



Comptroller General
of the United States
Washington, D.C. 20548

105838

Decision

Matter of: Tucson Mobilephone, Inc.
File: B-256802
Date: July 27, 1994

Theodore M. Bailey, Esq., Bailey, Shaw & Deadman, P.C., for the protester.
Col. Riggs L. Wilks, Jr., and Maj. Wendy A. Polk, Department of the Army, for the agency.
Robert Arsenoff, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably determined that one contractor should be responsible for providing, installing, and warranting equipment to upgrade and expand an emergency communications system where the need to coordinate between two separate contractors would likely lead to impermissible periods of downtime on the system.

DECISION

Tucson Mobilephone, Inc. (TMI) protests the terms of request for proposals (RFP) No. DAHC76-94-R-0004, issued by the Department of the Army for the upgrade and expansion of the Fort Richardson Trunked Nontactical Radio (TNTR) communications system at Elmendorf Air Force Base in Alaska. The RFP contemplates a single contract to provide all necessary hardware and software (manufactured by Ericsson General Electric Mobile Communications, Inc. (EGE)) to accomplish the upgrade/expansion effort and to install the equipment. TMI contends that the Army does not have a reasonable basis for "bundling" the equipment and installation requirements and requests that the requirement to install the equipment be broken out for a separate award in order to maximize competition.

We deny the protest.

The TNTR system is a multi-site emergency communications system linking military police, fire departments, and emergency, medical and safety personnel. It is expected to be the primary means of communication during national and state emergencies (e.g., fires, earthquakes, and floods) and

will be used at installations in Alaska covering an expansive geographic area. It is entirely comprised of EGE-manufactured hardware and software.

This procurement is a "follow-on" to an earlier TNTR contract awarded to EGE. Because the new equipment must be compatible with existing equipment, the Army issued a justification and approval (J&A) to use "other than full and open competition" limiting the equipment to be purchased to that manufactured by EGE. The J&A stated that "the installation of the equipment may be competed with the requirement that the technicians performing the work are EDACS [enhanced digital access communications system] trained." Subsequently, however, the contracting officer determined that the equipment and installation portions had to be "bundled," i.e., awarded to a single contractor. When TMI responded to the Commerce Business Daily synopsis for the procurement, it was provided a copy of the J&A and the contracting officer's subsequent determination. This protest followed. Prior to the submission of the agency report, an amended J&A was approved, authorizing the bundling of the equipment and installation portions of the contract.

TMI contends that the Army does not have a reasonable basis for bundling the two portions of the TNTR requirement. Based on our review of the record, we think the agency can bundle these requirements.

As TMI notes, 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); procurements by an agency on a total package or "bundled" basis can restrict competition. The Caption Center, B-230659, Feb. 19, 1986, 86-1 CPD ¶ 174. Therefore, the bundling of requirements will be upheld only where it is shown to be necessary to meet the agency's minimum needs.

For example, we have rejected challenges to a bundling approach where the restriction was needed to ensure military readiness, Southwestern Bell Telephone Co., B-231822, Sept. 29, 1988, 88-2 CPD ¶ 300; and where a single

TMI concedes that EGE equipment is required in order to be compatible with the existing TNTR. Also, TMI does not challenge the limitation on the competition, nor does it challenge the characterization of the TNTR as an emergency communications system.

contractor was required to ensure the effective coordination and integration of interrelated tasks, including the timely availability of components. Batch-Air, Inc., B-204574, Dec. 29, 1981, 81-2 CPD ¶ 509. We have also upheld the legitimacy of bundling where the agency has a need to obtain the benefit of dealing with only one accountable contractor so that the government is relieved of the need to analyze the source of equipment problems and to identify the correct contractor to service the equipment in the event of "finger pointing" between multiple contractors. See, e.g., Institutional Communications Co., B-233058.5, Mar. 18, 1991, 91-1 CPD ¶ 292. An agency can show such a need by demonstrating that more is at issue than mere administrative convenience, potential cost savings, or a routine desire to avoid any period of system malfunction. Id.; Electro-Methods, Inc., 70 Comp. Gen. 53 (1990), 90-2 CPD ¶ 363; cf. National Customer Eng'g, 72 Comp. Gen. 132 (1993), 93-1 CPD ¶ 225 (protest against bundling sustained where the agency's bundling justification was based only on unsupported claims).

Here, the agency states that multiple contractors likely will result in unacceptable periods of downtime for the emergency communications system in the installation and initial operational stages of the TNTR upgrade/expansion effort. According to the Army, the complexity of the system requires a unified engineering effort between the equipment manufacturer and the installer. The agency notes that there have been several occasions in which EGE-authorized installation subcontractors encountered problems repairing or configuring TNTR equipment, necessitating that EGE dispatch engineers to remote locations to reconfigure software and identify problems in which hardware and software did not operate together. Under separately awarded contracts, the Army concludes that there is no assurance that EGE will assign or dispatch engineers to Alaska to assist an installation contractor encountering similar problems. This will, in the Army's estimation, lead to delays and invite "underlapping" engineering efforts.

The Army also states that, although the RFP lists major equipment that is needed, the particular installation method of the contractor charged with that responsibility under the contract will determine what specific ancillary equipment will be necessary to successfully complete the project. Thus, the Army concludes that separate awards are impossible since competing installation contractors might require additional material from EGE after the equipment portion of the contract is awarded. Again, the Army foresees that this would cause impermissible delays as additional equipment is purchased and delivered from EGE.

The Army also states that if separate contracts are awarded for the equipment and the installation, the government would in effect be responsible for inspecting, accepting, and warehousing the equipment until it was furnished for installation. While this may be acceptable for a single piece of equipment, the agency argues that it is not acceptable for the complicated technical requirements involved in the upgrade/expansion project. The Army argues that if the installed government furnished equipment (GFE) did not perform as required, the government would be liable to the installation contractor for delays. In view of the time-critical nature of the project, the Army maintains that, rather than a situation where the agency is liable, it needs a single contractor responsible for furnishing and installing the equipment, making it operational and warranting the entire system.

Finally, in addition to citing a specific example where the agency accepted TNTR equipment, warehoused it and then became liable to the installation contractor for missing and defective equipment, the Army points to an April 1994 incident where a delay of more than 1 month occurred as TMI--the TNTR installation contractor at Fort Greely, Alaska--was in a dispute with EGE, the equipment manufacturer, over responsibility for malfunctioning EGE equipment. The agency maintains that it is precisely this type of "finger pointing" that it wants to avoid by making separate awards.

TMI in response argues that the minimum needs of the agency for an installation contractor are those stated in the original J&A--a firm with TNTR experience and EDACS training--qualifications it possesses. Thus, the protester disputes the Army's reasoning that separating the procurement will lead to an "underlapping" engineering effort. TMI also disputes the Army's reasoning that the potential need for ancillary equipment must lead to delays because, according to the protester, EGE should be required to identify the equipment or, alternatively, a request for best and final offers on the installation requirement could include a comprehensive list of the equipment necessary for completion of the system as identified by EGE and other firms offering on the separate equipment solicitation. TMI also finds the Army's desire to avoid liability for improperly warehousing equipment to be provided to the installation contractor to be an insufficient reason for limiting competition. Finally, the protester notes that in its April 1994 dispute with EGE concerning malfunctioning equipment, TMI was correct in its assertion that EGE was responsible and characterizes the delay encountered in the dispute to be incidental in nature. Thus, the protester concludes that the agency is improperly restricting the

procurement merely as a matter of administrative convenience.

Concerning TMI's first point, we note that the agency does not dispute the protester's qualifications as an installer. As to the protester's second point, TMI fails to understand the agency's position about the identification of ancillary equipment. What ancillary equipment will be necessary is dependent on what installation approach is taken by a given contractor; therefore, it is impossible for EGE or other equipment offerors to develop a comprehensive list of needed equipment without knowing what particular approach TMI, or any other installation firm, will take to installing the basic equipment. Moreover, as the agency points out, the need for certain equipment may only become apparent once installation begins.

As to the specific examples of delay encountered by the Army when equipment has been accepted and later installed, we note that these stand in stark contrast to the lack of such details in National Customer Eng'g, supra (cited by the protester), where we sustained a protest against the bundling of requirements because the agency alleged that it had encountered frequent problems with separate hardware and software maintenance contractors, but could not supply relevant specific examples of such problems. Here, TMI does not demonstrate that the Army did not encounter problems as the result of separately purchasing TNTR equipment and, following a period of storage, issuing it to an installation contractor in a defective condition. Moreover, whether or not TMI was correct in its recent dispute with EGE, this does not affect the fact that a delay was caused by a dispute between an equipment manufacturer and an installation contractor--precisely the circumstance of "finger-pointing" that the Army seeks to avoid by bundling its requirements. While TMI may believe that a 1-month delay in the operation of the emergency communication system is not important, it is evident that the Army does and we have no basis for finding that the Army's belief is unreasonable.

In conclusion, the Army had a reasonable basis to bundle these requirements involving the upgrade and expansion of an emergency communications system where downtime that may

result from coordinating between contractors must be minimized and a single contractor's responsibility for the system established. Institutional Communications Co., supra.

Accordingly, the protest is denied.

/s/ James A. Spangenberg
for Robert P. Murphy
Acting General Counsel