



Decision

Matter of: T&W Associates, Inc.

File: B-258149

Date: December 19, 1994

Thomas E. Ledbetter for the protester,
Garry S. Grossman, Esq., Fenwick & West, for Systems
Engineering Solutions, Inc., an interested party,
Vera Meza, Esq., Richard A. Couch, Esq., and Sharon B.
Patterson, Esq., Department of the Army, for the agency,
Sylvia Schatz, Esq., and John M. Melody, Esq., Office of the
General Counsel, GAO, participated in the preparation of the
decision.

DIGEST

Agency's decision to procure services under one firm's
existing contract was unobjectionable where the record shows
that services are within scope of that contract.

DECISION

T&W Associates, Inc. protests the Department of the Army's
decision to issue a technical direction order (TDO) to
procure the services of a computer systems programmer/
analyst under an existing cost-plus-award-fee contract
(No. DAAH01-93-C-0128) with Systems Engineering Solutions,
Inc. (SESI). T&W primarily maintains that since the
services contained in the TDO significantly increased the
scope of work in SESI's existing contract, the TDO
constitutes an improper modification to the contract and,
thus, is an improper sole-source award to SESI.

We deny the protest.

SESI's contract, which was competitively awarded on
February 19, 1993, is for providing direct on-site
information mission area support services to the Army
Information Systems Command-Missile Command (USAISC-MICOM)
for a base year and 4 options years. Section C-2 of the RFP
contained an extensive list of the software and hardware
that the contractor was required to know how to use to
perform the tasks required in the RFP. The solicitation
also contained a detailed statement of work (SOW) setting
forth specific requirements that were to be performed by

issuance of TDOs. Each TDO was to specify the tasks to be performed, the number of hours needed to accomplish the tasks, the period of performance required for the tasks, and the applicable contract line item numbers and subcontract line item numbers under which the tasks were to be performed.

Section C.3.2.1 of the SOW required SESI to provide numerous systems administration support functions, including "data transfer and conversion," and "support in the utilization of microcomputer (e.g. MS-DOS and Macintosh PC) hardware and software." In addition, section C.3.2.2 of the SOW required the contractor, among other things, to provide support "in the utilization of microcomputer hardware, software, and telecommunications systems, as well as in the administration of user assistance calls requesting technical support" and to "[r]esolve problems associated with microcomputer hardware and software systems," including "isolation of the problem to determine the origin of the malfunction, resolution of the problem, identification of required replacement or additional hardware or software, and testing of the system to verify operational ability upon resolution of the problem."

After SESI completed performance of the base year on its contract, the Army determined that it needed additional hours for an on-site computer systems programmer/analyst at the Army Armament, Munitions, and Chemical Command (AMCCOM). To acquire these services, the Army intended to issue a TDO under the second option year of SESI's existing contract, under which more than 500,000 manhours of effort remained available. The Army issued a draft TDO stating as follows:

"The contractor shall provide on-site computer support services for the MICOM Plans and Operations Office/Emergency Operations Center (EOC) as indicated below:

"The contractor shall provide support in the operation and utilization of the AMC (Army Materiel Command) Secure Command Operations Reports and Exercise (SCORE) system and associated hardware, software, and communications components. The contractor shall also provide telephonic and on-site support to the U.S. Army Armament, Munitions, and Chemical Command (AMCCOM) and its depots in the utilization of the SCORE system. . . . The contractor shall perform troubleshooting to isolate and resolve problems associated with the utilization of the SCORE system, and assist system users in the successful transfer of data, reports, and information through

secure data equipment. The contractor shall also provide on-site support services for EOC microcomputer (IBM-compatible personal computers and Macintosh computers) hardware, software, and communications systems."

After learning of the Army's intent to issue the TDO, T&W filed an agency-level protest, which was denied. This protest followed.

T&W asserts that the services in the TDO significantly increase the scope of work in SESI's contract, and that the TDO would constitute an improper sole-source award to SESI. More specifically, T&W argues that since the TDO requires a systems programmer/analyst with specific specialized experience in EOC and SCORE operations, and SESI's contract does not contain either a systems programmer/analyst category or any labor category that describes the specialized experience in SCORE and EOC operations, the requirement is not encompassed by SESI's contract.

We generally will not consider protests against an agency's decision to modify a contract since modifications involve contract administration, which is the responsibility of the contracting agency, not our Office. Bid Protest Regulations, 4 C.F.R. § 21.3(m)(1) (1994). However, we will review an allegation that a modification exceeds the scope of the existing contract and therefore should be the subject of a new procurement. Northeast Air Group, Inc., B-228210, Jan. 14, 1988, 88-1 CPD ¶ 33. In determining whether a modification is beyond the scope of the contract, we look to whether the contract as modified is materially different from the contract for which the competition was held. Id.

The TDO services are within the scope of SESI's existing contract, because the type of services being acquired are similar to those in the contract. Specifically, as indicated above, the TDO requires telephonic and on-site support for AMCCOM and its depots in the utilization of the SCORE system; SESI's contract similarly requires the contractor to provide on-site support for the USAISC-MICOM through the "administration of user assistance calls requesting technical support" in the utilization of the microcomputer system. The TDO requires the contractor to "isolate and resolve problems in the utilization of the SCORE system, and assist system users in the successful transfer of data, reports, and information through secure data equipment"; SESI's contract likewise requires the contractor to isolate and "resolve problems associated with microcomputer hardware and software systems," and to provide to USAISC-MICOM systems administration support services which include "data transfer." The TDO requires the contractor to provide on-site services for EOC using

"microcomputer (IBM-compatible and Macintosh computers) hardware, software, and communications systems"; SESI's contract similarly requires the contractor to provide on-site services for USAISC-MICOM using "microcomputer (e.g. MS-DOS and Macintosh PC) hardware and software."

The only difference between SESI's contract and the TDO is that the TDO services are to be performed in connection with the SCORE system, and the TDO specifies a systems programmer/analyst. The record shows that these are inconsequential distinctions. While T&W contends that the SCORE system requirements "are highly sophisticated and include secure, computerized communications software" the agency explains (and T&W does not dispute in its comments on the agency report) that the TDO services do not involve any highly sophisticated work. Rather, the agency emphasizes the fact that the SCORE system "is comprised of off-the-shelf hardware and software to perform word processing and database functions on an IBM compatible 486 personal computer," and further explains that "day-to-day operation of the system is already performed by [agency] personnel, with contractor intervention being limited to troubleshooting and development/revision of report formats based upon [agency] direction." According to the Army, no programming is anticipated for the effort, and a large part of the function will involve merely training agency personnel to use personal computers. In other words, the services encompassed by the TDO do not involve the technical sophistication on which T&W's argument is premised, and thus seem no different than the services already being furnished under SESI's contract.

As for the draft TDO's reference to a systems programmer/analyst, while SESI's contract does not include a labor category with this specific title, it clearly includes labor categories described as encompassing the TDO services (the Army identifies four such categories). For example, "Software Systems Analyst Level III" must have "information systems computer programming and analysis" experience. T&W does not dispute the agency's position in its report comments. Further, given that (as discussed above) the SCORE system does not require any specialized capabilities, the fact that SESI's contract failed to contain a labor category that described utilization of the SCORE system does not support T&W's position that inclusion of the SCORE system operations in the TDO altered the scope of SESI's contract.

T&W argues, essentially, that the Army acted in bad faith by describing the services of the computer systems programmer/analyst in the TDO in a manner which make the services appear to fall within the scope of SESI's contract, and speculates that the Army will modify the TDO to accurately

state the requirement after SESI begins performance. To show bad faith, a protester must submit virtually irrefutable evidence that the contracting agency directed its actions with the specific and malicious intent to injure the protester. Independent Business Servs. Inc., 59 Comp. Gen. 51 (1989), 89-2 CPD ¶ 413. The protester has made no such showing here.¹

The protest is denied.

/s/ Ronald Berger
for Robert P. Murphy
General Counsel

¹T&W contends that the Army should have obtained the services in issue here by exercising an option under T&W's existing contract with the Army, which specifically includes computer systems programmer/analyst services. A dispute such as this over which of two existing contracts is the appropriate vehicle for obtaining required services is a matter of contract administration, outside the scope of our bid protest function. 4 C.F.R. § 21.3(m)(1).