



Decision

Matter of: DynCorp International LLC

File: B-402349

Date: March 15, 2010

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DIGEST

Protest that task order requests for proposals (TORP) are outside the scope of multiple-award indefinite-delivery/indefinite-quantity (ID/IQ) contracts is sustained, where the ID/IQ contracts were limited to providing counter-narcoterrorism support services worldwide, and the TORPs sought mentoring, training, facilities, and logistics support services for the Ministry of the Interior and Afghan National Police in general law enforcement and counter-insurgency activities, which were not reasonably contemplated under the ID/IQ contracts.

DECISION

DynCorp International LLC, of Falls Church, Virginia, protests the issuance of task order requests for proposals (TORP) 150 for mentoring and training the Ministry of the Interior and Afghan National Police and TORP 166 for facility maintenance and logistics support for the Afghan National Police Development Program, by the Department of the Army under multiple-award indefinite-delivery/indefinite-quantity (ID/IQ) contracts to provide program and operations support for the Department of Defense Counter Narcoterrorism Technology Program Office. DynCorp contends that the TORPs are outside the scope of the ID/IQ contracts.

We sustain the protest.

BACKGROUND

On August 24, 2007, five ID/IQ contracts were awarded on the basis of full and open competition to Blackwater Lodge & Training Center, Inc. (now U.S. Training Center);

Lockheed Martin Integrated Systems, Inc.; Northrop Grumman/TASC, Inc.; Raytheon Technical Services Company; and ARINC Engineering Services, LLC. These contracts were awarded pursuant to request for proposals No. W9113M-06-R-0014, issued by the United States Army Space & Missile Defense Command/Army Forces Strategic Command for program and operations support for the Department of Defense Counter Narcoterrorism Technology Program Office.¹ The mission of the Counter Narcoterrorism Technology Program Office is to provide technology to the Department of Defense, other federal agencies, partner nations, and state and local authorities engaged in counter-drug and counter-narcoterrorism operations. AR, Tab 4e, ID/IQ Contract Performance Work Statement, at 5; see also AR, Tab 3a, ID/IQ Contract Acquisition Strategy, app. A, at A-1 (Counter Narcoterrorism Technology Program Office’s statutory authority is “to provide support for counter-drug activities of any other department or agency of the Federal Government or of any State, local or foreign law enforcement agency”).

The scope of work for the ID/IQ contracts was limited to providing the “necessary goods and services required by the [Counter Narcoterrorism Technology Program Office] to support the counter-narcoterrorism mission” of the above listed agencies, nations, and authorities in three “program performance areas”: technology development and application; training, operations, and logistics support; and program and executive support. AR, Tab 4e, ID/IQ Contract Performance Work Statement, at 6, 13. The performance work statement stated:

These support services will support the technology development and application of new counterdrug technologies. Support for training, operations, and logistic[s] for military and civilian missions (including conveyances, weapons, security services, etc.), and professional and executive support for information operations and information technology (IT) deployment will also be provided under this acquisition.

Id. at 5. The performance work statement indicated that although these services would be provided worldwide, the current “primary countries of interest” were Colombia and Afghanistan. Id. at 6. The performance work statement also specifically noted, as examples, that the goods and services provided would outfit and support counter-narcoterrorism units such as the Counter Narcotics Police in Afghanistan and the Counter Narcotics Brigade in Columbia. Id. at 6.

With regard to training and security services specifically, the performance work statement stated that the services would be “in support of counter-narcoterrorism missions and objectives.” Id. at 18, 19. The performance work statement also

¹ The contracts were for a base year and four 1-year options, and had a collective ceiling price of \$15 billion. Agency Report (AR) at 14.

identified representative examples of the training and security services contemplated, including security force training for border police in Afghanistan, training of counter-narcoterrorism forces in Afghanistan, and protective services for counter-narcoterrorism activities in Afghanistan. Id.

In addition, the solicitation for these ID/IQ contracts included three sample task orders, each of which included a sample performance work statement to illustrate representative TORPs. The sample task orders were to: (1) develop high resolution short-wave infrared cameras for surveillance and reconnaissance aircraft; (2) provide intelligence surveillance and reconnaissance support in the Trans-Sahara region of Africa; and (3) train Afghan Border Police to perform functions necessary to deny the flow of illegal persons, drugs, and weapons across borders. AR, Tabs 4b-e, Sample Task Orders.

The first of the two task order requests at issue here, TORP 150, seeks mentoring and training services for the Afghan Ministry of the Interior and Afghan National Police.² AR, Tab 5c, TORP 150 Performance Work Statement, at 1. The Ministry of the Interior is responsible for nationwide law enforcement in Afghanistan and controls the Afghan National Police.³ The Afghan National Police consists of a variety of organizations, most of which are involved in general law enforcement, safety and security, and counter-insurgency activities.⁴ Only two of these organizations—the

² TORP 150 includes a base and two option years; the total government estimate for this work is \$905,264,000. AR, Tab 5a, TORP Acquisition Strategy, at 9.

³ AR, encl. 3, Counter Narcoterrorism Technology Program Office Memorandum (Dec. 4, 2009), at 1; Protest, exh. 8, Department of State and Department of Defense Inspectors General Report (Nov. 2006), at 11.

⁴ The Afghan National Police consists of the following organizations: Afghan Uniformed Police, Afghan Border Police, Afghan National Civil Order Police, and several “specialized elements” such as Counter-Narcotics, Counterterrorism, Fire Fighting, Major Crimes Task Force, and the Special Police Operations Unit. AR, Tab 5c, TORP 150 Performance Work Statement, at 1; AR, encl. 3, Counter Narcoterrorism Technology Program Office Memorandum (Dec. 4, 2009), at 1-2; Protest, exh. 6, Afghan National Police Fact Sheet, at 1. The Uniformed Police, which is the largest organization within the Afghan National Police, is responsible for general law enforcement, public safety, and internal security throughout Afghanistan. The National Civil Order Police is responsible for addressing civil disturbances in large urban areas. The remaining organizations are smaller and have specialized missions, primarily focused on a variety of criminal and counter-insurgency activities. Protest, exh. 6, Afghan National Police Fact Sheet, at 1; Comments at 24-25.

Afghan Border Police and Counter-Narcotics element—have a mission directly involving counter-drug operations. Protest, exh. 6, Afghan National Police Fact Sheet, at 1; Comments at 24-25. Specifically, the Afghan Border Police are responsible for patrolling Afghanistan’s borders, conducting counter-smuggling operations, and managing immigration; the Counter-Narcotics element is responsible for eliminating the production and trafficking of illicit drugs. Protest, exh. 6, Afghan National Police Fact Sheet, at 1; Comments at 25. Thus, the Ministry of the Interior and Afghan National Police are involved in counter-drug and counter-narcoterrorism activities, but these activities are not their primary functions.

The stated “objective” of TORP 150 is to “support the Afghanistan [Ministry of the Interior] and the [Afghan National Police] to increase their overall capabilities to provide a trained and professional police presence, enhance public security, and support the rule of law in Afghanistan.” AR, Tab 5c, TORP 150 Performance Work Statement, at 1. In furtherance of this objective, the TORP requests 100 mentors to “provide for the administration and execution of the functions of the [Ministry of the Interior],” with approximately 30 of these mentors designated as key personnel. Id. at 2-4. One of the designated key personnel mentors is to provide training and support for the “Director [of] Afghan Border Police.” Id. at 6. As noted above, the Afghan Border Police are involved in counter-narcoterrorism operations.

The remaining mentors identified in the TORP support Ministry of Interior operations or law enforcement activities generally. For example, the TORP seeks mentors to develop policies and strategies for the Afghan fire department, the Ministry of Interior’s interaction with Parliament, and strategic communications. Id. at 5, 19. Several other mentors are requested to assist individuals who perform a variety of financial management services for the Ministry of the Interior. Id. at 21-22. Mentors are requested to assist with such things as personnel policy management, facilities management, medical and nursing, computer network and call center operations, and procurement. Id. at 9, 15, 20, 23-26. Mentors are also sought to support some general intelligence and law enforcement activities, including developing policies and strategies for counterterrorism operations, criminal investigations, intelligence, military, and police operations. Id. at 7-8, 10-18.

Notably, none of the descriptions of the mentoring and training tasks included in TORP 150 (including for the Afghan Border Police) describe or mention responsibilities directly related to counter-narcoterrorism. Notwithstanding the wide range of mentoring and tasks described above, TORP 150 generally states, “[t]his task effort will support the Warfighter in globally combating Narcoterrorism.” Id. at 1.

The second of the two task order requests at issue here, TORP 166, seeks facility maintenance and logistics support for TORP 150.⁵ Specifically, TORP 166 requires facility maintenance and logistics support services for the “Afghan National Police Development Program” in Camp Gibson, Afghanistan, and facility maintenance and logistics support for 14 other named camps.⁶ AR, Tab 5e, TORP 166 Performance Work Statement, at 1-156. The services sought under the TORP for Camp Gibson include such things as dining facility support, security services, water and electrical system support, medical support, vehicle fleet maintenance, and custodial services. Id. at 3-11. The TORP requires similar services for the other named camps. The TORP generally states that these services “directly support the [United States] and NATO missions to train the [Afghan National Police] to stabilize the country with emphasis on the reduction of illicit drug production and Narco-industry in Afghanistan.”⁷ Id. at 1. However, as discussed above, the Afghan National Police includes many divisions, only two of which appear to perform counter-drug operations, and this TORP does not otherwise state responsibilities directly related to counter-narcoterrorism.

DISCUSSION

DynCorp, which does not hold an ID/IQ contract with the Counter Narcoterrorism Technology Program Office, protests that TORPs 150 and 166 are outside the scope of the underlying ID/IQ contracts because the requested services are unrelated to counter-narcoterrorism.⁸ The Army asserts that the ID/IQ contracts are written broadly so as to include the services requested here.

⁵ TORP 166 includes a base and two option years; the total government estimate for this work is \$702,360,000. AR, Tab 5a, TORP Acquisition Strategy, at 9.

⁶ The “primary mission” of Camp Gibson is to “provide life support for mentors” at the Ministry of the Interior and other police training commands, but Camp Gibson also “provide[s] support to the management and logistics of the [Afghan National Police] program as a whole.” Id. at 2.

⁷ TORP 166 also contains a general statement similar to the statement in TORP 150 (quoted above): “This task effort will support the War Fighter in the combating of Narcoterrorism worldwide.” AR, Tab 5e, TORP 166 Performance Work Statement, at 1.

⁸ DynCorp previously provided training for the Ministry of the Interior and Afghan National Police under a task order with the Department of State that expired on January 31, 2010 (but was extended to March 31, 2010 to allow for transition). In the past, the Department of State maintained responsibility for training the Ministry and most of the organizations within the Afghan National Police, while the Counter Narcoterrorism Technology Program Office maintained responsibility for training for the Afghan Border Police, which, as noted above, is engaged in counter-

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Under the Federal Acquisition and Streamlining Act of 1994 (FASA), as modified by the National Defense Authorization Act of Fiscal Year 2008, our Office is authorized to hear protests of task orders that are issued under multiple-award contracts (or protests of the solicitations for those task orders) where the task order is valued in excess of \$10 million, or where the protester asserts that the task order increases the scope, period, or maximum value of the contract under which the order is issued. 10 U.S.C. § 2304c(d) (2006); 10 U.S.C.A § 2304c(e)(B) (2009); Innovative Techs. Corp., B-401689 et al., Nov. 9, 2009, 2009 CPD ¶ 235 at 6. Task orders that are outside the scope of the underlying multiple-award contract are subject to the statutory requirement for full and open competition set forth in the Competition in Contracting Act of 1984 (CICA), absent a valid determination that the work is appropriate for procurement on a sole-source basis or with limited competition. 41 U.S.C. § 253(A)(1)(A) (2006); Anteon Corp., B-293523, B-293523.2, Mar. 29, 2004, 2004 CPD ¶ 51 at 4; Erwin and Assocs., Inc., B-278850, Mar. 23, 1998, 98-1 CPD ¶ 89 at 7.

The analysis of whether a task order is outside the scope of a multiple-award contract is the same as the analysis of whether a contract modification is outside the scope of a single-award contract. Anteon Corp., supra, at 4-5. In addition, the law in this area is well-settled. 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

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narcoterrorism operations. Pursuant to an interagency decision, the Department of State and Department of Defense's Combined Security Transition Command-Afghanistan decided that the responsibility for training the Afghan National Police (including the Afghan Border Police) should be performed by the Department of Defense. The Department of Defense decided to procure the training for the Ministry of the Interior and the Afghan National Police through the Counter Narcoterrorism Technology Program Office ID/IQ contracts. AR at 14-15. The Army concedes that many of the services that are the subject of this protest were provided in the past by DynCorp under its task order with the Department of State. Id. at 21.

offerors would reasonably have anticipated. Anteon Corp., B-293523, B-293523.2, Mar. 29, 2004, 2004 CPD ¶ 51 at 5.

DynCorp argues that the services requested by the TORPs at issue here are outside the scope of the underlying ID/IQ contracts, because the requested services are broader than and only indirectly related to the underlying contracts' counter-narcoterrorism efforts. In DynCorp's view, these TORPs involve support services for counter-insurgency and other efforts unrelated to counter-narcoterrorism, and include support for organizations within the Ministry of the Interior and Afghan National Police that are not directly involved in counter-narcoterrorism operations. Protest at 20-26; Comments at 21-34.

The Army admits that the Ministry of the Interior and Afghan National Police are primarily involved in counter-insurgency activities. AR at 40. However, according to the Army, there is a "nexus" between these counter-insurgency activities and counter-narcoterrorism "because in Afghanistan the insurgency is funded by drug trafficking" and therefore "any organization or ministry conducting counter[-] insurgency operations in Afghanistan necessarily is involved in countering illegal drug trafficking." AR at 23, 34-38; Contracting Officer's Statement at 49-53 (explaining how drug trades support insurgency). Because of this funding "nexus," the Army contends that there is no difference between counter-insurgency and counter-narcoterrorism--"the two are the same." AR at 43. The Army also argues that the language of the underlying ID/IQ contracts (and sample tasks included within them) is broad enough to include training for all police and Ministry of the Interior activities and is not limited to counter-narcoterrorism. AR at 31-34, 43-49.

Based on our review of the record, we find that the underlying ID/IQ contracts do not contemplate providing the services requested by the TORPs here. As noted above, the underlying ID/IQ contracts advised that future task orders would be related to the counter-narcoterrorism mission of the Counter Narcoterrorism Technology Program Office.⁹ AR, Tab 4e, ID/IQ Contract Performance Work Statement, at 6, 18-19. Although the ID/IQ contracts were broadly written and included some training and logistics support, these contracts made clear that the activities had to be related to counter-narcoterrorism operations.

Here, with regard to TORP 150, only a small portion of requested training services arguably relate to counter-narcoterrorism or support the counter-narcoterrorism mission of the Counter Narcoterrorism Technology Program Office. See Contracting

⁹ To the extent that the contracting officer asserts that the Counter Narcoterrorism Technology Program Office's mission is broader than counter-narcoterrorism activities, Contracting Officer's Statement at 29-31, the ID/IQ contracts did not announce that mission objectives other than counter-narcoterrorism-related activities would be supported by task orders issued under the ID/IQ contracts.

Officer's Statement at 54. The vast majority of the TORPs' requested services involve training the Ministry of the Interior and Afghan National Police in activities that support their missions of providing general law enforcement and fighting the insurgency. These activities and missions are not mentioned anywhere in the ID/IQ contracts. The fact that there may be some small overlap in the services requested by the TORPs with those required under the ID/IQ contracts does not permit an agency to purchase other services under the ID/IQ contracts that were not reasonably contemplated when the ID/IQ contracts were issued. Anteon Corp., *supra*, at 5.

In addition, we find the disconnect between the underlying ID/IQ contracts and TORP 166 particularly striking. Although, as mentioned above, the ID/IQ contracts contemplated certain training and logistics support for counter-narcoterrorism activities, the performance work statement for TORP 0166 essentially identifies a logistics contract unrelated to these activities for the operation of 15 specific camps located throughout Afghanistan. For example, to support the operation of these camps, the task order anticipates providing dining facilities; maintaining water systems; providing heating, ventilation, and air conditioning services; maintaining the electrical system, a fleet of vehicles, and communications systems; and providing medical services, a laundry, and morale, welfare and recreation activities. AR, Tab 5e, TORP 166 Performance Work Statement, at 3-11.

Although the agency argues that the services sought by the TORPs are within the scope of the underlying ID/IQ contracts because the insurgency in Afghanistan is funded, at least in part, by money from drug trafficking, AR 34-38, our analysis is necessarily focused on the contract vehicles at issue here—*i.e.*, the underlying ID/IQ contracts and the two TORPs for task orders the agency seeks to place against them. As noted above, the ID/IQ contracts do not include counter-insurgency activities and did not advise offerors that mentoring, training, facilities, and logistics support for counter-insurgency, general law enforcement, or the administration of the Ministry of the Interior or the Afghan National Police unrelated to counter-narcoterrorism operations could be provided. Instead, as discussed above, the ID/IQ contracts limited the training and support to activities that supported counter-narcoterrorism operations.

We also reject the agency's arguments that the sample task orders placed potential offerors on notice that police training broader than counter-narcoterrorism training could be provided under the ID/IQ contracts. See AR at 44. Our review of the three sample task orders shows a clear nexus between the activities or technology requested and counter-narcoterrorism operations. While "Sample Task 3" provides for training and facilities support for the Afghan Border Police, this police organization (in contrast to rest of the Afghan National Police, with the exception of the Counter Narcotics element) is directly involved in counter-narcoterrorism activities. In addition, the sample task made clear that the training was to teach the border police how to "perform the functions necessary to deny the flow of illegal persons, drugs, and weapons across borders." AR, Tab 4d, Sample Task 3

Performance Work Statement, at 1. Here, however, the vast majority of services requested under the TORPs support counter-insurgency and other operations that do not involve counter-narcoterrorism-related operations.

Finally, we find unpersuasive the agency's reliance on general statements in the TORPs and ID/IQ contracts to show that the TORPs are within the scope of the ID/IQ contracts. For example, we note that the "mission objective" for each of the TORPs generally states that the services sought "support the Warfighter in globally combating Narcoterrorism." AR, Tabs 5c and 5e, TORP 150 and 166 Performance Work Statements, at 1. We also acknowledge the presence of general statements in the ID/IQ contracts that indicate that the Counter Narcoterrorism Technology Program Office will acquire goods and services "that cross traditional Department of Defense acquisition and contracting scopes," cover a "full spectrum of support," and include "[s]upport for training, operations, and logistic[s] for military and civilian missions." AR, Tab 4e, ID/IQ Contract Performance Work Statement, at 5. However, these statements must be read in the context of the solicitations as a whole. As noted above, the underlying ID/IQ contracts make clear that the services involved were to be provided in connection with counter-narcoterrorism operations, while the TORPs sought services that were much broader than counter-narcoterrorism and, therefore, are outside the scope of the ID/IQ contracts. A contracting agency cannot extract isolated "catch all" words and phrases from a contract, or stretch the flexibility of that contract, in order to justify issuing a task order whose nature would not reasonably have been anticipated by potential offerors; to countenance such a justification would eviscerate the requirements of CICA.¹⁰ Ervin and Assocs., Inc., supra, at 9.

In sum, we find that the TORPs for training and associated facilities and logistics support for the Ministry of the Interior and Afghan National Police are outside the scope of the ID/IQ contracts to support worldwide counter-narcoterrorism operations. We sustain the protest on this basis.

RECOMMENDATION

We sustain the protest and recommend that the Army cancel the TORPs and either conduct a full and open competition for these services, or prepare the appropriate justification required by CICA to limit the competition. We also recommend that the agency reimburse the protester the reasonable costs of filing and pursuing its

¹⁰ Furthermore, we note that the ID/IQ contracts do not include most of the labor categories required to perform the work sought by the TORPs. Although the agency asserts that the labor categories identified in the ID/IQ contracts were not all-inclusive or intended to limit the tasks that could be expected, the fact that so many of the necessary labor categories are not included in the ID/IQ contracts also indicates that the TORP services are outside the scope of the contracts.

protest, including attorneys fees. 4 C.F.R. § 21.8(d)(1). The protester must submit its certified claim for costs, detailing the time expended and the costs incurred, directly to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Lynn H. Gibson
Acting General Counsel