Comptroller General
of the United States

Washington, D.C. 20548

Decision

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Matter of: Pemco Aeroplex, Inc.

File: B-280397

Date: September 25, 1998

Ronald K. Henry, Esq., and Mark A. Riordan, Esq., Kaye, Scholer, Fierman, Hays & Handler, for the protester.
Thomas J. Madden, Esq., John J. Pavlick, Jr., Esq., Lars E. Anderson, Esq., and Paul N. Wengert, Esq., Venable, Baetjer, Howard & Civiletti, for Lockheed Martin Aircraft & Logistics Centers, an intervenor.
Gregory H. Petkoff, Esq., and John Lariccia, Esq., Department of the Air Force, for the agency.
Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging Air Force decision to use a consolidated solicitation to procure a significant portion of the workload currently performed by the Sacramento Air Logistics Center--thus bundling together programmed depot maintenance for the KC-135 aircraft, inspections and painting of the A-10 aircraft, and overhaul and repair requirements for hydraulic components, electrical accessories, and flight instruments--is sustained where the Air Force is unable to show that combining these requirements is reasonably required to satisfy the agency's needs.

DECISION

Pemco Aeroplex, Inc. protests the terms of request for proposals (RFP) No. F04606-98-R-0007, issued by the Department of the Air Force for a public/private competition for a significant portion of the depot workload currently performed by the Sacramento Air Logistics Center, McClellan Air Force Base (AFB), California. McClellan AFB is scheduled to close in 2001, and the Air Force has consolidated the depot's workload requirements in the following five areas into a single solicitation: (1) programmed depot maintenance for the KC-135 aircraft, (2) inspections and painting of the A-10 aircraft, and overhaul and repair requirements for (3) hydraulic components, (4) electrical accessories, and (5) flight instruments/electronics. Pemco asserts that it is a potential offeror for the KC-135 workload, and protests that the solicitation unduly restricts competition by combining these requirements into one procurement.

We sustain the protest.

BACKGROUND

In July 1995, the Base Realignment and Closure (BRAC) Commission recommended that McClellan AFB be closed by July 2001, and that the workload performed by the Sacramento depot be transferred elsewhere within the Department of Defense, or to the private sector.[1] Since that decision, there has been a continuing debate over the process for deciding where, and by whom, the workloads at the closing depots will be performed.

Prior Review by Congress and the General Accounting Office

The National Defense Authorization Act for Fiscal Year 1998, Pub. L. 105-85, 111 Stat. 1629, 1696 (1997), established certain requirements applicable to the transition of the workloads currently being performed at Sacramento. 10 U.S.C.A. § 2469a (West Supp. 1998). Among other things, the Authorization Act provides that a procurement which combines multiple depot-level maintenance and repair workloads is permissible only if: (1) the Secretary of Defense determines in writing that the individual workloads cannot "as logically and economically" be performed without combination; (2) the Secretary submits a report to Congress setting forth the determination along with the reasons for the determination; and (3) no solicitation is issued for 60 days following submission of the report. 10 U.S.C.A. § 2469a(e)(1).

On December 19, 1997, the Undersecretary of Defense for Acquisition and Technology executed the required determination regarding combination of the Sacramento workloads, reporting that determination along with the supporting reasons to Congress. Among other things, the Undersecretary's report stated that the consolidated workloads utilize certain common facilities, equipment and personnel skills; that combining the workloads will provide for a steady overall workload, compared to the highly variable workload associated with some portions of the effort; that significant cost savings will be derived; and that a single coordinated transition will mitigate readiness risks associated with transitioning to multiple contractors.

---

[1]At the same time, the BRAC Commission also recommended that Kelly AFB be realigned and that the San Antonio Air Logistics Center be closed by July 2001. In that instance as well, the Air Force combined a significant portion of the San Antonio depot's workload into one solicitation. Our decision denying the protest challenging the solicitation for the San Antonio workload is set forth in National Airmotive Corp., B-280194, Sept. 4, 1998, 98-2 CPD ¶ ___.

The Authorization Act also required that the Comptroller General review and report on various aspects of the Department of Defense's (DOD) transition activities for the Sacramento and San Antonio depots. Since the DOD determination, the General Accounting Office (GAO) has issued three reports concerning transition of the Sacramento workloads which, among other things, criticize the adequacy of the information that DOD provided in support of the determination to combine workloads. In the first report, issued in January 1998,[2] GAO stated, among other things:

> It may be that the individual workloads at the closing San Antonio, Texas, and Sacramento, California, Air Force maintenance depots cannot as logically and economically be performed without combination. . . . However, the DOD reports and supporting data do not provide adequate information supporting the determinations.

GAO/NSIAD-98-76 at 3.

In April, following DOD's issuance of a February 24 document titled "White Paper on Single vs. Multiple Workload Competitions (Sacramento)" containing additional support for the determination, GAO issued a second report,[3] stating:

> While we recognize that the determination[] ultimately represent[s] a management judgment based on various qualitative and quantitative factors and that DOD's determination[] may well be appropriate, the rationale presented in the . . . Sacramento white paper . . . for combining the workloads in [a] single solicitation[] . . . is not well supported.

GAO/NSIAD-98-143 at 3.

---

[2]Public-Private Competitions: DOD's Determination to Combine Depot Workloads Is Not Adequately Supported, (GAO/NSIAD-98-76, January 20, 1998). This report was written in response to the Authorization Act's requirement that "[t]he Comptroller General shall review [the DOD report] and, . . . submit to Congress the Comptroller General's views regarding the determination of the Secretary." 10 U.S.C.A. § 2469a(e)(2).

[3]Public-Private Competitions: DOD's Additional Support for Combining Depot Workloads Contains Weaknesses, (GAO/NSIAD-98-143, Apr. 17, 1998).

Finally, in May, GAO issued a third report,[4] stating:

> [T]he Air Force has not, as of April 22, provided a sufficient basis to show that soliciting the workloads on a combined basis is necessary to satisfy its needs. Otherwise, we found that the solicitation is in compliance with applicable laws, including the provisions of 10 U.S.C. 2469a.
>
> * * * * *
>
> Normally, we review the solicitation of combined requirements in the context of a bid protest; in that context, the agency has an opportunity to justify the combination by showing it is reasonably related to its needs or that it may actually enhance competition. The Air Force's supporting rationale, which was prepared in a different context, is not at this point sufficient to justify the workload combination. However, the rationale for the combination contains some elements--such as readiness concerns and potential competition enhancements--that if supported could establish the reasonableness of the combination under the acquisition laws.

GAO/OGC-98-48 at 3-4.

In Appendix I, the report also noted, "if a protest is filed the Air Force will have an opportunity to provide a more detailed justification." Id. at 19.

The Solicitation and the Bundled Workload

On March 20, 1998, the Air Force issued the solicitation for the Sacramento workload, which anticipated award of a variably-priced contract (cost-plus-award-fee, fixed-price, labor hour, and cost-reimbursement) for a transition period, a 5-year basic ordering period, and up to 3 additional ordering years. RFP at 2, 8. The RFP advised that award would be made to the offeror whose proposal represents the best value to the government, and that, in addition to other things,

---

[4]Public-Private Competitions: Review of Sacramento Air Force Depot Solicitation, (GAO/OGC-98-48, May 4, 1998). This report was written in response to the Authorization Act's requirement that GAO report within 45 days after issuance of the Sacramento solicitation regarding: (1) whether the solicitation complies with applicable laws and regulations; and (2) whether the solicitation provides a "substantially equal opportunity for public and private offers to compete for the contract without regard to the location at which the workload is to be performed." 10 U.S.C.A. § 2469a(g)(1).

offerors would be evaluated with respect to their proposed approach to performing this workload in the following areas: KC-135 aircraft, hydraulics, flight instruments/electronics, electrical accessories, and A-10 aircraft. RFP § M-900, paras. 2.0, 4.1.1a.2.

Over the course of the 8-year performance period, the total estimated value of this contract is approximately $2.47 billion. Contracting Officer's (CO) Statement at 1.[5] Of this total, approximately $1.172 billion is related to the aircraft portion of the workload (KC-135, $1.09 billion; A-10, $82 million), and $1.294 billion is related to the commodities portion of the workload (hydraulics, $587 million; flight instruments, $286 million; and electrical accessories, $301 million).[6] Id. at 3-5; Acquisition Plan at 13.

The aircraft portion of this workload is stable: it consists of programmed depot maintenance for the KC-135, and programmed work for the A-10. The commodities portion, however, is considerably less stable. The commodities workload includes almost 2,000 items--approximately 800 in hydraulics, and 600 each in instruments and electrical accessories. Hearing Transcript[7] (Tr.) at 21. For each of these items --in all three areas--approximately 20 percent of the items account for 80 percent of the value of the work. Tr. at 26-27, 35-36, 229, 246. At the other extreme, the Air Force has no computed workload for approximately 570 of these nearly 2,000 items. Tr. at 35-36. These items with no predicted need--any one of which, if in need of

---

[5]The CO's statement is not dated, but was provided to our Office attached to a cover letter dated July 24, 1998.

[6]Included within the $1.294 billion for commodities is $120 million for additional effort that the Acquisition Plan does not allocate to the separate estimated values for the hydraulics, instruments, and electrical accessories workload. This sum of $120 million must be added to the individual workload values ($587 million + $286 million + $301 million) to obtain the total of $1.294 billion. Acquisition Plan at 13.

[7]During the course of this protest our Office convened a hearing during which Air Force witnesses provided direct testimony and responded to cross-examination by counsel for Pemco. Air Force witnesses included: Darleen A. Druyun, Principal Deputy Assistant Secretary of the Air Force for Acquisition and Management; Major General Michael E. Zettler, Director of Maintenance for the Air Force; and Mr. James Barrone, Executive Director of the Sacramento Air Logistics Center. Citations to the hearing transcript refer to the hearing held on August 25 and September 9, 1998.

repair, might be critical to the continued operation of an airplane--are called the "orphan workload." Tr. at 36-40, 229-30.

As described above, the decision to bundle the aircraft and commodities workloads here into one solicitation was based on a determination that consolidation would permit utilization of certain common facilities, equipment and personnel skills; provide a steady overall workload, compared to the highly variable workload associated with portions of the component work; achieve significant cost savings; and provide a single coordinated transition that will mitigate the readiness risks associated with transitioning to multiple contractors. In its June 17 protest, Pemco argues that even though it is currently performing programmed depot maintenance for the KC-135, it cannot participate in this competition because it does not perform the other services included in the solicitation. Thus, Pemco claims that the bundled workload here violates 10 U.S.C.A. § 2469a and the Competition in Contracting Act of 1984 (CICA).

PROCEDURAL ISSUES AND SCOPE OF REVIEW

The Air Force raised two procedural challenges to Pemco's protest--that Pemco filed its protest too late for consideration by our forum, and that Pemco's protest fails to state a legally sufficient challenge to the procurement. For the reasons set forth below, we disagree on both counts, although the scope of review in this protest is narrower than the review sought by the protester in its initial filing.

Our Bid Protest Regulations require that protests based upon improprieties in a solicitation must be filed prior to the time set for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (1998). The Air Force argues that since potential offerors were required to submit past performance information "no later than 21 days prior to receipt of proposals," RFP § L-900, para. 7.2a, this challenge to the terms of the solicitation had to be filed prior to submission of the past performance information.[8] According to the Air Force, the past performance information was part of the proposal, and as the first part filed, serves as the "initial" proposal.

The language of the RFP, on its face, leads us to reject the Air Force's contention. The first page of the cover memorandum attached to the solicitation clearly states that "[p]roposals are due by 1630 PST on 20 May 1998." The requirement to submit past performance information "prior to proposal submittal" was set forth in a separate paragraph in that memorandum. Within the RFP, the provision requiring submission of the past performance information clearly states that the submission must be made "prior to the receipt of proposals." RFP § L-900, para. 7.2a. In our

---

[8]This requirement was also set forth in the first page of a March 20, 1998, Memorandum for All Interested Offerors, attached to the RFP as an executive summary.

view, the Air Force cannot reasonably maintain that providing this information constituted submission of the proposal. We also do not believe that a reasonable and knowledgeable offeror would interpret this provision to close the door on its right to challenge a solicitation prior to initial proposal submission. Accordingly, since Pemco's July 17 protest challenging the terms of this solicitation was filed prior to the July 19, 1998 deadline for receipt of initial proposals, we consider it timely filed.[9]

The Air Force's second procedural challenge concerns the requirements in our Regulations that protesters include a detailed statement of the legal and factual grounds of their protests, and that those grounds be sufficient to pursue a protest. 4 C.F.R. §§ 21.1(c)(4), 21.5(f). In this regard, the Air Force argues that its decision to bundle the Sacramento workload requirements was expressly authorized by 10 U.S.C.A § 2469a, and that this authorization precludes any further review under CICA.

As discussed in greater detail below, CICA generally requires that solicitations include specifications that provide for full and open competition, and requires that solicitations shall "include restrictive provisions or conditions only to the extent necessary to satisfy the needs of the agency <u>or as authorized by law</u>." 10 U.S.C. §§ 2305(a)(1)(A)(i), (B) (1994) (emphasis added). The Authorization Act language, discussed above, states that:

> a solicitation may be issued for [bundling of the depot requirements] only if --
>
> (A) the Secretary of Defense determines in writing that the individual workloads cannot as logically and economically be performed without combination . . . ;
>
> (B) the Secretary submits to Congress a report . . .; and
>
> (C) [the agency waits 60 days before issuing the solicitation].

10 U.S.C.A. § 2469a(e). Accordingly, the Air Force argues that since it has complied with each of the three requirements above--<u>i.e.</u>, the Secretary determined, the Air

---

[9]The May 20 due date initially identified for receipt of proposals was deleted by amendment 0001 to the RFP, dated March 30, 1998, and changed to June 19, 1998. On this subject, the amendment stated:

> Standard Form 1447, Block 9, the Date for receipt of offers is changed
>
> From: 20 May 98
>
> To: 19 Jun 98

RFP, amendment 1, Mar. 30, 1998, at 2.

Force reported, and the solicitation was delayed--there is no basis for a further review of its actions here.

Our Office does not view the provisions of 10 U.S.C. § 2469a(e) as falling within the meaning of the "authorized by law" provision of CICA, nor do we conclude that this statute constitutes a stand-alone authorization which replaces CICA's limitations on bundling. We reach this conclusion, in part, because several other portions of section 2469a--notably sections 2469a(f), 2469a(g)(1)(A), and 2469a(g)(2)(A)(ii)--indicate that Congress intended any solicitation issued under this statute to also comply with other applicable procurement laws and regulations. Based on the language of the statute itself--read as a whole, and the absence of any legislative history to the contrary, we view section 2469a(e) as imposing additional requirements with which the Air Force and the DOD must comply, which supplement the limitations in CICA. Thus, we disagree that Pemco has filed a legally insufficient challenge to the solicitation here.

On the other hand, our bid protest review here need not consider further whether this solicitation complies with the requirements of section 2469a. Our earlier report addressing the Sacramento solicitation's compliance with applicable laws and regulations found that, other than bundling, the solicitation complies with the requirements of section 2469a. GAO/OGC-98-48 at 26. In addition, none of the pleadings after the initial protest filing raised any further issue regarding compliance with section 2469a. Thus, our review will focus solely on whether the bundling here was permitted under CICA.

DISCUSSION

The Air Force response to Pemco's protest set forth five bases for the determination to bundle the workloads described above into one solicitation. These were:

> concerns about readiness, adequate competition for all of the portions of the workload, maintaining and promoting efficiency and economy in production operations, schedule constraints and staffing resources.

Agency Memorandum of Law, July 24, 1998, at 13. The Air Force contends that any one of these concerns provides a reasonable basis for the determination that bundling this workload is necessary to meet the agency's minimum needs.

As referenced above, the CICA mandate for full and open competition permits the use of restrictive specifications only to the extent necessary to satisfy the needs of the agency. 10 U.S.C. § 2305(a)(1). Since solicitations which combine multiple requirements have the potential for restricting competition by excluding firms that can furnish only a portion of the combined requirements, we review such solicitations to determine whether the procuring agency's approach is reasonably

required to satisfy the agency's needs. See, e.g., National Customer Eng'g, B-251135, Mar. 11, 1993, 93-1 CPD ¶ 225 at 4-5. In reviewing the propriety of combined requirements, we recognize that contracting officials must base their decisions regarding consolidation of requirements on the individual facts involved in each procurement. The Sequoia Group, Inc., B-252016, May 24, 1993, 93-1 CPD ¶ 405 at 5.

Readiness

The December 19, 1997 determination by the Undersecretary of Defense for Acquisition and Technology states, as its final consideration, that:

> the transition of these workloads has the potential to significantly impact readiness and has been identified as a high risk area. A single solicitation and resultant award provides for a single coordinated transition of the common areas, which will reduce the risk that would be associated with managing multiple transitions of mission critical workloads.

Report of Determination to Combine Multiple Depot-Level Maintenance and Repair Workloads, Dec. 19, 1997, at 2. In its report in response to this protest, the Air Force also argues that consolidation of these workloads will permit increased ability to respond to demands experienced in times of war and contingency operations, known as surge. Agency Memorandum of Law, supra, at 15.

With respect to the first issue, transition risk, the Air Force explains that it must carefully manage the transition of the depot workload "to avoid production level decreases that could impact the Mission Capable Rate for the aircraft and equipment currently maintained at [Sacramento]." Id. at 14. The Air Force maintains that any workload transition causes productivity declines, and that transitioning to multiple contractors will increase those declines. Tr. at 179, 198-200, 248, 255. In this regard, the Air Force argues that transitioning to multiple contractors will require multiple reductions in force (RIF) resulting in additional turbulence and decreased productivity at McClellan, thus further increasing the risk to readiness. Tr. at 74, 79-80, 198-99.

With respect to the second issue, ability to support a surge in requirements, the Air Force explains that one consolidated workload will permit the contractor to shift workers among the aircraft and commodity workloads to address changing needs. Agency Memorandum of Law, supra, at 15; Tr. at 106-10, 259. The Air Force also claims that a single point of contact for the Air Force customer will improve readiness. Agency Memorandum of Law, supra, at 16; Tr. at 250-51. Further, the Air Force argues that the bundling here will increase readiness by providing a guaranteed source for the orphan workload portion of the commodities effort. Tr. at 79, 92.

We have reviewed in detail each of the Air Force's claims regarding the readiness considerations here in light of our view that a combination of workload requirements may be reasonably required by the agency's needs to ensure military readiness. National Airmotive Corp., supra, at 9; Southwestern Bell Tel. Co., B-231822, Sept. 29, 1988, 88-2 CPD ¶ 300 at 4. We conclude that the Air Force has not shown a convincing relationship between its determination to bundle these workloads and its readiness concerns.

Our analysis of these readiness claims begins with the recognition that the Air Force has not provided additional information different from that previously considered by GAO in its earlier reviews. Tr. at 135-36. On the same issues, the April GAO report to the Congress concluded that "there is no inherent reason why these workloads cannot be transitioned without impacting equipment readiness if the transition is properly planned and effectively implemented." GAO/NSIAD-98-143 at 8. Even so, the May review of the terms of this solicitation acknowledged that "[a] statement that identifies and fully explains these [readiness] concerns may support the solicitation of combined requirements." GAO/OGC-98-48 at 20.

With respect to transition risks, we agree with the Air Force's claims that the transition of the depot workload will require careful management to avoid decreases in production that could cause a decline in the Mission Capable Rate for certain aircraft and equipment. However, these general concerns about risks to readiness would be true even if the transition were simply from McClellan to another Air Force depot.

The general risks to readiness here stand in marked contrast to the specific and detailed concerns raised by the Air Force in the San Antonio procurement, and addressed in our decision in National Airmotive Corp., supra. There, the Air Force provided data on the number of net serviceable engines required by the agency to support its wartime flying requirements, an assessment known as "war readiness engines," along with its current inventory levels for the engines. This information had not been offered as support for a single contract approach during GAO's earlier considerations (in January and April) of the determination to combine the workloads, and showed that two of three engines were at unacceptable readiness levels. The evidence of degraded major system readiness, together with the more uniform nature of the workloads--i.e., maintenance and repair of three aircraft engines--and the conclusion that one awardee would more effectively accomplish the combined workload for all three engines, led our Office to conclude that the Air Force's stated need to minimize any risk from unbundling that workload was reasonable.

Here, however, while the Air Force stated that mission capable rates for the KC-135 and the A-10 are at slightly less than optimal levels (Tr. at 233, 236-40), there was no convincing relationship shown between the Mission Capable Rates for these aircraft and a need to bundle all five workloads together. In fact, after a lengthy

discussion of readiness and Mission Capable Rates during the hearing (Tr. at 233-45), the Air Force witness summarized his first concern about readiness as the ability to find a producer for the commodities portion of the workload. Tr. at 245. However, the question of competition for the orphan portion of the commodities workload is different from the question of readiness. We will return to the question of adequate competition later.

In its claims that multiple transitions will entail greater risks to readiness, the Air Force attempts to cast our review of this bundling determination as a choice between a single transition and multiple transitions. The record shows, however, that there are already multiple transitions required to implement the closing of McClellan AFB. Specifically, we note the following examples--the list is not comprehensive--of transitions that have nothing to do with this procurement: (1) the BRAC Commission itself directed that the communications and electronics repair efforts performed at Sacramento--approximately 25 percent of the total workload--be transferred to the Tobyhanna Army depot, in Tobyhanna, Pennsylvania (Tr. at 46); (2) the software portion of the Sacramento workload will be transferred to Hill Air Force Base (Tr. at 70); (3) the F-15 aircraft portion of Sacramento's repair workload is being consolidated at Warner Robins Air Logistics Center (GAO/NSIAD-48-143 at 18); (4) McClellan's management of 24 separate weapons systems comprised of almost 48,000 items and $10 billion in inventory will be transitioned to multiple Air Force recipients (Tr. at 16); and (5) approximately 2,800 tenants--like the 940th Air Refueling Wing, which is headed to Beale Air Force Base--must relocate (Tr. at 17). Under these circumstances, the Air Force's contention is not reasonable that unbundling this procurement, and, for example, procuring the KC-135, A-10 and the commodities workloads separately, will move the agency from a single transition to multiple transitions, and, as a result, significantly increase risks to readiness.[10]

In the final issue regarding transition risks, the Air Force contends that any unbundling of this workload will require multiple RIFs, thus generating disruption, loss of productivity, and risks to readiness. Despite these claims, there is nothing in the record here to block the Air Force from scheduling any transitions that occur as

---

[10]We are mindful that the primary consideration of the BRAC Commission in identifying military installations which might be appropriately closed, or realigned, was the impact on military readiness. 1995 Report to the President, BRAC Commission, Appendix H (Final Selection Criteria). Our task here is to separate the risks to readiness already considered by the BRAC Commission in its decision to close the Sacramento depot and transition its workload to other locations, from any additional risks that could arise from failing to transition this workload in one bundle. Many of the Air Force's arguments in this area--i.e., any transition involves risk, see generally Tr. at 178-179, 248--raise issues we consider already decided by the BRAC Commission.

a result of unbundling this workload on uniform dates, exactly as the Air Force currently plans. Even if the Air Force finds it necessary to stagger its competitions to ensure sufficient agency personnel to conduct the competitions, Tr. at 102-106, there is no requirement that each workload awarded be transitioned separately. In short, we see no reason why the Air Force cannot manage the transfer of workloads here to avoid the multiple RIFs that we agree could be disruptive and could cause a decline in readiness.

We next turn to the second area of the Air Force's claim regarding readiness--i.e., that one consolidated workload will permit the contractor to address surge requirements and will provide a single point of contact for the customer. Again we disagree.

The April GAO report considered the claims that bundling was justified here because it would provide the contractor the ability to transfer employees between the aircraft and commodity workloads in times of surge. The report concluded that while such shifts might be possible, Sacramento depot personnel data showed that it had rarely happened over the last 7 years. GAO/NSIAD-98-143 at 8. During the hearing, the Air Force challenged GAO's earlier conclusion in two ways. First, the Air Force stated that our earlier conclusion was suspect because there have been no serious surge requirements over the last 7 years of data our evaluators reviewed. Tr. at 261-62. Second, the Air Force explained that its assertion is supported by daily "loans and borrows" of personnel from aircraft to commodity work that are not reflected in personnel records. Tr. at 110-12.

Based on our review of the record, the Air Force has offered no persuasive evidence that the bundling here is justified by a need to transfer employees between the aircraft and commodity workloads. Not only did the Air Force not produce evidence during GAO's earlier review of this claim, but the Air Force produced no evidence during the hearing, or at any point afterwards, to support its claimed practice of "loans and borrows." Tr. at 112.

In any event, the Air Force has now announced publicly that it has selected for award, pending the outcome of this decision, a proposal that splits the aircraft and commodities work between different locations. This approach appears to preclude the ready transfer of employees from one kind of work to the other, and was evaluated as acceptable to the Air Force during its review of proposals. Tr. at 182. In our view, the import of this evidence, especially without data to support any claim of joint use of personnel, is that it is not necessary to bundle these workloads for contractors to address the Air Force's valid need to meet surge requirements.

As a final matter, we find unpersuasive the Air Force's contention that a single point of contact for the customer for all these needs will improve readiness. As the protester points out, the single point of contact for KC-135 issues has been, and will continue to be, the KC-135 program office, regardless of where the depot

maintenance of this aircraft is performed. In addition, the Air Force has provided no support for any claim that it serves an important agency need to have the same point of contact for the aircraft maintenance here as for commodities repairs.

In sum, while our Office will show deference to agency claims that requirements of military readiness supports a combination of workload requirements, see National Airmotive Corp., supra, Southwestern Bell Tel. Co., supra, such claims must be properly documented and reasonably related to the workload combination. Here, unlike in National Airmotive, the Air Force has not shown that readiness requires bundling these workloads, despite extensive opportunities to do so.

Adequate Competition

The Air Force argues that it is necessary to bundle the aircraft and commodities workloads together because there was no other way to achieve competition for the $1.3 billion commodities workload. Agency Memorandum of Law, supra, at 16. In support of this claim, the Air Force contends that "the schedule as well as the volume of workload for any one item is unknown and, to a certain extent, unknowable. . . ." Id. at 17. For the reasons set forth below, we conclude that the Air Force's contention is not supported by the record, and does not state a valid basis for consolidating these workloads.

The Air Force explains that after the BRAC Commission decision, it began studying how best to transfer the Sacramento workload, and decided to subdivide the workload into several logical groupings. Id. at 3. After the first few attempts to generate industry interest in certain of the logical groupings failed, the Air Force decided to consolidate the Sacramento workload into a larger, partially-guaranteed package. Id. at 5-6. After awarding three study contracts to potential offerors and subcontractors to review how best to transfer this consolidated workload away from the Sacramento depot to either a private or public entity, the Air Force began the instant competition. Id. at 6, 8. According to the Air Force, this effort was a success because the process generated a competition between one private and one public entity that will lead to substantial cost savings. Id. at 8; Tr. at 93.

The April GAO report to the Congress expressly considered the nature of the Air Force's early attempts to interest industry in logical groupings of the Sacramento depot's workload and reached the opposite conclusion from that of the Air Force. The report stated:

> These analyses indicate that there are substantial numbers of private sector companies willing and able to maintain and repair the Sacramento workloads. For each type of workload, the analyses identified a number of companies with the capabilities, capacities, and interest in repairing specific commodities or selected portions of the workload.

GAO/NSIAD-98-76 at 7. GAO also considered the reports prepared by the three study contractors and concluded that the objective of these studies was not to examine how to compete these workloads separately, but rather how best to help the Air Force complete its planned consolidated acquisition. Id. at 8-9. The GAO report further noted that even these studies did not present the monolithic support for the consolidated approach the Air Force claimed. Id. at 9.

Apart from these earlier considerations, we also conclude that the Air Force's claims about the unpredictability and volatility of the commodities workload--i.e., that the need for any one item is unknown and unknowable--are overstated and contradicted by the record. Throughout the hearing on this procurement, the Air Force stressed that 20 percent of the commodity items account for 80 percent of the value of this workload, Tr. at 26-27, 35-36, 229, 246, 295, while 570 items of the nearly 2,000-item workload have no computed value whatsoever. Tr. at 35-36. Under these circumstances, the value of the workload for approximately 400 of these items (20 percent of the 2,000 item total) is $1.035 billion (80 percent of the $1.294 billion commodities total), and appears to be of sufficient magnitude to permit both some level of predictability and an economic base for competition.[11] Simply put, in light of the evidence here, we find unpersuasive the Air Force's statement that competition cannot be achieved for a $1.4 billion workload, of which nearly $1.035 billion is stable and predictable.

We recognize that the Air Force must have the orphan workload performed. That workload is split among the three groups of commodities included in the solicitation. It may be that each commodities group will be sufficiently attractive, even including the orphan items, that the Air Force can conduct separate procurements and obtain competing offers to perform the work for reasonable prices. It may be that all of the commodities must be bundled for the Air Force to obtain a reasonable price. Other combinations may be necessary. To date, the Air Force has not provided market surveys or any other evidence sufficient to justify any particular combination of items--including its proposed combination of all aircraft and commodities--as necessary to obtain adequate competition for all of the commodities workload.

Finally, we note that the Air Force's contention that it has received "outstanding competition" (Tr. at 93) between the public offeror (another depot) and the one private sector offeror is not dispositive of whether the bundling is necessary to meet the agency's needs. As we stated in National Customer Eng'g:

---

[11]Our view is supported by the fact that during the hearing two of the Air Force's three witnesses agreed that the agency would probably be able to achieve competition for 80 percent of the value of the commodities workload. Tr. at 246, 325. The third witness was not asked this question.

> The issue is not whether there are any potential offerors who can surmount barriers to competition, but rather whether the barriers themselves--in this case, the bundling--are required to meet the government's minimum needs.

Id. at 5.

Other Claimed Bases for Bundling

The Air Force also claims that the bundling determination here is justified by its needs to promote efficiency and economy in production operations, to meet scheduling constraints, and to address concerns about dwindling staffing resources. Specifically, the Air Force explains that consolidating the workload will permit "a series of common inspection and repair processes in a common set of backshops," Agency Memorandum of Law, supra, at 17; facilitate the transition of this workload prior to the 2001 closing date for McClellan AFB, id. at 18; and achieve savings resulting from the costs of conducting multiple acquisitions ($6.8 million), administering multiple contracts ($10 million to $32.8 million), and realizing the savings achieved by the current public/private competition (approximately 10 percent of the value of the workload). Id. at 19.

Again, our analysis begins with the recognition that each of these claimed bases for consolidation was reviewed by our Office and addressed in earlier reports to Congress. In concluding that the Air Force contention regarding the use of common backshops and processes was questionable, the GAO report stated:

> The efficiencies that are achievable from shared facilities and personnel may be greater if the workloads being combined are the same or more similar than the workload[] being combined under the Sacramento . . . solicitation[]. For example, the Air Force may achieve greater efficiency by combining [] the management of the Sacramento KC-135 workloads with other KC-135 workloads to be competed . . . .

GAO/NSIAD-98-143 at 8. Similar conclusions regarding the other bases identified above are set forth in the same report at pages 8 through 11.

During the course of this protest, we explored in detail the Air Force's continued claims regarding the common use of backshops and savings available from proceeding with the current solicitation. After numerous pleadings, and a hearing to explore these issues, the Air Force still has not submitted persuasive information to support the claimed savings from the bundling determination, or that any such savings are significant when compared to the potential cost savings from increased competition if the workloads are unbundled. See Better Service, B-265751.2, Jan. 18, 1996, 96-1 CPD ¶ 90 at 2 (duplication of effort involved if requirements are not bundled--i.e., increase in the number of offers to be evaluated and contracts to be

administered--does not justify bundling where there is no evidence that additional contracts would involve significant additional costs to the government).

We turn finally to the Air Force's claim that the bundling here is justified by the pending closure of McClellan AFB and the scheduling and personnel constraints created by that closure. We are mindful of the disruption--to the mission of the Air Force and to the lives of thousands of Air Force employees--caused by the requirement to close an institution the size of McClellan AFB. The May GAO report recognized that concerns such as these are appropriately related to the agency's needs and may provide a valid basis for consolidating this workload. GAO/OGC-98-48 at 20. On the other hand, the record here does not show that either the pending closing date, or the personnel disruption that will occur regardless of how these items are transferred, justifies the bundling of this workload.

As stated above, the choice to transition the workload covered by this solicitation is not a choice between a single transition and a multiple transition. The closing of McClellan AFB by July 13, 2001, already requires multiple transitions, and multiple challenges to management. Also, the record in this case shows that the Air Force has ample flexibility to manage the transition of this significantly diverse workload in a manner that will minimize the disruption to its people and its mission, and achieve significant competition. The Air Force's own materials show as many as four likely offerors for the KC-135 work (Agency Report (AR), Tab 22 at 23), and five likely offerors for the A-10 work (AR, Tab 24 at vii), while the hearing testimony of two Air Force witnesses (Tr. at 246, 325) and our analysis shows the likelihood of competition for approximately $1.03 billion of the commodities workload. Based on the evidence produced thus far, we cannot conclude that bundling this workload to the exclusion of numerous potential offerors--in order to achieve competition on a very small portion of the workload--is necessary to meet the requirements of the agency.

RECOMMENDATION

We recommend that the Air Force cancel the current solicitation and resolicit its requirements without bundling these workloads. Among other options, we recommend that the agency consider using a single solicitation that will permit competitors to offer on any combination of the five workloads. We also recommend that the protester be reimbursed the reasonable costs of filing and pursuing its protest, including attorneys' fees, if any. 4 C.F.R. § 21.8(d)(1). In

accordance with 4 C.F.R. § 21.8(f)(1), Pemco's certified claim for such costs, detailing the time expended and the costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision.

The protest is sustained.

Comptroller General
of the United States