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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: Lackland 21st Century Services Consolidated

File: B-285938.7; B-285938.8

Date: December 4, 2001

William A. Roberts, III, Esq., Phillip H. Harrington, Esq., William S. Lieth, Esq., and Janet L. Eichers, Esq., Wiley, Rein & Fielding, and Helaine G. Elderkin, Esq., Computer Sciences Corporation, for the protester.
Sharon A. Jenks, Esq., Department of the Air Force, for the agency.
Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester's contention that it was procedurally improper for an agency to use its in-house auditors to perform a limited review of the soundness of any decision it might make before proceeding to a decision in a cost comparison conducted pursuant to Office of Management and Budget (OMB) Circular A-76 is denied where the agency sought the review after two prior reversals and a critical Inspector General report raised questions about whether any decision made could withstand scrutiny.
 2. Protest alleging that the agency improperly canceled solicitation and reinitiated the A-76 cost comparison process is denied where a limited review of previous appeal and protest issues performed by in-house auditors led the agency reasonably to conclude that several problems with the solicitation may have resulted in a flawed private-sector competition.
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DECISION

Lackland 21st Century Services Consolidated (L-21) protests a decision by the Department of the Air Force to cancel solicitation No. F41689-99-R-0031, revise its requirements, and reinitiate a cost comparison pursuant to Office of Management and Budget (OMB) Circular A-76 for base operations support (BOS) at Lackland Air Force Base, Texas. L-21, having prevailed in both the private-sector competition and the public/private cost comparison, argues that the Air Force lacks a reasonable basis to cancel the solicitation and begin the process anew.

We deny the protest.

BACKGROUND

By press release dated August 27, 2001, the Air Force announced its intention to cancel and reinitiate its A-76 competition for these services. This protest was filed 10 days later, and was supplemented after L-21's receipt of the agency report. As this is the third dispute in a series of protests filed with our Office by L-21 challenging this A-76 cost comparison, and as some knowledge of the prior events and disputes is relevant to an understanding of the issues raised here, a brief review of this procurement is set forth below.

The RFP for these services was issued on August 9, 1999, and contemplated the selection of two "best value" offerors, one to provide BOS at Lackland, the other to provide airfield support at the base; the airfield support portion of the workload was reserved for a small business. Contracting Officer's (CO) Statement at 1. At the conclusion of the private-sector source selection, the Air Force planned to conduct a cost comparison between the cost estimate for the in-house plan for a "Most Efficient Organization" (MEO), and the combined price of the two successful private-sector offerors.

By May 19, 2000, L-21 and Phoenix Management, Inc. had been determined to be the best value offerors for the BOS functions and the airfield support functions, respectively. Upon comparison of the private offers with the MEO's cost estimate, the Air Force determined that performance of these services by contract would be the most economical way to proceed. As a result, by letter dated August 17, the Air Force advised L-21 that it was the conditional winner of the BOS portion of the cost comparison.

After the Air Force announced the tentative selection of L-21, the MEO filed a challenge to the cost comparison with the agency's Administrative Appeal Authority. Upon completion of his review, the appeal authority reversed the result of the initial cost comparison, and determined that the Lackland workload should be performed in-house. The news of this reversal was communicated to L-21 by letter dated October 25.

On November 6, L-21 filed a protest with our Office (B-285938.3), which it supplemented on November 13 (B-285938.5), raising several grounds of challenge to the decision to keep the Lackland workload in-house. By letter dated December 13, submitted in lieu of an agency report on the merits, the Air Force agreed with portions of L-21's cost comparison challenge and again reversed its decision; the Air Force advised that award would be made to L-21. Thus, the Air Force requested that the protests be dismissed as academic. By decision also dated December 13, we agreed and dismissed the protests.

Shortly after our Office dismissed L-21's protests because of the Air Force's intended corrective action, the Department of Defense's (DOD) Office of Inspector General (IG) began a review of the A-76 process at Lackland. The record shows that this review was requested both by the Deputy Secretary of DOD, and by several members of Congress from the state of Texas. By memorandum dated December 22, the Under Secretary of the Air Force advised DOD management that the Air Force would await completion of the IG review to award the contract to L-21.

Approximately 5 months later, on May 11, 2001, as the DOD IG was preparing to brief members of Congress and/or their staffs on its findings, and to publish a report, L-21 filed a second protest with our Office (B-285938.6). In this protest, L-21 argued that the Air Force had improperly delayed taking corrective action, and the firm sought reinstatement of its earlier protests, a ruling in its favor on the merits of those protests, and reimbursement of its protest costs. We dismissed L-21's request that its earlier protests be reinstated and sustained, and we denied its request for reimbursement of protest costs. Lackland 21st Century Servs. Consolidated--Protest and Costs, B-285938.6, July 13, 2001, 2001 CPD ¶ 124.¹

While L-21's protest alleging improper delay was pending, the IG report was released publicly, albeit with redactions. The IG concluded that "[t]he Air Force did not achieve supportable results from the Lackland Air Force Base competition" and, among other options, recommended that the Air Force consider canceling the solicitation and reinitiating the A-76 competition. DOD IG Rep. No. D-2001-118 (May 14, 2001) at i. Complaining that it was not given an opportunity to respond to the IG report prior to its publication, the Air Force's Air Education and Training Command prepared a detailed rebuttal to the IG Report. According to the agency report prepared in response to this protest, this undated report was released on or about June 14.

On June 28--unbeknownst to L-21 and shortly prior to release of the above-referenced decision from our Office--the Air Force asked its own auditors, the Air Force Audit Agency (AFAA), for an assessment of the agency's "ability to produce a supportable and auditable decision" from this competition. CO Statement at 3. The AFAA considered a limited number of issues, and completed its review in a limited amount of time. On July 25 and 27, and again on August 7, AFAA personnel briefed Air Force management on their findings and requested additional time to make a final assessment, which was denied. Based on its limited review, the AFAA advised Air Force management that "the Air Force would be at risk to award the workload to the MEO or best value offeror because of unresolved issues that could materially affect the cost comparison outcome." AFAA Report at 2.

¹ Our prior decision includes a more complete recitation of the events between the time that the Air Force sought dismissal of L-21's initial protests in December 2000 and the May 11 filing of L-21's second challenge to this procurement. Id. at 2-3.

By memorandum dated August 27, the Air Force's Principal Deputy Assistant Secretary (Acquisition and Management) formally decided to cancel the underlying solicitation, and reinstate the Lackland A-76 cost comparison. This decision memorandum stated that the agency was canceling the solicitation based on the AFAA recommendations. By press release of the same date, the cancellation decision was announced outside the Air Force and this protest followed.

DISCUSSION

Prior to identifying and addressing L-21's specific challenges to the agency's cancellation decision, we note first a recurring theme in the current dispute, and in the earlier disputes between L-21 and the Air Force over this procurement. This theme is L-21's frustration over what it describes as a lack of information from the Air Force about the progress of this ongoing A-76 cost comparison in the 2 years since the procurement began.

In this light, we note that at the time L-21 learned via press release of the agency's decision to cancel the solicitation (August 27), the only rationale for this action known to L-21 was the May 14 report of the DOD IG, which had been posted on the IG's website in redacted form. As described above, this report included, among other possible courses of action, a recommendation that the agency consider canceling the solicitation and reinstating the A-76 competition. With no other explanation available, L-21's initial protest filing necessarily focused on the role of the IG report in this process, and on the report's specific conclusions.

Upon receipt of the agency report, however, L-21 learned for the first time that the IG report was not the basis the Air Force identified for canceling the solicitation. Instead, the Air Force identified the conclusions of its own AFAA review as the basis for its decision. Thus, none of L-21's initial challenges are relevant to the validity of the Air Force decision to cancel the underlying solicitation, revise its requirements, issue a new solicitation, and restart the A-76 cost comparison process, and we need not consider them further.

In its supplemental protest, L-21 expands its cancellation challenge to include the AFAA review. L-21 first raises two procedural challenges to the review—*i.e.*, that a review by the AFAA at this stage in the A-76 process is neither authorized nor appropriate, and is therefore an improper imposition upon the process; and, that the AFAA review was improperly limited in time and scope, did not result in a formal recommendation, and qualified what few conclusions it reached. Thus, L-21 argues that the AFAA review cannot be used to justify a decision to cancel this solicitation. With respect to the substance of the AFAA review, L-21 raises only one specific challenge—*i.e.*, it argues that agency confusion over the number of units of family housing to be maintained is not a sufficient basis to cancel the solicitation. Supplemental Protest at 13-15.

In a negotiated procurement, an agency has broad authority to decide whether to cancel a solicitation; there need be only a reasonable basis for the cancellation. Safety Storage, Inc., B-280851.2, May 13, 1999, 99-1 CPD ¶ 93 at 2. This broad grant of authority extends to the cancellation of solicitations used to conduct A-76 cost comparisons. Source AV, Inc., B-241155, Jan. 25, 1991, 91-1 CPD ¶ 75 at 3; Cantu Servs., Inc., B-219998.8, B-233697, Mar. 27, 1989, 89-1 CPD ¶ 306 at 2. So long as an agency has a reasonable basis for doing so, it may cancel a solicitation regardless of 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 5; or, as here, after the announcement of a different course of action in response to a GAO protest. Id. at 1-2.

With respect to L-21's procedural challenges to the AFAA review, we disagree in every instance. In our view, there was nothing unreasonable about the agency's decision to ask its own auditors to perform a limited review of the soundness of any decision it might make, given the circumstances of this case. While L-21 would clearly prefer that the agency simply move forward with its award, this cost comparison has been fraught with controversy at every step in the process. After a tentative decision to award to L-21, the Air Force was reversed by the Administrative Appeal Authority, based on its consideration of arguments raised by the MEO. This decision was reversed again when the Air Force reviewed the arguments raised in L-21's first protest to our Office. Immediately thereafter, the Air Force decision was scrutinized, and then publicly criticized by the DOD IG, which ultimately concluded that the results of the cost comparison were unsupportable. Given the crossfire of criticism associated with any decision the Air Force might make, we fail to see how it could be improper for the agency to ask its in-house auditors to give it one last "quick read" of the situation before making its decision.

We also disagree with the assertion that the Air Force could not rely on the AFAA review to cancel this solicitation because the review was limited in scope and time, and because the review did not make a formal recommendation. In this regard, we note that the AFAA review was limited to four issues that had been previously raised in the MEO appeal and in L-21's bid protest. In addition, the AFAA personnel conducting the review qualified their conclusions as preliminary unless and until they could receive additional time to perform a more nuanced analysis, a request denied by Air Force management.

As L-21 indicates in its pleadings, this cost comparison involves a workload valued at approximately \$300 million. To review again this entire procurement and cost comparison study would have taken significantly longer than the 3 weeks Air Force management gave the in-house auditors, and would have further delayed this procurement—a matter about which L-21 has already protested to this Office. Under these circumstances, we see nothing unreasonable in the Air Force's approach of

conducting a kind of intellectual triage among issues already identified as controversial to determine whether any final decision could withstand the scrutiny it was certain to receive.

With respect to the substance of the Air Force decision to cancel, L-21 simply does not challenge most of the conclusions of the AFAA review that support the cancellation decision. As indicated above, the only substantive challenge raised in the L-21 supplemental protest involves agency confusion about the number of units of military family housing to be maintained under this solicitation.

The issue of the estimate for military family housing was but one of five solicitation issues identified in the AFAA briefing for Air Force management. The remaining four issues are not challenged by L-21. In addition, L-21 does not address an expanded explanation of the basis for the cancellation decision provided with the agency report, which L-21 refers to as the “Air Staff Statement” and describes as a post hoc rationalization inconsistent with the contemporaneous record that should be given little weight.²

We have reviewed the AFAA report to Air Force management, the AFAA briefing slides, and the expanded explanation of Air Force management’s considerations set forth in the Air Staff Statement, and we find no basis for concluding that the decision to cancel the solicitation here was unreasonable, especially in light of L-21’s failure to counter most of the agency’s explanations.³ See Atmospheric Research Sys., Inc., B-240187, Oct. 26, 1990, 90-2 CPD ¶ 338 at 4. For example, we find reasonable the Air Force’s explanation that it was concerned about the lack of direction in the solicitation for handling common costs, including costs under the headings “Refreshment of Information Technology under \$100,000” and “Replacement of Information Technology Equipment under \$100,000.” The agency also explained its concerns about the solicitation’s lack of instructions regarding cost escalation for supplies and materials, and lack of instructions regarding the requirements for network management. In the Air Force’s view, these items, as well as the fact that

² For the record, we disagree with L-21’s assertion that the Air Staff Statement expanding on the reasons for canceling the underlying solicitation is somehow inconsistent with the agency’s decision to cancel. Rather, this statement provides a more detailed rationale for the contemporaneous decision to cancel by filling in previously unrecorded details. NWT, Inc.; PharmChem Labs., Inc., B-280988, B-280988.2, Dec. 17, 1998, 98-2 CPD ¶ 158 at 16.

³ In its final comments filing, submitted more than 5 weeks after its receipt of the agency report explaining the specific bases for canceling this solicitation, L-21, for the first time, raised specific challenges to the bases for cancellation identified in the AFAA briefing materials and the Air Staff Statement. These challenges are untimely at this juncture and will not be considered. 4 C.F.R. § 21.2(a)(2) (2001).

the Performance Requirements Document incorporated in the solicitation was originally prepared in 1996 and 1997 and was likely outdated in other respects, led it to conclude that the solicitation should be canceled, the requirements revised, and the competition reinitiated. As indicated above, we have no basis for a contrary conclusion.

The protest is denied.

Anthony H. Gamboa
General Counsel