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Decision

Matter of: Qwest Government Services, Inc.

File: B-404845

Date: March 25, 2011

Gregory A. Smith, Esq., David E. Fletcher, Esq., Christopher J. Kimball, Esq., and Charles L. Capito, Esq., Cooley LLP, for the protester.
Beth Sturgess, Esq., Department of Homeland Security, for the agency.
Jennifer D. Westfall-McGrail, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Costs for equipment and services furnished by the government in connection with performance of task order are not considered when determining whether value of the order exceeds the \$10 million threshold to invoke task order protest jurisdiction.

DECISION

Qwest Government Services, Inc., of Arlington, Virginia, protests the terms of an unnumbered request for quotations issued by the Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) for data center hosting services for USCIS's Technology Engineering and Consolidation Center (TECC). The "hosting services" in question consist of providing a facility, power, network connections, and building security services for USCIS servers and other equipment. An order for the services will be issued to one of the three awardees under a General Services Administration indefinite-delivery/indefinite-quantity (IDIQ) contract for telecommunications services (the Networx Universal contract).¹ The protester objects to language in the RFQ providing for the addition of approximately \$14 million to the evaluated prices of contractors other than the incumbent service provider, Verizon, to take into account costs that the agency will incur if the services are provided in a new location. Qwest argues that this price evaluation approach is fundamentally unfair and is a de facto sole-source award to the incumbent.

We dismiss the protest because we do not have jurisdiction to consider it.

¹ The three contract holders are the protester, Verizon Business Systems, and AT&T.

Pursuant to 41 U.S.C. § 4106(f)(1) (2011), our Office has jurisdiction to entertain protests in connection with the issuance or proposed issuance of a task or delivery order only if the order has a value in excess of \$10,000,000, or it is alleged that the order increases the scope, period, or maximum value of the contract under which the order is placed. Qwest has not argued that the order here exceeds the scope, period, or maximum value of the underlying contract; rather, it maintains that we have jurisdiction over its protest because the value of the order in question is [more than \$10 million]. The agency argues in response that the value of the order is [less than \$10 million], and that, as a consequence, we lack jurisdiction.

As noted above, the RFQ provides for the addition of approximately \$14 million to the evaluated price of any contractor proposing to provide the services in a new location. In the foregoing connection, the solicitation explained as follows:

The Government will make award to the responsible offeror whose offer conforms to the solicitation and is determined to be the lowest price technically acceptable offer including any Government transition costs if a move is required. The Government currently uses data center hosting services under the GSA FTS 2001 contract. The current TECC hosting services are currently provided by Verizon Business Services. The hosting facility is located in Manassas, VA. The TECC is a critical data center for USCIS and must continue to operate during any transition to a new hosting location. Therefore, new [government furnished] equipment (equivalent to the [government-furnished equipment] located in the current hosting environment) along with data circuits must be procured, installed, and configured in any new hosting location. In addition, existing hosting services and existing data circuits would need to be maintained during the migration from the current TECC environment to a new hosting location. The Government estimates it would incur costs of \$13,895,944 for the equipment acquisition, configuration, data circuits, and continued hosting services during migration. Therefore, the sum of \$13,895,944 will be added to the total price (including options) of all proposals requiring a migration from the current TECC environment/location to a new environment/location.

RFQ at 5.

The protester argues that because the RFQ provides for the evaluated prices of the non-incumbent contractors to include the costs associated with transition to a new location, these costs should be considered part of the value of the order. The agency argues in response that the value of the task order here is the value of the services to be furnished pursuant to the order only—that is, the costs associated with transition to a new location should not be considered as part of the value of the order because

the government is not asking the contractor to incur, and will not be compensating the contractor for, these costs.

We have previously recognized that there are circumstances in which the successful contractor's proposed price is not the sole determinant of the value of an order, see, e.g., U.S. Bank, B-404169.3, Feb. 15, 2011, 2011 CPD ¶ 43 at 3-4; ESCO Marine, Inc., B-401438, Sept. 4, 2009, 2009 CPD ¶ 234 at 5-6. In these cases, the operative inquiry concerns the value of the goods or services being provided, and for which the contractor is, in fact, being compensated, under the order. Here, it is apparent that the agency will not be compensating the contractor for the costs of acquiring and/or configuring equipment necessary for performance of the order. Rather, the government will bear these costs apart from the task order and the costs will be assessed to contractors solely for the purpose of evaluation in the task order competition. Since the costs do not reflect a value to be provided by the contractor under the order for which it will be compensated, the value of these costs cannot be considered for the purpose of invoking our task and delivery order protest jurisdiction. Because it is also apparent from the record that, unless the costs associated with the transition to a new location are included, the value of the order in question is less than \$10 million, we conclude that we do not have jurisdiction over the protest. Accordingly, Qwest's protest is dismissed.²

Lynn H. Gibson
General Counsel

² While we do not have jurisdiction to entertain the protest, we point out that the above evaluation scheme appears to be inconsistent with Federal Acquisition Regulation (FAR) § 45.202, which provides that the offered prices of contractors possessing government-furnished property should be adjusted by applying, for evaluation purposes, a rental equivalent evaluation factor. The stated scheme appears to be inconsistent with this guidance in that it attributes to the evaluated prices of offerors other than the incumbent the full cost of the new equipment to be acquired by the government, as opposed to merely its rental equivalent value; the stated scheme also appears to be inconsistent FAR § 45.202 in that it fails to provide for application of a rental equivalent evaluation factor to Verizon's offered price to take into account the value of the government-furnished equipment already in its possession.