



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Northrop Worldwide Aircraft Services, Inc.
File: B-243318
Date: April 12, 1991

Ralph K. Pope, Esq., for the protester.
John E. Delane for Del-Jen, Inc., Walter I. Skinner, Esq.,
for ITT Federal Services Corp., and Jay Ward for Intelcom
Support Services, Inc., interested parties.
Herbert F. Kelley, Jr., Esq., and Jack B. Patrick, Esq.,
Department of the Army, for the agency.
John W. Van Schaik, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. General Accounting Office (GAO) will not consider protest allegation that challenges agency decision to conduct a cost comparison study under Office of Management and Budget Circular A-76, a matter of executive branch policy not reviewed by GAO.
2. Protest filed with the General Accounting Office more than 10 days after agency-level protest is denied as untimely.

DECISION

Northrop Worldwide Aircraft Services, Inc. protests the terms of request for proposals (RFP) No. DABT39-91-R-0001, issued by the Army as a cost comparison study of the Directorate of Logistics function at Fort Sill, Oklahoma pursuant to Office of Management and Budget Circular A-76 (A-76). Northrop maintains that the Army did not comply with A-76 or Army regulations which, according to the protester, direct the agency to compete the requirement using commercial sources before issuing a solicitation for a government cost comparison study. Northrop is the incumbent on the Fort Sill logistics contract.

We dismiss the protest.

First, Northrop's protest does not raise a matter that is appropriate for review by our Office. Our review role in A-76 protests is limited to an examination of the procuring agency's implementation of the cost comparison procedures

051110/14363a

announced in a solicitation. American Operations Corp., B-217237, Aug. 27, 1985, 85-2 CPD ¶ 231. Northrop's protest does not concern the Army's implementation of the solicitation's cost comparison procedures, but instead challenges the agency's compliance with A-76 and agency regulations concerning when a cost comparison study should be conducted. An agency's compliance with provisions of A-76 or internal agency regulations concerning when an activity should be the subject of a cost comparison study is a matter of compliance with executive branch policy, which we do not review. Id.

Second, for the reasons stated below, even if the matter was for our consideration, we would dismiss it as untimely.

After the Army notified Northrop that a cost-comparison solicitation would be issued, the firm protested directly to the Army in a letter dated October 24, 1990. In that letter, Northrop argued that an A-76 cost comparison study was inappropriate and requested that the solicitation not be issued.

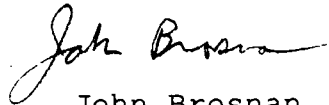
In a letter dated November 15, the Assistant Secretary of the Army (Installations, Logistics and Environment), responded to Northrop's protest by explaining that she had concluded that a cost comparison study was the proper course of action after she became aware of allegations about contract performance and administration at Fort Sill. The Assistant Secretary also explained that Fort Sill will not transfer the Logistics Function to the in-house workforce unless it determines that in-house performance would be less costly to the government.

Our Bid Protest Regulations provide that protests such as the one here which, in essence, is based upon alleged improprieties in a solicitation shall be filed prior to the closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1991). In cases where an alleged solicitation impropriety is timely protested to the contracting agency, any subsequent protest to this Office must be filed within 10 working days after the protester has acquired knowledge of initial adverse agency action on the protest. 4 C.F.R. § 21.2(a)(3). Section 21.0(f) of our Regulations defines adverse agency action as "any action or inaction on the part of a contracting agency which is prejudicial to the position taken in a protest filed with the agency," including a decision on the merits of a protest.

In this case, the Army's November 15 letter, which upheld the decision to conduct the cost comparison study, constituted initial adverse agency action on Northrop's October 24 protest. See W.D. McCullough Constr. Co. and M&A Equip. and Constructors Inc., a joint venture--Recon., B-238460.2, Mar. 5, 1990, 90-1 CPD ¶ 252. As a result, to be timely,

Northrop's protest to our Office had to be filed within 10 working days of when it received the Assistant Secretary's November 15 letter. For purposes of timeliness, we assume that Northrop received that letter within 1 calendar week of its mailing. White Water Assocs., Inc., B-240274; B-240275, Oct. 15, 1990, 90-2 CPD ¶ 291. Since Northrop did not protest to this Office until March 15, 1991, more than 10 working days after it was informed of adverse agency action on its agency-level protest, its protest is untimely.

The protest is dismissed.



John Brosnan
Assistant General Counsel