



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Department of State--Reconsideration

**File:** B-244633.2

**Date:** April 2, 1992

Paula J. Barton, Esq., Department of State, for the agency. Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Request for reconsideration of decision asserting jurisdiction over protest of award under tender of service for transportation of motor vehicles is denied, since the Competition in Contracting Act's broad authority extends to protests of "procurements" and encompasses acquisition of transportation services.

### DECISION

The Department of State requests reconsideration of our decision in Humco, Inc., B-244633, Nov. 6, 1991, 91-2 CPD ¶ 431, which denied a protest of an award under a tender of service for the transportation of motor vehicles via common carrier. The agency, essentially reiterating arguments we considered initially, asserts that our Office wrongly asserted jurisdiction over this protest.

We deny the request for reconsideration.

The protest involved the agency's solicitation of rate tenders for transporting vehicles over different routes in the continental United States. Under the terms of tender of service No. DOS-13, the offeror submitting the lowest rate for a route would be awarded that respective route. Award of a route meant the offeror would be listed as the first carrier on the agency's published rate/route schedule, from which the Despatch Agency of the United States would assign government bills of lading (GBL)<sup>1</sup> for individual vehicle movements.

<sup>1</sup>The GBL is the contract between the agency and the carrier.

We assumed jurisdiction over the protest pursuant to the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3552 (1988), which authorizes our Office to decide protests concerning alleged violations of procurement statutes or regulations. We found that this solicitation for services was issued under authority of 49 U.S.C. § 10721 (1988), which we consider to be a procurement statute.

The agency asserts that 49 U.S.C. § 10721 is not a procurement statute because, although it authorizes the government to solicit for rates below published tariffs, it does not require the government to solicit for such rates, nor does it require the government to contract with a carrier offering any particular rates. The agency alleges that we have jurisdiction only over protests that concern either a bid or proposal for a contract or an award of a contract. Since 49 U.S.C. § 10721 does not require award of a contract, and since the award of a route is not a contract and it does not necessarily result in a contract, the agency asserts that we do not have jurisdiction.

As stated in our prior decision, section 10721 authorizes the government to obtain transportation services from common carriers at rates below those in their published tariffs. We think that the term "procurement" as used in CICA is broad enough to include the process of acquiring transportation services by the government.<sup>2</sup> Congress enacted the protest provisions of CICA for the purpose of providing inexpensive and expeditious resolutions of protests on a governmentwide basis, and neither CICA nor its legislative history indicates an intent to limit the application of that statute to exclude procurements of transportation services. See generally Computer Support Sys., Inc., 69 Comp. Gen. 644 (1990), 90-2 CPD ¶ 94. Although we agree with the agency that transportation services, such as those here, are generally exempt from the Federal Acquisition Regulation (FAR), it is apparent that they are services procured by and

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<sup>2</sup>Procurement is defined in the Office of Federal Procurement Policy (OFPP) Act as "includ[ing] all stages of the process of acquiring property or service, beginning with the process for determining a need for property or services and ending with contract completion and closeout." 41 U.S.C. § 403(2) (1988).

provided to the government, and thus subject to our jurisdiction.<sup>3</sup> See Georgetown R.R., Inc. et al., 70 Comp. Gen. 70 (1990), 90-2 CPD ¶ 383.

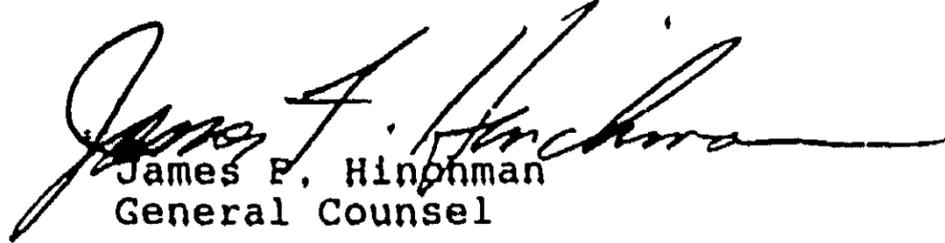
The agency asserts that we have improperly expanded our jurisdiction beyond the solicitation of transportation services through a formal solicitation and source selection leading to the award of a requirements contract, which was the only previous situation where we have asserted bid protest jurisdiction over the acquisition of transportation services under section 10721. See Federal Transport, Inc.--Recon., 68 Comp. Gen. 451 (1989), 89-1 CPD ¶ 542; Georgetown R.R., Inc. et al., *supra*. However, as indicated in our previous decision, our authority to consider protests does not rest on a contract being created by the actual award under the solicitation. CICA authorizes our Office to consider protests of objections to solicitations for bids or proposals for proposed contracts, or objections to proposed awards of proposed contracts. 31 U.S.C. § 3551. In this case, the record shows the awardee under the solicitation for services, which set forth the criteria for source selection, will be first in line under agency procedures to receive a GBL, *i.e.*, the contract award, for the shipment of vehicles.<sup>4</sup> Therefore, our Office may properly consider objections to an "award" under this tender of service, since the awards under DOS-13 will ordinarily result in the agency

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<sup>3</sup>As discussed in our prior decision, the applicability of the FAR is not coincidental with whether our Office has bid protest jurisdiction. See Computer Support Sys., Inc., *supra*, and cases cited therein. We disagree with the agency that there is no standard against which we may judge this procurement protest, or that we could not recommend any remedy. For example, if we had found that the solicitation was prejudicially misleading, that offers could not be evaluated on an equal basis to determine the successful offeror, or that the agency had not evaluated tenders in accordance with the solicitation, we may have recommended that another offeror receive the "award" or that new tenders be solicited for the requirement.

<sup>4</sup>We compared the award under DOS-13 to an award of a basic ordering agreement (BOA), over which we also have asserted bid protest jurisdiction. See, *e.g.*, A&A Realty, Inc., B-222139, June 20, 1986, 86-1 CPD ¶ 575. A BOA award is also not a contract in itself, but is an understanding between the government and a vendor that the government has an uncertain future need for supplies or services and the government may, but is not obligated to, award contracts to the vendor under the terms of the BOA as need arises. FAR § 16.703. This is analogous to the award under DOS-13.

entering into contracts with the awardee during the period covered by the tender of service.<sup>5</sup>

  
James P. Hinchman  
General Counsel

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<sup>5</sup>The present situation is different from the exemption from our review role that we have recognized for protests of spot movements, i.e., one-time shipments of a commodity on one bill of lading and which require special equipment or services not otherwise provided by tariff or special rate tenders. Spot movement acquisitions fall outside the structure of the formal procurement process and agencies may properly employ their own informal procedures to accomplish such one-time shipments. See, e.g., Moody Bros. of Jacksonville, Inc.; Troika Int'l Ltd., 69 Comp. Gen. 524 (1990), 90-1 CPD ¶ 550; Stapp Towing Co., Inc., B-240087, July 6, 1990, 90-2 CPD ¶ 19. In this case, the award will encompass a variety of GBL orders for the movement of vehicles.