



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Master Security, Inc.

File: B-274990; B-274990.2

Date: January 14, 1997

Robert D. Banfield, Esq., and Paul J. Seidman, Esq., Seidman & Associates, P.C., for the protester.

Manuel B. Oasin, Esq., and Harmon Eggers, Esq., General Services Administration, for the agency.

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DIGEST

1. Modifications to existing requirements contract for security guard services which increased the number of hours and added contract sites were proper since: (1) the solicitation advised offerors that the winning contractor would perform all the agency's security guard requirements in the specified geographic area over a 5-year period; (2) the increase in service hours and locations occurred within the solicitation's specified geographic scope; and (3) the nature and price of the required security guard services were not changed by the modifications and the addition of those requirements therefore would have had no impact on the original competition.
2. Protest challenging modifications to existing contract for security guard services on ground that agency used modifications to improperly add five sites outside the geographic scope of the originally awarded contract is denied where record shows that agency properly acquired services at the five new sites using small purchase procedures.
3. Where record shows that agency had an immediate, critical need for security guard services at a site, but was not in a position to proceed with fully competing the requirement, agency's utilization of small purchase procedures to make interim buys on an as-needed basis was proper.

DECISION

Master Security, Inc. (MSI) protests several modifications to contract No. GS-03P-95-DWD-0001, awarded by the General Services Administration (GSA) to Knight Protective Services for armed and unarmed security guard services at GSA facilities located in Baltimore City and Baltimore County, Maryland. MSI contends that GSA

has improperly modified the Knight contract by issuing numerous modifications which have significantly increased the number of required guard service hours and contract sites beyond the original requirement.

We deny the protest.

The Knight contract was awarded on June 19, 1995 and called for the awardee to provide armed and unarmed guard services, on a delivery-order basis, for GSA facilities located in Baltimore City and Baltimore County, Maryland. The request for proposals (RFP) listed nine performance sites in the Baltimore City/Baltimore County area, and set forth an estimated quantity of 61,257 "basic" guard service hours and 3,000 "emergency" guard service hours per contract year.

On April 17, 1995, the Alfred P. Murrah federal building in Oklahoma City was bombed. Thereafter, GSA began receiving increased requests for security guard services at its federal buildings. With regard to the Knight contract, the record shows that for the first year of contract performance, Knight performed 106,407 hours of basic security guard services: 77,162 hours were performed at the original 9 contract locations, while 29,245 hours were performed at 16 new Baltimore City/Baltimore County sites which were added during the course of the base contract year. During option year 1--which began August 1, 1996--the record shows that Knight performed 135,655 hours of basic security guard services: 77,108 hours were performed at the original 9 locations; 52,607 hours were performed at the 16 new sites; 5,047 hours were performed at 5 new sites outside the Baltimore City/Baltimore County area; and 893 hours were performed at a site in Woodlawn, Maryland, on an emergency, interim basis.

MSI contends that the increases in the number of hours and sites constitute improper modifications which exceed the scope of the original contract award and must be competed as a new requirement.¹ In making this argument, MSI maintains that because the original solicitation required offerors to maintain a reserve employee force "of sufficient size to cover an increase of 20 [percent] to the basic services," any modification which expands the required number of guard service hours beyond this percentage constitutes an increase beyond the scope of the contract. MSI also argues that because the solicitation identified only nine locations in the Baltimore City/Baltimore county area, adding 16 new locations beyond those identified in the RFP similarly constitutes an improper increase in the contract scope. Finally, MSI challenges the apparent addition of five sites outside

¹On June 27, 1996 MSI requested copies of all modifications issued under the Knight contract; on September 25, MSI received copies of the modifications. On October 7, MSI timely filed this protest.

the Baltimore City/Baltimore County area to Knight's contract, as well as the orders issued to Knight for services to be performed at the Woodlawn site.

Because a contract modification that goes beyond the scope of a contract is tantamount to a sole source award that may not be justified, we will review a protest challenging a contract modification where the allegation is that a modification is beyond the contract's scope and therefore should be the subject of a new procurement. Insituform East, Inc., B-272399, Oct. 3, 1996, 96-2 CPD ¶ 134; Webcraft Packaging, Div. of Beatrice Foods Co., B-194087, Aug. 14, 1979, 79-2 CPD ¶ 120. In determining whether a modification constitutes a cardinal change, *i.e.*, whether it improperly exceeds the scope of the contract and should be the subject of a new procurement, we look to whether there is a material difference between the modified contract and the contract originally competed. CAD Language Sys. Inc., 68 Comp. Gen. 376 (1989), 89-1 CPD ¶ 364. As explained below, we conclude that the challenged modifications here are unobjectionable.

The Baltimore City/Baltimore County Modifications

The record shows that by option year No. 1--which began August 1, 1996--GSA had added 16 sites to the Knight contract, resulting in a total work requirement of 129,715 hours per contract year in the Baltimore City/Baltimore County area; the original RFP set forth a basic security guard service estimate of 61,257 basic hours and 3,000 emergency hours at nine identified Baltimore City/Baltimore County contract sites.

In examining the materiality of a modification, our decisions have considered such factors as: (1) the contract terms--and whether offerors should have reasonably anticipated the modification, *see* Marine Logistics Corp., B-218150, May 30, 1985, 85-1 CPD ¶ 614 (modification to requirements contract for shipping services unobjectionable where consistent with solicitation terms); (2) the nature of the procured goods or services and the extent of any changes introduced by the challenged modification, *see* Stoehner Security Servs., Inc., B-248077.3, Oct. 27, 1992, 92-2 CPD ¶ 285 (modification which incorporated new type of guard service into basic contract improper); and (3) the impact of the modification on competition, *see* Webcraft Packaging, Div. of Beatrice Foods Co., *supra* (protest sustained where record showed that more firms would have entered a competition based on the modification's incorporation of a relaxed specification).

In this case, we think the challenged Baltimore City/Baltimore County modifications were within the scope of the awarded contract. This procurement involved the award of a requirements type contract, which calls for the government to fill all its actual requirements for specified supplies or services during a fixed contract period by purchasing from the awardee, who agrees to provide them at the agreed price. *See* Federal Acquisition Regulation (FAR) § 16.503(a). Specifically,

Section C of the contract's statement of work (SOW) described the contract to be awarded as:

"[a] term or requirements contract . . . for filling all of the agency's requirement for a particular service within a specified time frame. In this solicitation GSA's requirement is for armed and unarmed guard service in the Baltimore City and Baltimore County [area]."

By defining this contract as a requirements-type contract to be performed over a 5-year period, and by identifying--in seven different sections of the RFP--the geographic scope of contract performance as Baltimore City/Baltimore County, GSA clearly placed all offerors on notice that the agency was soliciting for all armed and unarmed guard services required by the agency in the Baltimore City/Baltimore County area. Offerors should have expected fluctuations or increases in the number of hours and sites; this is because a requirements contract--by definition--presupposes uncertainty about actual purchases because it is to be used where, as here, the government anticipates recurring needs but cannot predetermine the precise quantities or future demands at the time of award. See FAR § 16.501(a); 16.503(b).

In addition to its classification as a requirements contract, other contract clauses set forth in the solicitation also advised offerors of the potential for quantity increases. First, the following disclaimer introduces the solicitation's work description:

"PLEASE NOTE [emphasis in original]: The following listing [of contract sites and hours] is the government's best estimate at this time of the total quantity of service required. This estimate is not a representation that the estimated quantity will be required or ordered, or that conditions affecting requirements will be stable or normal."

Moreover, by means of an amendment issued to the original RFP which set forth the minutes of the pre-proposal conference, offerors were specifically advised that the 61,257-hour estimate was included for "evaluation" purposes--and that this figure "[might] not reflect" the actual total of required hours. Section C of the solicitation also advised offerors that the 61,257-hour estimate constituted "the minimum man-hours which have been determined by the [g]overnment as essential to perform the work required by the contract." Consistent with this language, the solicitation's pricing schedule required contractors to propose their pricing by year and type of service, e.g., "BASIC SERVICES, BASE YEAR. Baltimore City, Baltimore County, MD," instead of by individual contract site.

Finally, paragraph 3(b) of the contract's statement of work (SOW), "Additions Deletions to Man-hours Required," advised offerors that:

"[the agency] has the unilateral right to order services in excess of [61,257 hours], as long as the increase is within the scope of the contract, and the [c]ontractor will be obligated to provide services at the specified rate shown in [its submitted pricing schedule]."

Despite the above-referenced terms, MSI argues that two other solicitation provisions limited the number of hours by which the government could increase the basic security guard services contract. MSI first contends that because paragraph 3(c)(1) of the SOW, "Reserve Productive Personnel," only required offerors to maintain a "reserve force" of "sufficient size to cover an increase of 20 [percent] to the basic services required," any increase in service hours beyond this 20 percent of the estimated basic requirement--an additional 12,251 hours--constitutes an out-of-scope modification. Alternatively, MSI argues that because the solicitation set forth a 3,000-hour emergency guard service estimate, any increase beyond 3,000 hours in the basic service level constitutes an out-of-scope increase.

We find MSI's interpretation to be unreasonable. First, interpreting the reserve force provision as a service hour cap forecloses the possibility of increases based on unusual conditions--a situation clearly permitted and contemplated by the disclaimer provision quoted above. Significantly, the reserve force clause does not set forth any specific terms or language purporting to limit the amount by which the basic security guard service hours or number of contract sites may be increased. Moreover, when read in the context of the entire solicitation--particularly the fact that this is a requirements contract--we think it clear that the purpose of the 20 percent reserve force clause was to cover foreseeable contingencies inherent in providing the basic contract services, described in the "Reserve Productive Personnel" clause as "e.g., . . . to replace guards on scheduled or non-scheduled breaks, sick leave or vacation."

Similarly, with regard to MSI's interpretation of the 3,000-hour emergency security guard provision, the solicitation clearly envisioned treating basic security guard services and emergency security guard services as distinct efforts. In addition to using separate contract line item numbers for these two service types, and setting forth different estimates for each (61,257 hours per year for basic security guard services and 3,000 hours per year for emergency security guard services), the original solicitation specifically provided that the need for "emergency" security guard services would only arise "in the event of an emergency" and would be procured "in addition to the services specified [in the RFP] for the basic services."

Although MSI contends that offerors could not reasonably anticipate a quantity increase from 61,257 to 134,000 hours, as noted above, since the original contract

was a requirements contract and contained numerous provisions placing offerors on notice of the potential for fluctuations in guard service quantity, we think the agency was entitled to order during the contract's term whatever quantity of guard services the agency actually required in the Baltimore City/Baltimore County area, so long as the nature of the guard services did not change. See W. H. Mullins, B-207200, Feb. 16, 1983, 83-1 CPD ¶ 158. In this regard, it is well established that in a requirements contract, the stated solicitation estimates do not act as ceilings--but instead constitute benchmarks used by offerors to establish their prices, and by agencies to evaluate them. See Caltech Serv. Corp., B-240726.6, Jan. 22, 1992, 92-1 CPD ¶ 94 (49 percent increase in requirements contract for containerization of cargo tonnage unobjectionable where pricing and nature of services did not change); Marine Logistics Corp., *supra* (25 percent increase in requirements contract quantity unobjectionable where nature of services did not change). Accordingly, we have sustained challenges to quantity increases under requirements contracts only where the nature of the item or services was materially altered by the modification. See Liebert Corp., 70 Comp. Gen. 448 (1991), 91-1 CPD ¶ 413 (modification improper where it was inconsistent with original contract's maximum quantity ceiling); American Air Filter Co., Inc., 57 Comp. Gen. 285 (1978), 78-1 CPD ¶ 136 (modification to requirements contract which substituted diesel for gasoline engines improper since nature of the competed item was materially altered); W. H. Mullins, *supra* (modification of an existing requirements contract for an estimated 1,700 tons of specified grade of magnetite rock which permitted the purchase of 5,000 tons of a reduced grade of magnetite at a newly negotiated price improper).

In contrast, this contract contained no maximum quantity ceilings, and as discussed above, clearly contemplated increases in the number of required security guard service hours and individual sites, so long as the increases were within the specified geographic scope of Baltimore City and Baltimore County. In light of the clear contract terms, and consistent with the anticipated duration of contract performance--5 years--we think it was foreseeable to the original competitors that the agency's needs for security guard services could significantly increase. Although the number of hours and sites has increased, there have been no changes or modifications in the type of service to be performed, in the performance period, or in the prices under the Knight contract. Under these circumstances, we see no basis to conclude--nor does MSI allege--that the field of competition would be materially changed by the modifications. Accordingly, we find the challenged Baltimore City/Baltimore County modifications to be unobjectionable.

The Five Remote Contract Sites Award

On July 8, 1996, shortly before option year 1 began, the record shows that GSA issued 10 delivery order modifications to Knight which required basic security guard services at 5 contract sites located outside the solicitation's identified Baltimore City/Baltimore County geographic area. MSI contends that the addition of these

five sites--Westminster, Frederick, Columbia, Annapolis and Hagerstown--to the Knight contract constitutes an improper modification because they are outside the Baltimore City/Baltimore County area.

GSA reports that although services at these sites ultimately were ordered from Knight via modifications to the original Baltimore City/Baltimore County contract, in fact the awards were not made until after a competition using small purchase procedures was held among three small business contractors, including Knight.² The record shows that on June 24, 1996, the GSA Philadelphia Regional Office--which administers GSA's Maryland requirements--received a request for basic security guard services at the five sites. Because the cumulative dollar value for the five sites was below \$25,000, a GSA contracting officer solicited oral quotations pursuant to FAR Part 13. Three contractors--including Knight--were solicited by telephone; Knight submitted the lowest quote. On June 25, the contracting officer selected Knight for award. Because Knight was already performing the Baltimore City/Baltimore County contract, the contracting officer awarded the small purchase contract through a series of 10 delivery orders to Knight's current contract; these 10 modifications are the subject of MSI's current challenge.

Although the orders were issued as modifications to Knight's existing contract, the record shows that the agency properly competed the requirements and properly

²The Competition in Contracting Act of 1984 (CICA) authorizes the use of simplified procedures that "promote competition to the maximum extent practicable" for small purchases of property and services not expected to exceed \$100,000. 41 U.S.C. § 253(g)(1994); 41 U.S.C. § 403(11) (1994). An agency is to promote efficiency and economy in small purchase procurements by using simplified procedures in soliciting quotations, and is generally considered to have complied with the mandate that it "promote competition to the maximum extent practicable" when it solicits quotes from three or more qualified sources(not exceeding \$25,000).

FAR § 13.106-2(a)(4); Arcy Mfg. Co., Inc.; Beard Servs., Inc.; Keys Wholesale, Inc.; Craftmaster Hardware Co., Inc., B-261538 et al., Aug. 14, 1995, 95-2 CPD ¶ 283.

selected Knight for award in accordance with the FAR small purchase procedures.³ We therefore see no basis to object to the awards to Knight.

The Woodlawn Requirement

On August 7, 1996, prior to filing its current protest, MSI filed a protest at this Office challenging a modification issued by GSA under the current Knight contract--providing for the performance of security guard services at the Health Care Financing Administration (HCFA) facility, in Woodlawn, Maryland. In that protest, MSI contended that the modification was improper in part because it required substantially different security guard services from those required under the Knight Baltimore City/Baltimore County contract.

On August 21, GSA took corrective action on the protest, advising MSI that it would fully compete the HCFA Woodlawn requirement as a separate procurement. GSA stated that until a new competition could be conducted, "in the interim GSA [would] obtain the required guard services for the HCFA building on a month to month basis." On August 27, MSI withdrew the HCFA Woodlawn protest.

Since MSI withdrew its protest, GSA has issued three delivery orders to Knight--to provide 187 hours of security guard services at the HCFA Woodlawn facility on a 30-day basis. In its current protest, MSI contends that the agency is improperly dividing a large purchase into small purchases in order to circumvent the requirements for full and open competition.

GSA reports that consistent with its promised corrective action, its issuance of the three challenged delivery order modifications simply reflects the need for interim purchases until the agency is in a position to fully compete this requirement. In this regard, the record shows that as soon as the Department of Labor provides GSA with the appropriate wage rate determinations for the Woodlawn services, the agency will proceed with a fully competitive procurement for this site.

³On December 19, 1996, MSI filed a supplemental protest challenging the agency's failure to solicit the protester for the small purchase procurement. Under our Bid Protest Regulations, section 21.2(a)(2), 61 Fed. Reg. 39039, 39043 (1996) (to be codified at 4 C.F.R. § 21.2(a)(2)), protests such as this one must be filed within 10 calendar days from when the protest basis was known. In its report dated November 7, 1996, GSA advised that it had procured services at the five non-Baltimore sites using a small purchase procurement among three former contractors. Since the protester waited more than a month to challenge the agency's small purchase methods, its supplemental protest is untimely.

We find the challenged modifications to be unobjectionable. When an agency is faced with a critical need while being simultaneously unable to proceed with a fully competitive award for that item, it may properly use the small purchase procedures as an interim means to procure its needs until a fully competitive award is possible. Mas-Hamilton Group, Inc., 72 Comp. Gen. 6 (1992), 92-2 CPD ¶ 259. Here, where the record shows that the agency is using the small purchase procedures to make short-term buys until a fully competitive award can be completed, we find the interim use of small purchase procedures is appropriate.

The protest is denied.

Comptroller General
of the United States