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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Global Communications Solutions, Inc.

File: B-291113

Date: November 15, 2002

Ronald K. Henry, Esq., Kaye Scholer, for the protester.
Marshall J. Doke, Jr., Esq., Gardere Wynne Sewell, for AOS, Inc., an intervenor.
William Mayers, Esq., Defense Information Systems Agency, for the agency.
Katherine I. Riback, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where a solicitation for an indefinite-delivery/indefinite-quantity contract contemplates only a single competitive source selection for specific items, based on the proposals submitted in response to the solicitation, and is not for work to be assigned based on further competitions among the awardees, the proscription contained in 10 U.S.C. § 2304c(d) against protests of individual task and delivery orders does not preclude GAO's bid protest jurisdiction.

2. Agency's interpretation of solicitation price evaluation scheme to consider only the prices for the first 3 years, rather than the 10-year pricing solicited from the offerors, in determining the awardees of certain line items was unreasonable where the solicitation unambiguously stated that awards were to be made on the basis of 10-year pricing.

DECISION

Global Communications Solutions, Inc. protests the awards of certain contract line item numbers (CLIN) to AOS, Inc. for International Maritime Satellite (INMARSAT) services under a multiple-award, delivery-order contract awarded by the Defense Information Systems Contracting Organization (DITCO), Defense Information Systems Agency pursuant to request for proposals (RFP) No. DCA200-01-R-5029.

We sustain the protest.

The INMARSAT contract provides satellite-based mobile telecommunications services and equipment for the Department of Defense and other branches of the

federal government. The principal commodity purchased under this contract is satellite airtime.

The RFP anticipated awarding multiple, indefinite-delivery/indefinite-quantity (ID/IQ) contracts utilizing fixed-price and time-and-material type delivery orders for a 3-year base period with seven 1-year options. RFP § L.3. To this end, the RFP (at section B) required that proposals include prices for all CLINs and sub-line item numbers (SLIN) for each year of the 10 years (120 months) covered by the solicitation. RFP § L.10, Part III. The CLINs were to add new INMARSAT services and to replace existing INMARSAT services. The RFP stated a minimum guaranteed dollar value for each contract of $10,000. RFP § H.2.b.

The RFP stated that two of the evaluation factors, cost/price and past performance/corporate capability, were of comparatively equal importance, and were both more important than the third evaluation factor, technical/management approach. RFP § M.4.1.

With respect to the conduct of the price evaluation, Section M.4.2.b specified that:

> (2) The Offeror is required to submit all pricing data in the format indicated in Sections B and L. Offerors are required to submit their proposed prices for the entire 120-month period as set forth in Section B.
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> . . . . .
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> (5) The price evaluation will be based on the lowest total discounted life cycle cost (DLCC) for each proposal. The DLCC will be determined based on the proposed prices and quantities listed in Section B (including options) over a 120-month service period. Although the evaluation period will be 120 months of service, this should not be construed to mean that all option years will be exercised. . . .

Section G.6 of the RFP, entitled "AWARD OF EXISTING INMARSAT SERVICES," stated:[1]

> Upon award of this solicitation, all existing INMARSAT air-time services administered by DITCO, whether on [delivery orders] or contracts, will be re-awarded to the winning Contractor or

[1] Section G.5 outlined the procedures for ordering new services/supplies, which generally provided for competition among the awardees.

> Contractors. Award will be based on a comparison of all awardee's contract prices. Selection will be based upon low price.

Amendment Number 3 of the RFP, issued on December 14, 2001, clarified that awards under the RFP would be made on the CLIN, not the SLIN, level.

On June 6, 2002, five contract awards were made. GCS and AOS were among the awardees.

There were meetings with the awardees, including GCS, in late July. During a July 24 meeting, the agency indicated that it was contemplating issuing delivery orders to make awards of the CLINs for existing INMARSAT services on the basis of comparing the awardees' pricing for the 3-year base period. On July 25, GCS protested this interpretation to DITCO, arguing that the solicitation contemplated that the 10-year pricing would be considered in making the awards for these CLINs.

On August 1, GCS received a letter from DITCO in which it was informed that the awards were "recalculated" and that it would no longer receive the award of any line items for existing INMARSAT services. The agency, in the same letter, went on to state:

> The original awards were based upon your company's total price at the CLIN level for the first base year. The awards were re-calculated to reflect your company's total prices for all three base years. Awards were not calculated using 10 years because there is no guarantee that any of the option years will be exercised. In addition, the re-calculation indicated that a mistake was made in the initial CLIN total amounts. As a result, you are no longer the low offeror for CLINs 0006 and 0009.

Protest, exh. 1, DITCO Letter (Aug. 1, 2002).

On August 9, GCS protested to our Office the agency's decision to use the 3-year base period, rather than the total 10-year period priced by the offerors, to determine low price for the CLINs for existing INMARSAT services.[2] In its report, the agency

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[2] The agency argues that GCS's August 9 protest is untimely because it was filed more than 10 days of the July 24 meeting when GCS was advised of how these CLINs would be evaluated. We disagree. The protester's letter of July 25 effectively constituted an agency-level protest, because it expressed dissatisfaction with an agency decision and requested corrective action. ST Aerospace Engines Pte. Ltd., B-275725.3, Oct. 17, 1997, 97-2 CPD ¶ 106 at 3-4. Since GCS filed its protest with our Office within 10 days of the adverse agency action on its July 25 letter, namely, the agency's August 1 letter, its protest is timely. 4 C.F.R. § 21.2(a)(3) (2002).

calculates, and the protester agrees, that for CLIN 0001 (INMARSAT A) and CLIN 0006 (INMARSAT M4), while AOS is the low-priced offeror if the 3-year base period was considered, GCS would be the low-priced offeror if the 10-year pricing is compared.[3] Agency Report at 9; Protester's Comments at 4, 8. GCS stated, in its agency-level protest, that it prepared its proposal with the assumption that award would be made at the CLIN-level to the lowest offeror taking into account 10 years of pricing, as indicated by the RFP, and that if GCS had known that the agency intended to evaluate only the first 3 years of pricing to determine who was the low offeror, then "that would have been a serious consideration in the pricing." Agency Report, Tab 7, GCS Agency-level Protest (July 25, 2002).

As a preliminary matter, the agency contends that our consideration of the protest is precluded by 10 U.S.C. § 2304c(d) (2000), which provides, with respect to orders under ID/IQ contracts:

> 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.

We do not find that this provision precludes our consideration of this protest. Where a solicitation for an ID/IQ contract contemplates only a single competitive source selection for specific items, based on the proposals submitted in response to the RFP, and is not for work to be assigned based on further competitions among the awardees, we have found that 10 U.S.C. § 2304c(d) does not preclude our bid protest jurisdiction by virtue of the implementation of these source selections by the issuance of task or delivery orders. Teledyne-Commodore, LLC--Recon., B-278408.4, Nov. 23, 1998, 98-2 CPD ¶ 121 at 3-4; Electro-Voice, Inc., B-278319, B-278319.2, Jan. 15, 1998, 98-1 CPD ¶ 23 at 5. As discussed in detail below, that is precisely the situation here, where the RFP contemplated that awards for the CLINs for existing INMARSAT services would be based on the proposals, including the pricing, submitted in response to the RFP and would not be based on further competitions among the awardees of the ID/IQ contracts under this RFP.

With respect to the merits of the protest, the agency basically contends that there is no language in section M of the RFP stating how CLINs for existing INMARSAT services would be awarded, so that the awards, based on the evaluation of 3-year pricing, are consistent with section G.6 because they may save the government money, inasmuch as it is not certain that the options would be exercised, as offerors were advised in section M.

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[3] There is no suggestion in the record that indicates that the evaluation of past performance/corporate capability or technical/management approach affected or should have affected the award of CLINs for existing INMARSAT services.

This ID/IQ contract had two types of CLINs. The CLINs for existing INMARSAT services were, in accordance with section G.6, to be awarded to the "winning Contractor" "based on a comparison of all awardee[s'] contract prices." The solicitation contemplated no future competitions for this work among the awardees. In contrast, work covered by the other CLINs would, in accordance with section G.5, be generally awarded based on competition among the awardees. The agency's basic argument here is that it is not bound by section M in making the awards of the CLINs for existing INMARSAT services because section M did not specify how the awardees of these CLINs would be selected and because it cautioned that options may not exercised. However, a solicitation must be read and interpreted as a whole, and where it is appropriate sections other than section M of the solicitation must be considered in determining how proposals should be evaluated. See Joseph W. Beausoliel, B-285643, Aug. 31, 2000, 2001 CPD ¶ 26 at 4; Recon Optical, Inc. B-232125, Dec. 1, 1988, 88-2 CPD ¶ 544 at 8-9.

Here, section G.6 stated that the awards for the existing INMARSAT services "will be based upon low price," based on a "comparison of all awardee[s'] contract prices" with the low price controlling which awardee would receive the award of these CLINs. Section M.4.2.b of the RFP then expressly provided that "the evaluation period is 120 months." No other period of evaluation is provided for in section M. Thus, we find that the RFP unambiguously provided that the awards for each CLIN covering existing INMARSAT services would be made to the awardee offering the lowest 10-year pricing for these services, as reflected in its proposal under the RFP.[4]

Procuring agencies have broad discretion to determine the evaluation scheme they will use, but they do not have the discretion to announce in the solicitation that one scheme will be used, and then follow another in the actual evaluation. 10 U.S.C. § 2305(b)(1)(2000). Once offerors are informed of the criteria against which their proposals will be evaluated the agency must adhere to those criteria or inform all offerors of any significant changes made in the evaluation scheme. Marquette Medical Sys., Inc., B-277827.5, Apr. 29, 1999, 99-1 CPD ¶ 90 at 8-9. Here, the RFP stated that the awards for the CLINs for existing INMARSAT services would be based on the 10-year pricing, but the agency evaluated these CLINs based on 3-year pricing. This was improper.[5]

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[4] In justifying its evaluation, the agency makes reference to the protester's statement to the agency before proposals were due, that the services to be provided under CLIN 0001 may be terminated during the 10-year period. However, as noted by the protester, the evaluation period was not altered by the agency, so that GCS structured its proposal accordingly, taking into account the risk of increased performance costs, in pricing this CLIN. Protester's Comments at 5.

[5] We recognize that FAR § 17.206(b) authorizes a contracting officer not to evaluate option prices "when it is determined that evaluation would not be in the best interests of the Government and the determination is approved at the level above the

(continued...)

We sustain the protest.

We recommend that the agency reevaluate CLINs 0001 and 0006 using the 10-year pricing, and, presuming the agency's calculations in the report are correct and if otherwise appropriate, make award for these CLINs to GCS and terminate the original orders to AOS for these CLINS. In the alternative, if the agency's needs have changed, then the agency should amend the solicitation, solicit revised proposals, and evaluate accordingly. We also recommend that GCS be reimbursed its protest costs, including reasonable attorney's fees. 4 C.F.R. § 21.8(d). The protester should submit its certified claim for costs, detailing the time expended and the costs incurred, directly to the agency within 60 days of receipt of this decision. 4 C.F.R. § 21.6(f)(1).

Anthony H. Gamboa
General Counsel

(...continued)
contracting officer," and that this authority can be exercised after receipt of proposals. See ACC Constr. Co., Inc., B-289167, Jan. 15, 2002, 2002 CPD ¶ 21 at 3. The agency does not claim, and the record does not otherwise evidence, that the agency made any such determination here. For example, there is no suggestion that availability of funds for the options is currently perceived to be a real issue. See FAR § 17.206(b).