

## RAPID RESPONSE TO CRITICAL SYSTEM REQUIREMENTS PROTEST NO. 281114: LESSONS LEARNED

1. Issue: Scope of Indefinite- Delivery-Indefinite-Quantity (IDIQ) contracts.

2. Background: The basic IDIQ contract is a Time and Materials contract with a two year base period and three, one year options. The contract award was the result of a competitively negotiated best value solicitation for the Rapid Response to Critical System Requirements (R2CSR) program. Six prime contractors submitted proposals and three were awarded contracts on 29 July 1998. ARINC was one of the three successful offerors.

3. Facts: L-3 Communications Aviation Recorders, Inc. (L-3) protested the award of a delivery order placed against the ARINC IDIQ contract. L-3 was not one of the three awardees of the basic R2CSR contracts nor was it a subcontractor to any of the three awardees. The protest was denied.

4. Protester's Allegation: L-3's only allegation addressable by the GAO was that the delivery order issued was not within the scope of the basic ARINC contract. The delivery order required the acquisition and integration of flight data and voice recorders (black boxes) and emergency locator transmitters into the entire fleet (580) of C/KC-135 aircraft.

The protester argued that the basic contract was for engineering support services and that, while the IDIQ contract did allow for the acquisition or fabrication of "limited quantities" of hardware and software, the delivery order to equip the 580 aircraft was beyond the scope of the contract.

5. Key Points: An essential aspect of any case involving the scope of a delivery or task order under an IDIQ contract is whether the order or tasking is of a nature which potential offerors (of the original IDIQ solicitation) would reasonably have anticipated. Therefore, it is important to communicate to industry the purpose of the contract as well as the specific types of work that will be covered by it.

a. Pre-solicitation Conference: A key to the Government success in this case was the fact that there was a pre-solicitation conference open to all potential offerors and that the solicitation contained an executive summary explaining the purpose of the program.

The pre-solicitation conference allowed the Government to communicate to industry the purpose of the R2CSR program, the manner in which the Government expected to administer the contract, and to provide industry with specific examples of the types of systems where taskings were likely to occur. The pre-solicitation conference also included a question and answer session. The specific examples of potential systems and the question and answer session turned out to be of particular value in the protest. Fortunately, one of the examples of systems likely to need upgrading was the C/KC-135 aircraft. While no specific type of upgrade was discussed, the prior reference to this system aided the Government in its argument that fleet-wide upgrades to the C/KC-135 could have been anticipated. With respect to the question and answer session, again

fortuitously, a question was asked that directly related to the protest issue. The key issue in the protest was whether a quantity of 580 “black boxes” could be considered a “limited quantity” of hardware and software. At the pre-solicitation conference it was asked, “What is the definition of ‘limited production’? Does this mean only a prototype quantity?” The Government responded that “[t]he quantity required to fulfill an immediate contract requirement will be determined on an individual delivery order basis”. This clearly implied that “limited” did not mean only “prototypes” as the protester later argued.

b. Executive Summary: The executive summary in the Request for Proposals (RFP) was important in that it allowed the GAO to see that the Statement of Work (SOW) in the RFP, while broad, was consistent with the stated purpose of the contract, which was also broad.

c. Proportionality: The other key element of the decision was the dollar relationships between the cost of the hardware in the delivery order and the overall estimated contract value (\$19.7 million to \$1.5 billion). The GAO agreed with the Government argument that in light of an advertised contract value of \$1.5 billion, a hardware cost of \$19.7 million was “limited”.

6. Summary: Pre-proposal information is of particular importance in the IDIQ arena. In a typical source selection, if there is no protest within ten days of the award, much of the pre-award occurrences have little future affect on the contract. In the IDIQ situation, where delivery or task orders often follow years later, the importance and preservation of pre-award documents and occurrences can be crucial, since any future delivery or task order can be protested as “not within the general scope” of the underlying contract. A pre-solicitation or pre-proposal conference should be conducted and could be very useful in defending a subsequent protest. The conference briefings and questions and answers should be given wide dissemination (R2CSR published them on the CECOM website on the internet) and preserved. For the same reasons, an executive summary in the RFP is recommended. In addition the Statement of Work should also contain a general scope paragraph describing the general purpose and goals of the contract. While vagueness is not the goal, there are instances where flexibility is desired and strict definitions might hamper that desire. For example, in the R2CSR contracts “limited quantities” was referred to only in terms of that “needed to meet immediate operation and support needs” and “in accordance with applicable delivery orders”. No more explicit definition could be supplied. However, as noted above, the questions and answers at the pre-solicitation conference made it clear that “limited quantities of hardware” did not mean “prototypes” only. In those instances where the awarded contract is not clear or specific, the pre-award documents, executive summary, and general purpose statements will serve as a kind of legislative history for future challenges as well as guidance for the contracting and legal offices.