



**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** The Intrados Group

**File:** B-280130

**Date:** June 22, 1998

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Richard Maresca, Esq., Porter, Wright, Morris & Arthur, for the protester.  
Rumu Sarkar, Esq., Agency for International Development, for the agency.  
Paula Williams, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. GAO dismisses protest of an order placed under a task order contract pursuant to 41 U.S.C. § 253j(d) (1994), which provides that a protest is not authorized in connection with the issuance or proposed issuance of a task or delivery order except on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued, where the enumerated exception does not apply.
2. Although restriction on protests of orders placed under a task order contract, as contained in 41 U.S.C. § 253j(d), does not apply to protests of downselections implemented by the placement of a task order under a multiple award task order contract where the task order results in the elimination of one of the contractors from consideration for future orders, this exception to the protest restriction does not apply where an agency merely consolidates several task orders under one task order, but is not implementing a downselect by issuance of that task order.

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## DECISION

The Intrados Group protests the United States Agency for International Development's (AID) issuance of a task order to Financial Markets International under indefinite-quantity, indefinite-delivery, multiple award contracts awarded under request for proposals (RFP) No. OP/CC/N-94-2 for technical assistance services to support the privatization and economic restructuring program for Europe and the New Independent States (NIS) of the former Soviet Union.

We dismiss the protest.

The RFP described privatization services to be provided over a 5-year period for the following five functional activities: (a) transactions; (b) financial sector restructuring and privatization; (c) privatization advisory and training services and support; (d) capital and financial markets to support privatization; and (e) public

information. These services were to be provided on a time-and-materials, level-of-effort task order basis. Offerors could submit proposals for one or more of the functional activities, and proposals for each activity would be separately evaluated. Multiple awards were contemplated under each functional activity and each award was to be for a minimum of \$10,000.

Thirty-six firms, including Intrados, submitted proposals for the capital and financial markets functional activity, known as Functional Activity D. Intrados and eight other firms were selected for contract award under Functional Activity D. The contracts awarded to these firms provided for the issuance of task orders for technical assistance services in support of capital and financial markets in connection with AID's privatization related work throughout Central and Eastern Europe and the NIS.

Since 1995, Intrados has been invited to compete for 22 task orders under Functional Activity D, including two task orders issued subsequent to the task order which is the subject of this protest. To date, Intrados has been issued six task orders under Functional Activity D, in the aggregate amount of \$18,232,543, pursuant to which Intrados has provided technical services in connection with AID programs in Russia, Romania, Kazakstan, and Moldova.

Intrados argues that the agency's competition for this task order was flawed because the agency did not follow the stated evaluation criteria and scoring scheme and that its technical proposal was misevaluated. Intrados recognizes that 41 U.S.C. § 253j(d) (1994) provides that "[a] protest is not authorized in connection with the issuance or proposed issuance of a task or delivery order, except for a protest on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued." However, Intrados argues that our Office has jurisdiction to consider this protest consistent with our decision in Electro-Voice, Inc., B-278319, B-278319.2, Jan. 15, 1998, 98-1 CPD ¶ 23 at 5.

In that decision, we concluded that the restriction on protests of orders placed under task or delivery order contracts does not apply to protests of downselections implemented by the placement of a task or delivery order under a multiple award task or delivery order contract where the task order results in the elimination of one of the contractors from consideration for future orders. Intrados argues that the task order protested here represents a consolidation into "one last task order" of the AID capital market work in Romania that it and others performed under previously awarded task orders. Intrados asserts that "[t]he inevitable consequence of [AID's] task order competition is to 'downselect,' as that term was used in Electro-Voice, one [AID] contractor working in Romania and exclude all others from all remaining Romania work." Intrados thus concludes that, based on our decision in Electro-Voice, our Office has jurisdiction to review the protested competition.

AID responds that this was not a "downselection," but rather the routine issuance of a task order that by no means eliminates Intrados as a source for AID work under its contract, which is not limited to Romania. AID notes that, since 1995, Intrados has been invited to compete on 22 task orders under its contract, and has been issued six task orders for work in four different countries, including Romania. Although it has no further projected task orders in Romania, AID plans to conduct two more task order competitions during 1998 for services under the multiple award contracts and anticipates that Intrados will be provided an opportunity to compete for these task orders. AID also expects there will be further opportunities for Intrados in 1999. AID therefore argues that this is not a downselect as described in Electro-Voice, and that this particular task order, contrary to Intrados's position, will not eliminate Intrados from receiving future task orders for the duration of its contract.

In our view, the Electro-Voice decision is not applicable here and we think that the restriction on protests of orders placed under a task order contract as contained in 41 U.S.C. § 253j(d) applies. In Electro-Voice, the protester and another contractor were issued an order for an initial delivery of product demonstration models consistent with the agency's intent of conducting a downselect between the two competitors; once the downselection was made, only the selected contractor would receive task orders for the production requirements. Once the downselection was made, there would be no ongoing competition for orders among the multiple award contractors as envisioned by the law. The legislative history concerning the multiple award task order contracting statutory provisions shows that these provisions were intended to promote an ongoing competitive environment in which each contractor was fairly considered for each task order issued. Electro-Voice, supra.

Here, Intrados has received a number of task orders in the past, it was provided an opportunity to compete for the consolidated Romanian work, and there is other work, albeit probably not in Romania, for which it will have an opportunity to compete under its contract. While Intrados may be foreclosed from further work in Romania, unlike the situation in Electro-Voice, where the protester was eliminated from any more task orders under its contract, Intrados is not similarly foreclosed, given the scope of the Intrados contract with AID, which provides for technical services throughout Central and Eastern Europe and the NIS. Simply stated, the protested task order does not implement a downselect which eliminates Intrados from future work under its contract. Further, the fact that this protested task order

arguably may be the last order for services in Romania does not convert this task order into a "downselection." Under its contract with AID, Intrados is clearly still eligible to compete to provide capital and financial market services in countries other than Romania.

We dismiss the protest.

Comptroller General  
of the United States