Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Pemco Aeroplex, Inc., Aero Corporation

File: B-275587.9; B-275587.10; B-275587.11; B-275587.12

Date: June 29, 1998

Kevin P. Connelly, Esq., Seyfarth, Shaw, Fairweather & Geraldson, for Pemco Aeroplex, Inc.; and Thomas G. Jeter, Esq., Suzanne L. Karbarz, Esq., and Michael T. Janik, Esq., McKenna & Cuneo, for Aero Corporation, the protesters.
John E. Lariccia, Esq., Gregory H. Petkoff, Esq., and Brad Adams, Esq., Department of the Air Force, for the agency.
John Van Schaik, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. The Competition in Contracting Act of 1984 (CICA) provides that the General Accounting Office (GAO) has protest jurisdiction to review objections to cancellations of solicitations and that GAO shall decide protests "concerning an alleged violation of a procurement statute or regulation." Since 10 U.S.C. § 2462 (1994) mandates that the Department of Defense (DOD) procure goods or services under specified circumstances, rather than supply them from an in-house source, it is a procurement statute. Under the circumstances, where a DOD agency issues a solicitation, receives and evaluates bids or proposals, and awards a contract, and then cancels the solicitation to take the work in-house, CICA grants GAO the authority to consider a protest that the agency did not comply with 10 U.S.C. § 2462.

2. In a negotiated procurement, the contracting officer is required to have a reasonable basis to cancel a solicitation. There could be no reasonable basis for cancelling a solicitation in order to bring work in-house if doing so violates 10 U.S.C. § 2462, which is a congressional mandate to allow private companies to provide goods and services to DOD unless the government can provide those goods and services at a lower cost. Thus, although DOD agencies historically have had broad discretion to manage resources and make decisions as to whether to contract out or perform work in-house, when 10 U.S.C. § 2462 applies, those decisions are required to be based on a determination of which source can provide a supply or service at the lower cost.

3. Although 10 U.S.C. § 2462 generally requires that decisions of DOD agencies as to whether to perform work in-house or to contract out are to be based upon a determination of which source can perform the work at the lower cost, section 2462 is subject to the proviso: "Except as otherwise provided by law." Where a DOD agency reasonably relies on the need to meet the requirements of 10 U.S.C.A. § 2466(a) (West Supp. 1998)--which limits the funds which DOD agencies can use to contract out for depot-level maintenance and repair work--as a basis for cancelling a solicitation, this statutory direction means that the requirements of section 2462 do not apply.

DECISION

Pemco Aeroplex, Inc. and Aero Corporation protest the cancellation of request for proposals (RFP) No. F09603-95-R-13032 issued by the Air Force for programmed depot-level maintenance (PDM) of the C-130 aircraft. Pemco and Aero also challenge the decision of the Air Force to perform the work covered by the RFP in-house at Warner Robins Air Logistics Center and Ogden Air Logistics Center.

We deny the protests.

BACKGROUND

The RFP was issued in July 1996 and included C-130 PDM work in Europe, the continental United States, and the Pacific. After a contract for the continental United States work was awarded to Aero on April 15, 1997, Pemco protested the evaluation of proposals and the award to Aero. In response to that protest, the Air Force determined that the evaluation of the offerors' past performance appeared to be inadequate. As a result, the Air Force announced that it would revise the solicitation, conduct discussions, solicit best and final offers, reevaluate proposals, and make a new selection decision. On May 19, 1997, we dismissed Pemco's protest, since the Air Force's corrective action rendered the protest academic.

The Air Force, however, did not complete this corrective action. The Air Force's Principal Deputy Assistant Secretary (Acquisition and Management) directed the agency to take the announced corrective action but also stated: "[I]n view of emerging changes in depot workloads[,] re-evaluate the C-130 PDM requirement." May 19, 1997 Letter at 1. After determining that the corrective action could not be completed until October 1997, the Air Force terminated Aero's contract and decided that, as a temporary measure, Warner Robins would "organically" perform the C-130 PDM workload. On June 24, the Air Force notified offerors that it was "reevaluating the [continental United States] and [European] C-130 PDM effort to determine the

best approach to ensure readiness and sustainability of the C-130 weapon system." June 24, 1997 Memorandum.[1]

Finally, on March 3, 1998, the Air Force announced its plans for the C-130 work. In a memorandum of that date, the contracting officer informed the offerors that she was cancelling the RFP. That memorandum stated:

> As a result of a comprehensive business case analysis, using the same terms, conditions and work statement in the C-130 PDM [RFP], the Air Force has concluded that splitting the [continental United States] and [European] C-130 PDM workload between the Warner Robins Air Logistics Center and the Ogden Air Logistics Center is the most cost effective means of satisfying this requirement.

March 3, 1998 Memorandum.

PROTEST CONTENTIONS

In addition to arguing that the Air Force improperly failed to take the corrective action that it had promised, and that the Air Force's actions were calculated to punish Pemco for filing its earlier protest, Pemco and Aero argue that there is no reasonable basis for cancelling the RFP. According to the protesters, the initial reason offered by the Air Force for cancelling the RFP--that it is more cost effective to perform the work in-house--was based on a flawed business case analysis. In addition, the protesters argue that, in conducting its business case analysis and cancelling the RFP on the basis of that analysis, the Air Force violated 10 U.S.C. § 2462 (1994) and its implementing regulations, 32 C.F.R. § 169a (1997). Section 2462 of title 10, which is titled "Contracting for certain supplies and services required when cost is lower," states:

> (a) In general.--Except as otherwise provided by law, the Secretary of Defense shall procure each supply or service necessary for or beneficial to the accomplishment of the authorized functions of the Department of Defense (other than functions which the Secretary of Defense determines must be performed by military or Government personnel) from a source in the private sector if such a source can provide such supply or service to the Department at a cost that is

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[1]Pemco requested reconsideration of our dismissal of its earlier protest. Among other allegations, Pemco argued that we should reconsider its protest as a result of the Air Force's failure to promptly take the promised corrective action. Pemco also protested that the Air Force had improperly canceled the solicitation. In Pemco Aeroplex, Inc.--Recon. and Costs, B-275587.5, B-275587.6, Oct. 14, 1997, 97-2 CPD ¶ 102, we denied Pemco's reconsideration request and protest.

> lower (after including any cost differential required by law, Executive order, or regulation) than the cost at which the Department can provide the same supply or service.
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> (b) Realistic and fair cost comparisons.--For the purpose of determining whether to contract with a source in the private sector for the performance of a Department of Defense function on the basis of a comparison of the costs of procuring supplies or services from such a source with the costs of providing the same supplies or services by the Department of Defense, the Secretary of Defense shall ensure that all costs considered (including the costs of quality assurance, technical monitoring of the performance of such function, liability insurance, employee retirement and disability benefits, and all other overhead costs) are realistic and fair.

The protesters argue that the cost of contracting for the C-130 PDM work is lower than the cost of in-house performance and that the Air Force has not performed the "realistic and fair" cost comparison required by section 2462(b) in order for an agency to bring work in-house and to justify a decision to cancel the solicitation. The protesters argue that the business case analysis was a competition between public entities--Warner Robins and Ogden--and private contractors, including Aero and Pemco, and used the proposals submitted by those firms to determine whether C-130 PDM work could be performed more cost effectively in-house. The protesters argue that this competition violated the basic structures and protections of the procurement system and cannot form the basis for the agency's cancellation of the C-130 procurement.

Among other flaws, the protesters argue that they were not permitted to compete equally with the government since Warner Robins and Ogden were not required to meet the same minimum requirements, submit the same information, bid on the same level of work, and make the same certifications. The protesters also argue that the contractors proposed under a best value solicitation that emphasized technical merit over price, while the decision to perform the work in-house was based on low price. The protesters also argue that there was no meaningful analysis of the agency's conclusion that the government's estimate of the cost of in-house performance poses low technical and cost risk.

The protesters also argue that, although no discussions were conducted with Aero and Pemco while the agency was performing the business case analysis, the agency discussed the in-house cost estimate with Warner Robins and Ogden throughout the analysis. In addition, the protesters argue that the Air Force violated proscriptions on disclosure and use of a competitor's proprietary information and violated prohibitions against assisting a competitor--in this case Warner Robins and Ogden--in preparing its proposal. The protesters also argue that the Air Force failed to comply with the Department of Defense (DOD) cost comparison handbook, which

requires, among other things, that audits of public awards be conducted by the Defense Contract Audit Administration or a public accounting firm and that the government's proposals be based on generally accepted accounting principles.

Pemco and Aero also argue that the business case analysis performed by the agency was not realistic and fair, as required by section 2462(b), since it did not state the reasonable costs the agency could expect to incur to perform the PDM work. For example, according to the protesters, the Air Force double counted overhead cost "savings" associated with the increased volume of work and decreased excess capacity at the depots. They also argue that the agency unfairly added $9,556,958 to the contractor's proposal used in the cost comparison. In addition, the protesters argue that the Air Force cannot substantiate or support its cost estimate and that the analysis did not consider depreciation costs, income tax deductions, or cost of money, and also did not adequately consider the cost of a C-130 flight test hangar which the Air Force is constructing at Ogden.

ANALYSIS

As we explain in detail below, this Office has jurisdiction to consider whether the Air Force has a reasonable basis to cancel the RFP. We also have authority to consider whether the Air Force acted contrary to 10 U.S.C. § 2462 by deciding to cancel the procurement and perform the C-130 PDM work in-house, instead of contracting for it. Finally, on the merits of the protests, we conclude that the Air Force has a reasonable basis for cancelling the solicitation and that the agency's actions did not violate section 2462 or other applicable laws.

Jurisdiction

The Air Force's primary response to the protests is to argue that our Office has only limited jurisdiction over the issues raised. Specifically, the Air Force argues that our Office does not have jurisdiction to consider objections to the Air Force's management decision to perform the C-130 workload in-house, including the contention that the Air Force's action have violated 10 U.S.C. § 2462. We conclude that our Office has jurisdiction to consider these protests.

The Competition in Contracting Act of 1984 (CICA), 31 U.S.C.A. §§ 3551-56 (West Supp. 1998), which establishes the procurement protest system under which we review the contracting actions of federal agencies, limits our review to consideration of objections to solicitations, cancellations of solicitations, proposed awards, and awards of contracts for the procurement of property or services, and to terminations of such awards under limited circumstances. 31 U.S.C. § 3551(1) (1994). Thus, as the Air Force acknowledges, this Office has jurisdiction under CICA to review and decide objections to the cancellation of a solicitation.

CICA provides further that the Comptroller General shall decide protests "concerning an alleged violation of a procurement statute or regulation." 31 U.S.C.A. § 3552. Section 2462 of title 10 mandates that DOD agencies procure goods or services from a source in the private sector under specified circumstances, rather than from an agency source; therefore it is a procurement statute. Thus, where, as here, a DOD agency issues a solicitation, receives and evaluates bids or proposals, and awards a contract, and then cancels the solicitation to take the work in-house, CICA grants us the authority to consider a protest that the agency did not comply with the requirements of 10 U.S.C. § 2462.[2] In this case, therefore, we have jurisdiction to consider the propriety of the Air Force's decision to cancel the solicitation, including whether the effect of that decision--taking the C-130 PDM work in-house--is consistent with 10 U.S.C. § 2462.

Cancellation of the RFP

In a negotiated procurement, the contracting officer has broad authority to decide whether to cancel the solicitation; there need be only a reasonable basis for the cancellation. Cantu Servs., Inc., B-219998.9, B-233697, Mar. 27, 1989, 89-1 CPD ¶ 306 at 2. So long as there is a reasonable basis for doing so, an agency may cancel a solicitation no matter when the information precipitating the cancellation first surfaces or should have been known, even if the solicitation is not canceled until after proposals have been submitted and evaluated, Peterson-Nunez Joint Venture, B-258788, Feb. 13, 1995, 95-1 CPD ¶ 73 at 4; Nomura Enter. Inc., B-251889.2, May 6, 1993, 93-1 CPD ¶ 490 at 3-4; after contract award, see Atlantic Scientific & Tech. Corp., B-276334.2, Oct. 27, 1997, 97-2 CPD ¶ 116 at 2; or after the announcement of a different course of action in response to a GAO protest. Id. at 1-2. In addition, although we will consider a protester's contention that an agency's actual motivation in cancelling a solicitation is to avoid awarding a contract or is in response to the filing of a protest, see Griffin Servs. Inc., B-237268.2 et al., June 14, 1990, 90-1 CPD ¶ 558 at 3, recon. denied, B-237268.3 et al., Nov. 7, 1990, 90-2 CPD ¶ 369, if there is a reasonable basis for the cancellation, notwithstanding some element of personal animus, we will not object to the cancellation. Dr. Robert J. Telepak, B-247681, June 29, 1992, 92-2 CPD ¶ 4 at 4.

In a declaration prepared after the protests were filed, the Air Force's Principal Deputy Assistant Secretary (Acquisition and Management) explained that cancellation of the solicitation was in the best interests of the government for three reasons. First, as Pemco and Aero were informed on March 3, the Air Force maintains that performance of the work in-house will reduce the cost of depot-level maintenance. According to the Air Force, its business case analysis showed that

[2]We do not decide here whether we would have jurisdiction if the Air Force had simply issued the solicitation and canceled it without receiving and evaluating proposals and making award.

the cost of performing the C-130 PDM work in-house would result in savings in excess of $14 million over 3 years.

Second, the Air Force's Principal Deputy Assistant Secretary asserts that cancelling the RFP is justified because the Air Force no longer requires an overflow contractor to perform C-130 PDM work in the United States and Europe. According to her declaration, as a result of increased efficiency and dwindling workload, the Air Force's air logistics centers now have excess capacity that can be used to perform C-130 PDM work in-house.

Third, the Principal Deputy Assistant Secretary states that cancelling the solicitation and performing the C-130 PDM work in-house will facilitate the Air Force's compliance with limitations on contracting for depot-level maintenance and the best use of Air Force capacities and resources. The Air Force notes that Congress has enacted a complex statutory regime to govern DOD's utilization of its depot facilities. In particular, the Air Force notes that 10 U.S.C.A. § 2466(a) (West Supp. 1998) prohibits the Air Force from contracting out more than 50 percent of its depot-level maintenance and repair work. According to the Air Force, in-house performance of the C-130 PDM work will facilitate the Air Force's ability to operate within that statutory limit.

The Air Force argues that any one of these reasons is sufficient to justify cancellation of the solicitation. According to the Air Force, absent a demonstration that each of the three reasons lacks a reasonable basis, the cancellation must stand.

Pemco and Aero, on the other hand, argue that the Air Force could not have acted reasonably in cancelling the solicitation and bringing the work in-house if doing so violated 10 U.S.C. § 2462. Thus, according to the protesters, since 10 U.S.C. § 2462 requires that the decision as to whether to contract or to obtain a particular supply or service in-house is to be based on low cost, regardless of the merits of any other grounds for cancellation, if in-house performance of the C-130 PDM work is not the lower cost alternative, then section 2462 requires that the PDM work be contracted out.

Although the Air Force correctly points out that section 2462 does not address the cancellation of a solicitation, we agree with Pemco and Aero that there could be no reasonable basis for cancelling the solicitation in order to bring work in-house if doing so violates 10 U.S.C. § 2462, which on its face governs decisions concerning whether to contract or perform work in-house. As the protesters argue, section 2462(a) is a congressional mandate to allow private companies to provide goods and services to DOD unless the government can do so at a lower cost. Thus, although DOD agencies historically have had broad discretion to manage resources and make decisions as to whether to contract out or perform work in-house, when 10 U.S.C. § 2462 applies, those decisions are required to be based on a determination of which source can provide a supply or service at the lower cost. In other words,

when it applies, section 2462(a) does not permit an agency to base such a decision on noncost factors. See CC Distributors v. United States, 883 F.2d 146, 149, 154-156 (D.C. Cir. 1989) (holding that under 10 U.S.C. § 2462 and its implementing regulations, the decision about whether particular work should be performed in-house is not totally discretionary to agency officials); see also Diebold v. United States, 947 F.2d 787, 797 (6th Cir. 1991).[3]

Nonetheless, although we conclude that 10 U.S.C. § 2462 generally applies to DOD agency decisions as to whether to perform work in-house or to contract out, section 2462 is subject to the proviso: "Except as otherwise provided by law." We conclude that the proviso applies here--thereby negating the requirements of section 2462--since the Air Force determined--and the record supports that determination--that cancellation and performance of the work in-house were justified by the Air Force's need to comply with the limitation contained in 10 U.S.C.A. § 2466(a). That provision states:

> Percentage limitation.--Not more than 50 percent of the funds made available in a fiscal year to a military department or a Defense Agency for depot-level maintenance and repair workload may be used to contract for the performance by non-Federal Government personnel of such workload for the military department or the Defense Agency. Any such funds that are not used for such a contract shall be used for the performance of depot-level maintenance and repair workload by employees of the Department of Defense.

10 U.S.C.A. § 2466(a).

Pemco argues that the "[e]xcept as otherwise provided by law" proviso does not apply here. Pemco notes that 10 U.S.C. § 2462 was originally set forth in the

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[3]In the past we have declined to review DOD agency decisions concerning whether to perform work in-house or to contract out because we considered such decisions to be a matter of executive branch policy, Nomura Enter. Inc., supra, at 4; Daniels Mfg. Corp., B-253637, June 7, 1993, 93-1 CPD ¶ 439, except where the challenged agency had used the procurement system by issuing a solicitation for the purpose of conducting a cost comparison under Office of Management and Budget Circular A-76. Daniels Mfg. Corp., supra., W. B. & A., Inc., B-229926.3, May 19, 1988, 88-1 CPD ¶ 475 at 2. We are unaware of any previous instance in which a protester has raised 10 U.S.C. § 2462 as the basis for challenging an agency's decision to cancel a solicitation to bring work in-house.

National Defense Authorization Act for Fiscal Year 1987, Pub. L. No. 99-661, § 1223(a), 100 Stat. 3816, 3977 (1986).[4] Pemco also notes that a Senate report concerning 10 U.S.C. § 2462 states as follows:

> This provision will enable private industry to compete with the government sector wherever possible with the following exceptions: Firefighters (see applicable bill language) . . . and Core Logistics functions as determined by last year's authorization bill.

S. Rep. No. 99-331, at 277-278 (1986).

According to Pemco, this legislative history indicates that the "[e]xcept as otherwise provided by law" proviso of 10 U.S.C. § 2462 exempts only firefighters and core logistics functions. As Pemco notes, the solicited C-130 PDM work does not involve firefighters and is not a core logistics function. Thus, Pemco argues, since there is nothing in the legislative history that suggests the drafters of 10 U.S.C. § 2462 or 10 U.S.C.A. § 2466 believed that 10 U.S.C.A. § 2466 would fall within the "[e]xcept as otherwise provided by law" exception, this Office should not interpret section 2466 as an exception to section 2462.

We do not agree with Pemco's interpretation. When determining legislative intent, "the beginning point must be the language of the statute, and when a statute speaks with clarity to an issue judicial inquiry into the statute's meaning, in all but the most extraordinary circumstances, is finished." Estate of Cowart v. Nicklos Drilling Co., 505 U.S. 469, 475 (1992). While the Senate report contains language suggesting that the "[e]xcept as otherwise provided by law" proviso should be limited to two specific circumstances--firefighters and core logistics functions--those specific circumstances were not included in the enacted version of section 2462. Therefore, based on a plain reading of the statute, the exception is not limited to those circumstances. Chicago City-Wide College, B-228593, Feb. 29, 1988, 88-1 CPD ¶ 208 at 5. Under the circumstances, we conclude that the requirements of section 2466 can form the basis for an exception to the requirements of section 2462.

We now turn to the merits of the Air Force's determination that cancelling the solicitation is necessary to ensure compliance with 10 U.S.C.A. § 2466(a). The Air Force argues that the agency's Principal Deputy Assistant Secretary (Acquisition and Management) is cognizant of the overall depot environment and the statutory constraints imposed on the Air Force's management of its depots and that in managing the contracting activity ongoing at any one depot, she must consider current as well as future contract activity. According to the Air Force, the Principal Deputy Assistant Secretary determined that performance of the C-130 PDM workload in-house reflected an appropriate allocation of in-house and contractor

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[4]This section was originally set forth at 10 U.S.C. § 2304.

resources and would facilitate the Air Force's ability to operate within the 50-percent limit set by Congress in section 2466(a).

In response to this contention, the protesters argue that the decision of the Principal Deputy Assistant Secretary--that performance of the C-130 workload in-house would facilitate the Air Force's ability to operate within the limit of 10 U.S.C.A. § 2466(a)--has not been documented and there is no evidence in the record that the agency did any analysis to support that conclusion. In addition, the protesters argue that the Air Force's own documents show that the conversion of this work to in-house performance will not seriously affect the ability to meet the workload ratio requirement. The protesters argue that the C-130 PDM workload is worth approximately $27 million in fiscal year 1998 and note that the Air Force's documents show that bringing the C-130 PDM work in-house will effect a change of less than 1 percent in the proportion of the Air Force's depot-level work that is performed in-house.

In response to our request, the Air Force provided the following further explanation of its need to cancel in order to ensure compliance with 10 U.S.C.A. § 2466(a). According to the Air Force, due to section 2466(a), the agency's management of its depot system is tightly proscribed by law and, as a result, the agency must vigilantly manage its depot-level maintenance and repair workloads, carefully balancing the funds used for contracting and in-house performance. The Air Force notes that it must manage numerous contracting and organic actions that have or may have an effect on its ability to comply with the law. The Air Force notes that information provided to GAO in connection with a statutorily required GAO audit of DOD compliance with section 2466 shows that, for fiscal year 1998, the difference between the funds provided to public depots (approximately $3.112 billion) and private contractors (approximately $2.503 billion) is approximately $600 million. Thus, the Air Force points out that a shift of $300 million from the public depots to the private sector will result in the Air Force violating 10 U.S.C.A. § 2466(a).

In addition, the Air Force notes that each one of these decisions to contract out performance of depot-level maintenance and repair has an impact on and possibly precludes future decisions, because "headroom"--the amount of appropriated funds that the Air Force can use for contracting with the private sector for depot-level maintenance and repair without violating 10 U.S.C.A. § 2466--is a scarce resource. The Air Force explains that, when it makes a decision to contract out, the agency loses its ability to use that "spent" headroom to contract for future depot-level maintenance and repair, which may, in retrospect, be more suitable for contractor performance because the depots do not have required capabilities.

As an additional factor complicating these decisions, the Air Force notes that, while in 1997 Congress amended section 2466 to increase--from 40 percent to 50 percent--the percentage of depot-level maintenance and repair workload that could be contracted out, at the same time, Congress also statutorily defined "depot-level

maintenance and repair." In this respect, "depot-level maintenance and repair" is now statutorily defined to include, among other things, "interim contractor support or contractor logistics support." 10 U.S.C.A. § 2460 (West Supp. 1998). According to the Air Force, "interim contractor support or contractor logistics support" efforts have historically been performed by the private sector and the Air Force previously did not consider these efforts to be depot level maintenance and repair workload. As a result, the Air Force argues that these revisions significantly altered the agency's balance of workload for purposes of section 2466 and greatly increased the need for close scrutiny of all depot-level source of repair assignments and the difficulty of complying with the limitation on contracting depot-level workload.

Information provided to this Office in connection with the required audit of DOD compliance with section 2466(a) supports the Air Force's contention that it is close to the 50-percent limit for fiscal year 1998 and later years. In fact, that information shows that 45 percent of the funds available for depot-level maintenance and repair for fiscal year 1998 are to be spent on private sector contracts--placing the Air Force within 5 percent of the 50-percent limit of section 2466. While this situation could change, the agency is constrained by, among other factors, the fact that funds committed to contracts with the private sector are lost for the duration of those contracts.[5] In any event, since the Air Force is projected to be close to the statutory limit, we think the agency must be allowed a reasonable exercise of discretion in determining what steps to take to remain within that limit. Thus, in this case, since the Air Force is projected to be close to the 50-percent limit for fiscal year 1998, we conclude that it was a reasonable exercise of the agency's discretion to cancel the RFP in order to bring the C-130 PDM workload in-house.

Other Issues

The protesters, nonetheless, argue that cancelling the RFP cannot be justified by the need to comply with section 2466(a) since the Air Force is left violating the requirement of 10 U.S.C. § 2462 that the Air Force perform a realistic and fair cost comparison in making its decision whether to contract out. We do not agree. Although the protesters argue that nothing in section 2466(a) specifically negates section 2462's mandatory cost comparison requirement, as explained above, the cost comparison provision of section 2462 is negated in this case by the "[e]xcept as

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[5]The Air Force is preparing to conduct public-private competitions for extensive workloads at the Sacramento Air Logistics Center and the San Antonio Air Logistics Center. See Public-Private Competitions: Review of Sacramento Air Force Depot Solicitation, GAO/OGC-98-48, and Public-Private Competitions: Review of San Antonio Air Force Depot Solicitation, GAO/OGC-98-49. These competitions each have a potential value of more than $2 billion over a number of years. These workloads could have a substantial impact upon the Air Force's ability to comply with the 50-percent limit.

otherwise provided by law," language of section 2462 itself and by section 2466(a), which, in fact, otherwise provides.

In this respect, an agency needs only one reasonable basis to cancel a solicitation and there is no reason to consider the other grounds offered by the Air Force to justify the cancellation--that cancellation and performance of the work in-house will reduce the cost of depot-level maintenance and that the Air Force no longer requires an overflow contractor to perform C-130 PDM work. Thus, since the Air Force's reliance on section 2466 means that the section 2462(a) provision requiring the decision to be based on low cost does not apply here, even if in-house performance, in fact, will cost more, the cancellation is still reasonable. Accordingly, there is no reason to consider allegations by Pemco and Aero that the Air Force's cost comparison, or business case analysis, amounted to an unfair competition between the private firms and the Air Force depots or that the business case analysis was flawed. Since, as we explained above, cancelling the solicitation was reasonable--based on the need to ensure compliance with 10 U.S.C.A. § 2466(a)--there is no reason to consider the other grounds offered by the Air Force to justify the cancellation or the protesters' allegations concerning those other grounds.

The protesters argue that the Air Force has unreasonably failed to take the corrective action which it promised and that the real reason for cancelling the solicitation was not section 2466(a). For example, Pemco argues, as it did in its reconsideration request, that the agency's actions were calculated to deny Pemco a contract in order to punish Pemco for filing its earlier protest. According to Pemco, this contention is supported by an article in an Air Force publication, "The Inspector General Brief," which, according to Pemco, misrepresents the facts of pending litigation between Pemco and the Air Force.

As explained above, so long as there is a reasonable basis for doing so, an agency may cancel a solicitation after the announcement of a different course of action in response to a GAO protest. See Atlantic Scientific & Technology Corp., supra, at 1-2. In addition, if there is a reasonable basis for cancelling a solicitation, notwithstanding some element of personal animus, we will not object to the cancellation. Dr. Robert J. Telepak, supra, at 4. Here, the protesters have offered no credible evidence showing that the cancellation was based upon animus toward either firm. In any event, since the Air Force has provided a reasonable basis for cancelling the solicitation, neither the timing of the announcement of that basis nor the possibility of personal animus provides grounds for sustaining this protest.

Finally, Pemco argues that it is entitled to be reimbursed for the costs of preparing its proposal. The sole basis for this assertion is Pemco's argument that the solicitation was improperly canceled. CICA, 31 U.S.C. § 3554(c)(1) (1994), and our implementing regulations, 4 C.F.R. § 21.8(d) (1998), provide for the recommended reimbursement of proposal preparation costs only where our Office determines that

"a solicitation for a contract or a proposed award or the award of a contract does not comply with a statute or regulation." In this case, since the challenged cancellation was proper, and since there has been no showing that the agency has acted contrary to statute or regulation, there is no basis to recommend the recovery of these costs. See Bahan Dennis Inc., B-249496.3, Mar. 3, 1994, 94-1 CPD ¶ 184 at 6.

The protests are denied.

Comptroller General
of the United States