Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: LDDS WorldCom

File: B-266257; B-266258

Date: February 8, 1996

J. Randolph MacPherson, Esq., Sullivan & Worcester, for the protester.
Francis J. O'Toole, Esq., Robert J. Conlan, Jr., Esq., Joseph C. Port, Jr., Esq., and Michael L. Shore, Esq., Sidley & Austin; and Nathaniel Friends, Esq., and Steven W. DeGeorge, Esq., AT&T Corporation, for AT&T Corporation, an interested party.
Carl Wayne Smith, Esq., and H. Jack Shearer, Esq., Defense Information Systems Agency, for the agency.
Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Same issues and arguments as those resolved in a recent decision involving the same agency and the same procurement will not be considered as no useful purpose would be served.

2. Protest alleging that agency cancellation of solicitations prior to receipt of responses from offerors was improper is denied where the record shows that the cancellation decision was reasonable; there is no evidence that the agency issued the solicitations without intending to award contracts; and the regulatory requirement for a written determination supporting the cancellations, cited by the protester, does not apply because the solicitations were canceled before receipt of responses.

3. Contention that the agency improperly modified an existing contract beyond its scope instead of holding a separate competitive procurement is denied where a review of the contract terms shows that the added services could have been anticipated from the face of the contract itself, and where the added services are not materially different from the services currently procured under the contract.

DECISION

LDDS WorldCom protests the cancellation of solicitation Nos. RG20JUL951511 and RG20JUL951512 by the Defense Information Systems Agency (DISA), and the agency's corresponding decision to obtain these services from AT&T via the Defense Commercial Telecommunications Network (DCTN) Contract. LDDS contends that the agency is improperly consolidating services onto AT&T's DCTN

contract, and onto an upcoming sole-source transition contract the agency intends to award to AT&T until completion of a global competition for these telecommunication services.[1] LDDS also protests that the consolidation of international services onto the DCTN contract (and transition contract) exceeds the scope of those contracts, and that the agency has awarded an improper letter contract to AT&T.

We deny the protest.

BACKGROUND

On July 20, 1995, DISA received a requirement from the Air Force for two separate 1.544 megabit per second circuits to be in place not later than October 16. These dedicated circuits were to connect McChord Air Force Base (AFB), Washington, with Nellis AFB, Nevada, and Gunter AFB Annex, Alabama, with Tyndall AFB, Florida. Since these services involve command and control of military forces, they are exempt from the coverage of the government-wide FTS 2000 contract, pursuant to the terms of 10 U.S.C. § 2315 (1994). While these services normally would have been ordered using AT&T's DCTN contract, DISA procurement personnel concluded that they could not properly fill these requirements on the DCTN contract because it was slated to expire on February 29, 1996. Since the two circuits had an estimated 60-month service life, DISA procurement personnel decided instead to procure the two circuits competitively via posting on an electronic bulletin board.

On July 27, DISA placed a telecommunications service request, commonly referred to as an "inquiry," on its electronic bulletin board available to the telecommunications industry. This bulletin board uses an accelerated competitive procedure, known as an "Inquiry/Quote/Order" process, whereby the inquiry references certain standard DISA provisions and contains information unique to the requirement. Offerors respond with a quote, and if successful, receive an order for the service. The inquiry required that quotes be received by 3 p.m. on August 11.

After placing inquiries for these two dedicated circuits on the bulletin board, DISA's procurement personnel received guidance explaining that use of the DCTN contract to procure new services was appropriate even if the duration of the new requirements exceeds the remaining term of the DCTN contract or the term of the

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[1]Our prior decision in Sprint Communications Co., B-262003.2, Jan. 25, 1996, 96-1 CPD ¶ 24, includes a detailed discussion of AT&T's DCTN contract and the proposed sole-source award of a transition contract until completion of an upcoming competition already underway. In that decision, our Office denied Sprint's challenge to the award of the sole-source transition contract to AT&T. The decision also addressed other issues relevant here, as explained below.

planned sole source transition contract. In addition, this guidance advised that, whenever appropriate, the DCTN contract should be the contract of first choice in fulfilling such requirements. Thus, on August 4, a week before quotes were due, DISA canceled the two solicitations. This protest followed.[2]

DISCUSSION

Of the four challenges raised by LDDS--improper cancellation of the solicitations for the two circuits; improper consolidation of services onto AT&T's contracts; inclusion of services beyond the scope of the DCTN and transition contracts; and award of a letter contract to AT&T in violation of the restrictions on such awards--two raise the same arguments involving the same contract actions raised by Sprint in its protest involving the DCTN and transition contract, Sprint Communications Co., supra. Since these two issues--i.e., the propriety of the agency's decision to consolidate telecommunications services on the DCTN and transition contracts, and the nature of the alleged letter contract--and the arguments raised are the same as in the earlier protest, which was resolved in the agency's favor by the decision of January 25, we see no useful purpose to be served by our further consideration of these issues. See RMS Indus., B-247465; B-247467, June 10, 1992, 92-1 CPD ¶ 506; Wallace O'Connor, Inc., B-227891, Aug. 31, 1987, 87-2 CPD ¶ 213. Instead, we focus on LDDS's challenge to the cancellation of the solicitations for the two circuits, and its contention that the agency is using the DCTN and transition contracts to procure international services beyond the scope of those two contracts.

Cancellation of the Two Solicitations

LDDS argues that the agency decision to cancel the two electronic solicitations was improper, and that the agency failed to follow the guidelines in the Federal Acquisition Regulation (FAR) applicable to decisions to cancel solicitations.

Our prior decision in Sprint sets forth in detail the agency's decision to consolidate services onto the DCTN and transition contracts until completion of a major competitive procurement planned for early 1997. While we recognize that the agency could procure these services on a piecemeal basis using competition, we also recognize the benefits associated with streamlining the unwieldy system currently used by the Department of Defense, and procuring these services using consolidated procurements designed to achieve significant economies of scale. Sprint Communications Co., supra at 10-12. As discussed at length in Sprint, we find nothing unreasonable in the agency's decision to consolidate its

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[2]LDDS first filed an agency-level protest challenging the cancellation of the solicitations for these services, and other services. After receiving the agency decision denying its protest, LDDS filed a timely challenge with our Office.

telecommunications services onto the DCTN and transition contracts. Thus, in the general sense that the cancellations at issue here are part of the agency's implementation of that decision, we have no objection to the cancellations.

With regard to the two solicitations at issue here, LDDS argues that the agency violated FAR § 15.402(c), which admonishes agencies not to issue solicitations under which they have no intention of awarding a contract. LDDS also argues that the contracting officer was required to make a written determination, pursuant to the terms of FAR § 15.608(b), explaining the basis for rejecting all quotes received in response to the solicitations. In our view, LDDS is wrong on both counts.

First, there is no evidence in the record that the agency issued these solicitations with the knowledge that it would cancel them. Instead, the record shows that agency personnel had a good faith belief, until advised otherwise, that they could not order services under the DCTN and transition contracts slated to last longer than the life of the contracts themselves. Since the agency changed its position after placing these requirements on the bulletin board, but before quotes were received, we see nothing in the record to support a finding that the agency improperly issued the solicitations with no intent to award a contract.

Second, the requirement in FAR § 15.608(b) for preparing a written determination for canceling a solicitation after receipt of proposals, on its face, does not apply in a situation where the agency canceled the solicitation 8 days after posting the requirement, and a week before quotes were due. See Valix Federal Partnership I v. Department of the Air Force, GSBCA No. 12038-P, Oct. 30, 1992, 93-2 BCA ¶ 25,595, 1992 BPD ¶ 326.

Addition of International Services to DCTN Contract

As part of its challenge to the agency's decision to consolidate services on the DCTN and transition contracts, LDDS argues that the agency is adding international services to the contract, which, LDDS claims, are beyond the contract's scope and must be the subject of a separate competitive award. We disagree.

As a general rule, our Office will not consider protests against contract modifications, as they involve matters of contract administration that are the responsibility of the contracting agency. 4 C.F.R. § 21.3(m)(1) (1995); National Linen Serv., B-257112; B-257312, Aug. 31, 1994, 73 Comp. Gen. ___, 94-2 CPD ¶ 94. We will, however, consider a protest that a modification is beyond the scope of the original contract, and that the subject of the modification thus should be

competitively procured absent a valid sole-source justification. Neil R. Gross & Co., Inc., 69 Comp. Gen. 292 (1990), 90-1 CPD ¶ 212; Everpure, Inc., B-226395.4, Oct. 10, 1990, 90-2 CPD ¶ 275. In determining whether a modification improperly exceeds the scope of the contract, we consider whether there is a material difference between the modified contract and the contract originally competed. CAD Language Sys., Inc., 68 Comp. Gen. 376 (1989), 89-1 CPD ¶ 364; Clean Giant, Inc., B-229885, Mar. 17, 1988, 88-1 CPD ¶ 281. The materiality of a modification is determined by examining factors such as the magnitude of the changes in relation to the overall effort, CAD Language Sys., Inc., supra, whether the nature and purpose of the contract has been altered by the modification, Clean Giant, Inc., supra, and whether the field of competition would be materially changed by the contract modification. Rolm Corp., B-218949, Aug. 22, 1985, 85-2 CPD ¶ 212.

The record here shows that from the inception of the DCTN contract in 1984, until January 26, 1995, the DCTN contract was not used to procure international services. In fact, LDDS has provided a statement from the contracting officer at the time the DCTN contract was solicited, indicating that he considered the use of the DCTN contract for international services beyond the scope of the contract.

While the understanding of the former contracting officer is a useful indicator of the agency's mindset at the time the agency solicited these services, it is not a substitute for a reasoned review of the contract document itself and a comparison of the existing and modified services. Such a review shows that the original DCTN contract as solicited contained an option for extending these services "to users located outside the [Continental United States]." Although the agency is not here exercising that option, the presence of the option in the solicitation, issued some 12 years ago, provides strong evidence that offerors could have expected that international services might be covered by the contract at some point in the future. In addition, the contract contains numerous other performance requirements that, while less explicit than the option provision, strongly suggest that the DCTN contract might be used to procure services reaching beyond the borders of the continental United States.[3] Finally, there is nothing about international

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[3]For example, the performance specifications section of the DCTN contract, at paragraph 2.2.1, requires the contractor to

> "meet the needs of the National Command Authorities (NCA), the DOD, and the Military Departments (MILDEPs) under crisis and emergency conditions such as mobilization of U.S. forces for overseas deployment, military exercises, mobilization and transfer of resources for assistance to allies, military participation during natural disasters, and evacuation of Americans from hostile environments."

(continued...)

telecommunications services that differs from the existing services other than their destination.

In sum, the record shows that services such as these are not materially different from those currently procured via this contract, and do not alter the nature or purpose of the contract from one seeking specialized telecommunications services. Accordingly, we conclude that the services at issue are within the scope of the DCTN contract.

The protest is denied.

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[3](...continued)

The notion that the contractor in every one of these situations would be required to stop providing services at the U.S. border, while troops progress elsewhere, is unreasonable.