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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Triad Logistics Services Corporation

File: B-403726

Date: November 24, 2010

Edward J. Kinberg, Esq., Kinberg & Assocs., for the protester.
John Pettit, Esq., and Maj. Stephan Piel, Department of the Air Force, for the agency.
David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Assertion that agency determination to perform work in-house rather than under protester's contract improperly was based on an internal agency cost comparison that did not comply with 10 U.S.C. § 129a or internal department policy and guidance does not state a valid basis of protest; 10 U.S.C. § 129a sets forth general personnel policy of Department of Defense and does not bear directly on federal agency procurements, and compliance with internal agency guidance is a matter GAO will not consider.

DECISION

Triad Logistics Services Corporation protests the Department of the Air Force's decision to convert to in-house performance vehicle operations and maintenance services at Columbus Air Force Base, Mississippi, previously performed under Triad's contract No. FA3022-07-C-0001.

We dismiss the protest.

The contract awarded to Triad in 2006 provided for a 1-year base period, with services to commence on October 1, 2006, and included four 1-year options. On June 22, 2010, prior to expiration of the third option period (on September 30), the Air Force advised Triad that the agency "will initiate the process of in-sourcing" performance of the vehicle operations and maintenance services. Letter from Air Force to Triad, June 22, 2010; Agency Contract Administrator Memorandum, June 22, 2010, Meeting with Triad. On July 15, Triad submitted a request under the Freedom of Information Act (FOIA) for documents concerning the agency's determination to in-source the requirement, including documents relating to a comparison of the costs

of continuing performance by Triad and the cost of in-house performance. On August 19, Triad received a number of documents in response to its FOIA request, including the agency's July 21 business case analysis for in-sourcing, an attachment to which indicated that in-house performance would be approximately 10.14% less expensive than contract performance. Memorandum of Intent to In-source a Contracted Activity (Vehicle Operations (Columbus) and FA3022-07-C-0001), July 21, 2010.

Triad challenges the determination that in-house performance would be less expensive. In this regard, section 2463 of title 10 of the U.S. Code, added by Public Law No. 110-181, Div. A, Title III, § 324(a)(1), 122 Stat. 60 (2008), requires the Department of Defense (DOD) to

devise and implement guidelines and procedures to ensure that consideration is given to using, on a regular basis, Department of Defense civilian employees to perform new functions and functions that are performed by contractors and could be performed by Department of Defense civilian employees.

10 U.S.C. § 2463(a) (2009 Supp.). Section 2463 further identifies certain contracted functions for which "special consideration" is to be given to converting to performance by DOD civilian employees. 10 U.S.C. § 2463(b). Consistent with the statute, DOD--having determined to decrease funding for contract support and increase funding for new civilian position authorizations--issued guidance to assist DOD components in reviewing contracted services for possible in-sourcing. See, e.g., Memorandum: In-Sourcing Contracted Services-Implementation Guidance, May 28, 2009. Among the guidance issued by DOD in this regard is Directive-Type Memorandum (DTM) 09-007, Estimating and Comparing the Full Costs of Civilian and Military Manpower and Contract Support, Jan. 29, 2010, which furnishes guidance in comparing the costs of government and contract performance. DTM 09-007 at 1, attach. 1. Triad asserts that the internal agency comparison of the costs of in-house and contract performance was inconsistent with the provisions of DTM 09-007, resulting in an understated cost of in-house performance and overstated cost of performance under Triad's contract.

Triad's protest fails to state a valid basis of protest. In Aleut Facilities Support Servs., LLC, B-401925, Oct. 13, 2009, 2009 CPD ¶ 202, we considered a similar protest challenging the agency's decision to cancel a solicitation to perform work in-house on the basis that the cost comparison performed by the agency violated DOD's in-sourcing guidance (as well as that the requirement was not one given priority under section 2463). We held that the protest failed to state a valid basis of protest, finding that section 2463 does not require a cost comparison and that, since the cited guidance issued pursuant to section 2463 was only internal DOD policy, the assertion that the agency did not adhere to that policy guidance is not a basis for challenging

the agency's actions. Id. at 3-4; see Hughes Space and Commc'n Co.; Lockheed Missiles & Space Co., Inc., B-266225.6 et al., Apr. 15, 1996, 96-1 CPD ¶ 199 at 17; Indian Res. Int'l, Inc., B-256671, July 18, 1994, 94-2 CPD ¶ 29 at 3. Although DTM 09-007 was issued subsequent to our decision in that case, it likewise is only internal agency guidance; thus, the alleged violation of DTM 09-007 is not a valid basis of protest.

Triad asserts that our review of the cost comparison nevertheless is authorized by 10 U.S.C. § 129a (2000), General Personnel Policy, which provides as follows:

The Secretary of Defense shall use the least costly form of personnel consistent with military requirements and other needs of the Department. In developing the annual personnel authorization requests to Congress and in carrying out personnel policies, the Secretary shall--

(1) consider particularly the advantages of converting from one form of personnel (military, civilian, or private contract) to another for the performance of a specified job; and

(2) include in each manpower requirements report submitted under section 115a of this title a complete justification for converting from one form of personnel to another.

We disagree. Under the Competition in Contracting Act of 1984 (CICA), our Office is authorized to decide bid protests "concerning an alleged violation of a procurement statute or regulation." 31 U.S.C. §§ 3552, 3553(a) (2000). Although protests usually involve alleged violations of statutes that are indisputably procurement statutes (such as CICA) governing procurements of property or services by federal agencies, we also will consider protests alleging violations of other statutes or regulations where those statutes or regulations bear directly on federal agency procurements. See Veolia Water North Am. Operating Servs., LLC, B-291307.5, B-298017, May 19, 2006, 2006 CPD ¶ 86 at 18-19; Merck & Co., Inc., B-295888, May 13, 2005, 2005 CPD ¶ 98 at 10-11. Here, the statute on which the protester's argument is founded--10 U.S.C. § 129a--is not a procurement statute. Nor does it bear directly on federal agency procurements; rather, it sets forth the general personnel policy of DOD. Moreover, the provision does not require a cost comparison between agency and contractor performance; it requires only that agencies use the "least costly form of personnel consistent with military requirements and other needs of the Department." 10 U.S.C. § 129a. In these circumstances, we find that Triad has not set forth a valid basis of protest. 4 C.F.R. § 21.5(f) (2010).

The protest is dismissed.

Lynn H. Gibson
Acting General Counsel