable regulations, Bristol Elecs., Inc., B-193591, June 7, 1979, 79-1 CPD ¶ 403; and where an agency's basis for contract termination is that the contract was improperly awarded. Condotels, Inc. et al., B-225791; B-225791.2, June 30, 1987, 87-1 CPD ¶ 644.

We conclude, as did the Board, that the FTS 2000 reallocation raises a matter of contract administration that is not for consideration under our bid protest jurisdiction. The limited competition conducted between Sprint and AT&T is not only provided for under their contracts with GSA, but also is not intended to result in the additional procurement of anything. It is, as the Board held, simply a tool for determining whether requirements previously awarded to the two contractors should be reallocated between them. Thus, we are in agreement with the Board's view that our prior decisions dealing with limited competitions conducted between parallel development/production contractors pursuant to provisions of their contracts to determine which contractor should be selected for the next phase of the development/production effort are distinguishable as they involved additional, follow-up work--here no additional work is contemplated.

In short, since the PR/SR was conducted pursuant to the terms of the FTS contracts and only reallocates the requirements already subjected to full and open competition under the original solicitation, the reallocation is properly categorized

as a matter of contract administration not reviewable under our bid protest jurisdiction.

The protest is dismissed.

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