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## Decision

**Matter of:** California Industrial Facilities Resources, Inc., d/b/a CAMSS Shelters

**File:** B-406146

**Date:** February 22, 2012

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Paul F. Khoury, Esq., Tracye Winfrey Howard, Esq., and Brian G. Walsh, Esq., Wiley Rein LLP, for the protester.

John P. Patkus, Esq., R. Zenjiro Schaper, Esq., Defense Logistics Agency, for the agency.

Scott H. Riback, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest that request for quotations impermissibly solicits equipment that is beyond the scope of several underlying indefinite-delivery, indefinite-quantity contracts is denied where record shows that equipment to be purchased is within the scope of the underlying contracts.

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### DECISION

California Industrial Facilities Resources, Inc., d/b/a/ CAMSS Shelters (CAMSS) protests the terms of request for quotations (RFQ) No. 20111110008607, issued by the Defense Logistics Agency (DLA) to acquire a quantity of environmental control units (ECUs). CAMSS asserts that the RFQ is soliciting a requirement that is beyond the scope of the underlying multiple award indefinite-delivery, indefinite-quantity (ID/IQ) contracts under which the RFQ was issued.

We deny the protest.

The solicitation calls for the supply of 496 ECUs, which are climate control units that are used in connection with tents and temporary structures to be deployed in Afghanistan. As explained by the agency, the ECUs being acquired here will be included in “force provider” units, which are deployable modular systems for housing, food service, laundry, water, fuel storage, waste water collection, and showers and latrines. Agency Report (AR), exh. 19. Each force provider unit requires 56 ECUs to make the system fully operational; when deployed, the force provider units provide shelter for 600 military personnel. Id.

The underlying multiple award ID/IQ contracts are collectively referred to as the Special Operational Equipment Tailored Logistics Support Program (SOETLSP), and there are four contract holders under the program, AR, exhs. 3-6; the protester is not one of the contractors under the program. The sole issue in this case concerns whether or not the agency is properly acquiring the ECUs under the SOETLSP contracts, or whether the agency is required to conduct a separate, full and open competition for the ECUs.

CAMSS maintains that the agency's effort to acquire the ECUs using the SOETLSP contracts will result in the agency's issuance of an out-of-scope delivery order. According to the protester, acquisitions under the SOETLSP contracts must be confined exclusively to supplies or services to be used by special operations forces to accomplish their mission. The protester maintains that the agency is improperly acquiring the ECUs for use by personnel that may not be special operations forces accomplishing special operations missions.<sup>1</sup>

Under the Federal Acquisition and Streamlining Act of 1994, 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. 10 U.S.C. § 2305(a)(1)(A)(i) (2006); DynCorp Int'l LLC, B-402349, Mar. 15, 2010, 2010 CPD ¶ 59 at 6.

When a protester alleges that the issuance of a task or delivery order under a multiple-award contract is beyond the scope of the contract, we analyze the protest in essentially the same manner as those in which the protester argues that a contract modification is outside the scope of the underlying contract. DynCorp Int'l LLC, supra. In determining whether a task or delivery order is outside the scope of the underlying contract, and thus falls within CICA's competition requirement, our Office examines whether the order is materially different from the original contract,

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<sup>1</sup> The record shows that the ECUs will be used by both special operations forces, as well as other military personnel, engaged in tactical and combat operations in Afghanistan. AR, exh. 19.

as reasonably interpreted. Evidence of a material difference is found by reviewing the circumstances attending the original procurement; any changes in the type of work, performance period, and costs between the contract as awarded and the order as issued; and whether the original solicitation effectively advised offerors of the potential for the type of orders issued. In other words, the inquiry is whether the order is one which potential offerors reasonably would have anticipated. Symetrics Indus., Inc., B-289606, Apr. 8, 2002, 2002 CPD ¶ 65 at 5.

We find no merit to CAMSS's protest. As an initial matter, we note that this is not CAMSS's first challenge to DLA's acquisition of tents and accessories using the SOETLSP contracts. In previous protests, CAMSS argued that DLA's acquisition of large "shelter systems" (essentially very large tents) under four other delivery orders or solicitations amounted to out-of-scope acquisitions under the SOETLSP contracts. We denied CAMSS's protests, finding that the acquisitions were within scope of the contracts. California Industrial Facilities Resources, Inc., d/b/a/ CAMSS Shelters, B-403421, et al., Nov. 5, 2010, 2010 CPD ¶ 269.

In its current protest, CAMMS relies on its reading of the decision cited above to assert that our prior decision held that the SOETLSP contracts could only be used to procure goods or services necessary for special operations forces to accomplish their mission.

CAMSS is mistaken. As an initial matter, CAMSS never advanced the argument it currently is making in its earlier protests. In fact, CAMSS specifically made the opposite argument in the course of the earlier protests, asserting as follows: "Whether the items are needed to support missions of the Special Operations community cannot be the test because that test has no limits." CAMSS Comments Responding to the Agency Report in B-403421, B-403421.2, Sept. 17, 2010, at 22.

More fundamentally, a careful review of our earlier decision shows that the acquisitions at issue there were identical to the current acquisition in terms of the ultimate end users--i.e. the tents being acquired in those procurements were not limited to equipment for use by special operations forces to accomplish their mission. As we described the acquisitions in our earlier decision:

On July 19, 2010, U.S. Forces in Afghanistan (USFOR-A) submitted purchase requests to DLA for tents and accessories to support the expected surge of 30,000 personnel and to distribute such equipment to smaller contingents of troops at forward operating bases and combat outposts. See AR, Tab H, Military Interdepartmental Purchase Request (MIPR); Tab G, MIPR Justification Memorandum. DLA also received requests from USFOR-A for tents for surgical facilities, medical supply warehouses, work spaces, and housing soldiers. See AR, Tab J, Request for Tents, Aug. 25, 2010; Tab N, Request for Tents, Aug. 28, 2010.

California Industrial Facilities Resources, Inc., d/b/a/ CAMSS Shelters, B-403421, et al., supra. at 3.<sup>2</sup> Thus, the tents and accessories being acquired in those other acquisitions were for general purposes associated with the anticipated troop surge in Afghanistan and were not limited to equipment to be used by special operations forces to accomplish their mission. Accordingly, to the extent that our decision may be read as indicating that use of these contracts was confined to purchases that were necessary for special operations forces to accomplish their mission, such a reading would be inconsistent with the underlying purchases being made.<sup>3</sup>

Second, and more importantly, the terms of the underlying RFP do not support the protester's position. In this connection, although the RFP represented that the "primary concept" of the contracts is to support America's special operations community by providing them equipment, training and related incidental services necessary to perform their mission, RFP at 45, it also contemplated other users or "customers" using the contracts for missions other than special operations missions.

The RFP describe the scope of the contemplated SOETLSP contracts as follows:

The Defense Supply Center Philadelphia (DCSP) is an Inventory Control Point (ICP) of the Defense Logistics Agency (DLA), and is a combat support activity whose objective is to continue, and to expand, its use of unique and innovative approaches for providing focused logistics support for its military and federal customers, as well as other authorized customers, for their special operational equipment requirements.

RFP at 11. Thus, while what is being acquired under the SOETLSP contracts is limited to "special operational equipment," the prospective customers for the equipment are not just special operations personnel, but the larger group of military and federal customers, along with other authorized customers.

This is further confirmed by other provisions of the solicitation. For example, the RFP provided the following in connection with who would be authorized to use the SOETLSP contracts:

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<sup>2</sup> Portions of the quoted text were redacted from the final public version of this decision; the quote above is from the protected decision.

<sup>3</sup> We point out as well that, even though the facts in those prior cases were identical to the facts here--the agency was acquiring equipment to be used by other than special operations forces to accomplish their mission--CAMSS did not raise its current allegation during the litigation of those protests, and, in fact, took the opposite view.

1. This solicitation represents a continuation of the Special Operations TLS Contracting Program of the Defense Supply Center Philadelphia (DCSP). The program has been slightly expanded in scope and depth of customer support and has been renamed "Special Operational Equipment Tailored Logistics Support (TLS)." Tailored Logistics Support through this third generation will acquire a full line of logistic support of special operational equipment, related incidental services, and training requirements of military installations, federal agencies, state and local governments, and other authorized customers located worldwide.

2. Based on the success of the Special Operational TLS Contracting Program, as evidenced by the increased number of "authorized customers" under the existing contracts, DCSP anticipates that participation in the program will be expanded to various additional, if not all, authorized customers (military installations, federal agencies, state and local governments) worldwide.

RFP at 12. It therefore is clear that the RFP put contractors on notice that the resulting contracts would be used not only by special operations forces, but also by a host of other users as well.<sup>4</sup>

The RFP goes on to describe the missions that it was intended to support:

Under the Special Operational Equipment Tailored Logistics Support Program contract, the program will service customers worldwide utilizing a combination of commercial support capabilities and Government transportation capabilities. The scope of the work

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<sup>4</sup> The protester appears to concede that the users or customers authorized to use the SOETLSP contracts include entities other than special operations forces, but nonetheless maintains that those other users can only make purchases in support of special operations forces performing their missions. According to the protester:

It is not the customer here that makes this procurement out of scope, it is the intended use of the ECUs being procured. If these ECUs were necessary for special operations forces to accomplish their mission in Afghanistan, the identity of the DLA customer would be irrelevant.

Protester's Comments, Dec. 22, 2011, at 3. However, the protester has not explained what possible set of circumstances could lead, for example, to an authorized local government customer purchasing equipment in support of special operations forces performing their missions.

involves the total logistics support required to supply customers and missions related to: [a list of 23 different logistics support requirements/mission types].

RFP at 45 (emphasis supplied).

Thus, the RFP contemplated not only a wide array of users beyond special operations forces, but also a wide variety of missions, and not simply special operations missions.

In summary, we find that the RFP clearly put offerors on notice of the type of orders to be anticipated (orders for a full range of special operational equipment); that the prospective user or customer base went well beyond special operations forces (authorized customers (military installations, federal agencies, state and local governments) worldwide); and that the missions for which the equipment could be ordered varied considerably (to include some 23 different mission types and the required equipment therefor). In light of the foregoing, we find no merit to CAMSS's position.

The protest is denied.

Lynn H. Gibson  
General Counsel