



The Comptroller General  
of the United States

Washington, D.C. 20548

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**Decision**

**Matter of:** Condotels, Inc.; Chester L. and  
Harvelene Lewis  
**File:**  
**Date:** B-225791; B-225791.2  
June 30, 1987

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**DIGEST**

Protests of agency's termination of leases of housing units are dismissed since the agency's action involved a matter of contract administration not reviewed by the General Accounting Office.

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**DECISION**

Condotels, Inc., and Chester L. and Harvelene Lewis protest the termination by the U.S. Army Corps of Engineers, Kansas City District, of leases awarded under the Corps' solicitation No. 135. We dismiss the protests.

The agency issued the solicitation in December 1984, to lease housing units for officers attending the Combined Arms and Services Staff School at Fort Leavenworth, Kansas. The agency subsequently entered into leases for a total of 403 housing units: one lease with Condotels for 51 units, one lease with the Lewises operating as Lewis Management for 40 units, another lease with David V. Adamson for 36 units, and three leases with two other individuals doing business as Magnolia Manor for 276 units. The leases stated that the initial lease terms would extend from January 20 to September 30, 1986, and that the leases would continue automatically from year to year (but not beyond January 19, 1988) unless terminated pursuant to the termination clause. The termination clause provided that either the government or the lessor could terminate at any time after December 31, 1986, by giving at least 30 days notice to the other party.

In early February 1987, the agency informed the protesters of its intention to terminate their leases at midnight, March 11. After filing initial protests with the Corps, the protesters filed their protests with this Office. The

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protesters' basic contention is that the agency's action in terminating some of the leases while maintaining two of the leases at the Magnolia Manor complex constituted the improper award of contracts to lease the units on a sole-source basis. The protesters argue that the agency failed to comply with 10 U.S.C. § 2304(a)(1)(A) (Supp. III 1985), which provides that an agency must obtain full and open competition through the use of competitive procedures in the procurement of all property (other than land) and services. In essence, the protesters' position is that the requirement to obtain competition applied at the time the decision was made regarding which units to continue leasing.

One of the lessors whose lease also was terminated, David Adamson, did not file a protest with this Office, but elected to file an action in the United States District Court for the District of Kansas seeking declaratory and injunctive relief. Adamson v. Radosevic, No. 87-2105-0 (D. Kan. filed Mar. 10, 1987). The recital of facts in that complaint is virtually identical to that contained in the protests. The complaint alleges a violation of the statute cited above as well as arbitrary and capricious action by the agency. By order dated May 8, the court requested our decision on the protests.

Under our Bid Protest Regulations, when the matter involved in a protest is the subject of litigation before a court of competent jurisdiction we will decide the protest only where, as here, the court requests us to do so. 4 C.F.R. § 21.9(a) (1986). In such cases, we may decide issues that otherwise we would dismiss on procedural grounds, see, e.g., Blue Cross and Blue Shield of Virginia, B-222485, July 11, 1986, 86-2 CPD ¶ 61, but we will not decide issues that are beyond the jurisdiction of this Office. See Decker and Co., et al., B-220807 et al., June 28, 1986, 86-1 CPD ¶ 100. Generally, this Office lacks jurisdiction to review an agency's decision to terminate a contract for convenience since the termination is a matter of contract administration within the discretion of the contracting agency for review by a cognizant board of contract appeals or a court of competent jurisdiction. See Bid Protest Regulations, 4 C.F.R. § 21.3(f)(1) (1986); Firm Reis, GmbH, B-224545, Nov. 12, 1986, 86-2 CPD ¶ 554. We will review contract terminations only where the agency's basis for termination is that the contract was improperly awarded. Firm Reis, GmbH, B-224545, supra.

The agency reports that leases were properly awarded and that at the time of award the need for off-post housing was only temporary since a 616-person Unaccompanied Officers Quarters was scheduled for completion by early 1987. In

January 1987, the agency determined that it would require only 264 housing units after the new building's anticipated occupancy date of March 11. The agency determined further that this need could be met most efficiently by continuing two of the Magnolia Manor leases and canceling the remaining leases. The reason for this determination was that all of the units under the two leases were in the same area and concentrating all off-post housing at one location would shorten shuttle bus runs, facilitate the formation of study groups, and reduce processing costs. Further, the agency reports that a pro rata reduction in the number of units leased from each lessor was not possible because the language of the termination clause, consistent with the intent of the parties, provided for termination of any lease only in its entirety.

These protests involve matters of contract administration not reviewed by this Office. The action taken by the agency involved merely the exercise of its right under the leases to terminate upon 30 days notice. The agency was administering existing leases, not making awards. We note that the leases involved here had been properly awarded based on full and open competition and that 19 proposals were received. In addition, there is no indication in the record that the leases with Magnolia Manor were modified to increase their scope. This Office therefore lacks jurisdiction to decide the protests.

In any event, since the agency's termination of some of the leases did not involve the actual or constructive award of a contract, it is our view that there was no statutory requirement to obtain competition at the time this action was taken. Furthermore, it appears to us that the Corps acted reasonably here. The agency needed fewer housing units than it had under lease and determined that a pro rata reduction in units per lease was not possible. The file contains a detailed study prepared by the agency that shows that retaining only the two Magnolia Manor leases was the least costly of all possible alternatives, and the agency believed that consolidating the requirement for off-post housing at one location would improve logistics and student morale.

The protests are dismissed.

*Harry R. Van Cleve*  
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General Counsel