



The Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: W. B. & A., Inc.

File: B-229926.3

Date: May 19, 1988

DIGEST

General Accounting Office (GAO) will not review an agency's determination to perform services in-house, pending resolution of a protest, rather than extend the incumbent's contract since the decision is a matter of executive policy, which is not within GAO's bid protest function when an agency has not issued a competitive solicitation for cost-comparison purposes under Office of Management and Budget Circular No. A-76.

DECISION

W. B. & A., Inc., the incumbent contractor, protests a decision by the United States Army Corps of Engineers to perform in-house maintenance and operation services at Lake Sidney Lanier, Buford, Georgia, utilizing W. B. & A. employees, pending resolution of the firm's protest against the proposed award to another offeror under solicitation No. DACW01-87-R-0056 for the same services. W. B. & A. contends that in deciding to perform the services in-house, rather than extending W. B. & A.'s contract, the agency acted improperly in not conducting a cost comparison in accordance with Office of Management and Budget (OMB) Circular No. A-76, setting forth the executive branch's policy for determining whether to perform services in-house or under contract.

We dismiss the protest.

On February 25, 1988, we dismissed as academic a protest, B-229926, filed by W. B. & A. against the proposed award because the agency indicated that it would grant the relief W. B. & A. requested, i.e., the reevaluation of proposed costs using a corrected agency cost estimate. When the contracting agency did not take corrective action

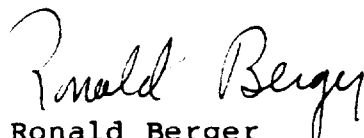
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satisfactory to W. B. & A., the firm filed a new protest, B-229926.2, on April 19. On April 22, the Corps notified W. B. & A. that it would not extend the firm's contract past April 30, 1988, but instead would perform the work in-house after that date until award was made under the solicitation.

We will not review the Army's determination to perform the services in-house rather than continuing to have them performed under contract. We regard such decisions as matters of executive branch policy, and will review them only where a competitive solicitation for cost comparison purposes has been issued. Etc. Technical & Professional Services, Inc., B-227554, July 2, 1987, 87-2 CPD ¶ 12. Since no competitive solicitation has been issued here for purposes of performing a cost comparison under OMB Circular A-76, the Corps' determination to perform the services in-house is not a proper matter for our review. Further, the decision not to extend an incumbent contractor's contract is a matter of agency discretion; an incumbent has no right to such an extension.

We note that W. B. & A. maintains that the Competition in Contracting Act of 1984, 31 U.S.C. § 3553(c)(1) (Supp. III 1985), prevents the Corps from performing the work in-house during the pendency of W. B. & A.'s protest. The section of the Act to which W. B. & A. refers, however, provides that a contract generally may not be awarded after the agency receives notice of a protest with respect to the procurement. Since the decision to perform the work in-house does not involve an award, it appears that this provision is inapplicable here. However, the Corps' decision to perform the work in-house does not affect the stay of the proposed award invoked by protest B-229926.2, which is pending before our Office.

The protest is dismissed.


Ronald Berger
Deputy Associate
General Counsel