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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: U.S. Electroynamics, Inc.

File: B-403516; B-403516.2

Date: November 12, 2010

J. Randolph MacPherson, Esq., and Rebecca Bailey Jacobsen, Esq., Halloran & Sage LLP, for the protester.

JoAnn Melesky, Esq., Defense Information Systems Agency, for the agency.

Pedro E. Briones, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging consolidation of requirements for global satellite service, previously provided under separate contracts and task orders, as improper bundling under the Small Business Act and the Competition in Contracting Act is denied where the agency reasonably determined that consolidation would result in measurably substantial benefits to the government.

DECISION

U.S. Electroynamics, Inc., of Brewster, Washington, protests the terms of request for proposals (RFP) No. HC1013-10-R-2010, issued by the Defense Information Systems Agency (DISA) for global satellite services for transmission of American Forces Radio and Television Services (AFRTS). The protester contends that the RFP improperly bundles a number of requirements in violation of the Small Business Act and the Competition in Contracting Act of 1984 (CICA).

We deny the protest.

BACKGROUND

AFRTS provides television and radio programming worldwide to American service members, their families, and civilians assigned overseas; embassies; and military personnel serving on naval ships. See RFP, Performance Work Statement (PWS), at 1. The RFP, which was issued on July 9, 2010, provides for the award of a single fixed-price contract for a base year and 6 option years for an integrated telecommunications network to support AFRTS. The contractor will provide end-to-end video, audio, and data transmission satellite services, including, among

other things, full-time management, operations, uplink and downlink services, terrestrial connectivity, maintenance, and monitoring and control. PWS at 1-2. In this regard, the PWS identifies seven tasks requiring satellite coverage for different geographic areas around the world. The total estimated value of the contract is [DELETED]. Id. at 20; Agency Report (AR), Tab L, Acquisition Plan, at 6.

The RFP, which is not set aside for small businesses,¹ consolidates AFRTS transmission services that are currently provided by four large businesses under the following seven contracts and task orders: two firm fixed-price DISA contracts; three task orders issued under two DISA multiple award, indefinite-delivery/indefinite-quantity (ID/IQ) contracts; and three task orders issued under two General Services Administration satellite services (GSA SATCOM) ID/IQ contracts. AR at 7-9. The DISA contracts are valued at \$40.3 million and \$20.6 million; the DISA task orders are valued at \$29 million, \$7.1 million, and \$705,427; and the GSA SATCOM task orders are valued at \$40.4 million and \$13.4 million.² See id.; Tab H, Market Research Report, at 1; Tab L, Acquisition Plan, at 2-3.

The RFP also provides for the evaluation of small business subcontracting plans, and incorporates Defense Federal Acquisition Regulation Supplement (DFARS) clauses 252.219-7003, Small Business Subcontracting Plan, and 252.237-7006, Subcontracting, which require offerors to submit subcontracting plans that meet agency's small business subcontracting goals. RFP amend. 2, addendum A, Evaluation, at 7. The agency states that its subcontracting goals are as follows: 18 percent for small businesses; 10 percent for small disadvantaged business; 6 percent for women-owned small business; 3 percent for service-disabled veteran-owned small business; and 1 percent for historically underutilized business zone. AR at 35.

Prior to issuing the RFP, the agency performed market research in March and April 2010, to identify potential offerors and determine the variety of services offered. See AR, Tab H, Market Research Report, at 2. The agency compiled historical data from the existing AFRTS contracts and task orders, as well as other task orders issued under GSA SATCOM contracts. The agency also considered technical information obtained by AFRTS engineers from satellite and broadcast conferences, expositions,

¹ The RFP includes North American Industry Classification System (NAICS) code 517410, Satellite Telecommunications, which has a small business size standard of \$15 million. See RFP at 1, 189. NAICS code 517410 states that it comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.

² The performance period for the various contracts and task orders range from 1.5 years to 10.5 years.

and Industry Days hosted in conjunction with GSA, as well as information and guidance from commercial broadcast and satellite communications providers. Based on its market research, the agency concluded that its global satellite services requirements were available from commercial satellite operators/owners and resellers of satellite services.

The agency found that there were no small businesses that could perform this requirement. For example, the agency noted that the estimated [DELETED] annual contract value exceeded the \$15 million small business standard identified by NAICS code 517410 for this procurement.³ The agency's contracting officer and small business specialist presented these findings to the Small Business Administration's (SBA) representative, who concurred with these findings based on the agency's "recent market research." See AR, Tab J, Small Business Coordination Record.⁴

In April and May, the agency prepared an acquisition plan that proposed combining the various requirements into a single, long-term contract. Specifically, the agency's acquisition plan stated that consolidating the seven contracts and task orders, which have disparate performance periods, would save the government millions of dollars and countless hours of engineering oversight and supervision. See AR, Tab L, Acquisition Plan, at 2. The plan also noted that the technical requirements for global satellite services had changed frequently over the years with regard to bandwidth, satellite signal coverage of geographic areas, installation of satellite uplink-downlink equipment, and commercial teleport hub services. Id.

The agency concluded that the consolidation of its requirements did not constitute Small Business Act bundling because the prior requirements were not performed by small businesses. DISA also determined that the consolidation of its requirements was necessary and justified. See AR, Tab K, Determination and Finding, at 6. Among other things, the agency found that standardizing contract deliverables would provide better quality services, given that a single contractor, which was responsible for global satellite services infrastructure, would provide continuity of service and a higher level of responsiveness in problem resolution and greatly decrease the time required to resolve technical issues. The agency also found that consolidation would significantly reduce overall costs to the government, including staff hours required

³ In this regard, the agency notes that, although some of the current large business contractors and vendors originally qualified as small businesses under the then-applicable Standard Industrial Classification at the time of contract award, none currently qualify as small businesses under the current NAICS. AR, Tab H, Market Research Report, at 3.

⁴ The Small Business Coordination Record states that this requirement is a first-time buy under NAICS code 517410 and that a subcontracting plan would be required. AR, Tab J, Small Business Coordination Record.

for engineering oversight and procurement. In this regard, the agency noted that reducing the number of contract vehicles would allow for the purchase of larger quantities of bandwidth and for longer lease periods, which would enable cost savings through volume discounts and reduced contractor overhead, and that consolidation of services would mitigate the extreme market volatility of bandwidth prices. Id. at 4.

DISCUSSION

Small Business Act Bundling

U.S. Electrodynamics, a small business, contends that the RFP unnecessarily restricts competition by improperly bundling the agency's requirements in violation of the Small Business Act.⁵ Protest at 7-8. The protester disputes the agency's determination that consolidation would result in measurably substantial benefits. The protester also complains that the agency did not assess impediments to small business participation or the costs that would be charged by small business concerns for the same or similar work or consider any alternative acquisition strategies to reduce or minimize the scope of the bundling. Supp. Protest at 3-5. In this regard, the protester contends that the agency did not consider whether its requirements could be consolidated into two or three contracts or the possibility of acquiring separate network operation and management services from a systems integrator. Comments at 15-16. The protester argues that there are a number of small business concerns that could provide global satellite services, although the protester does not argue that this requirement should have been set aside for small businesses.

⁵ As a preliminary matter, the agency contends that Electrodynamics is not a small business, and thus not an interested party under our Bid Protest Regulations to challenge bundling under the Small Business Act. See Supp. Request for Dismissal at 2. The protester responds that, although its CCR registration had expired, it was previously certified as a small business and has submitted a CCR registration renewal, under which it certifies itself as a small business. See Protester's Response to Supp. Request for Dismissal; Comments at 10-15, exh. 5, Declaration of Electrodynamics' Owner, at 5-6. In this regard, the protester notes that it is not required to have CCR registration until contract award. See FAR § 4.1102(a). We find that under these circumstances the protester is an interested party eligible to protest bundling under the Small Business Act. See Brechan Enters., Inc.—Costs, B-294046.2, Nov. 4, 2004, 2004 CPD ¶ 227 at 2 (offeror may self-certify that it is a small business concern if it meets definition of small business concern and agency must either accept firm's self-certification or refer challenges to SBA); Phoenix Scientific Corp., B-286817, Feb. 22, 2001, 2001 CPD ¶ 24 at 4-5, n. 3 (protester was an interested party to challenge bundling under Small Business Act where it states its intention to participate in procurement as small business).

The Small Business Act, as amended, states that, “to the maximum extent practicable,” each agency shall “avoid unnecessary and unjustified bundling of contract requirements that precludes small business participation in procurements as prime contractors.” 15 U.S.C. § 631(j)(3) (2006). Bundling, for purposes of the Small Business Act, means “consolidating 2 or more requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small-business concern.” 15 U.S.C. § 632(o)(2). The term “separate smaller contract” is defined as “a contract that has been performed by 1 or more small business concerns or was suitable for award to 1 or more small business concerns.” 15 U.S.C. § 632(o)(3); Federal Acquisition Regulation (FAR) § 2.101.

Because bundled or consolidated procurements combine separate and multiple requirements into one contract, they have the potential for restricting competition by excluding firms that furnish only a portion of the requirement; we therefore review challenges to such solicitations to determine whether the approach is reasonably required to satisfy the agency’s needs. 2B Brokers et al., B-298651, Nov. 27, 2006, 2006 CPD ¶ 178 at 9. We have recognized that bundling may serve to meet an agency’s needs where the agency reasonably determines that consolidation will result in significant cost savings or operational efficiencies. See B.H. Aircraft Co., Inc., B-295399.2, July 25, 2005, 2005 CPD ¶ 138 at 7; Teximara, Inc., B-293221.2, July 9, 2004, 2004 CPD ¶ 151 at 6. Administrative convenience, however, does not in and of itself provide a reasonable basis for an agency’s consolidating or bundling of requirements. See Vantex Serv. Corp., B-290415, Aug. 8, 2002, 2002 CPD ¶ 131 at 4.

Here, the agency argues that the consolidation of its requirements does not constitute bundling under the Small Business Act, because prior contracts are not being performed by small business concerns and the protester has not demonstrated that the contracts were suitable for award to one or more small businesses. AR at 24; see Vox Optima, LLC, B-400451, Nov. 12, 2008, 2008 CPD ¶ 212 at 3-4; USA Info. Sys., Inc., B-291417, Dec. 30, 2002, 2002 CPD ¶ 224 at 3. U.S. Electrodynamics does not dispute that the prior requirements are being performed by large businesses, but generally contends that the prior requirements are suitable for performance by one or more small businesses. We need not resolve this dispute because the record shows, as explained below, that consolidation of the agency’s requirements will result in measurable substantial benefits to the government. See, e.g., Nautical Eng’g, Inc., B-309955, Nov. 7, 2007, 2007 CPD ¶ 204 at 8.

Under the Small Business Act, an agency may determine that consolidation of requirements is “necessary and justified if, as compared to the benefits that would be derived from contracting to meet those requirements if not consolidated, the Federal Government would derive from the consolidation measurably substantial benefits, including any combination of benefits that, in combination, are measurably

substantial.” 15 U.S.C. § 644(e)(2)(B); 2B Brokers et al., supra, at 6. The FAR states in pertinent part that

[m]easurably substantial benefits may include, individually or in any combination or aggregate, cost savings or price reduction, quality improvements that will save time or improve or enhance performance or efficiency, reduction in acquisition cycle times, better terms and conditions, and any other benefits. The agency must quantify the identified benefits and explain how their impact would be measurably substantial. Except as provided in paragraph (d) of this section, the agency may determine bundling to be necessary and justified if, as compared to the benefits that it would derive from contracting to meet those requirements if not bundled, it would derive measurably substantial benefits equivalent to--

* * *

(2) Five percent of the estimated contract or order value (including options) or \$9.4 million, whichever is greater, if the value exceeds \$94 million.

FAR § 7.107(b)(2).

The agency identifies a number of substantial benefits it will receive from consolidation, including improved performance, efficiency, and services; less redundancy; and cost savings of [DELETED] (or approximately [DELETED] percent of the estimated contract value). See AR, Tab K, Determination and Finding, at 4; Supp. AR at 16-22. With respect to its anticipated cost savings, the agency explains that the satellite industry provides higher discounts for larger quantities of bandwidth and longer contract periods, and that consolidation of services to purchase larger blocks of bandwidth would also counteract the extreme market volatility of bandwidth prices. In this respect, the agency explains that the most expensive aspect of satellite service is bandwidth cost due to its limited supply and high demand. The agency states that consolidating its bandwidth requirements into one contract will minimize or eliminate duplicative coverage areas and that it expects that [DELETED].⁶ In this regard, the agency expects to save [DELETED] in

⁶ The agency provided a map of current AFRTS satellite transmission which shows redundancy in global satellite and teleport coverage. AR at 4a. The agency explains that this significant overlap resulted from the “hodgepodge” of seven contracts and task orders, which are based on geographical coverage and mission functions as needs arose. Id. at 27; Supp. AR at 16. Not all of the geographic coverage areas specified under each PWS task correspond to the coverage areas under each of the

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bandwidth and teleport costs over the 7-year contract performance period. See id. Tab M, Consolidation Analysis, at 5-6. The agency also expects cost savings of up to [DELETED] labor costs for the life of the contract by reducing [DELETED] needed by multiple contractors and vendors. Id. at 6-7.

U.S. Electrodynamics generally disputes the agency's calculation of measurably substantial cost benefits and argues that consolidation will actually result in significant costs above the current annual costs of the prior contracts and task orders. Protest at 5, 17; Supp. Comments at 14-15. To support its arguments, the protester averaged the annual value of each of the seven current contracts and task orders according to their total contract values and performance periods, and concludes that the average annual cost for the seven existing contracts and task orders is [DELETED], which is lower than the annual costs under of the consolidated contract of [DELETED] in year one and [DELETED] in year seven.

Based on our review of the record, we find that U.S. Electrodynamics has not shown that DISA unreasonably determined that consolidation would result in measurably substantial benefits. In this regard, the protester does not specifically address the agency's explanation for its expected cost savings; that is, for example, that consolidation would result in the reduction of transponders, teleports, and network operation centers. Rather, the protester's disagreement with the agency's cost savings conclusion is based upon a simple comparison of the estimated contract value here with the costs of the prior contracts and task orders. The flaw in the protester's analysis, however, is that it is based upon pricing that was obtained in some cases over a decade ago and ignores price increases and inflation since that time. See Supp. AR at 17. Moreover, the protester does not address the technology changes in global satellite services, as recognized in the agency's acquisition plan, which noted that the technical requirements for global satellite services had changed frequently over the years with regard to bandwidth, satellite signal coverage of geographic areas, installation of satellite uplink-downlink equipment, and commercial teleport hub services. AR, Tab L, Acquisition Plan, at 2. As DISA points out, and the protester does not dispute, the agency consolidated three global satellite

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current seven contracts and task orders. Compare, e.g., PWS, §§ 4.6, 4.7, at 16-18 with AR, Tab L, Acquisition Plan, at 2-4. For example, Task 4.6 requires satellite coverage of the north-eastern seaboard of the United States, the Azores, United Kingdom, Europe, Africa, and Diego Garcia; and Task 4.7 requires coverage of the Atlantic Ocean region (AOR) and the Pacific Ocean region (POR). By contrast, coverage of the AOR, POR, and the domestic United States is currently provided by Americom Government Services, Inc. under contract Nos. HC1013-04-C-5008 and HC1013-09-F-2003; coverage of the East and West costs of the United States and Canada and the AOR is currently provided by Intelsat General Corporation under contract Nos. DCA200-00-C-5009 and HC1013-08-F-2001.

services contracts in 2008 and realized cost savings of [DELETED] per year, as well as significant technical improvements. See AR at 18. In short, we do not find that the protester's simple comparison of this contract's estimated value with the prior years' pricing demonstrates that the agency will not achieve the asserted cost savings. In fact, the protester itself conceded to the agency that such savings could be achieved. See Supp. Protest, attach. 1, Protester's Letter to Contracting Officer, Sept. 2, 2010, at 2.

The protester also does not address any of the other substantial benefits that the agency stated it expected to receive from consolidation of these requirements. As we discussed above, the agency expects that consolidating its requirements will improve performance, efficiency, and services and result in less redundancy. With respect to the protester's arguments that the agency did not consider alternative acquisition strategies that would reduce or minimize the scope of the bundling and impact on small businesses, the record also shows that the agency considered a number of alternatives, including recompeting each of the contracts and task orders as stop-gap measures. See AR at 14-16; Tab L, Acquisition Plan, at 4-5. To the extent that the protester believes the agency should have considered consolidating its requirements into fewer contracts or acquiring network management services, the protester fails to acknowledge the identified efficiencies and cost savings that would be realized by integrating the agency's global satellite services requirements. See Supp. AR at 19-21. Indeed, here too the protester concedes that the agency's consolidated approach will likely provide the most efficient network administration and management. See Supp. Protest, attach. 1, Protester's Letter to Contracting Officer, Sept. 2, 2010, at 2.

In sum, although the protester disagrees with the agency's conclusions, it has not shown that the agency's assumptions were unreasonable or provided a persuasive basis to challenge the agency's belief that a consolidated approach would be operationally efficient. 2B Brokers et al., supra, at 10-11, 13 n. 20 (protester, which has burden of showing agency's analysis and explanation supporting bundling are unreasonable, did not dispute efficiency of agency's bundled approach and agreed that consolidation will provide non-monetary benefits); Teximara, supra, at 7, 9 (protest that the agency did not consider bundling requirements into smaller groups was denied, where the protester did not show or dispute that significant savings and efficiencies will occur by consolidating tasks).

CICA Bundling

U.S. Electrodynamics also contends that the consolidation improperly bundles the agency's requirements in violation of CICA. The protester argues that the agency did not consider or identify whether the benefits of consolidation exceed the benefits of possible alternatives, as required under 10 U.S.C. § 2382(b)(1)(b) (2006) and DFARS § 207.170-3(a)(2). Supp. Protest at 2-3.

CICA generally requires that solicitations permit full and open competition and contain restrictive provisions and conditions only to the extent “necessary to satisfy the needs of the executive agency.” 10 U.S.C. §§ 2504(a)(1)(A) (2006). Since bundled or consolidated procurements may combine separate, multiple requirements into one contract, they have the potential for restricting competition by excluding firms that can furnish only a portion of the requirement. Aalco Forwarding, Inc., et al., B-277241.12, B-277241.13, Dec. 29, 1997, 97-2 CPD ¶ 175 at 6. In interpreting CICA, we have assessed whether an agency has a reasonable basis for its contention that bundling is required, and have sustained protests only where no reasonable basis is demonstrated. Phoenix Scientific Corp., supra, at 10.

Here, as discussed above, the record shows that the agency would receive measurably substantial benefits from consolidating the agency’s global satellite services requirements. In our view, these benefits also provide a reasonable basis to justify consolidation of the requirements for purposes of CICA. See Nautical Eng’g, supra, at 14 (measurably substantial benefits justify consolidation of requirements under the Small Business Act and CICA).

The protester also argues that the broad geographic coverage area required under Task 4.6 restricts competition by effectively requiring the use of one specific satellite and complains that the satellite owner refuses to provide U.S. Electrodynamics with a quote to use that satellite. See Protest at 8; Comments, exhib. 5, Declaration of Electrodynamics’s Owner, at 8; footnote 6, supra. In this regard, the protester argues that, while the coverage requirement could be met by leasing two satellites, this would significantly increase an offeror’s costs and effectively excludes competition.

As originally issued, Task 4.6 required the contractor to provide signal uplink to Intelsat’s IS10-02 satellite at a particular orbital position. In response to the protest, the agency amended the RFP to require uplink to IS10-02 “or a follow-on/backup AOR satellite.” See Notice of Corrective Action at 1; Supp. Notice of Corrective Action at 3; PWS, § 4.6, at 16.

We find no merit in the protester’s argument that Task 4.6, as amended, unnecessarily restricts competition. In this regard, the amended solicitation does not specify a particular satellite or satellites to meet the agency’s needs under this task. Moreover, although the protester complains about the broad geographic coverage area, it does not show that the agency’s determination in this regard was unreasonable. See Tucson Mobilephone, Inc., B-250389, Jan. 29, 1993, 93-1 CPD ¶ 79 at 2 (determination of agency’s needs and best method for accommodating them are matters primarily within agency’s discretion). To the extent that the protester complains that the satellite provider refuses to lease its satellite to U.S. Electrodynamics, it does not state a valid basis for protest. See Caprock Gov’t Solutions, Inc.; ARTEL, Inc.; Segovia, Inc., B-402490, et al., May 11, 2010, 2010 CPD ¶ 124 at 25 n. 19 (complaint that awardee having exclusive control over satellite did not allow protester to purchase satellite services not a matter for review by our

office); see also ESCO Marine, Inc., B-401438, Sept. 4, 2009, 2009 CPD ¶ 234 at 3 n.2 (allegations of predatory pricing are reserved for review by Department of Justice, not by our Office).

The protest is denied.

Lynn H. Gibson
Acting General Counsel