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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Turkcell Consortium

File: B-293048.2

Date: November 12, 2003

Stephen G. Anderson, Esq., and Charles R. Johnston, Jr., Esq., Baker, Donelson, Bearman, Caldwell & Berkowitz, for the protester.
Maj. Frank A. March, Department of the Army, for the agency.
Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging Coalition Provisional Authority's issuance of licenses for telecommunications services in Iraq is not for consideration under General Accounting Office's bid protest function since the licenses do not involve the provision of property or services to the federal government.

DECISION

Turkcell Consortium protests the decision by the Coalition Provisional Authority (CPA), which currently exercises governmental powers in Iraq, not to issue to Turkcell a mobile telecommunications license under a solicitation issued by, in the protester's words, "the CPA, in consultation with the Iraqi Ministry of Communications."[1] The licenses are granted to allow companies to offer wireless

[1] On October 22, 2003, our Office dismissed Turkcell's original protest of this same matter because that protest failed to meet the requirements at 4 C.F.R. § 21.1(c)(4) and (f) (2003) of our Bid Protest Regulations, which require that a protest include a detailed statement of the legal and factual grounds for protest, and that the grounds stated be legally sufficient. In its original protest, Turkcell stated that it had almost no information about the evaluation of competitors proposals and any licenses that might have been issued, but that "Turkcell finds it inconceivable that errors were not made in the evaluation process." Protester's Original Protest, Oct. 14, 2003, at 3. We concluded that such speculation did not meet the requirements in our Regulations. See Little Sustina, Inc., B-244228, July 1, 1991, 91-2 CPD ¶ 6 at 4. Turkcell filed this second protest after receiving a debriefing from the CPA.

communications services to private subscribers for a fee. Army's Dismissal Request, November 3, 2003, at 5.

We dismiss the protest.

The authority of our Office to decide bid protests is based on the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. §§ 3551-3556 (2000), and encompasses "a written objection by an interested party to a solicitation or other request by a federal agency for offers for a contract for the procurement of property or services." Our jurisdiction does not turn on whether appropriated funds are involved, West Coast Copy, Inc.; Pacific Photocopy & Research Servs., B-254044, B-254044.2, Nov. 16, 1993, 93-2 CPD ¶ 283 at 5, or on whether the competition requirements of CICA apply.

The Department of the Army argues that our Office lacks jurisdiction to hear this protest because the CPA is not a "federal agency" and alternatively, this transaction is not a "procurement of property or services" under CICA. Army's Dismissal Request, Nov. 3, 2003, at 5.

Where a concession or similar type of contract or agreement, such as a license, does not include the delivery of goods or services to the federal government, the contract is not one for the procurement of property or services as envisioned by CICA. Starfleet Marine Transp. Inc., B-290181, July 5, 2002, 2002 CPD ¶ 113 at 6. Thus, for example, where the agency's issuance of concession permits merely allowed entry by visitors into a national park, and did not also include the provision of services to the government, we did not exercise jurisdiction. Crystal Cruises, Inc., B-238347, Feb. 1, 1990, 90-1 CPD ¶ 141, aff'd, B-238347.2, June 14, 1990, 90-1 CPD ¶ 560. Similarly, the license at issue here involves no provision for property or services to the federal government. This transaction is not for the acquisition of goods and services, but the granting of the right to the selected telecommunications firms to establish and sell mobile telecommunications services in Iraq to business and social users. Coalition Provisional Authority Order 11, Licensing Telecommunications Services and Equipment (June 11, 2003) and Statement of Objectives for Iraq Mobile License Offer at Annex B. The federal government is not purchasing or receiving any goods or services. Under these circumstances, we do not view the award of these licenses as a procurement of property or services and, therefore, the matter cannot be considered under our CICA bid protest authority.

In light of the above, we need not resolve at this time whether the CPA is a federal agency for purposes of our bid protest jurisdiction under CICA. We note, however, that even if we ultimately determine that the CPA is not a federal agency, we may well assume jurisdiction if the challenged procurement is conducted on the CPA's behalf by an entity that is a federal agency (such as the Department of the Army). Cf. Cline Enters., Inc., B-252407, June 24, 1993, 93-1 CPD ¶ 492 at 1 n.1 (GAO has jurisdiction to decide protest of procurement conducted by federal agency on behalf of nonappropriated fund activity). In any event, we would also consider a request by

the CPA for our Office to consider protests outside the framework of CICA. Cf. 4 C.F.R. § 21.13 (concerning nonstatutory protests involving, among other things, procurements by government agencies that do not meet the definition of "Federal agencies" in 4 C.F.R. § 21.0(c)).

The protest is dismissed.

Anthony H. Gamboa
General Counsel