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**Comptroller General
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**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: California Industrial Facilities Resources, Inc., d/b/a CAMSS Shelters

File: B-403421; B-403421.2; B-403766; B-403788

Date: November 5, 2010

Thomas P. Humphrey, Esq., John E. McCarthy Jr., Esq., Puja Satiani, Esq., Lindsay Denault, Esq., and Gunjan R. Talati, Esq., Crowell & Moring LLP, for the protester. Holly Emrick Svetz, Esq., James K. Kearney, Esq., and Lesley Whitcomb Fierst, Esq., Womble Carlyle Sandridge & Rice PLLC, for the intervenor. John P. Patkus, Esq., Defense Logistics Agency, for the agency. Pedro E. Briones, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that a task order, and requests for quotations for the issuance of tasks orders, for tents are outside the scope of the multiple-award indefinite-delivery/indefinite quantity contract for operational logistical equipment against which the task order (and RFQs) were issued, is denied where the tents were reasonably encompassed within the contract's scope of work.

DECISION

California Industrial Facilities Resources, Inc., d/b/a CAMSS Shelters, of Monroe, Washington, protests the issuance of a task order to Atlantic Diving Supply, Inc. (ADS) of Virginia Beach, Virginia, by the Defense Logistics Agency (DLA) for tents and accessories pursuant to the agency's multiple-award indefinite-delivery/indefinite-quantity (ID/IQ) contract for special operational logistical equipment. CAMSS also protests the terms of requests for quotations (RFQ) Nos. 20100901083514, 20100901084011, 20100901114919, and 20100901090915, issued by DLA for additional tents and accessories under the ID/IQ contract. CAMSS argues that the task order and RFQs are outside the scope of the ID/IQ contract.

We deny the protests.

BACKGROUND

On January 9, 2009, four ID/IQ contracts were awarded by DLA on the basis of full and open competition under request for proposals (RFP) No. SPM8EJ-08-R-0051 to ADS; Source One Distributors, Inc.; Tactical & Survival Specialties, Inc.; and W.S. Darley & Co. for special operational logistical equipment.¹ See RFQ at 11, 45. The RFP informed offerors that the agency was soliciting proposals for tailored logistics packages for a full range of equipment for military commands and other authorized customers world-wide. Offerors were also informed that the “primary concept” of the contract would be to support U.S. special operations forces by providing all equipment necessary to perform their missions. See Statement of Work (SOW) at 45.

The SOW identified 23 general categories of items and advised offerors that the contractor would be required to supply over 8,100 separate commercial items. Id. at 45-46; RFP at 6. These categories included, among other things, personal protection equipment; survival gear; tactical equipment protective; escalation of force equipment; thermal protection equipment; lifesaving and search and rescue equipment; and survival kits. The SOW identified 9 federal supply classes as examples of some of the general categories of items to be ordered, but stated that the contract would not be limited to those supply classes.² The RFP also included a “core list” of 391 items, identified by manufacturer’s part number or description, and advised that the list was representative of the items that could ordered under these contracts.³ The RFP also advised that the government reserved the right to bilaterally add new or replacement items by contract modification at prices to be negotiated. Id. at 46-48; RFP at 12. The RFP further advised that there could be a significant number of these additions. The four ID/IQ contracts were subsequently

¹ Each contract had an estimated annual dollar value of \$244 million and a maximum value of \$5.7 billion. See Agency Report (AR) at 2, 7. The contracts, which collectively have a value of \$22.9 billion, incorporated by reference all the terms and conditions of the RFP, as amended. Id. at 7; see, e.g., id., Tab C, ADS Contract, at 3.

² The RFP identified the following federal supply classes: 4220 Marine Lifesaving and Diving Equipment; 4240 Safety and Rescue Equipment; 6220 Electric Vehicular Lights and Fixtures; 6230 Electric Portable and Hand Lighting Equipment; 6240 Electric Lamps; 6615 Automatic Pilot Mechanisms and Airborne Gyro Components; 8415 Clothing, Special Purpose; 8460 Luggage; and 8465 Individual Equipment.

³ The core list includes items such as handheld translators; night vision binoculars; holsters; tactical knives; laser pointers; portable speed bumps; traffic cones; handheld spotlights; diver training tanks; wet suits; life preservers; boats and life rafts; aircraft escape slides; assault ladders; respirator cartridges; helmet lights; goggles; and various articles of clothing such as gloves, jackets, and parkas. RFP at 120-26.

modified in 2009 to include tents. See, e.g., AR, Tab C, Apr. 6, 2009, ADS Contract Modification, at 15.

On July 19, 2010, U.S. Forces in Afghanistan (USFOR-A) submitted purchase requests to DLA for tents and accessories⁴ to support [DELETED] and to distribute such equipment to [DELETED]. See AR, Tab H, Military Interdepartmental Purchase Request (MIPR); Tab G, MIPR Justification Memorandum. DLA also received requests from USFOR-A for tents for surgical facilities, medical supply warehouses, work spaces, and housing soldiers. See AR, Tab J, Request for Tents, Aug. 25, 2010; Tab N, Request for Tents, Aug. 28, 2010. On July 20, DLA issued a task order RFQ to the four ID/IQ contractors for 300 tents and related accessories, and on July 21, DLA received quotations from each contractor.

On July 22 DLA issued a task order to ADS for the tents and accessories, which CAMSS protested on July 29. AR, Tab Q, Task Order. On September 1, DLA issued another four RFQs for additional tents and accessories. Supp. AR, Tabs B, E, H, L. CAMSS protested three of the RFQs on September 2 and protested the fourth RFQ on September 7.

DISCUSSION

CAMSS, which does not hold a contract with DLA to provide operational logistical equipment, contends that the task order and subsequent RFQs exceed the scope of the original ID/IQ contract. The protester contends that the tents do not fall within the 23 identified categories of equipment, the 9 federal supply classes of equipment, or the core list of items identified in this contract.⁵ Protester's Comments at 8-9, 18-19. In this regard, the protester argues that the tents and shelter systems here are materially different from the categories of survival gear and tactical equipment described in the SOW because they are not survival-type tents that can be carried by a soldier. The protester argues that it could not have been anticipated that a contract that included equipment such as eyewear, gloves, backpacks, pocket knives, and flashlights, would later be used to procure large "shelter systems" that can be interconnected and customized with electricity, lighting, hard floors, and heating and cooling. In this respect, the protester points out that some of these shelters will be used for surgical facilities, medical supply warehouses, work spaces, and housing. See Protester's Supp. Comments at 7, citing Supp. AR, Tab N, Aug. 28, 2010, Request for Tents.

⁴ The tents requested by USFOR-A can be variously configured and outfitted with accessories, such as generators, electricity, lighting kits, and heating and cooling units. See AR, Tab L, RFQs; Tab I, Request for Information, at 2.

⁵ The protester notes that there is a separate federal supply class (8340) for tents and tarpaulins, which was not identified in the contract.

DLA responds that the tents constitute both survival gear and tactical equipment, consistent with the types of items described in the RFP. *See* AR at 14-15. The agency states that these soft-sided, readily-mobile tents and related accessories will provide basic shelter for troops in harsh environments. *Id.*; Supp. AR at 17. In this regard, the agency states that the shelters' flexibility allows them to be distributed to [DELETED]. The agency disputes the protester's view that these ID/IQ contracts were limited in scope to small personal items such as eyewear, noting the broad scope of work identified by the contract. The agency also points out that offerors were informed that contractors should be prepared to supply a full line of over 8,100 items.⁶

Our Office is authorized to hear protests of task orders that are issued under multiple-award contracts (or protests of the solicitations for those task orders) where the task order is valued in excess of \$10 million, or where the protester asserts that the task order increases the scope, period, or maximum value of the contract under which the order is issued. 10 U.S.C. §§ 2304c(d), (e)(1)(B) (2006); *Innovative Techs. Corp.*, B-401689 *et al.*, Nov. 9, 2009, 2009 CPD ¶ 235 at 6. Task orders that are outside the scope of the underlying multiple-award contract are subject to the statutory requirement for full and open competition set forth in the Competition in Contracting Act of 1984, absent a valid determination that the work is appropriate for procurement on a sole-source basis or with limited competition. 10 U.S.C. § 2304(a)(1)(A); *DynCorp Int'l LLC*, B-402349, Mar. 15, 2010, 2010 CPD ¶ 59 at 6; *Anteon Corp.*, B-293523, B-293523.2, Mar. 29, 2004, 2004 CPD ¶ 51 at 4.

In determining whether a task order is beyond the scope of the contract, GAO and the courts look to whether there is a material difference between the task order and that contract. *DynCorp*, *supra*, at 6; *MCI Telecomms. Corp.*, B-276659.2, Sept. 29, 1997, 97-2 CPD ¶ 90 at 7; *see also AT&T Commc'ns, Inc. v. Wiltel, Inc.*, 1 F.3d 1201, 1204 (1993); *CCL, Inc.*, 39 Fed. Cl. 180, 191-92 (1997). Evidence of such a material difference is found by reviewing the circumstances attending the procurement that was conducted; examining any changes in the type of work, performance period, and costs between the contract as awarded and as modified by the task order; and considering whether the original contract solicitation adequately advised offerors of the potential for the type of task order issued. *Anteon Corp.*, *supra*, at 5; *Data Transformation Corp.*, B-274629, Dec. 19, 1996, 97-1 CPD ¶ 10 at 6. The overall inquiry is whether the task order is of a nature that potential offerors would reasonably have anticipated. *Anteon Corp.*, *supra*, at 5.

We find that the task order and RFQs for tents and related accessories are within the broad scope of the ID/IQ contract for operational logistical equipment. The stated

⁶ In this regard, the Intervenor argues that the core list, which includes such large items as boats, "looks much like an outdoor outfitting catalog from companies such as REI." *See* Intervenor's Comments at 4.

primary purpose of the contract is to provide all equipment necessary for special operations forces to perform their missions. In this regard, offerors were informed that contractors would be required to quickly supply over 8,100 items of equipment and that a significant number of items may be identified after contract award. The RFP identified, as examples, 23 broad categories of items, 9 federal supply classes, and nearly 400 core items. Although the tents being procured here were not specifically identified in the contract's original examples of equipment that could be ordered, we agree with DLA that the tents are within the broad types of survival gear and logistical and tactical equipment envisioned by the ID/IQ contract.⁷ That is, these tents will be used for, among other things, basic shelter for troops deployed in harsh environments, [DELETED]. In this regard, we do not agree with the protester's apparent belief that the items to be procured under the contract were limited to items that could be carried by a soldier, given that a number of items, e.g., diver training tanks, boats, aircraft escape slides, and speed bumps, appear to be too large to be carried by an individual. See RFP at 120-26.

Although the protester disagrees with the agency that the tents fit within these identified categories of items that could be purchased, the protester has not identified any definition in the contract, or elsewhere, that limits these categories in the fashion argued by the protester. In short, we agree with the agency that potential offerors would reasonably have anticipated that the ID/IQ contract could require contractors to provide tents and related accessories necessary for special operations forces to accomplish their mission.⁸ See Speciality Marine, Inc., B-293871, B-293871.2, June 17, 2004, 2004 CPD ¶ 130 at 6 (broad ID/IQ contract for repair of Navy Strategic Sealift ships reasonably encompassed tugboats and inspection and repair of the tugboats' life rafts); Computers Universal, Inc., B-293548, Apr. 9, 2004, 2004 CPD ¶ 78 at 2-3 (ID/IQ's general requirement for modification, maintenance and repair of weapons systems reasonably encompassed non-destructive weapons inspection and testing services).

The protests are denied.

Lynn H. Gibson
Acting General Counsel

⁷ Moreover, the value of the task order was \$15,230,298, well under the RFP's estimated annual dollar value of \$244 million.

⁸ The protester raises a number of other related arguments, including that the agency failed to conduct proper acquisition planning and the agency was required to execute a Justification and Approval because the task order constituted a de facto sole source procurement. Protest at 9-11. Because we find that the tents ordered by DLA were reasonably encompassed by the ID/IQ contract, we need not address the protester's additional arguments and dismiss them.