



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Sprint Communications Company

File: B-278407.2

Date: February 13, 1998

David S. Cohen, Esq., and Alex B. Kondé, Esq., Cohen Mohr LLP, and George J. Affe, Esq., and Anthony L. Cogswell, Esq., Sprint Communications Company, for the protester.

Richard P. Rector, Esq., Kevin P. Mullen, Esq., Chandra Emery, Esq., Piper & Marbury, and Robin L. Redfield, Esq., for MCI Telecommunications Corporation, the intervenor.

H. Jack Shearer, Esq., McKenzie Whitaker, Esq., Defense Information Systems Agency, for the agency.

John Van Schaik, Esq., and Michael R. Golden, Esq. Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Modification of contract for bandwidth management and switching services for Department of Defense telecommunications network to permit the contractor to become the primary supplier of transmission services for agency customers using asynchronous transfer mode (ATM) service (a high-speed, packet-like switching and multiplexing technique which simultaneously transfers voice, data, and video at far higher speeds than other existing technology) is beyond the scope of the original contract; the transmission component of ATM must be purchased in accordance with the statutory requirements for competition.

DECISION

Sprint Communications Company protests the decision of the Defense Information Systems Agency (DISA) to modify its contract with MCI Telecommunications Corporation for bandwidth management and switching services for the Defense Information System Network (DISN). Sprint argues that the requirement of the modification that MCI provide transmission services exceeds the scope of the original contract. Thus, Sprint argues that DISA was required to hold a competition for the transmission services.

We sustain the protest.

BACKGROUND

MCI's contract, No. DCA200-96-D-0096, is one of a series of component contracts that make up the DISN, a telecommunications system providing end-to-end common user, switched voice and video, and dedicated data service in support of Department of Defense (DOD) command, control, communication, and intelligence requirements. The MCI contract, which is known as the DISN Switched/Bandwidth Manager Services continental United States (CONUS) (DS/BMS-C) contract, was awarded under request for proposals (RFP) No. DCA200-95-R-0129.

Three vendors submitted proposals in response to the DS/BMS-C RFP: MCI, AT&T Corporation, and Electronic Data Systems, Inc., which proposed Sprint as a subcontractor. The DS/BMS-C contract was awarded to MCI on August 28, 1996, at an evaluated life-cycle cost of approximately \$84.9 million. Agency Report (Report) at 14. The contract includes a not-to-exceed cost ceiling of \$400 million.

The DS/BMS-C contract includes a statement of work (SOW) which describes the services to be provided under the contract as "switched and bandwidth management services in support of DISN CONUS." SOW § 1.2. Thus, the DS/BMS-C contract provides the capability to switch network traffic¹ at service delivery points and provides bandwidth managers at government specified service delivery points.² In addition, the contractor provides network management services and shares network coordinating functions with other network contractors. SOW § 3.4.

Concerning the issue raised by this protest--whether the DS/BMS-C contractor will provide transmission services--section 1.2 of the SOW states:

This contract will not require the contractor to provide either access to the network or backbone transmission services. All access and backbone transmission services, including those that are needed to connect with existing services during transition of full services between end-user [service delivery points], will be provided by the Government under separate contract unless otherwise stipulated.

Also relevant to this protest, SOW section 1.4, "ROLE OF OTHER CONTRACTORS," describes the various contracts that make up the DISN. Generally, that section

¹"Traffic" is the flow of information in a telecommunications network, and a telecommunications "switch" is essentially a computer system that routes or directs traffic to the desired location.

²Bandwidth managers essentially link transmission facilities (or transmission lines) within a telecommunications network.

explains that the DS/BMS-C contract provides switching and bandwidth management services and network management functions for the DISN. Section 1.4 of the DS/BMS-C SOW also describes the DTS-C contract, which was awarded to AT&T on January 28, 1997. According to section 1.4, the DTS-C contract provides access transmission services defined as "access between DOD facilities and the DISN CONUS network" and backbone transmission services defined as "the wideband network level transport that will connect the [bandwidth managers] provided under this [the DS/BMS-C contract] contract."³

The Modification

In May 1997, DOD's TRICARE⁴ Information Management Program requested that DISA provide a high bandwidth, reliable telecommunications network for hospitals and medical facilities within the military's health care system. Report at 16. The network is to integrate information such as patient records, laboratory analysis results, resource scheduling, billing, and medical consultations. In addition, the network is to allow health care providers in critically short specialty areas to serve a wider area of coverage through video teleconferencing and telemedicine. DISA agreed to provide the required telecommunications network and decided that an advanced technology known as asynchronous transfer mode (ATM) service would best support the type of high bandwidth service requested by TRICARE.⁵ DISA also determined that the TRICARE requirement should be satisfied on the DISN rather than a separate stand-alone network. Id.

As explained by the contracting officer, DISA expected that the DTS-C contractor, AT&T, would be the primary source of transmission for the DISN, including transmission for ATM service. Hearing transcript (Tr.) at 82. However, AT&T was unable to install the SONET⁶ transmission backbone required for ATM service by the time required by the contract and proposed a schedule for installation no later

³In a previous decision, AT&T Corp., B-270841 et al., May 1, 1996, 96-1 CPD ¶ 237, we denied a protest by AT&T against DISA's refusal to allow offerors to submit, and have evaluated, single proposals as an alternative to individual proposals under three DISN RFPs, the DS/BMS-C RFP, the DTS-C RFP and a third RFP, for video services.

⁴TRICARE is a DOD managed health care program.

⁵ATM is a high-speed, packet-like switching and multiplexing technique which simultaneously transfers voice, data, and video over the same circuits at far higher speeds than other existing technology. Report at 3.

⁶SONET stands for synchronous optical network and refers to a fiber optic transmission system for high-speed digital traffic.

than June 1998. Tr. at 84. As a result, DISA has had to look elsewhere for transmission for ATM until AT&T can provide it.

In the summer of 1997, DISA considered several possible approaches to satisfying the TRICARE ATM requirement. Among the approaches considered were: (1) modification of the DS/BMS-C contract to provide full ATM service, including transmission; (2) providing ATM service indirectly through Sprint via the Federal Systems Integration and Management Center contract, a General Services Administration multiple-award schedule contract;⁷ (3) initiation of a new competitive procurement for ATM service; and (4) delay providing ATM technology until the DISN reaches full operational capability, probably in the summer of 1998. Report at 17.

In September 1997, while DISA was considering its options, Sprint first approached the agency and argued that use of the DS/BMS-C contract to provide full ATM service would exceed the scope of that contract. Report at 19. DISA and Sprint discussed whether Sprint could provide ATM services, including switching and transmission under either one of two existing contracts. DISA rejected those possibilities.⁸ Report at 19.

Subsequently, DISA decided to modify the DS/BMS-C contract to allow MCI to provide ATM services, including bandwidth management and switching and transmission under that contract. On November 4, the modification, No. P00012, was signed. The modification states that it was issued to add 54 TRICARE sites under subclin 0014AA of the contract for ATM service. The modification lists 54 TRICARE sites and adds to the contract a Statement of Work Addendum (SOW Addendum) and a Functional Requirements Specification Appendix, both dated October 15, 1997. After the modification, some TRICARE sites were added and some were deleted; DISA now plans to provide ATM services to 70 TRICARE sites under the modification. Tr. at 29.

⁷Sprint provides a transmission backbone as a subcontractor for small disadvantaged business firms on some Federal Systems Integration and Management Center contracts. DISA reports that it has used this program to obtain ATM service for specific functions. Report at 17 n.9.

⁸Sprint first protested the proposed modification of the DS/BMS-C contract to this Office on October 17, 1997. That protest was dismissed as premature on October 24 since DISA had not yet decided to modify the contract.

The SOW Addendum, at section 1.2 "CONTRACT SCOPE," states that the "Addendum provides for DISN-CONUS ATM services under the DS/BMS-C contract." It also states:

Initially, the government's ATM service will be provisioned using commercial ATM services under the DS/BMS-C and other ATM contract sources. . . . The interim ATM service will transition to an objective DISN CONUS ATM service after the DISN CONUS achieves Full Operational Capability. . . . After DISN CONUS [Full Operational Capability], the government's ATM service will be provisioned using both the DS/BMS-C and DTS-C contracts.

The SOW Addendum also states that transition from the interim ATM service to the objective ATM service--with transmission to be provided by the DTS-C contract--will start 180 days after Full Operational Capability and the transition will be completed 180 days after it has begun. SOW Addendum at § 1.2.

PROTEST ALLEGATIONS

Sprint acknowledges that the bandwidth management and switching component of the ATM modification is within the scope of the DS/BMS-C contract. Sprint Supplemental Comments, January 8, 1998, at 7. Sprint, nonetheless, argues that the transmission component of the modification is materially different from the services solicited by the RFP and is outside the scope of the DS/BMS-C contract. Protest at 4. According to Sprint, the original solicitation could not be construed as advising potential offerors of the possibility that ATM transmission services could be acquired under the contract.

Sprint states that, in reliance on the plain language of the DS/BMS-C RFP, it elected not to submit a proposal in response to that RFP, although it did submit a proposal in response to the transmission RFP. Sprint also argues that it was prejudiced by the modification because it is fully able to provide public or private transmission services to meet DISA's ATM requirements.

ANALYSIS

Standard of Review

The Competition in Contracting Act (CICA) requires "full and open competition" in government procurements as obtained through the use of competitive procedures. 10 U.S.C. § 2304(a)(1)(A) (1994). Once a contract is awarded, however, our Office will generally not review modifications to that contract, because such matters are related to contract administration and are beyond the scope of our bid protest function. 4 C.F.R. § 21.5(a)(1997); Stoehner Sec. Servs., Inc., B-248077.3, Oct. 27, 1992, 92-2 CPD ¶ 285 at 4. The exception to this rule is where it is alleged that a

contract modification is beyond the scope of the original contract, since the work covered by the modification would otherwise be subject to the statutory requirements for competition (absent a valid determination that the work is appropriate for procurement on a sole-source basis). MCI Telecomms. Corp., B-276659.2, Sept. 29, 1997, 97-2 CPD ¶ 90 at 7.

In determining whether a modification triggers the competition requirements in CICA, we look to whether there is a material difference between the modified contract and the contract that was originally awarded. Id.; see AT&T Communications, Inc. v. Wiltel, Inc., 1 F.3d 1201, 1205 (Fed. Cir. 1993). Evidence of a material difference between the modification and the original contract is found by examining any changes in the type of work, performance period, and costs between the contract as awarded and as modified. MCI Telecomms. Corp., supra, at 7-8. We also consider whether the solicitation for the original contract adequately advised offerors of the potential for the type of change found in the modification, CAD Language Sys., Inc., B-233709, Apr. 3, 1989, 89-1 CPD ¶ 342 at 4, or whether the modification is of a nature which potential offerors would reasonably have anticipated at the time of the original award. American Air Filter Co.--DLA Request for Recon., 57 Comp. Gen. 567, 573 (1978), 78-1 CPD ¶ 443 at 9-10.

The Scope of the DS/BMS-C Contract

As an initial matter, there is no question that the DS/BMS-C contract contemplated the possibility of some ATM services being ordered under the contract. The pricing tables of the contract include line item 0014, "Technical Enhancements" and subline item 0014AA "Asynchronous Transfer Mode" each with the reference that the price was "To Be Negotiated." In another reference to ATM, the SOW, section 1.2, SCOPE, states in part:

Service enhancements, such as ATM, may be required under the provisions of technology enhancements. The specific terminations, throughput capability, and network management suite for system operation have not been finalized. It is envisioned that dedicated point-to-point service will migrate to this capability as soon as the performance for the ATM is proven and the costs for ATM service becomes competitive.

These and other provisions in the DS/BMS-C contract indicate that ATM service could be added to the contract; these provisions, however, do not address the question presented by Sprint's protest: whether the transmission component of the ATM modification is within the scope of the contract.

The contract also includes, at section H12, an expansive technical enhancements clause which provided that after award:

the Government may solicit, and the contractor is encouraged to propose independently, improvements to the services, features, or other requirements of the contract. These improvements may be proposed to save money, to improve performance, or for any other purpose which presents a service advantage to the Government.

Despite the broad nature of the enhancements clause, however, and despite the references to the DS/BMS-C contractor providing ATM service, we conclude that the transmission component of ATM added to the contract by the modification resulted in a material change in the contract. Our reasons for this conclusion are set forth below.

Focusing first on the type of work at issue, the DS/BMS-C SOW, in section 1.4, "ROLE OF OTHER CONTRACTORS," states that "DISN CONUS end user services will be provided through services and facilities that are obtained from a number of separate contracts referred to throughout this contract as DISN Service Contracts." According to section 1.4(1), the DS/BMS-C contractor is to "provide the capability to switch DISN CONUS traffic and . . . provide dedicated [bandwidth managers] at Government-specified locations. In addition, the DS/BMSC Contractor shall perform the active Network Management functions for DISN and share network coordinating information with the other DISN service contracts."

According to section 1.4(2) of the DS/BMS-C SOW, the DTS-C (AT&T) contract, is to provide access transmission services, described as "access between DOD facilities and the DISN CONUS network. Each DOD facility will be connected to a [bandwidth manager] provided under the DS/BMSC contract." Section 1.4(2) also states that the DTS-C contract is to provide backbone transmission services, which are described as "the wideband network level transport that will connect the [bandwidth managers] provided under this contract."

Thus, as reflected in SOW section 1.4 of the DS/BMS-C contract, the DISN generally was based upon a division of responsibilities, with the DS/BMS-C contract providing bandwidth management, switching services, and network management functions, and the DTS-C contract providing transmission. Section 1.2 of the DS/BMS-C SOW specifically addresses the provision of transmission under that contract. That provision states:

This contract will not require the contractor to provide either access to the network or backbone transmission services. All access and backbone transmission services, including those that are needed to connect with existing services during transition of full services between end-user [service delivery points], will be provided by the Government under separate contract unless otherwise stipulated.

DISA maintains that this provision permits the delivery of transmission for ATM service under the DS/BMS-C contract. According to the agency, "although the RFP advised offerors that the DS/BMS-C contractor would not be 'required' to provide transmission, it did not prevent the contractor from agreeing to provide such services." Report at 11. In addition, referring to the phrase "unless otherwise stipulated" in the above-quoted provision, DISA argues that it "explicitly reserved the right to stipulate that transmission would be provided under the DS/BMS-C instead of a separate contract." Report at 11-12.

The linchpin of DISA's position is the premise that the "otherwise stipulated" clause permits DISA to modify the contract to add transmission requirements beyond those in the contract when it was awarded as long as DISA and MCI agree to do so. We reject this premise. The "unless otherwise stipulated" paragraph must be read in the context of other provisions of the contract, including the SOW language that describes the duties of the DS/BMS-C contract and the DTS-C contract, and the transmission requirements that were in the contract when it was awarded. The only reasonable reading of the "unless otherwise stipulated" paragraph in the context of the contract as a whole is that access and backbone transmission services will not be provided by the DS/BMS-C contractor except for purposes which the contract as awarded stipulated. Section 1.4 of the SOW, as quoted above, indicates that DISA generally contemplated a separation of transmission and bandwidth management duties between the two contracts. Any reading of the "unless otherwise stipulated" paragraph that contradicts that fundamental separation must be based on specific language in the contract when it was awarded. We are aware of no such language.

As DISA notes, the division of responsibilities between the DS/BMS-C contract and the DTS-C contract was not absolute; the DS/BMS-C contract included some transmission requirements when it was awarded. For example, the DS/BMS-C SOW indicates that MCI provides transmission of network management data and service information, SOW § 3.4, § 3.4.2; transmission for certain calls which overflow onto MCI's public switched telephone network because they cannot be completed over the DISN, Functional Requirements Specification § 1.2.2(a); and transmission for calling cards. SOW § 3.1.7, Functional Requirements Specification § 1.2.2(b). Nonetheless, the only reasonable reading of the contract is that those transmission requirements are the "otherwise stipulated" transmission services referred to in the paragraph of the SOW quoted above. Since the SOW specifically states that transmission would be provided under other contracts and that this contract will not require transmission "unless otherwise stipulated," the only transmission requirements that are within the scope of the DS/BMS-C contract are the transmission requirements called for by the contract as awarded.

Turning to the modification, the SOW Addendum of the modification states at section 1.2 that, prior to full operational capability of the DISN, "the government's ATM service will be provisioned using commercial ATM services under the DS/BMS-C and other ATM contract sources." The Functional Requirements

Specification Appendix describes the performance requirements for the DISN-ATM service as "end-to-end," which is defined as "customer terminal to customer terminal . . . includ[ing] the effects of all the intermediate systems and subsystems such as the customer network, the access network, ATM switch service and the backbone network." Functional Requirements Specification Appendix, at § 3.1. Moreover, DISA and MCI acknowledge that, as a result of the modification, in addition to its bandwidth management duties, MCI will be the primary provider of access and backbone transmission for ATM customers under the DISN until Full Operational Capability.

The modification represents a material departure from the contract as competed and awarded. Under the modification, MCI as the DS/BMS-C contractor is to be the primary provider of transmission for ATM users under the DISN until the DISN reaches Full Operational Capability. Although transmission was required under the DS/BMS-C contract as awarded, as explained above, prior to the modification, MCI's transmission responsibilities were limited to those situations stipulated in the contract--which did not stipulate that the DS/BMS-C contractor was to be the primary provider of transmission for any DISN users.

Moreover, in addition to becoming the primary provider of transmission for ATM service under the modification (until Full Operational Capability), MCI also will provide to ATM users bandwidth management and switching services as well as network management services, in addition to those types of transmission that were stipulated in the contract as awarded. Having one firm provide such a largely complete network solution for particular DISN customers was not contemplated by the DISN. On the contrary, as explained above, section 1.4 of the SOW indicates that DISA generally contemplated a separation of transmission and bandwidth management duties between the two contracts. For this reason also, the type of work to be performed under the modification is materially different from the work performed under the original contract.

DISA has argued, however, that Sprint must have known that some transmission responsibilities would be included under the DS/BMS-C contract. Report at 13-14; Supplemental Agency Report at 4-5, n.4. In this connection, DISA notes that the Electronic Data Systems proposal, which included Sprint as a subcontractor, discussed Sprint's transmission capabilities.

Here again, the issue is not whether Sprint understood that the delivery of transmission would be required under the DS/BMS-C contract; the contract stipulated a number of specific situations in which the DS/BMS-C contractor would provide transmission. The issue rather is transmission for ATM, and DISA does not suggest that anything in the Electronic Data Systems proposal demonstrates that Sprint knew that the DS/BMS-C contractor would be the primary provider of

transmission for ATM for any DISN customers.⁹ In addition, we consider it significant that DISA solicited bandwidth management and switching services in one RFP and transmission in another; it appears that DISA itself views the services as separable. The separate solicitations for these services further supports our view that a modification to make the DS/BMS-C contractor the primary provider of transmission for ATM service (until Full Operational Capability of the DISN) was beyond the contemplation of offerors when the contract was awarded.

The potential cost of the transmission component of the modification also supports what is clear from the DS/BMS-C contract itself--that ATM transmission is beyond the scope of the contract. Based on a stipulation by the parties, Tr. at 291-292, 294-297, the cost of the transmission component appears to be between [deleted] for the 70 TRICARE sites currently covered by the modification. MCI and DISA argue that this cost range does not represent a significant increase in the cost of the contract, which has a \$400 million not-to-exceed ceiling. For several reasons, however, the actual cost associated with the modification may be considerably greater than [deleted]. For example, the modification includes no firm date for Full Operational Capability and it is possible that MCI will be the primary provider of ATM transmission longer than expected. The contracting officer insists that he will monitor the situation to ensure that there is no extension of the scheduled June 30, 1998, Full Operational Capability date (after which transmission for ATM is to be provided under the DTS-C contract). Tr. at 43-44. However, the contracting officer acknowledges that the original date for Full Operational Capability was June 1, 1997, so the date by which the DTS-C contract will provide ATM transmission has already been delayed more than a year. Tr. at 43. A further delay would obviously increase the cost associated with the modification.

In addition, the scope of the modification is broad. Although the modification, when issued, specifically covered only 54 TRICARE sites, the modification states that "[o]ther/future customers for ATM services within the DISN CONUS service area may be added and/or deleted to this contract service" Thus, although the contracting officer has explained that he intends to limit the number of sites for which ATM is provided under the modification, Tr. at 27-29, the modification itself places no limit on the number of TRICARE sites for which ATM transmission can be provided. In fact, the modification would permit the expansion of ATM service to any site within the DISN--not just TRICARE sites. Under the circumstances, and because there is no firm date for conversion to ATM transmission from the DTS-C

⁹For the record, we note that an MCI official testified and showed references in the firm's proposal that appear to indicate MCI anticipated ATM transmission could be ordered under the contract. Tr. at 250-251, 256-257. We also note, however, that MCI has acknowledged that [deleted]. MCI Post Hearing Comments, January 29, 1998, at 19.

contract, we conclude that the modification could have a significant impact on the cost of the DS/BMS-C contract. MCI Telecomms. Corp., supra, at 10.

RECOMMENDATION

We conclude that the modification to the DS/BMS-C contract adding transmission services for ATM is beyond the scope of the original contract, and that DISA was required to procure these services in accordance with the competition requirements of CICA, 10 U.S.C. § 2304(a)(1)(A). Accordingly, we recommend that DISA terminate the transmission services added to the DS/BMS-C contract pursuant to modification number P00012, and either hold a competition for these services or prepare the appropriate justification required by CICA for a sole-source procurement.¹⁰

We also recommend that the protester be reimbursed the reasonable costs of filing and pursuing its protest including attorneys' fees. 4 C.F.R. § 21.8(d)(1). In accordance with 4 C.F.R. § 21.8(f)(1), Sprint's certified claim for such costs, detailing the time expended and the costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision.

The protest is sustained.

Comptroller General
of the United States

¹⁰During the course of this protest, DISA determined that it was in the best interest of the government to continue performance notwithstanding the protest and executed a "best interest" override of the statutory stay of MCI's performance of this modification to the contract. See 31 U.S.C. § 3553(d)(3)(C)(i)(I) (1994). In such cases, CICA requires our Office to make our recommendation "without regard to any cost or disruption from terminating, recompeting, or reawarding the contract." 31 U.S.C. § 3554(b)(2).