



Decision

Matter of: People, Technology and Processes, LLC

File: B-417273

Date: May 7, 2019

Victor L. Buonamia, for the protester.

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DIGEST

Protest alleging that a proposed task order for training services is outside of the scope of the underlying indefinite-delivery, indefinite-quantity (IDIQ) contract is denied where the scope of the underlying IDIQ contract includes education products and general training support.

DECISION

People, Technology and Processes, LLC, (PTP) of Tampa, Florida, protests the decision of the Department of the Army to obtain training services for the Special Warfare Education Group (SWEG) at the United States Army John F. Kennedy Special Warfare Center and School, under the Special Operations Forces Requirements, Analysis, Prototyping, Training, Operations, and Rehearsal III (SOF RAPTOR III) single-award, indefinite-delivery, indefinite-quantity (IDIQ) contract. PTP, the incumbent contractor, asserts that the proposed task order is beyond the scope of the underlying IDIQ contract.

We deny the protest.

BACKGROUND

PTP was the incumbent contractor providing training services for the SWEG's human dynamics and performance (HDP) program,¹ under a task order issued under a different IDIQ contract administered by the United States Special Operations Command (USSOCOM). Memorandum of Law (MOL) at 1. On January 30, 2019, USSOCOM informed PTP that it did not intend to exercise an option term under PTP's existing task order, but instead intended to issue a task order for the HDP program under a different contract vehicle, the SOF RAPTOR III contract. Protest at 1.

The SOF RAPTOR III contract was competitively awarded in 2014 to Raptor Training Services, LLC, and is administered by the Army Contract Command-Orlando. MOL at 2. The SOF RAPTOR III contract included a detailed statement of work (SOW) that provided, among other things, a series of "core competencies" that the contractor would be expected to perform. Agency Report (AR), Tab 3, SOW, at 2. Relevant to this protest, the SOW indicated that one of the core competencies was "Education and Training Support" and that the contractor would be required to provide "education products and general training support, as required." Id. at 5. The SOW additionally provided specific examples of training activities to be performed:

- a. You shall develop and provide training for SOF RAPTOR III Tactics, Techniques and Procedures (TTPs), system operation and maintenance familiarization training through a combination of classroom, written instructions, and/or hands-on operation;
- b. You shall analyze and prepare training courseware, including program of instruction, lesson plans, practical exercises, and a train-the-trainer package to accommodate new equipment training, sustainment training, and training of testers and evaluators. These tasks shall be executed, if and when directed by the SOW of each individual Task Order.

Id.

The SOW also noted, however, that the requirements were "typically unique and unpredictable," and that "[t]he SOW identifies the basic parameters and expectations for the management of SOF RAPTOR III," but "[t]he Government cannot articulate every requirement for Task Orders that have yet to be defined." Id. at 2.

¹ The agency describes the HDP program as a core program used to train special forces, civil affairs, and military information support soldiers attending courses at the United States Army John F. Kennedy Special Warfare Center and School. Memorandum of Law at 2 (citing Agency Report, Tab 5, Task Order 117 Performance Work Statement at 6). According to the agency, HDP is a training approach combining physiological, interpersonal, cognitive, and spiritual components to create optimal performance development for each soldier. Id.

DISCUSSION

The protester alleges that the proposed task order in support of the HDP program is outside the scope of the SOF RAPTOR III contract. Protest at 3-4; Comments at 4-5. Specifically, The protester argues that the HDP program involves “baseline doctrinal” training for students with no prior knowledge of the subject matter, which it argues is outside the scope of the SOF RAPTOR III contract. Id. The protester alleges that the SOF RAPTOR III contract, instead, focuses on operational training “outside the doctrinal educational parameters and is designed for refinement of traditional occupational specialty skills.” Protest at 3. Additionally, PTP argues that the SOW for the SOF RAPTOR III contract provides specific examples of the types of training contemplated by the contract, such as tactics, techniques, and procedures training or equipment-related training. Comments at 4-6. The protester argues that these examples show that the training requirements of the SOW are focused on training support related to new technologies, which is a distinct category of training from the HDP program, which involves assessing, selecting, and educating civil affairs, psychological operations, and special forces soldiers.² Id.

² The protester also alleges that the Army’s selection of the specific IDIQ contract is potentially tainted by an organizational conflict of interest. Comments at 6-7. Specifically, the protester contends that the spouse of a disgruntled former PTP employee is the director of the Human Dynamics Department at the SWEG, which is the requiring activity for this task order. Id. However, this protest ground is untimely. The protester raised this protest ground for the first time in its comments on the agency report, filed on March 8, but the only supporting evidence alleged was that the individual in question had become the director of the relevant department and that his spouse had been involuntarily released from employment at PTP. Comments at 7. The protester did not provide any information establishing when it learned that the individual in question became the director of the relevant department other than to say that it was “during the performance” of PTP’s task order, which concluded on February 28, 2019. Id. In response to a request for additional briefing from our Office, the protester filed additional information, on March 18, but still failed to indicate when it learned the information forming the basis of its supplemental protest. See Protester’s Response to Request for Additional Information. Instead, the protester made entirely new factual allegations that the individual has been involved in several “closed door” meetings concerning the procurement, which the protester allegedly learned of on the “5th or 6th of March.” Id. at 2. This represents a piecemeal presentation of facts that the protester clearly should have included in its March 8 comments on the agency report, or, at the latest, on March 16. See AAA Eng’g & Drafting, Inc., B-236034.3, Apr. 6, 1993, 93-1 CPD ¶ 295 at 4. In any case, because the protester has not established that the supplemental protest ground was filed within 10 days of when it knew or should have known its protest grounds, the supplemental protest ground is dismissed as untimely. 4 C.F.R. § 21.2(a)(2). Because this protest ground is untimely, we do not reach the question of whether the protest ground presents a legally sufficient organizational conflict of interest allegation.

The analysis of whether a task order is outside the scope of an IDIQ contract is the same as the analysis of whether a contract modification is outside the scope of a single-award contract. Anteon Corp., B-293523, B-293523.2, Mar. 29, 2004, 2004 CPD ¶ 51 at 4-5. In determining whether a task order is beyond the scope of the contract, GAO and the courts look to whether there is a material difference between the task order and that contract. Id. at 5; MCI Telecomms. Corp., B-276659.2, Sept. 28, 1997, 97-2 CPD ¶ 90 at 7; see also AT&T Commc'ns, Inc. v. Wiltel, Inc., 1 F.3d 1201, 1204 (1993); CCL, Inc., 39 Fed. Cl. 180, 191-92 (1997). Evidence of such a material difference is found by reviewing the circumstances attending the procurement that was conducted; examining any changes in the type of work, performance period, and costs between the contract as awarded and as modified by the task order; and considering whether the original contract solicitation adequately advised offerors of the potential for the type of task order issued. Anteon Corp., supra, at 5; Data Transformation Corp., B-274629, Dec. 19, 1996, 97-1 CPD ¶ 10 at 6. The overall inquiry is whether the task order is of a nature that potential offerors would reasonably have anticipated. Id.

Here, the scope of the SOF RAPTOR III contract is broad, and expressly contemplates the performance of general training for the special operations community. Specifically, the statement of work describes the contract as a “a responsive, flexible vehicle to deliver capability and services to the Special Operations Forces (SOF) community,” with specific reference to identified core competencies. SOW at 2. One of the core competencies outlined in the SOW is “Education and Training Support,” and the SOW specifically contemplates that the contractor will provide “education products and general training support, as required” to the special operations community. SOW at 5. Regarding the protester’s contentions concerning “doctrinal” versus “operational” training, these characterizations do not appear to be supported by the record. The SOF RAPTOR III contract does not use those terms in reference to training, does not appear to narrowly focus on operational training, and does not otherwise distinguish training on the basis of the trainee’s level of training or experience. Compare Protest at 3-4 with SOW at 2, 5.

With respect to the protester’s argument concerning the scope of the examples in the SOW, we note that, while the protester is correct that the HDP training program appears unrelated to one of the examples (training related to equipment), the protester has not made clear how, or in what way, the HDP training at issue in this procurement differs from the other example (training related to tactics, techniques, and procedures) contemplated by the SOW. Compare SOW at 5 with Comments at 4-6. However, even assuming that the protester is correct that the type of training at issue here is distinct from the specific types of training identified as examples in the SOW, the SOW provided notice to offerors that the SOF RAPTOR III contract would both involve general training support for the special operations community and would involve a broader scope of

training support than that specified in the examples.³ SOW at 2, 5. Accordingly, we have no basis to conclude that this task order falls outside the scope of the SOF RAPTOR III contract.

The protest is denied.

Thomas H. Armstrong
General Counsel

³ In this regard, the protester argues that the agency has impermissibly extracted “catch all” phrases from the contract to justify issuing an out of scope task order. Comments at 6 (citing DynCorp Int’l LLC, B-402349, Mar. 15, 2010, 2010 CPD ¶ 59). However, this case is readily distinguishable from the circumstances in DynCorp. In that decision, we concluded that an agency was impermissibly attempting to use an IDIQ contract for counter-narcoterrorism mission support to obtain counter-insurgency services that had only a tangential nexus to counter-narcoterrorism activities. DynCorp Int’l LLC, supra, at 6-7. In that decision, the relevant IDIQ contract suggested on its face that task orders would be related to the agency’s counter-narcoterrorism mission, which we concluded constrained other clauses that, in isolation, may have suggested a broader scope. Id. By contrast, in this case, the relevant IDIQ contract specifically contemplates general training support for the special operations community, which is what the agency proposes to procure. See SOW at 2, 5.