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**Comptroller General
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Decision

Matter of: Morris Corporation

File: B-400336

Date: October 15, 2008

James H. Roberts, III, Esq., and Carrol H. Kinsey, Jr., Esq., Van Scoyoc Kelly PLLC, for the protester.

Christine M. Choi, Esq., Department of the Army, for the agency.

Paula A. Williams, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly determined that a task order for detainee food services could be issued under an existing indefinite-delivery/indefinite-quantity (ID/IQ) contract that expressly anticipated providing food services for Iraqi police and military forces is denied because the record shows that offerors could have reasonably anticipated during the original ID/IQ competition that feeding requirements, like those here, could be obtained through task orders issued against the resulting contracts.

DECISION

Morris Corporation protests the decision of the Department of the Army, Joint Contract Command-Iraq (JCC-I), to obtain detainee food services through a task order proposal request issued under multiple-award, indefinite-delivery/indefinite-quantity (ID/IQ) contract No. W91GYO-07-D-0017. Morris, which does not hold one of the ID/IQ contracts at issue in this procurement, argues that detainee food services do not fall within the scope of the ID/IQ contract. The protester also argues that by acquiring these services under the ID/IQ contract, the Army is effectively precluding Morris from competing for this work.¹

We deny the protest.

¹ Since 2006, Morris has been providing detainee food services in various Iraqi detention centers.

The JCC-I is the contracting authority under which 15 individual contracting divisions or regional contracting centers administer various contracting functions in Iraq. In July 2007, the Multi-National Security Transition Command-Iraq (MNSTC-I) Support Division, one of the JCC-I contracting divisions, awarded multiple-award ID/IQ contracts to five firms with an ordering period of 3 years and a not-to-exceed ceiling of \$495 million. ID/IQ Contract at 3.

The ID/IQ contract contains two statements of work (SOW). One is for Iraqi training camp support services and the other, for coalition support services. SOW at 11-26, 27-40. The SOW for Iraqi training camp support describes the services to be performed as follows:

1.0. SCOPE OF WORK: The contractor shall provide all resources, personnel, equipment and management necessary to provide life support operations at Iraqi Police Training Sites or Iraqi Military Training Sites identified on each Task Order issued against this [ID/IQ] contract.

SOW at 13. The second SOW, coalition life support, provides:

20.0. SCOPE OF WORK: The contractor shall provide all resources, personnel, equipment and management necessary to provide life support operations at coalition bases identified on each Task Order issued against this [ID/IQ] contract.

Id. at 29. Section B of the ID/IQ contract included separate contract line items for the various SOW requirements such as the requirements for food operations and dining facility services. ID/IQ contract at 3-10.

In April 2008, JCC-I Theater-Wide Requirements (TWR) Division received a purchase request from the requiring activity for a contractor to provide food services for up to 5,000 detainees and 150 local nationals at the Theater Internment Facility Reconciliation Center (TIFRC) to be constructed at Camp Taji in Iraq². Agency Report (AR) exh. 7, Requirements Package.

In preparing for this acquisition, the agency acknowledges that it initially intended to acquire the required services as a single-award, fixed-price contract. In connection with that planned acquisition strategy, the agency published a presolicitation notice on the Federal Business Opportunities (FedBizOpps) website advising potential offerors of its requirements, and of its intent to issue a solicitation. The anticipated solicitation release date was June 12, 2008. AR exh. 9, Presolicitation Notice (May

² A coalition base and an Iraqi facility are both located at Camp Taji; TIFRC will be located on the coalition side. Agency Legal Memorandum at 10.

28, 2008). As explained at the hearing conducted by our Office,³ subsequent to the FedBizOpps posting, the requiring activity learned of the existing ID/IQ contract and requested and received copies of the ID/IQ ordering guide from the CO administering the ID/IQ contracts.⁴ After reviewing the scope of the contracts, the requiring activity concluded that the detainee feeding requirements could be met under the ID/IQ contract. Hearing Transcript (“Tr.”) at 76-85.

This review was followed by a second CO’s review (also at the requiring activity), who again compared the requirements for the detainee food services with the decentralized ordering guide and SOWs for the ID/IQ contract. At the end of this review, the activity again concluded that the detainee food services requirement was within the scope of, and could be satisfied under, the existing ID/IQ contracts. According to the second reviewer:

The TIFRC is located on a coalition base at Taji. An Iraqi Army facility is also located at that base . . . as is clearly stated in the second scope of work, the contractor is required to provide life support operations, and Dining Facility services are clearly a part of life-support services at coalition bases. Although detainees are not specifically mentioned, they are also not excluded . . . [a]s Coalition bases are set up to house many different nationalities and encompass many different missions, detainee feeding services are clearly within the scope of this contract.

CO’s Statement at 4. As further explained at the hearing, the CO was not concerned with “the specifics of who we were feeding” rather, she was focused on whether “all of the requirements that were in my statement of work could be met under [the ID/IQ contract].” Tr. at 125.

The CO for the requiring activity then submitted a written request for a task order scope determination--and a request for authorization to issue a task order request under the contract--to the CO administering the ID/IQ contract. AR exh. 11, Email from CO (June 20, 2008). In response, the CO administering the ID/IQ contract separately determined that the detainee food services at issue here are within the scope of that contract, and assigned a solicitation number for the task order

³ Our Office convened a hearing in this protest. The primary hearing witnesses were procurement officials from the Army and a representative from Morris.

⁴ Among other things, the CO administering the ID/IQ contract reviews and approves requests from requiring activity COs to issue task orders under the ID/IQ contract. Declaration of ID/IQ CO; AR exh. 6, Ordering Guide, at 2.

proposal request. AR exh. 12, Email from ID/IQ CO (June 24, 2008). Specifically, the CO administering the ID/IQ contract concluded:

. . . after reviewing the [ID/IQ contract] and the Taji TIFRC draft statement of work, I determined that the requirements for food service operations, facilities and housing maintenance, demobilization/ decommissioning of equipment, anti-terrorism and force protection, a safety and health plan program, vector control, environmental protection, and deliverables were within the scope of the [ID/IQ contract] and use of the streamlined/ decentralized ordering tool was appropriate. Additionally, the expected value of the task order for the Taji TIFRC life support services falls within the maximum contract value limits set forth in Section B of the [ID/IQ] contract.

Declaration of the ID/IQ CO at 2 (July 30, 2008); Tr. at 169-173. Thereafter, on July 12, 2008, the agency issued the task order request to all five ID/IQ contract-holders for the Taji TIFRC feeding requirements. AR exh. 16, Task Order Proposal.

DISCUSSION

Morris argues that providing food services to detainees is outside the scope of the underlying ID/IQ contracts. Morris acknowledges, however, that the scope of work for the underlying contracts includes providing food services for Iraqi police, Iraqi military personnel and coalition forces at the same location. Protester's Comments at 2. Nonetheless, Morris contends that extending these food services to detainees is materially different from the currently-provided food services because the nutritional requirements for feeding detainees are different, and because of differences in the command structure applicable to detainees. We disagree.

The Competition in Contracting Act (CICA) of 1984 requires that agencies specify their needs and solicit offers in a manner designed to achieve full and open competition, so that all responsible sources are permitted to compete. 10 U.S.C. § 2305(a)(1)(A)(i) (2000). When a protester alleges that the issuance of a task or delivery order under a multiple-award contract is beyond the scope of the contract, we analyze the protest in essentially the same manner as those in which the protester argues that a contract modification is outside the scope of the underlying contract. The fundamental issue is whether issuance of the task or delivery order in effect circumvents the general statutory requirement under CICA that agencies use competitive procedures when procuring their requirements. Specialty Marine, Inc., B-293871; B-293871.2, June 17, 2004, 2004 CPD ¶ 130 at 4.

In determining whether a task or delivery order is outside the scope of the underlying contract, and thus falls within CICA's competition requirement, our Office examines whether the order is materially different from the original contract,

as reasonably interpreted. Evidence of a material difference is found by reviewing the circumstances attending the original procurement; any changes in the type of work, performance period, and costs between the contract as awarded and the order as issued; and whether the original solicitation effectively advised offerors of the potential for the type of orders issued. In other words, the inquiry is whether the order is one which potential offerors would have reasonably anticipated. Symetrics Indus., Inc., B-289606, Apr. 8, 2002, 2002 CPD ¶ 65 at 5.

In our view, the record in this case, particularly the scope determination analyses of both COs, quoted above, demonstrates that detainee food services are within the scope of the underlying contract. While the Army concedes that the ID/IQ contract does not make reference to either “detainees,” “detention centers” or “TIFRCs,” we find the absence of those terms does not mean that the detainee feeding requirements are outside the scope of the ID/IQ contract.

For instance, the record shows that the agency considered two detainee specific requirements that arguably might differ from the food services operations provided to Iraqi police/military personnel and coalition forces--the requirement to deliver meals to the detainees, and the requirement that local nationals are not permitted to serve detainee meals. The agency concluded that both requirements were within the scope of the ID/IQ contract. In this regard, the agency decided that the requirement to transport meals to the detainees was encompassed by paragraph 4.6 of the ID/IQ contract which requires the contractors to transport meals to locations designated by the CO or the CO's representative. Similarly, the agency decided that the requirement prohibiting local nationals from serving food to detainees could be satisfied under paragraph 30.12 of the ID/IQ contract which specifically requires contractor employees serving, preparing and handling food, to be third country nationals. Tr. at 127-29. Thus, the agency found that every aspect of the requiring activity's specific needs could be provided under the ID/IQ contract.

Nonetheless, the protester argues that the detainee-specific nutritional requirements and food portion sizes are distinguishable from the nutritional requirements and food portion sizes specified in the underlying ID/IQ contract. In our view, even if we assume for purposes of this argument that these differences are exactly as the protester contends, we do not think these differences support a conclusion that this order exceeds the scope of the underlying contracts.

For example, we recognize that the detainee-specific nutritional requirements and food portion sizes are not listed in the underlying ID/IQ contract. However, both COs testified that it was not unusual for ID/IQ contracts, such as the one at issue here, to set forth general requirements since the SOW for each task order proposal will delineate the specific requirements to be acquired against the underlying contract. Tr. at 107-112; 154-55. The record shows instead that the ID/IQ contract, at paragraph 4.1.2, specifies food services with Iraqi-style menus for breakfast, lunch, and dinner, and permits “substitutions of similar quantity and quality,” as well as

permitting the contractor to “equitably adjust the menu based on the availability of meat, fresh fruits and vegetables, and other items from the local market.” ID/IQ contract at 16. Thus, the underlying contract clearly allowed the agency to tailor the quantity and quality of the nutritional requirements for detainees. At any rate, although Morris disagrees with the agency’s determination in this regard, it has not shown that the detainee feeding requirements are materially different from the food services to be provided to coalition forces or Iraqi police/military personnel housed at Camp Taji.

Finally, during the course of this protest, the parties argued about the reasons Morris did not compete for one of the underlying ID/IQ contracts here. We see no reason to address this issue. Rather, the question for our Office is whether the current task order is of a nature which potential offerors would reasonably have anticipated. See e.g., Anteon Corp., B-293523, B-293523.2, Mar. 29, 2004, 2004 CPD ¶ 51 at 5. We conclude it is.

As discussed above, there is a logical connection between the broad scope of food service operations delineated in the ID/IQ contract--the feeding of individuals housed within a specified Iraqi training camp and/or coalition base--and the food service operations required to feed detainees located within an Iraqi training camp and/or coalition base. Thus, we conclude that offerors could have reasonably anticipated during the original ID/IQ competition that feeding requirements, like those here, could be obtained through task orders issued against the existing ID/IQ contracts. Accordingly, we find that the record substantiates the agency’s determination that the detainee feeding requirements are within the scope of the existing ID/IQ contracts.

The protest is denied.

Gary L. Kepplinger
General Counsel