

5536

A. Hallahan
Proc I

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-191233

DATE: March 2, 1978

MATTER OF: Communications Satellite Corporation

DIGEST:

Protest based upon refusal of Office of Telecommunications Policy to make appropriate determination pursuant to Federal Communications Commission decisions--which would permit offeror to provide communications services directly to Government in NASA procurement--is not for consideration. GAO does not review protests concerning adherence to Executive branch or departmental policies, and to extent that protest is analogous to cases where regulatory agency determination adversely affects individual offeror's eligibility for award, it is similarly not for consideration.

The Communications Satellite Corporation (Comsat) protested to our Office on February 7, 1978, concerning the award of a contract for wideband data communications services to Western Union International, Inc., by the National Aeronautics and Space Administration (NASA).

The information submitted by the protester indicates that NASA regarded its proposal as technically superior and lowest in cost. However, it appears that NASA declined to make an award to Comsat because an appropriate determination by the Office of Telecommunications Policy (OTP), Executive Office of the President, was lacking. Some discussion of the background is necessary to understand the factual situation.

Comsat points out that the Communications Satellite Act of 1962 authorized it to contract with authorized users, including the United States Government, for the services of the communications satellite system. 47 U.S.C. § 735(b)(4) (1970). However, the result of several Federal Communications Commission (FCC) decisions in 1966 and 1967 was that Comsat would be authorized by FCC to provide services directly to the



B-191233

Government only after it was determined by OTP that such services were required to meet unique governmental needs or were otherwise required in the national interest. The protester notes that throughout the present procurement NASA carefully indicated that it would make an award directly to Comsat only if an appropriate determination was made. OTP considered the matter and declined to make the "unique governmental needs" or "national interest" determination.

Comsat contends that NASA's award violated well-established principles calling for maximum competition in procurements and award to the most advantageous proposal, citing NASA Procurement Regulation § 1.301(a) and § 1.302-2 (1977 ed.). The protester further alleges it has been denied due process by OTP's failure to develop clear and objective standards for making "national interest" determinations. Comsat states that OTP " * * * has distorted the FCC's authorized user policy and turned it into an absolute bar against direct service by Comsat to the United States Government. This was not the intent of Congress when it enacted the [Communications Satellite] Act nor the intent of the FCC when it enunciated the authorized user policy."

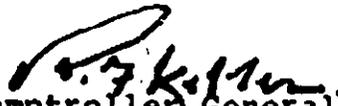
Our consideration of bid protests is predicated upon our statutory duty to pass upon the legality of the expenditure of public funds. 31 U.S.C. §§ 71, 74 (1970). Accordingly, we consider protests involving compliance with procurement policies prescribed by law and implementing regulations. However, in many decisions we have declined to consider protests concerning adherence to Executive branch or departmental policies *per se*, because we do not generally have any authority to require adherence to such policies in particular procurements. Questions of this kind are for resolution within the Executive branch or by the department concerned. See generally 42 Comp. Gen. 640 (1963), 43 *id.* 217, 221 (1963), 53 *id.* 86 (1973), and *PNC Computer Center, Inc., et al.*, 55 *id.* 60, 67-68 (1975), 75-2 CPD 35.

The record indicates that FCC, under its decisions, looks to OTP as the focal point for the judgment of

B-191233

Executive agencies with respect to determinations of unique governmental needs or national interest. OTP's function appears to be in the nature of furnishing policy advice to FCC in such matters, and, accordingly, we believe that the exercise of this function is not for consideration by our Office. In addition, to the extent that Comsat's protest is analogous to cases where a regulatory agency, in the exercise of its statutory responsibilities, makes a determination which adversely affects an individual offeror's eligibility for an award, it is similarly not for consideration. See, for example, Carlisle Laboratories, Inc., B-186987, B-187059, B-187131, February 22, 1977, 77-1 CPD 124, and Lemmon Pharmacal Company, B-189048, July 25, 1977, 77-2 CPD 47.

The protest is dismissed.


Deputy Comptroller General
of the United States