



United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Paragon Systems, Inc.

File: B-284694.2

Date: July 5, 2000

Robert M. Cambridge, Esq., for the protester.

Jacob B. Pompan, Esq., and Gerald H. Werfel, Esq., Pompan, Murray & Werfel, for Halifax Corporation, an intervenor.

Joshua A. Kranzberg, Esq., and John Metcalf, Esq., Department of the Army, for the agency.

Wm. David Hasfurther, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that delivery order and prior contract modification upon which order was issued were not within the scope of the original contract is denied where both the order and the earlier modification were within the scope of the contract as awarded.

DECISION

Paragon Systems, Inc. protests the Department of the Army's failure to compete the procurement for network engineering services in support of the billet structure management information system (BSMIS) at the U.S. Army, Communications and Electronics Command Technology Applications Office (TAO). The Army issued delivery order No. 47 for these services to Halifax Corporation under the agency's indefinite-delivery/indefinite-quantity (ID/IQ) contract, No. DAAB07-97-D-3001, with Halifax. Paragon contends that the services called for under the delivery order are not within the scope of the Halifax contract and that the requirement should have been competed or properly justified as a noncompetitive award.

We deny the protest.

The Army competitively awarded the ID/IQ contract to Halifax on March 21, 1997. Halifax Contract, Standard Form 33. As discussed in some detail below, the RFP

required Halifax to engineer, furnish, and install (EF&I) systems and equipment including the Command, Control, Communications Computers and Intelligence (C⁴I) systems and equipment for customers supported by the TAO. Halifax Contract § C.1, at 32. The contract covered project management, engineering, material acquisition and logistics support, system design, equipment integration and configuration management support, operation, maintenance, and on-site support and maintenance. Halifax Contract, EF&I Servs. Statement of Work (SOW), §§ 1.3-1.3.9, at 2-4. On-site support and maintenance services “entail[ed] the EF&I and system management requirements . . . [to] be ordered on a monthly basis.” Id. § 1.3.8, at 4. In addition, under its contract, Halifax was required to engineer, furnish, and install a wide range of communications equipment or systems as required by the agency, for example, “LAN/WAN (Local Area Network/Wide Area Network) systems.” Id. §§ 4.1-4.9, at 5-6.

Halifax was required to have qualified managerial and technical personnel available for the “contract and related task orders.” Halifax Contract § C.3, at 32. Id. As relevant here, the project manager, task leader, and system engineers were required to have “the ability to plan, direct, and administer complex engineering and installation programs involving all aspects of secure digital, analog, and radio frequency technologies.” Id. §§ C.3.3-C.3.6, at 34-36. The computer systems analyst II was required to be able to install software, build databases, and configure software; was to have had experience in configuration management; and was to have performed on-site system analysis, network configuration, fault isolation, troubleshooting, and/or administration of a digital network or LAN/WAN. Id. § C.3.8, at 36-37.

The Halifax contract was modified several times. Of relevance here, modification No. 10, issued on August 18, 1999, added two labor categories for the Washington, D.C. area: senior network project engineer and network project engineer. Modification No. 10. These two individuals were required to obtain certifications as Microsoft Certified Systems Engineers (MCSE). Each was required to have experience in planning, configuring, and maintaining LAN/WAN systems involving security, shared system resources, networks and combinations of hardware and software applications. Modification No. 10, at 39 (as revised).

Delivery order No. 47, issued to Halifax on February 22, 2000, primarily called for a network engineer to provide system administration, system and network engineering, configuration management, technical assistance, troubleshooting, and support for network administration and associated components installed under the TAO BSMIS project. Delivery Order No. 47, SOW § 2.0, at 2. The order called for technical support and troubleshooting assistance for Microsoft software products. The order required Halifax to provide 2,050 hours of technical support from the date of award; an additional 24 months of work would be awarded if funds were available. Delivery Order No. 47, DD Form 1155, at 1 and SOW §§ 4.1, 2.0, and 3.0, at 2-3; Supplemental Agency Report, Tab 1, Contracting Officer’s (CO) Statement, at 2.

Unaware of modification No. 10 at the time it filed its original protest, Paragon contended that delivery order No. 47 was beyond the scope of Halifax's original contract because this contract simply provided for Halifax to engineer, furnish, and install hardware and to furnish initial support, primarily for hardware and only incidentally for software and, in any event, provided for services only until the hardware was accepted by the government. Upon receiving the initial agency report containing the modification, Paragon argued that the modification calls for network engineer services relating primarily to software services that were not within the scope of the original contract.

The agency states that modification No. 10 to Halifax's contract simply adds "a higher level of the type of work" already in that contract. Supplemental Agency Report, Tab 1, CO Statement, at 1-2. The agency describes the delivery order as a detailed requirement for a full-time network engineer to perform a number of tasks to upgrade BSMIS, for example, by making connections to certain high-speed telephone lines using a variety of switching protocols, by changing systems interfaces, and by obtaining security certifications. The agency, referencing the EF&I SOW provisions in the Halifax contract, notes that these provisions address upgrading, relocating, expanding or installing communications equipment systems, and providing a wide range of engineering assistance.

Once a contract is awarded, our Office will generally not review modifications to that contract because such matters are related to contract administration and are beyond the scope of our bid protest function. 4 C.F.R. § 21.5(a) (2000); MCI Telecomms. Corp., B-276659.2, Sept. 29, 1997, 97-2 CPD ¶ 90 at 7. The exception to this rule is where it is alleged that a contract modification is beyond the scope of the original contract, since the work covered by the modification would otherwise be subject to the requirement in the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2304(a)(1)(A) (1994), for competition (absent a valid determination that the work is appropriate for procurement on a sole-source basis). MCI Telecomms. Corp., supra.

In determining whether a modification triggers the competition requirement in CICA, we look to whether there is a material difference between the modified contract and the contract that was originally awarded. Sprint Communications Co., B-278407.2, Feb. 13, 1998, 98-1 CPD ¶ 60 at 6. Evidence of a material difference between the modification and the original contract is found by examining any changes in the type of work, performance period, and costs between the contract as awarded and as modified. Id. We also consider whether the solicitation for the original contract adequately advised offerors of the potential for the type of change found in the modification or whether the modification is of a nature which potential offerors would reasonably have anticipated at the time of the original award. MCI Telecomms. Corp., supra, at 8. Based on a review of the original Halifax contract, we conclude that the modification, and thus the delivery order, were within the scope of the original contract.

In this regard, we conclude that the protester disregards the software installation and integration work in the original contract. As stated above, the SOW in the Halifax contract calls for a broad range of services for “telecommunication, computer, automation, C⁴I equipment/systems/ . . . networks.” Halifax Contract, EF&I Servs. SOW, § 1, at 32. There is no indication that the services under the original contract were limited to hardware, as the protester suggests. The contract lists labor categories where the designated personnel will install and configure software. For example, the computer systems analyst II description provides that the individual “[m]ust have performed on-site system analysis, network configuration, fault isolation, troubleshooting, and or administration of a digital network, or LAN/WAN [and] . . . [m]ust have . . . ability to install software, build database, and configure network software.” *Id.* § C.3.8, at 36-37. Several other labor categories require personnel to have networking and communications experience, including working with software. The systems engineer labor category description specifically calls for the individual to have the ability “to design, engineer, install, maintain, upgrade and customize communications system/equipment and . . . [LAN/WANS] and related services,” and “the ability to plan, direct, and administer complex engineering and installation programs involving all aspects of secure digital, network communications” *Id.* § C.3.6, at 36. There is very similar language in the contract job descriptions for the project manager, task leader, senior systems engineer, and engineer.

We agree with the agency that the descriptions of the network project engineer and network engineer labor categories as added to the contract by modification No. 10 are similar, if not identical, to the descriptions contained in the original contract. For example, network engineers are required to show the ability to plan, direct, configure and maintain large scale LAN/WAN networks involving aspects of security, shared resources, networks and combinations of hardware and software applications. *Id.* §§ C.3.16, C.3.17. This language closely tracks the Halifax contract descriptions for system engineers, as quoted above.

Further, we do not view the MCSE requirement as rendering the modification out of scope with respect to the original contract. As the protester recognizes in its own reference to the MCSE certification description, the MCSE is “for professionals who analyze the business requirements for a system architecture, design solutions, deploy, install, and configure architecture components, and troubleshoot system problems.” Protester’s Comments, exh. C, MCSE Requirements from Microsoft Corporation Website. Again, the description is not meaningfully different from the SOW job descriptions in the original contract quoted above. Moreover, the agency reports, and the protester does not meaningfully rebut, that any telecommunications system has some aspect of software installation and maintenance. Agency Report, exh. F, Memorandum from Chief, TAO Management and Engineering Division to Chief, Technical Contracting Division at 3 (Mar. 15, 2000). As discussed above, the original contract required a wide range of services relating to communications systems, including installation and configuration of network software.

In view of the broad scope of the original Halifax contract, which explicitly includes software installation and the configuration of network software, we think the network engineering services, including software support, are within the scope of the initial contract. Further, since Halifax's original contract calls for "integration of commercial-off-the-shelf (COTS) equipment/systems to provide the functional services requested by the Government," the requirement that the network engineer have the ability to work with Microsoft products is reasonably within the scope of the original contract. Halifax Contract, EF&I Servs. SOW, § 1, at 1. In short, we think the modification is within the scope of the original contract, and therefore the delivery order is unobjectionable.¹

We deny the protest.

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¹ Paragon also argues that the "On-Site and Maintenance" provision in Halifax's contract limits Halifax to providing "operations, maintenance, troubleshooting and repair of equipment/systems prior to Government acceptance," and that under the protested order, the services relate to systems already accepted by the government. Protester's Comments, exh. F, at F-3. The other provision cited by the protester allows for on-site support, including "EF&I and system management requirements . . . [to] be ordered on a monthly basis." Halifax Contract, EF&I Servs. SOW, § 1.3.8, at 4. Without resolving how acceptance is determined under the contract or a particular order, we note that the original contract clearly contemplates months of support and maintenance work, since it provided, as noted above, for that work to be ordered on a monthly basis.

In addition, the protester points out that the contract calls for pricing on a monthly basis, while the prices in the order are priced on an hourly basis. A total quantity of hours was included in the order and was multiplied by the hourly rate to obtain a total price. While a monthly price was not established, we do not think this is a ground for sustaining the protest. The vendor's price for the work was provided in the order. The fact that the order prices the work based on total hours, rather than on a monthly basis, while arguably inconsistent with the original contract, is a matter of contract administration that does not render the services ordered out-of-scope.