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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Relm Wireless Corporation

File: B-298715

Date: December 4, 2006

William L. Walsh, Jr., Esq., J. Scott Hommer, III, Esq., Peter A. Riesen, Esq., and Keir X. Bancroft, Esq., Venable LLP, for the protester.

Brian E. Toland, Esq., Department of the Army, 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

Protest that agency improperly obtained products outside scope of multiple-award indefinite-delivery/indefinite-quantity contracts is denied where the product was reasonably encompassed by the contracts at issue.

DECISION

Relm Wireless Corporation protests the decision of U.S. Army Communications-Electronics Command (CECOM) to issue a solicitation contemplating the award of a task order under a multiple-award, indefinite-delivery/indefinite-quantity (ID/IQ) task order contract to obtain commercial Land Mobile Radio (LMR) equipment for tactical, intra-squad communications. Relm maintains that this tactical radio is outside the scope of the ID/IQ contracts.

We deny the protest.

In 2001, the Department of the Army issued a solicitation contemplating the award of multiple ID/IQ contracts for base radio systems (BRS). Request for Proposals (RFP) No. DAAB07-01-R-H801. Under the statement of work, the solicitation described the scope of the contracts as follows:

- 1.2. Scope.** The BRS program will offer commercially available radio technology products and services. These will allow customers to create a uniquely tailored solution to meet their LMR requirements. Offerings include categories for [LMR] systems from

full turn-key to customer-tailored solutions, equipment, technical support services, and system design and analysis.

RFP, attach. 1, Statement of Work (SOW), at 3. The solicitation did not include a definition of BRS,¹ but it did include the following definition of a LMR:

Land Mobile Radio (LMR). The collective term for pagers and all fixed, mobile and portable non-tactical two-way radios used by various base and tenant organizations to control activities on or off-base. This term also covers similar assets designated for contingency, tactical or war ready material purposes.

Id. at 17. The SOW went on to specify that the BRS contractors are required to provide commercially available LMR equipment that meets Joint Tactical Radio Systems (JTRS) functional capabilities and Association of Public Safety Communications Officials' (APCO) 25 guidelines. Id. at 3. The RFP contemplated that task orders would be competed among the holders of the BRS multiple-award task order contracts. The solicitations requesting proposals from the BRS contractors for a task order are supported by individual Customer Requirements Statements (CRS), which are tailored to the customer's specific needs.

In March, 2006, the Department of the Army was tasked to procure commercial off-the-shelf Tier 2 LMRs for tactical operations that were compliant with APCO 25 guidelines and had Advanced Encryption Standard encryption capabilities. On July 27, a Letter Request for Proposals and CRS #0446 for Radio Equipment, Logistics Support, and Training were issued to BRS contractors.² These Tier 2 LMRs are planned to be used at temporary bases that are set up during tactical operations and are relocated to new positions as the tactical missions evolve to provide intra-squad communications for noncritical command and control, administrative and logistics functions and are intended for small unit operations. Agency Report at 3.

Relm basically argues that the BRS contract is limited to non-tactical radios, and that the agency is improperly using this contract vehicle to purchase tactical radios.³ In this regard, Relm cites CRS #0446, which states that the Tier 2 LMRs "are not

¹ In its report, the agency defines a BRS as a communication system that supports a base's mission. Agency Report at 3.

² The agency describes CRS #0446 as "essentially a combination of a Statement of Work and Objectives . . . with the technical specifications for the Tier 2 LMR radio." Agency Report at 2.

³ The protester does not hold a BRS contract, but is an active supplier of analog tactical and non-tactical radios to the Army.

intended for use as part of a base radio system for CONUS or OCONUS garrison support operations nor as a Contingency Operation Base . . . Land Mobile Radio system.” CRS #0466 § 1.0.

As a general matter, our Office is statutorily precluded from considering protests challenging the issuance of task or delivery orders under multiple-award contracts. See 10 U.S.C. § 2304c(d) (2000); Specialty Marine, Inc., B-293871; B-293871.2, June 17, 2004, 2004 CPD ¶ 130 at 4. There is an exception to this prohibition, however, where a protester, as in this case, alleges that a task or delivery order is beyond the scope of the contract originally awarded. 10 U.S.C. § 2304c(d); Specialty Marine, Inc., *supra*. When a protester alleges that an order is outside 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 “obtain full and open competition through the use of competitive procedures” when procuring their requirements. Specialty Marine, Inc., *supra*; see 10 U.S.C. § 2304(a)(1)(A).

In determining whether a task or delivery order (or modification) 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. 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. Overall, 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.

As noted above, the RFP’s SOW included a definition of LMRs that specifically stated that LMRs “cover[] similar assets designated for contingency, **tactical** or war ready material purposes.” RFP, attach. 1, SOW, at 17 (emphasis added). The SOW goes on to specify that the BRS contractors will offer commercially available LMR equipment that meets Joint Tactical Radio Systems (JTRS) functional capabilities. *Id.* at 3. The JTRS is clearly a tactical radio used for tactical purposes. Agency Report at 5. We agree with the agency that the BRS SOW requires BRS contractors to meet JTRS functional capabilities because the BRS contracts include tactical radios.

We also find the statement in CRS #0446 referenced by the protester that the tactical radios to be purchased are not part of a “base radio system” does not mean that they are outside the scope of the BRS contracts. As explained by the agency, the Tier 2 radios described in CRS #0446 are for use at tactical bases, whether they are used in a deployed setting or during training exercises. As tactical radios, operation of the Tier 2 LMRs must be operationally independent of enterprise level or non-tactical base radio systems. Agency Report at 3. According to the agency, the necessity for

these radios to be able to operate independently from non-tactical base radio systems explains why CRS #0446 states that the Tier 2 LMRs “are not intended for use as part of a base radio system for CONUS or OCONUS garrison support operations nor as a Contingency Operation Base . . . Land Mobile Radio system.” CRS #0446 § 1.0; Agency Report at 5. The protester disputes the agency’s explanation; however, it has not shown that the radios being purchased here are outside of the scope of the BRS contracts that specifically indicate that they encompass tactical radios. To the contrary, the record shows that Tier 2 radios are tactical radios that potential offerors reasonably could have anticipated would be covered by the BRS contract.

The protest is denied.

Gary L. Kepplinger
General Counsel