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**Comptroller General  
of the United States**

**United States General Accounting Office  
Washington, DC 20548**

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## **Decision**

**Matter of:** Satellite Services, Inc.

**File:** B-288848.3

**Date:** April 28, 2003

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Rand L. Allen, Esq., William S. Lieth, Esq., and Janet L. Eichers, Esq., Wiley Rein & Fielding, for the protester.

Vera Meza, Esq., and Beth Biez, Esq., U.S. Army Materiel Command, for the agency.  
Tania Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

Agency's decision to cancel solicitation used to obtain and evaluate private-sector proposals in conducting an Office of Management and Budget Circular A-76 cost comparison, after selection of a private-sector offeror, two cost comparisons, and two General Accounting Office protests, is denied where agency reasonably based its decision on the cumulative impact of uncertainty generated by pending agency management decisions with the potential to substantially affect the solicitation's workload, workload changes that occurred before and after a recent agency reorganization, and the uncertainty associated with the full impact of that reorganization.

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### **DECISION**

Satellite Services, Inc. (SSI) protests the Department of the Army's decision to cancel request for proposals (RFP) No. DAAH03-99-R-0027, issued in conjunction with a commercial activities study pursuant to Office of Management and Budget (OMB) Circular A-76; to revise the agency's requirements; and to issue a new solicitation based upon those revised requirements for the provision of multi-function services to the Redstone Arsenal in Alabama. SSI, which prevailed in the private-sector competition and has twice challenged the Army's tentative decision to retain in-house performance of the work, argues that the cancellation decision lacks a reasonable basis.

We deny the protest.

## BACKGROUND

The Army issued this RFP on November 29, 1999, to obtain a cost comparison between performance by the government and performance by the private sector under what was then known as the Redstone Arsenal Support Activity (RASA) multi-function study, conducted pursuant to OMB Circular A-76.<sup>1</sup> The RFP explained that RASA provided a wide range of installation support services to the U.S. Army Aviation and Missile Command (AMCOM) and various other offices located on the Redstone Arsenal or in the Huntsville, Alabama area. Performance Work Statement (PWS) § C.1.2. At issue in this RFP were services RASA provided to the Directorate of Logistics, the Directorate of Public Works, and the Directorate of Flight Operations, and certain services associated with managerial and administrative functions. *Id.* §§ C.5, C.1-C.4. The solicitation, issued as a small business set-aside, anticipated the award of a cost-plus-award-fee contract to be performed over a base period and option periods that might extend for as long as 10 years.

After a private-sector competition that elicited offers from three firms, the Army selected SSI's proposal as that offering the best value to the government for purposes of the cost comparison. The source selection authority (SSA) ultimately concluded that the in-house offer<sup>2</sup> met the PWS requirements and offered the same level of performance and performance quality as did the SSI proposal. The corresponding cost comparison showed that the in-house offer was approximately \$7.9 million lower than SSI's cost of \$77,827,968 (after inclusion of the various adjustments called for in Circular A-76), and the Army issued its tentative decision to retain performance of these services in-house on June 14, 2001. After SSI's administrative appeal of this decision was denied, the firm filed its initial protest in our Office, arguing that the in-house offer failed to include adequate management and supervision for personnel proposed to accomplish the PWS requirements and that the in-house offer did not represent a level of service comparable to the level of

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<sup>1</sup> The procedures for determining whether the government should shift performance of an activity from in-house employees to a contractor, or vice versa, are set forth in OMB Circular A-76 and its Revised Supplemental Handbook (RSH), which have been made expressly applicable to the Department of Defense (DOD) and its military departments and agencies. *See* 32 C.F.R. § 169a.15(d) (2002).

<sup>2</sup> Consistent with the OMB Circular A-76 RSH, we use the term "in-house offer" to refer to the government's management plan detailing the changes that will be made to perform the commercial activity in-house and in accordance with the PWS, even though the government's plan to perform the work in-house is not an offer. *American Fed'n of Gov't Employees, AFL-CIO, et al.*, B-282904.2, June 7, 2000, 2000 CPD ¶ 887 at 3-4. The government's in-house organization to perform a commercial activity, the most efficient organization (MEO), is a product of the government's management plan. OMB Circular A-76 RSH, app. 1, Definition of Terms, at 35.

service proposed by SSI. On the morning of November 13, the day of a scheduled GAO hearing in the matter, the Army and SSI agreed that the Army would take corrective action by revising the MEO to capture the workload, including all management and supervision of all PWS sections, and by reviewing the resulting in-house offer to ensure that it exhibits the same level of performance and performance quality as did SSI's offer. In view of the Army's proposed corrective action, our Office dismissed SSI's protest as academic.

The Army implemented its proposed corrective action and conducted a second cost comparison under which the cost of in-house performance was found to be approximately \$3.7 million lower than SSI's cost, and in June 2002 the Army therefore made a tentative decision to retain in-house performance of the requirements. After SSI's administrative appeal of the second cost comparison decision was denied, the firm filed its second protest in our Office, arguing that the Army overstated certain amounts added to SSI's costs, the MEO failed to include sufficient resources to perform all the services required by the PWS, and the Army failed to ensure the MEO offered the same level of performance and performance quality as did SSI's proposal.

On January 23, 2003, the due date for the agency report, the Army notified our Office that it planned to cancel the solicitation. The contracting officer's cancellation memorandum set forth two bases for the cancellation. The first was associated with a recent Army management restructuring and reorganization that directly affected Redstone and the workload of the organizations covered by the PWS. The second basis was associated with the implementation of the Army's current "Third Wave" initiative and the Federal Activities Inventory Reform (FAIR) Act, which resulted in exempting from A-76 review 204 of the 315 positions that were included in the commercial activities study when the solicitation was issued. Cancellation Memorandum at 1. The contracting officer stated that Army-directed changes, in the form of exemption requests associated with positions whose workload was captured in the PWS, reflected a 66 percent change in the scope of work of the solicitation, and she concluded that it was not viable to continue with either implementation of the MEO or award of a contract because the existing RFP was outdated and neither implementation of the MEO nor contract award would meet the agency's current requirements. *Id.* at 2.

In view of the Army's decision to cancel the solicitation, our Office dismissed SSI's protest of the second cost comparison as academic. In the instant protest, SSI argues that the Army's cancellation decision is unreasonable.<sup>3</sup> Our review of the

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<sup>3</sup> SSI also argues that, since it has demonstrated on two occasions that it can provide the work at a cost lower than that of in-house performance, the cancellation violates the statutory prohibition against retaining work in-house when it can be performed less expensively by contract, citing our decision in Pemco Aeroplex, Inc., Aero Corp., (continued...)

record, the pleadings, and testimony taken at a hearing leads us to conclude that we cannot find the cancellation decision to be unreasonable, based on the cumulative impact of uncertainty generated by the pending exemption requests with the potential to substantially affect the solicitation's workload, taken together with changes in the solicitation's workload that occurred both before and after the reorganization and the continuing uncertainty associated with the full impact of that reorganization. We begin our discussion by explaining the recent developments underlying the cancellation decision.

## RECENT DEVELOPMENTS

In May 1997, the initial Commercial Activities Proposed Action Summary (CPAS)<sup>4</sup> for the RASA multi-function study encompassed the Directorate of Public Works (DPW), the Directorate of Logistics (DOL), the Directorate of Community and Family Activities (DCFA), and the Directorate of Flight Operations (DFO), for a total of 337 full-time equivalents (FTE). In subsequent years, the DCFA activity was excluded from the study and the CPAS was amended to reduce the number of FTEs from 337 to 315. When this solicitation was issued in November 1999, the covered activities were performed by RASA under the cognizance of the Army Materiel Command through AMCOM at the Redstone Arsenal.

In late 2001, the Secretary of the Army announced the Transformation of Installation Management (TIM) initiative, a centralized installation management initiative that changed the way the Army manages base operations and support functions. In October 2002, in conjunction with the TIM initiative, the Army established the new Installation Management Agency (IMA) to oversee all facets of installation support and installation management under a new regionalized structure. RASA was removed from the organizational control of AMCOM and renamed the U.S. Army

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(...continued)

B-275587 *et al.*, June 29, 1998, 98-2 CPD ¶ 17 (there could be no reasonable basis for canceling a solicitation in order to bring work in-house if doing so violated 10 U.S.C. § 2462 (2000), a congressional mandate to allow private companies to provide goods and services to DOD unless the government can provide those goods and services at a lower cost). SSI has twice argued that it can provide the work at a cost lower than that of in-house performance, but has not demonstrated that this is the case—the administrative appeals board twice denied SSI's appeals and our Office has never issued a decision on the merits. Moreover, the Army's cancellation decision was not based on a conclusion that in-house performance is less costly than contract performance. *Cf. Imaging Sys. Tech.*, B-283817.3, Dec. 19, 2000, 2001 CPD ¶ 2. As a result, we will not consider SSI's argument in this regard.

<sup>4</sup> The CPAS is an Army document that delineates which function or functions are to be studied. Department of the Army Pamphlet 5-20 ¶ 2-5.

Garrison, Redstone Arsenal (the garrison) under the IMA's authority. The IMA will exercise its authority over the garrison through its Southeast Region, housed at Fort McPherson, Georgia.

In October 2002, the Secretary of the Army also announced the Army's "Third Wave" initiative, under which all Army commands were required to develop and present to the Assistant Secretary of the Army, Manpower and Reserve Affairs (ASA(M&RA)), implementation plans for "privatizing, divesting, competing using A-76, outsourcing using 'alternatives to A-76,' converting military spaces to civilian or contract, or transferring to other government agencies, all non-core functions that fall under [the command's] purview."<sup>5</sup> Secretary of the Army's Third Wave Memorandum, Oct. 4, 2002, at 1. The plans were required to include "all non-core spaces (*i.e.*, spaces potentially eligible for private sector performance) unless an exemption, based on disruption to core missions, is approved [in writing] by the ASA(M&RA)." *Id.*

The guidance accompanying the memorandum defined the scope for the Third Wave as "100% of the Inventory of Commercial and Inherently Governmental Activities (ICIGA) reviewable spaces (Codes L through V and X)<sup>6</sup> and contract support," for a total of 213,637 military and civilian non-core spaces. *Id.*, encl. 2 at 1-2. The guidance also established deadlines for the exemption process, which were subsequently extended. In brief, an exemption request, signed by a principal official of the headquarters of the Department of the Army or a major command commander, must have been provided to and received by the ASA(M&RA) on or before November 29, 2002, and the exemption approval must have been signed by the ASA(M&RA) on or before January 21, 2003. Unless these deadlines were met, the commands were required to include the spaces being considered for exemption in their implementation plans. If the exemptions were approved, the spaces exempted were to be considered "core" and removed from the implementation plans. These deadlines were subsequently extended again to permit Army functional chiefs to submit their final exemption requests by January 15, 2003. ArmyLink News, Dec. 18, 2002, "Army extends deadline for 'Third Wave' exemptions."

Over the fall of 2002 and into January 2003, USAG-Redstone personnel had telephonic and e-mail communications with an IMA representative regarding

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<sup>5</sup> This is the "Third Wave" initiative because it was preceded by two "waves" of public-private competitions. Secretary of the Army's Third Wave Memorandum, Oct. 4, 2002, encl. 2 at 1.

<sup>6</sup> These codes refer to DOD's manpower mix criteria codes, which provide a shorthand description of the reason for concluding that a given military or civilian position is or is not subject to cost comparison. See DOD Instruction No. xxxxx.x, Oct. 1, 1997, and the draft on the Under Secretary of Defense for Personnel and Readiness website, <[http://dod.mil/prhome/docs/criteria\\_mix1102.doc](http://dod.mil/prhome/docs/criteria_mix1102.doc)>.

implementation of the Third Wave initiative and associated exemption requests. Testimony of the Deputy to the Garrison Commander (the Deputy), Hearing Transcript (Tr.) at 42-44, 46.<sup>7</sup> On January 13, the garrison forwarded to the IMA a number of Third Wave exemption requests covering various positions in each of the three directorates at issue in the solicitation. Agency Report (AR) Tab BV. In the following days, the IMA representative advised garrison personnel of the status of these exemption requests. Specifically, on January 14, the garrison was advised that, with respect to the DPW, a “blanket exemption [is] in place and [the IMA representative] is checking it to see if all positions listed are exempt; some may not fit.” AR Tab BU, E-Mail no. 4, Jan. 14, 2003. The IMA representative updated this advice on January 15, stating, “The Redstone Garrison DPW functions are covered in a blanket exemption request . . . [a]lso, the DOL functions have been addressed by the IMA proponent in Operations Div here. I don’t understand exactly what they’ve done, but will figure it out and let you know.” AR Tab BU, E-Mail no. 3, Jan. 15, 2003. The Deputy testified that the IMA representative subsequently advised garrison personnel by telephone of the positions that would be covered by the exemption requests. Tr. at 42-43, 46. The Deputy testified that these personnel told him that, of the 108 positions in the MEO, the exemptions covered all [DELETED] FTEs in the DPW, [DELETED] of the 60 positions in the DOL, and all [DELETED] FTEs in the DFO. Id. at 46, 18-20; see also Agency Hearing Exhibit 1.

The Deputy testified that, after receiving this information, he felt a need to cancel the solicitation because it was no longer a viable acquisition. Tr. at 67. First, it appeared that the agency would be changing in excess of 60 percent of the requirement based on the number of FTEs that would be exempt based upon the information provided by the IMA representative.<sup>8</sup> Id. at 67-68. Second, he considered changes in workload that had occurred both before and after the reorganization, as well as the impact of the loss of funding on certain operations. Id. at 68-69, 72-74, 95-102.

On January 16, the Deputy sent the garrison commander an e-mail requesting authorization to cancel the solicitation. In that e-mail, the Deputy stated that changes had occurred since the RFP was released and it no longer met the agency’s requirements. The e-mail stated that, “if a contract were to be awarded, significant descope, [termination for convenience], and probably de-obligation of funds would occur.” Agency Hearing Exhibit 3. The e-mail also stated that, “during the course of the procurement action the RASA workload changed dramatically and the

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<sup>7</sup> Cites to the hearing transcript refer to the transcript of the hearing that our Office conducted in connection with this protest.

<sup>8</sup> The Army explains that the information communicated by the IMA representative was that [DELETED] functions, or [DELETED] FTEs, were affected by these exemption requests, which translates to [DELETED] percent of the 108 FTEs in the MEO. Army Letter, Mar. 17, 2003, at 2.

configuration of the organization was also beginning to change dramatically. These changes were discussed and cancellation of the procurement action was discussed several times but the end decision was that the mission changes had not yet reached the point to warrant a cancellation of this specific action. That is no longer the case.” Id. The e-mail explained that “what was RASA in 1997 changed to the [garrison] in 2002, the funding streams and the funding process for all the Garrison Services is/has changed and most dramatically, recent ‘Third Wave/Fair Act’ changes have exempted 204 of the original 315 FTEs on the CPAS—significant change because DPW and DFO (with the exception of a single [administrative] FTE in DFO) are now *entirely* exempt.” Id. The Deputy testified that he received telephonic approval of this request. Tr. at 62-63.

On January 21, the Deputy sent a formal request to cancel the solicitation to the contracting officer and the SSA, expanding upon the reasons outlined above. On that same day, the contracting officer and SSA issued the formal determination to cancel the solicitation using much the same language as that used by the Deputy.

First, the contracting officer explained that TIM “has had, and will continue to have, a profound effect on the operations” of the garrison. The significant change was to the command and control of the garrison, which would no longer be managed through AMCOM and its headquarters, the Army Materiel Command, but, instead, by the IMA through its regional office. She stated that base operations funding would be channeled through the IMA, instead of AMCOM, and that “[t]he customer base and the budget process for the entire garrison changed dramatically with this reorganization and this substantially changed the workload for the organizations listed in the original A-76 solicitation.” Cancellation Memorandum at 1-2.

Second, the contracting officer discussed the impact of the Third Wave and the FAIR Act. In her cancellation memorandum, the contracting officer stated that compliance with the most recent coding guidance from DOD and OMB changed many of the functions listed in the original CPAS from “contractible” to “non-contractible” functions, with the end result being that 204 of the 315 FTEs in the original study were now exempt from review. As relevant to this solicitation, she stated that e-mails from an IMA representative informed the garrison that the IMA had “submitted blanket exemptions” for the DPW, and the DOL and DFO were “under review now for blanket exemptions.”<sup>9</sup> Id. The contracting officer stated that these Army-directed changes reflected a 66 percent change in the scope of work of the original A-76 solicitation. Id.

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<sup>9</sup> The contracting officer’s statement that e-mail communications from the IMA representative provided exemption information on the DFO is in error, since the e-mails do not address the DFO. The Deputy testified that information concerning the DFO exemptions was transmitted telephonically. Tr. at 46-69.

The contracting officer concluded that continuation of the solicitation would result in immediate termination for convenience of any resultant contract award, as the information in the RFP, which was the basis for the MEO and the private-sector proposals, did not adequately identify the work required to meet the garrison's current needs. She believed that any amendment to conform the terms of the solicitation to the changed workload requirements would be an amendment of such substance and magnitude that the cancellation of the solicitation was mandatory, citing FAR § 15.206(e). The contracting officer added that the flight operations function was so unique that it severely limited the number of qualified offerors, and anticipated that a new solicitation for the logistics effort alone would result in greater competition.

## DISCUSSION

SSI argues that the agency's decision to cancel the solicitation lacks a reasonable basis. The protester contends that the reorganization at Redstone had no effect on the workload in the PWS; there is no reliable evidence that any blanket exemption requests that may be pending cover any of the functions in the PWS; and there are currently no final approved exemptions.

Where an agency determines that a solicitation does not accurately reflect its needs, cancellation is appropriate. Rice Servs., Ltd., B-284997.5, Mar. 12, 2002, 2002 CPD ¶ 59 at 4. In a negotiated procurement, an agency has broad authority to decide whether to cancel a solicitation; there need be only a reasonable basis for the cancellation. This broad grant of authority extends to the cancellation of solicitations used to conduct A-76 cost comparisons. IT Corp., B-289517.3, July 10, 2002, 2002 CPD ¶ 123 at 3; Source AV, Inc., B-241155, Jan. 25, 1991, 91-1 CPD ¶ 75 at 3. So long as a reasonable basis exists to exercise this authority, an agency may cancel a solicitation regardless of when the information precipitating the cancellation first surfaces. Rice Servs., Ltd., *supra*; Lackland 21<sup>st</sup> Century Servs. Consol., B-285938.7, Dec. 4, 2001, 2001 CPD ¶ 197 at 5.

We acknowledge at the outset that SSI correctly asserts that, at the hearing on the protest, the contracting officer testified that she believed the exemptions had been granted when she made the determination to cancel the solicitation, and that, if she had known they were still pending, she would have concluded she did not have a basis for cancellation at that time. Tr. at 120, 140-41. However, we do not agree with SSI that this admission alone means that the cancellation decision cannot be reasonably based. The contracting officer's testimony contradicts the language in the cancellation memorandum she drafted, wherein she states that a blanket exemption for the DPW had been "submitted," and that the DOL and DFO were "under review now for blanket exemptions." Cancellation Memorandum at 2. The contemporaneous language clearly indicates the contracting officer's understanding that these requests had not yet been granted but were still pending. In any event, the Army is standing by its decision to cancel the solicitation, citing not only the pending



exemption requests, but changes in the PWS workload both before and after the restructuring and reorganization, as well as funding shortfalls. It is the reasonableness of this agency decision that we are called on to review in this protest.

As explained below, the Army provided scant evidence to support its conclusions regarding the effects of reorganization-related workload changes and funding concerns. Because of the limited record in these areas, we cannot conclude that either factor, standing alone, justifies cancellation of the solicitation. It is also clear from the record, however, that the primary factor leading to the cancellation was the information concerning pending exemption requests affecting the workload in the PWS. We conclude that this justification--in conjunction with the agency's other concerns--reasonably supports the decision to cancel. We address each of the agency's justifications in turn.

### Reorganization

The cancellation memorandum explained that the TIM initiative had had, and "will continue to have, a profound effect" on the garrison's operations. Cancellation Memorandum at 1. When the RFP was issued in 1999, the garrison was managed through AMCOM and its headquarters. However, as of October 2002, the garrison is managed by a new agency, the IMA. The contracting officer explained that base operations funding will now be channeled through the IMA instead of AMCOM, and that "the customer base and the budget process for the entire garrison changed dramatically with this re-organization and this substantially changed the workload for the organizations listed in the original A-76 solicitation." *Id.* at 2.

SSI is correct that the cancellation memorandum contained no support for the statement that the restructuring and reorganization "substantially changed the workload" for the organizations covered by the PWS, and is equally correct that the Army has failed to provide any documentary evidence to support the statement during the pendency of this protest. However, both the Deputy and the contracting officer provided testimony on this matter at the hearing.

The Deputy stated that the changes wrought by the TIM and the shift to the IMA had been dramatic, causing the garrison to integrate various new pieces into its existing organization, all of which were accompanied by such things as budget and personnel requirements. This process is still ongoing. *Tr.* at 10-12. The Deputy added that consolidating the groups that do installation management work into a central group to achieve efficiencies was a process that would probably continue on until 2004 or 2005. *Id.* at 12. The contracting officer testified that, prior to the reorganization, RASA had only one customer, AMCOM, but, after the reorganization, the garrison's customer base expanded beyond AMCOM, in a way that will have an impact on how the activity is funded. *Id.* at 123-24. As the Army explains, because the garrison has increased in size and mission over its former incarnation as RASA, the workload for some functions may expand.

Citing the Deputy's testimony that the number of personnel performing the PWS work has fluctuated only slightly over the past year and has been a constant [DELETED] personnel since October 2002, when the garrison came under the IMA's authority, SSI argues that the workload has not changed due to the reorganization, even though, as discussed below, certain tasks have been eliminated or consolidated, because the number of personnel performing the work is the same and there has been no increase in overtime to compensate for any additional work. We do not share SSI's view that this fact means the workload has not changed. The Deputy testified that the number of personnel has been constant due to "pure funding." Tr. at 72. Moreover, it is not clear to us that the full impact of the restructuring and reorganization has been realized in any concrete manner in the few short months since the reorganization.

Beyond changes to the workload caused by the reorganization, the Deputy provided testimony concerning changes to the PWS over the nearly 6 years since the study's inception. The Deputy testified that the garrison has incorporated the military construction engineers, master planners, and space management personnel who had been in a different organization into the DPW, and has suffered a major funding shortfall in customer design requirements. As a result, even without considering the implications of the Third Wave or the FAIR Act, the Deputy testified that the entire DPW PWS, "the way it's written, would have to be redone." *Id.* at 97-98. SSI asserts that the Deputy failed to provide testimony that any of the actual workload being performed by the engineers has changed but, in our view, the interweaving of a new organization not previously covered by the PWS into an organization that was covered by the PWS brings inherent changes that, at a minimum, make the workload different from that anticipated by the solicitation.

The Deputy also testified that the garrison moved some of the fleet management workload under the DOL to an existing contract, and that there had been reductions and consolidations based on funding considerations with respect to other DOL workload. *Id.* at 95, 96. The Deputy testified that certain work within the DFO had been dropped, other work was no longer performed based on funding constraints, and the aircraft maintenance task had already been contracted out.<sup>10</sup> *Id.* at 98-100.

SSI argues that the fact that the aircraft maintenance work has not been removed from the RFP compels the conclusion that the Army intended to move the work to the MEO or SSI's contract at the end of the competition. On the contrary, the

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<sup>10</sup> The Deputy also testified as to the uncertain status of the DFO. When RASA transitioned into the garrison, ownership of the airfields was in question and was transferred this year to another organization. Since then, the Army has decided to transfer ownership back to the garrison effective October 1, 2003. *Id.* at 13-14.

contracting officer explains, “during the TIM initiative, it was discussed on numerous occasions that it did not appear the DFO would be under the control of the garrison and should be removed from the RFP. Because it was a small portion of the entire effort, the decision was made to go forward and implement a reduction in either the MEO or a partial termination for convenience, in the event of contract award rather than cancel the RFP.” Contracting Officer’s Statement, Feb. 4, 2003, at 3.

We recognize that the Army has provided scant evidence with respect to specific workload changes to the PWS that occurred either before or as a result of the reorganization. We find, nonetheless, that there is sufficient evidence in the record to show that there have been revisions to the workload covered by the PWS over the 6 years since the study commenced, both before and after the reorganization. We also find that there is sufficient evidence to show that the reorganization has created uncertainty for some time to come about the garrison’s organization as a whole, and that this uncertainty necessarily extends to the components of the organization that were the subject of the solicitation.

#### Funding

The second basis for cancellation cited by the Army in its post-hearing comments concerns funding issues. The Army argues that obtaining the services covered by the PWS through either the MEO or a contract is not cost-effective, citing testimony provided by the Deputy and the contracting officer concerning the garrison’s funding problems and the likelihood of “de-scoping” the work if this procurement went forward. SSI argues that the Army’s “funding” justification is a post hoc rationalization that does not appear in the cancellation memorandum but was created for the purpose of responding to this protest.

SSI is correct that the cancellation memorandum does not use funding as a justification for the cancellation, and does not mention funding other than to say that there has been a shift in the source of funding from AMCOM to the IMA. There is, however, contemporaneous evidence to show that funding concerns were a consideration underlying the decision to cancel the solicitation. As noted above, in his request to the garrison commander to authorize cancellation of the solicitation, the Deputy stated, “if a contract were to be awarded, significant descope, [termination for convenience], and probably de-obligation of funds would occur.” Agency Hearing Exhibit 3. The Deputy also stated, “what was RASA in 1997 changed to the [garrison] in 2002, the funding streams and the funding process for all the Garrison Services is/has changed . . . ” Id.

The Deputy testified that the garrison started having financial problems 3 years ago and, citing an example, had to reduce its base operations contract significantly and will have to reduce it again this year. Tr. at 69. The Deputy stated that the garrison

could not afford to proceed with the RFP as written and would have to “descope,” or eliminate some of its requirements.<sup>11</sup> Id. at 73. We have no basis to question the Deputy’s testimony that funding concerns, including those associated with the reorganization, may have influenced the agency’s decision to cancel the decision. Nonetheless, the minimal support the Army has provided as evidence of these funding concerns is not sufficient for us to conclude that this factor, standing alone, justified cancellation of the solicitation.

### Exemption Requests

As stated above, the record is clear that the precipitating justification for canceling the solicitation was the information concerning pending exemption requests affecting the workload in the PWS.

SSI argues that there is no reliable evidence that any blanket exemption requests that may be pending cover any of the functions in the PWS. The protester asserts that the Army has not produced the IMA’s exemption requests, and failed to provide a hearing witness with first-hand knowledge of the information provided by the IMA on specific functions covered by the exemption requests.

As the Army explains, neither AMCOM nor the garrison has access to the IMA’s exemption requests or their underlying rationale. Army Letter March 7, 2003, at 2. We are troubled, however, that the Army failed to provide a hearing witness with first-hand knowledge of the information provided orally by the IMA on the specific positions covered by the exemption requests. The Army was on notice that the hearing’s purpose was to discuss, among other things, the status of the exemption requests and to support the changes of certain FTEs from “contractible” to “non-contractible,” and the Army was asked to provide witnesses that could shed light on these issues. GAO Hearing Notice, Mar. 25, 2003, at 1-2. Neither of the witnesses the Army provided had first-hand knowledge of the communications with the IMA representative; the Deputy could only relay the information he was given by staff who did have such knowledge.

Nonetheless, we do not agree with SSI’s assertion that we should infer that the information that could have been provided by another witness would have been adverse to the Army, citing Department of Commerce–Recon., B-277260.4, July 31, 1998, 98-2 CPD ¶ 35 at 3. In the case at hand, it is more important for us to know

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<sup>11</sup> SSI argues that since the Deputy has not seen its proposal, his testimony concerning what might happen if SSI won the contract is speculative. We do not think the Deputy is saying any more than that the RFP’s requirements will cost more than the garrison is able to afford, regardless of whether SSI or the MEO performs the work set out in the PWS.

that the “DPW functions are covered in a blanket exemption request,” and “the DOL functions have been addressed,” AR, Tab BU, E-Mail no. 3, Jan. 15, 2003, than to know the specific positions at issue. In any event, we have no basis to discount the Deputy’s testimony concerning his staff’s account of the contents of the telephone conversations with the IMA representative.<sup>12</sup>

SSI also asserts that the cancellation decision was unreasonable because there are currently no final approved exemptions. As of the date of this decision, it is apparently still true that no final approved exemption requests have been released. The Deputy and the contracting officer testified that they were told, on or about April 1, that the Assistant Secretary had signed 20 of the 24 exemption requests that were pending before him from the IMA. Tr. at 45-46; see also Agency Hearing Exh. No. 2, at 2. These requests have not yet been released, and may not be released for some time to come. Id. at 120; see also Agency Hearing Exhibit No. 2 at 2. SSI is also correct that there is little information concerning the contents of these signed exemption requests. The only information in the record is an e-mail from the IMA indicating that “[DELETED].” Agency Hearing Exh. No. 2, at 2. As a consequence, there is great uncertainty regarding the scope of the exemption requests and their potential impact on this solicitation.<sup>13</sup>

## Conclusion

Considering the record before us, we find that the Army has presented evidence that the workload in the PWS has undergone revision and will likely undergo continuing revision as a result of the reorganization, and that the garrison has faced funding shortfalls that have had an impact on the workload in the PWS and will likely face additional such challenges. We also find that the Army has presented evidence that its authorizing agency, the IMA, has submitted requests for exemption from A-76 competition that, if approved, may have a substantial impact on the workload in the PWS whether the work is ultimately performed by the MEO or by SSI. What remains to be considered is the question of what action the agency reasonably may take where, during the course of an ongoing protest of the validity of the cost

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<sup>12</sup> SSI argues that an e-mail exhibit to the Army’s post-hearing comments undermines the Deputy’s testimony concerning the content of these conversations because the sender of the e-mail, a staff member privy to the conversations, states that “all we have are [the IMA representative’s] e-mails stating such blanket exemptions are in place.” Army Post-Hearing Comments, Exhs., at 1. When the e-mail is read in context, the staff member is clearly responding to a request for documentation.

<sup>13</sup> As SSI points out, this uncertainty is magnified by the fact that, even if some or all of the positions in the PWS are included in the signed exemption requests, they are still subject to challenge under the FAIR Act.

comparison, agency management decisions raise the prospect that two-thirds of the positions covered by the PWS may be exempted from A-76 competition.

In such a case, the agency faces two alternatives. First, the agency could continue to defend the protest and either award a contract to SSI to perform the services covered by the PWS or proceed to in-house performance by the MEO of the services covered by the PWS, and address after award the implications of the Army management decision that two-thirds of the positions in the PWS should not have been competed. Second, the agency could—as the Army has chosen to do here—cancel the solicitation and await more certain information regarding the outcome of the exemption requests.

We believe that determinations of this kind must be left in the first instance to the sound judgment and discretion of responsible agency officials, subject to objection upon review only if clearly shown to be without a reasonable basis. See Federal Leasing, Inc.; DPF, Inc., B-182534, Apr. 18, 1975, 75-1 CPD ¶ 236 at 7-8. After a review of the record in the present case, we cannot conclude that the Army lacked a reasonable basis to cancel the solicitation at the time it did so.

In reaching this conclusion, we take note of the evidence in the record that the PWS workload has changed over the lengthy period of time since the study commenced; of the recent restructuring and reorganization of the way the Army manages installation support operations and the inevitable but uncertain impact this will have on the garrison's organization and its components, including the three components at issue in the solicitation; and of the garrison's concerns about funding. In an appropriate case, each of these factors may be sufficient to justify the cancellation of a solicitation. Printz Reinigung GmbH, B-241510, Feb. 8, 1991, 91-1 CPD ¶ 143 (cancellation of solicitation justified because of agency concerns about inaccuracy of the RFP's stated workload due to recent organizational changes and potential for cost savings through consolidation); Source AV, Inc., *supra* (cancellation of A-76 solicitation was reasonable where agency based its decision on uncertainty regarding budgetary constraints and likelihood that a reduction in the workload would materialize after a planned agency reorganization); Mercury Consolidated, Inc., B-218182, June 17, 1985, 85-1 CPD ¶ 687 (cancellation of A-76 solicitation justified based on substantial changes in the government's needs and the long period of time between the original solicitation and necessary revisions). While we find that the Army failed to provide sufficient support to justify the cancellation of the solicitation on any one of these factors alone, in our view, when the implications of these factors are combined with the uncertainty raised by the pending exemption requests and their potential impact on the scope of this procurement, we cannot conclude that the cancellation decision was clearly unreasonable.

The protest is denied.

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General Counsel