



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Analex Space Systems Inc.

File: B-260537

Date: March 22, 1995

DECISION

Analex Space Systems Inc. protests the National Aeronautics and Space Administration's (NASA) decision to cancel competitive solicitation No. 10-94-0045, a section 8(a) set-aside. Analex contends that it is improper for NASA to issue a competitive solicitation and then choose to perform the work in-house. Analex argues that NASA's actions directly contradict procurement regulations and the Office of Management & Budget Circular A-76 requirements.

We dismiss the protest.

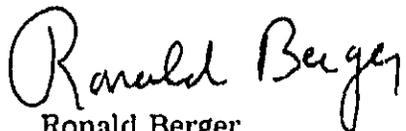
Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1988 and Supp. V 1993), authorizes the Small Business Administration (SBA) to enter into contracts with government agencies and to arrange for the performance of such contracts by letting subcontracts to socially and economically disadvantaged small business concerns.

The Circular establishes Executive Branch policy with respect to determining whether commercial activities should be performed in-house or through contracting with the private sector. See Federal Acquisition Regulation subpart 7.3. Pursuant to the Circular, the government may solicit offers from the private sector for the purpose of comparing the cost of private sector performance with the costs of government performance. When an agency uses the competitive procurement system for cost comparison purposes, we will review a protester's complaint that the procedures applicable to the solicitation were not followed. Contract Servs. Co., Inc., 65 Comp. Gen. 41 (1985), 85-2 CPD ¶ 472; Nero and Assocs., Inc., B-218166, June 11, 1985, 85-1 CPD ¶ 666. As a general rule, however, the provisions of the Circular, as well as an executive agency's decision regarding whether or not

to determine if it should contract for work or perform the work in-house, involve matters of executive branch policy, which are not subject to our bid protest review. See Crown Laundry & Dry Cleaning, Inc., B-194505, July 18, 1979, 79-2 CPD ¶ 38.

When an agency determines that a solicitation no longer reflects its minimum needs, as in this case, there is a reasonable basis for cancellation. See Nomura Enter. Inc., B-251899.2, May 6, 1993, 93-1 CPD ¶ 490. In the absence of a solicitation provision calling for a cost comparison under the Circular, we do not review an agency decision to cancel and perform the work in-house because that decision, as stated above, is a matter of executive branch policy and is outside our bid protest jurisdiction. See Digicon Corp., B-256620, July 7, 1994, 94-2 CPD ¶ 12.

The protest is dismissed.

A handwritten signature in cursive script that reads "Ronald Berger".

Ronald Berger
Associate General Counsel