



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Stanford Telecommunications, Inc.

File: B-241449

Date: December 10, 1990

Jerome F. Klajbor for the protester.

Donald E. Weight, Esq., Department of the Air Force, for the agency.

Linda C. Glass, Esq., Andrew T. Pogany, Esq., and Michael J. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

General Accounting Office will not question the contracting agency's decision to issue a delivery order for the development of specifications for a Transionospheric Sensing System under an existing indefinite-quantity contract, where requirement is within the scope of such contract.

DECISION

Stanford Telecommunications, Inc. protests the Department of the Air Force's decision to develop specifications for a Transionospheric Sensing System (TISS)^{1/} by issuing a delivery order to Draper CS Laboratory, Inc. under Draper's existing Design Engineering Program (DEP) contract No. F04606-89-D-0035. Stanford contends that the Air Force is using the Draper contractor unfairly to avoid full and open competition for the TISS system.

We deny the protest.

The Air Force originally sought to procure the TISS through the issuance of competitive request for proposals (RFP) No. F04606-89-R-25237 on November 20, 1988, as a total small business set-aside, which included training, data, installation, contractor logistics support, and first article test. Three firms, including Stanford, submitted technical proposals, but only Stanford was found to have submitted a

^{1/} The TISS system receives signals from satellites and processes and stores these signals. The system includes a receiver, an omni-directional antenna, a microcomputer, an

technically acceptable proposal. Stanford's costs, however, were well above the government's estimate for the program. The solicitation was subsequently canceled on September 30, 1989, due to lack of adequate funding.

The Air Force determined that the cost of the program, as structured, was cost-prohibitive. The Air Force states that in the interests of fostering competition and lowering cost, it decided to develop new specifications and a revised statement of work. At the time the TISS solicitation was canceled, the Air Force had design engineering vendors already under indefinite-quantity contracts for the purpose of developing specifications, prototypes, and associated data for complex systems.^{2/} The Air Force decided that it would be in the best interest of the government to use one of the design engineering contractors to assist in developing a competitive procurement package for the TISS.

Consequently, the Air Force will issue a delivery order to Draper, one of the design engineering contractors. Phase I will require Draper to conduct multiple studies and analysis of the current TISS specifications. The most cost-effective alternative derived from the studies will be incorporated in a new statement of work. Under Phase II, Draper will develop prototypes from the new specifications and deliver Level III drawings. The Air Force plans to use the Level III drawings for procuring TISS under full and open competition for requirements currently programmed for fiscal year 1993. The Air Force states that it will solicit the protester at that time.

Stanford maintains that the Air Force's actions avoid full and open competition for the design effort associated with the TISS program for which Stanford successfully competed under the original RFP.^{3/} Stanford argues that the Air Force's new design effort effectively excludes it from the design phase of the system, the phase in which it was most interested.

^{2/} These design engineering contracts were themselves awarded competitively.

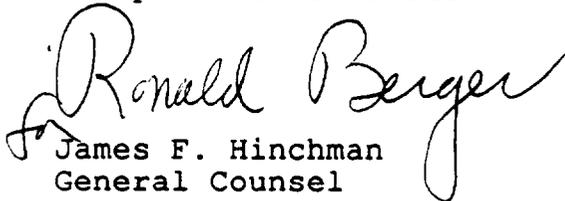
^{3/} To the extent Stanford is protesting the cancellation of the original RFP, its protest is untimely. Stanford was notified more than a year ago that the RFP was canceled. Protests not based upon alleged improprieties in a solicitation must be filed not later than 10 working days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1990).

The Air Force reports that it worked with Stanford to reduce the cost of the system it proposed under the original RFP but was unsuccessful. The Air Force states that because it could not obtain a competitive and affordable system from small businesses under the original RFP, it decided to analyze, re-define and revise the TISS specifications and re-compete the requirement. The Air Force further states that the purpose of this design engineering effort is to produce specifications, a statement of work, and a data package that will allow it to solicit affordable proposals under full and open competition.

Although Stanford disagrees with the agency decision, the record does not show that the agency acted unreasonably. The record shows that the design effort required for the TISS is within the scope of work of the existing design engineering contract. That contract requires Draper to design and develop hardware and software specifications for the government. Furthermore, the design engineering contract specifically provides that tasks to be performed by the contractor will result in the delivery of a non-proprietary competitive data package to be used by the government for future competitive production contracts, and the design engineer contractor cannot compete for those contracts.

We therefore conclude that the agency reasonably determined to satisfy its needs through the issuance of a delivery order under an existing design engineering contract. Since the delivery order is within the scope of the existing design engineering contract, we have no basis to require a separately-competed procurement as urged by the protester. See Amdahl Corp., B-236318, Nov. 27, 1989, 89-2 CPD ¶ 499.

The protest is denied.


James F. Hinchman
General Counsel