



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

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

Decision

Matter of: Colliers International

File: B-400173

Date: July 3, 2008

Michael P. Foley, Esq., Rendigs, Fry, Kiely & Dennis, LLP, for the protester.
Brian S. Smith, Esq., and Amy B. Pereira, Esq., Department of the Army, for the agency.

Lois A. Hanshaw and James A. Spangenberg, Esq., Office of the General Counsel,
GAO participated in the preparation of the decision.

DIGEST

Protest that agency improperly obtained services outside scope of multiple-award indefinite-delivery/indefinite-quantity contract is denied where the services were reasonably encompassed by the contract at issue.

DECISION

Colliers International protests the decision of the Department of the Army to obtain services to evaluate the feasibility of the U.S. Army Garrison Humphreys Housing Alternative Plan Concept (HHAP) under a multiple-award, indefinite-delivery/indefinite-quantity (ID/IQ) task order contract. Colliers maintains that these services are outside the scope of the ID/IQ contract.

We deny the protest.

On June 7, 2007, the Army Corps of Engineers, Far East District, awarded contract W912UM-07-D-0012 to Kunwon-CH2M Hill PMC, LLC (Kunwon). The contract, entitled the Program Management Consortium (PMC) contract, was to support a program, jointly established by the Republic of Korea and the United States, to realign and relocate a substantial amount of the U.S. military force structure from the Seoul metropolitan area to Camp Humphreys, Korea. The program required the establishment of a program management office, which would be responsible for a wide range of program management (PM) duties necessary to ensure the successful completion of the PMC program. The goal and objective of the program was to complete the U.S. base relocation within budget and schedule constraints and to provide the end user with the best

achievable quality while satisfying the program schedule, effective cost management, safety, and environmental management. The statement of work in the contract listed various PM tasks, but stated that these were the “Outline of Services” and that “[t]he scope of services identified in [the] RFP only covers the general outline of the PM tasks. Therefore, the scope of services is not limited to the specific services described in this RFP.” Contract § 3.1.1. Among the PM tasks listed in the scope of work were program-wide and program management services, such as financial feasibility studies, construction bidder interest, market analysis to determine key subcontractor’s services, cost and value management, and construction cost estimates. The contract further stated that the contractor may be required to provide “special services” not specifically “clarified” in the PM section of the scope of work. *Id.* § 3.1.3.

On January 25, 2008, the Army issued Task Order 0009 to Kunwon under the ID/IQ contract to evaluate the feasibility of the HHAP for implementation in Korea. Task Order 0009 required the contractor to conduct an industry forum on February 26, 2008 to provide information on the HHAP to Korean industry, to seek feedback from industry participants regarding the feasibility of implementing the concept in Korea, and to prepare a report on the feasibility of the HHAP. Kunwon employed Jones Lang LaSalle, a specialized consultant with housing development in Korea, to assist with the industry forum.

Colliers protests that the task order is outside the scope of Kunwon’s ID/IQ contract. According to the protester, the underlying multiple-award ID/IQ contract called for “the *management* of a program to ‘realign and relocate’ a substantial amount of the US military force structure in Korea.” Opposition to Motion to Dismiss at 1. Colliers further argues that because the HHAP concept was not mentioned or contemplated when the IDIQ contract was awarded, it could not be considered within the scope of that contract, and conducting a study or an industry forum regarding a “complex leasing program for military family housing” involving the private sector was unlike the planning and management tasks set forth in the ID/IQ contract. *Id.*

As a general rule, the Competition in Contracting Act of 1984 (CICA) requires contracting agencies to obtain full and open competition in the procurement of supplies and services. 10 U.S.C. § 2304(a)(1)(A) (2000); *Specialty Marine, Inc.*, B-293871, B-293871.2, June 17, 2004, 2004 CPD ¶ 130 at 2. Our Office does not review a protest of the issuance or proposed issuance of a delivery or task order except for a protest on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued. 10 U.S.C. § 2304c. In determining whether a task or delivery order is outside the scope of the underlying contract, and thus falls within CICA’s competition requirement, our Office examines whether the order is materially different from the original contract. Evidence of a material difference is found by reviewing the circumstances attending the original procurement; any changes in the type of work, performance period, and costs between the contract as awarded and the order as issued; and whether the original solicitation effectively advised offerors of the potential for the type of orders issued;

overall, the inquiry is whether the order is one which potential offerors would have reasonably anticipated. Relm Wireless Corp., B-298715, Dec. 4, 2006, 2006 CPD ¶ 190 at 2.

Based on the record, we conclude that the task order to evaluate the feasibility of the HHAP was within the scope of the ID/IQ contract as originally awarded. As previously noted, the contract required the efficient realignment and relocation of a substantial amount of the U.S. military force structure through PM techniques, such as financial feasibility studies, construction bidder interest, market analysis to determine key subcontractor's services, cost and value management, and construction cost estimates. It seems apparent that a feasibility study regarding what approach should be taken regarding military housing at Camp Humphreys clearly relates to the efficient realignment and relocation of the U.S. military to that base with the best achievable quality, which was the primary purpose of the ID/IQ contract. Moreover, the industry forum and feasibility study, targeted to participants who could provide financial and technical feedback on the HHAP concept is the type of task contemplated by the ID/IQ contract. A financial feasibility study requires financial feedback and information, just as market analysis or construction related issues of bidder interest or cost would have to be based on technical insight. Further, the management nature of the contract necessitates a planning process sufficient to determine the scopes of work for separate projects, and to schedule and manage the implementation of those projects while complying with the program's budget and efficiency requirements. While it is true that the contract did not specifically provide for an industry forum concerning the HHAP concept, as indicated above, the scope of work for the ID/IQ contract was broad and specifically provided for unidentified "special studies," such as the feasibility study here.

The protest is denied.

Gary L. Kepplinger
General Counsel