



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Institutional Communications Company

File: B-233058.5

Date: March 18, 1991

J. Randolph MacPherson, Esq., Thelen, Marrin, Johnson & Bridges, for the protester.
Frank K. Peterson, Esq., for The Chesapeake and Potomac Telephone Company, an interested party.
Kevin E. O'Brien LTC, JA, Department of the Army, for the agency.
Linda C. Glass, Esq., and Michael R. Golden, Esq., GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency did not have the proper delegation of procurement authority to conduct procurement for a state-of-the-art, telecommunications system is denied where record shows that agency had delegation of authority from the General Services Administration.
2. Agency determination to procure a state-of-the-art, telecommunications system by means of a total package rather than by separate procurements for divisible portions of the total requirement was proper where the agency reasonably concluded that based on its need for a reliable and available system especially during emergencies, award of a single contract is necessary to ensure total system integration, installation and performance.

DECISION

Institutional Communications Company (ICC) protests request for proposals (RFP) No. MDA903-88-R-0971 issued by the Defense Supply Service-Washington (DSS-W), Department of the Army, for the acquisition of a state-of-the-art, digital telecommunications system to support the Department of Defense (DOD) in the National Capital Region (NCR).^{1/}

We deny the protest.

^{1/} The NCR includes the District of Columbia and six adjacent counties in suburban Maryland and Virginia.

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The RFP, issued on May 27, 1988, as part of DOD's telecommunications modernization project (TEMPO), seeks a single prime contractor to assume total performance responsibility for the TEMPO system. This includes, but is not limited to, designing, engineering, furnishing, installing, testing and maintaining throughout the life of the contract the total system specified in the RFP. The TEMPO contractor will be responsible for providing all the equipment necessary to provide a total telecommunications system and related services. The TEMPO contractor will also be responsible for site surveys, site preparation, construction, building alterations, station user requirement reviews, training, documentation, maintenance, operations, system software, follow-on configuration engineering management, billing, and all other user services. The closing date for receipt of initial proposals was July 5, 1989.2/

ICC, in its initial protest filed with our Office on July 3, 1989, protested that the requirement that a single prime contractor be responsible for providing the complete TEMPO system unduly restricted competition and exceeded the government minimum needs. ICC contended that there were at least five alternative approaches available to increase competition for the TEMPO system. ICC's suggestions mainly involve restructuring the RFP into three major components concerning: systems integration; network services; and customer premises equipment (CPE); and allowing potential offerors to propose individually or collectively on such components under one RFP or contracting separately for each. ICC's suggestions also include allowing potential offerors to propose separately or collectively on one or more of the discrete portions of the existing RFP or removing portions of the existing RFP and separately contracting for such services. Lastly, ICC suggested the elimination of all "smaller" sites from TEMPO and restructuring the RFP into two contracts; one for systems integration/network services and the other for CPE. ICC also argued in its protest that the TEMPO RFP and other agency actions have unlawfully enhanced the Chesapeake and Potomac Telephone Company's (C&P) competitive advantage.

During the pendency of the protest, we were informed by DOD that ICC's allegations concerning the TEMPO solicitation had been referred to DOD's Office of the Inspector General (IG). In view of that investigation, and DOD's decision to delay the procurement pending the investigation, we concluded that DOD had not made a final decision on the propriety of proceeding

2/ The record indicates that the agency received two offers in response to the RFP. The offers were evaluated and an awardee has been selected.

with the procurement and dismissed ICC's protest, subject to reinstatement, pending the protester's receipt of the results of the IG investigation. Institutional Communication Co., B-233058.2, Oct. 23, 1989, 89-2 CPD 368.

The IG in its report, dated September 27, 1989, concluded that the contracting activity failed to recognize the barriers to competition present in the RFP; that the competition advocate failed to effectively perform the advocacy function and that the agency's program office was not adequately staffed to manage a contract of the size and complexity of TEMPO. The IG recommended that the Secretary of the Army withdraw the RFP, develop a new TEMPO solicitation that would provide incentives to legitimate competition, and adequately staff the program office to manage the TEMPO contract. The IG was of the opinion that if the RFP was restructured to insist that a dedicated switching system (switches for exclusive Tempo use) be installed and the "blackwire"^{3/} be provided as government-furnished equipment, this would provide the necessary incentives to legitimate competition.

By letter dated January 11, 1990, the Army reported its disagreement with the IG's report and concluded that withdrawal and restructuring of the TEMPO RFP was not warranted. Subsequently, the Secretary of the Army appointed a special board of inquiry to review the disagreement between the IG and the activity. In its report dated April 27, 1990, the Board concluded that there were no significant undue or inappropriate barriers to full and open competition created, or inadequately addressed, by the government and recommended that the TEMPO acquisition be allowed to continue.

ICC was notified on June 7, 1990, of the Secretary of the Army's approval of the Board's recommendation and on June 21, filed a request for reinstatement of its protest. ICC's request for reinstatement raised the additional argument that the Army did not possess the authority necessary under 40 U.S.C. § 759 (1988), the Brooks Act, to proceed with the procurement. During the pendency of the reinstated protest, we were advised by the General Services Administration (GSA) that it expected to issue a specific delegation of procurement authority (DPA) which would include recommendations concerning the TEMPO procurement. On that basis, and with the parties' concurrence, by letter dated October 15, 1990, we again dismissed the protest, without prejudice, pending GSA's issuance of the new DPA.

^{3/} "Black-wire" is the existing intra-premises plant in-plant wiring for all buildings/campuses occupied by the subscribers owned by the local exchange carriers.

By letter, dated October 29, 1990, to DOD, GSA stated that the TEMPO project had been selected "for a comprehensive review" and that DOD may proceed with the TEMPO project under the blanket regulatory DPA established by the Federal Information Resources Management Regulation (FIRMR), 41 C.F.R. § 201-1 et seq. (1986), Temporary Regulation No. 13 (Temp. Reg. 13). The letter amended the blanket authority to require that DOD meet milestones for GSA's management review. On November 19, 1990, ICC requested reinstatement of its protest. ICC basically alleges that DOD lacks proper authority to proceed with the acquisition and the solicitation is unduly restrictive of competition.

DELEGATION OF PROCUREMENT AUTHORITY

ICC maintains that the TEMPO procurement is subject to the Brooks Act and the FIRMR requirements for a DPA, and that the Army did not have a DPA to issue the TEMPO RFP, or to proceed with the TEMPO procurement. ICC further maintains that, pursuant to FIRMR § 201-23.106 (1990), the TEMPO procurement requires a specific DPA. The protester contends that the FIRMR provisions require agencies to submit agency procurement requests to GSA so that a reasoned determination can be made regarding whether authority to conduct the acquisition should be delegated to the agency. ICC argues that GSA's letter of October 29, was merely an after-the-fact issuance of a specific DPA, without DOD submission or GSA review of the needs, requirements, alternatives and acquisition strategy documentation required by regulation to accurately determine if the TEMPO procurement is anticompetitive.

The Brooks Act gives GSA exclusive federal purchasing authority for all commercially-available general purpose automatic data processing equipment (ADPE). 40 U.S.C. § 759 (b) (2). GSA may delegate this authority. 40 U.S.C. § 759 (b) (2). GSA has implemented this authority by publishing regulations defining ADPE, which grant blanket delegations of procurement authority in certain circumstances, but which otherwise require that an agency seeking to purchase ADPE submit a documented agency procurement request to GSA requesting a specific DPA. FIRMR, 41 C.F.R. § 201-23. With certain exceptions, absent a GSA-approved DPA, an agency lacks authority to acquire ADPE. PRC Computer Center, Inc., et al., 55 Comp. Gen. 60,67 (1975), 75-2 CPD ¶ 35.

We solicited GSA's views concerning DOD's authority to proceed with the TEMPO acquisition. GSA's position is that: (1) DOD possessed the necessary DPA under the then applicable regulations at the time of the issuance of the TEMPO solicitation, and (2) the October 29, 1990, GSA letter constituted a specific DPA for the TEMPO procurement.

GSA states that in May 1988, the date on which the TEMPO solicitation was issued, requirements for GSA authorization for telecommunications procurements were set forth in FIRM Temp. Reg. 13, effective December 23, 1986, which granted a blanket regulatory DPA for the acquisition of telecommunications resources covered by the Brooks Act. GSA states that pursuant to Temp. Reg. 13, DOD possessed the necessary authority to initiate the procurement under the blanket regulatory DPA. In any event, GSA states that its October 29 letter is a new or specific DPA. GSA states that in issuing the "new" DPA, the original blanket regulatory DPA was amended to establish that the TEMPO project would be subject to a comprehensive management review.^{4/}

ICC argues that GSA has not properly issued a specific DPA for TEMPO because DOD failed to submit the necessary documentation. The record does not support this argument. GSA has reviewed this procurement and in accordance with its authority and current operating procedures granted a specific DPA and made TEMPO, because of its high dollar value, subject to its comprehensive management review.

To the extent ICC believes that, if GSA were asked to review this procurement again for a DPA, it would have to address the alleged anticompetitiveness of the agency's requirements, GSA has already responded to our Office concerning this issue. GSA states that while it has the authority to authorize a procurement of ADPE resources under the Brooks Act and case law interpreting this authority, it cannot substitute its determination of an agency's minimum needs for that of the agency. GSA points out that the TEMPO specifications have undergone extensive scrutiny within various DOD organizations, including a special board of inquiry and, in its view, presumptively the specifications as revised after these reviews constitute the minimum needs of the agency.

Based on the above, we conclude that the Army does have the necessary authority to conduct this procurement. GSA, which is authorized to delegate its procurement authority, has unequivocally stated that the agency had the authority to proceed, under a blanket DPA in existence at the time the

^{4/} GSA also maintains that in 1988 it implicitly approved the TEMPO procurement by not insisting that DOD use its procurement for an area contract known as the Washington Interagency Telecommunications Systems.

solicitation was issued, and, in any event, under the specific authority granted by its letter of October 29.^{5/}

TOTAL PACKAGE APPROACH

The agency states that it decided to use the "total package" approach rather than the sub-system approach proposed by ICC because the TEMPO system needs to be integrated.^{6/} The agency maintains that each of the TEMPO components and sub-systems must support and operate with other system elements. The agency argues that such integration and compatibility can only be achieved by having one contractor design the system as a whole and identify interdependencies and interrelationships among individual system components during the system design phase. Another key TEMPO priority, according to the agency, is overall system availability, that is, the amount of time a system remains in use without disruption. The agency states that each sub-system and its individual components play an essential role in attaining the required availability level.

The agency further reports that this RFP also was issued to comply with the requirements of the "National Communications System" created by Executive Order 12472, 49 Federal Register 13471 (1984), which requires that telecommunications systems provide "the necessary combination of hardness, redundancy, mobility, connectivity, interoperability, restorability and security to obtain, to the maximum extent practicable, the survivability of national security and emergency preparedness telecommunications in all circumstances, including conditions of crisis or emergency." The agency states that it is necessary to have one contractor provide the entire system to assure the proper coordination of maintenance, trouble shooting and repair of the entire interrelated system. The government reports that the determination of responsibility for identifying the source of specific problems and the required corrective action is complicated by the need for coordination and cooperation among multiple suppliers when interrelated acquisitions are procured separately.

^{5/} We have been advised that GSA temporarily has suspended the Army's DPA pending receipt of information requested in GSA's October 29 letter. The Army reports that it intends to furnish this information to GSA. Upon receipt of this information, GSA advises it will reinstate the DPA. Our decision is based on these representations.

^{6/} Although the IG report noted some problems with the structure of the TEMPO RFP which may limit competition, the desire for a single contractor was not one of them.

The government advises that the use of multiple suppliers has created difficulties and delays in maintenance and repair of the current telecommunication system, particularly when disruption of telephone service occurs. Since the agency usually cannot identify the cause of the problem there is uncertainty as to which company should be called. Calling the wrong company delays repairs and results in unnecessary charges to the government.

In some instances, the government reports that vendors disagree as to the source of the problem or even insist that their equipment is working properly even though the combined service is inoperable. The government maintains that by requiring one provider to be responsible for complete services, it can ensure that breaks in service can be responded to more rapidly and efficiently, thus meeting its need for maintaining its telephone system in all circumstances, including emergencies.

The government also maintains that in order for telephone systems to provide all of the latest "state-of-the art" features as required by the RFP the various components must be interdependent and in some instances different vendors' equipment, software and technology are likely to be incompatible. Moreover, the replacement system has to be completely compatible and interoperable with the existing system throughout the transition period to avoid unnecessary disruption of service.

ICC contends that the total package approach is not required to meet the government's need for interoperability and compatibility. First, ICC argues that the TEMPO RFP itself prescribes numerous technical standards, interface, and interoperability/compatibility requirements which offerors would still be obligated to meet. Second, ICC contends that to the extent additional technical standards or interoperability/compatibility requirements might become necessary, only minimal effort by the agency would be necessary. Lastly, ICC maintains that additional contractual mechanisms, such as systems integration management vendors, are available to ensure that should more than one vendor be involved in supplying TEMPO services, any government requirements for interoperability or compatibility of services and equipment are fully satisfied.

ICC also contends that recent results of the Fort Belvoir telecommunication procurement, which was separated from TEMPO in 1989, and for which three viable offers were received, demonstrates that with restructuring of the TEMPO solicitation full and open competition is possible. ICC also maintains that the agency's acquisition of certain interim private line

services under full and open competition provides further evidence that the TEMPO procurement should be restructured.

The Competition in Contracting Act of 1984 (CICA) generally requires that solicitations include specifications which permit full and open competition and contain restrictive provisions and conditions only to the extent necessary to satisfy the needs of the agency. 10 U.S.C. § 2305(a)(1)(B) (1988). We have recognized that procurements by an agency on a total package basis can restrict competition. The Caption Center, B-220659, Feb. 19, 1986, 86-1 CPD ¶ 174. However, where it was reasonable to conclude that procurement on a total package basis was necessary to meet the agency's minimum needs, we have upheld an agency's procurement on that basis. Thus, for instance, we have rejected challenges to a total package approach where (1) separate procurements would have involved undue technical risk or defeated a requirement for interchangeability and compatibility within a computer system, MASSTOR Sys. Corp., B-211240, Dec. 27, 1983, 84-1 CPD ¶ 23; (2) there was a requirement to minimize potential for disruption of on-base communication, Southwestern Bell Tele. Co., B-231822, Sept. 29, 1988, 88-2 CPD ¶ 300; and (3) a single contractor was required to assure the effective coordination and integration of interrelated tasks, Batch-Air, Inc., B-204574, Dec. 29, 1981, 81-2 CPD ¶ 509.

We find that the agency's justification for a total package requirement to assure that one contractor is responsible for designing, engineering, furnishing, installing, testing and maintaining the total TEMPO system throughout the life of the contract is reasonable. The government's main concern in procuring TEMPO is reliability and availability of the system especially in times of emergencies. The record shows that since deregulation of the telephone industry, the government has had difficulties in identifying the problems with the equipment and getting the correct contractor to service the equipment. These difficulties effectively delay repair and prolong disruption of the system. These past repair difficulties support the requirement for one contractor to be responsible for the maintenance of the entire system. See Southwestern Bell Tele. Co., B-231822, Sept. 29, 1988, 88-2 CPD ¶ 300 (benefit of dealing with only one contractor accountable for all repairs and maintenance provides national basis for using total package approach).

In addition, the record shows that the TEMPO system consists of various components which are interdependent. Every aspect of the system is dependent on and must be interoperable with other system components. For example, switches must be integrated with the transmission facilities. We understand that because of software and other technological differences, different vendors' equipment may be incompatible. In such

circumstances, it is reasonable that soliciting based on functional specifications for one system designer with control over the equipment, software and, technology would minimize technical risks by ensuring that the various components are compatible and therefore would enhance the agency's ability to obtain a reliable and working system.

ICC asserts that a system integrator would meet the agency's needs in this regard. However, the government observes that as a practical matter no one company has all of the resources needed to fulfill the TEMPO contract without acquiring significant portions of the system from other companies and, in fact, the solicitation provided for multiple contractors teaming together into a joint venture arrangement. Even C&P, the incumbent, has to function as, or team with, other companies since they are precluded from manufacturing equipment. The government maintains that retaining an integrator as manager of multiple contracts would have little practical effect to ensure or improve overall system performance. The government would retain liability for inadequate performance caused by equipment incompatibility or deficient system integration. Further, the government states that components of specific systems are rarely interoperable or interchangeable with similar components of other systems due to proprietary architectures employed by most vendors. Basically, therefore, the function of an integrator as manager would be limited to reporting problems to the respective contractors and tracking their results and would have very little ability to resolve compatibility or deficiencies in system design.

Although ICC maintains that TEMPO is merely for routine business and administrative telecommunication services, the need for a dependable system is a legitimate one. The TEMPO system will provide service for the Office of the Secretary of Defense, the Joint Chiefs of Staff, the Pentagon, and various other military departments and military agencies in the NCR. Moreover, there is extensive interaction between the TEMPO system and the DOD Command, Control, Intelligence telecommunications system.

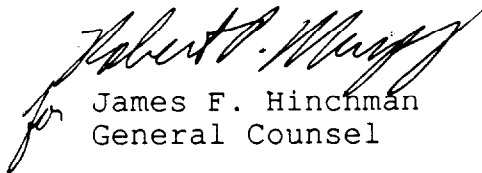
With regard to separation of the Fort Belvoir requirement from the TEMPO solicitation, the record shows that this was because of the urgent need for service expansion and enhancements to replace the antiquated government-owned system and it was believed that the TEMPO procurement would likely not provide timely satisfaction of those urgent requirements. A single contractor was required to meet the telecommunications need at Fort Belvoir and in fact award was made to single contractor with a subcontractor. The record also shows that Fort Belvoir involved service for a discrete campus environment, while this acquisition involves the integration of multiple, varied

locations which presents greater logistical and operational concerns. In any event, each procurement is a separate transaction and must stand alone, Inter-Continental Equip., Inc., B-225689, May 14, 1987, 87-1 CPD ¶ 511. The fact that Fort Belvoir was separated from the TEMPO procurement does not make this procurement improper.

We conclude that the agency decision to make a single award for the entire telecommunication system to a contractor responsible for designing, installing and maintaining the entire system in order to minimize technical risks of obtaining a working system and to minimize disruptions for repair and maintenance is reasonable. Accordingly, we will not question the agency's total package approach.

Since ICC concedes that the total package approach effectively precludes it from competing, and in view of our determination that the total package approach was reasonable, we need not consider ICC's other contentions and the agency's responses thereto.

We deny the protest.


for James F. Hinchman
General Counsel