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of the United States**

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Decision

Matter of: WorldWide Language Resources, Inc.

File: B-299315.7; B-299315.8

Date: August 12, 2010

Richard D. Lieberman, Esq., Gary S. Grossman, Esq., and Gabriel D. Soll, Esq., McCarthy, Sweeney & Harkaway, P.C., for the protester.

Craig A. Holman, Esq., Dominique L. Castro, Esq., and William S. Speros, Esq., Arnold & Porter LLP, for the intervenor.

Maj. Patrick L. Vergona, Department of the Army, for the agency.

Edward Goldstein, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly increased dollar ceiling of contract for linguist and translator services in support of U.S. troops in Afghanistan to bridge the period until the agency can award a competitive follow-on contract for the services is denied where the record shows that the agency reasonably concluded that the incumbent contractor was the only firm capable of meeting the agency's interim need for the services.

DECISION

WorldWide Language Resources, Inc., of Fayetteville, North Carolina, protests the decision by the U.S. Army Intelligence and Security Command (INSCOM) to modify its contract with Mission Essential Personnel, LLC (MEP), of Columbus, Ohio, which provides linguist and interpretation services for military operations in Afghanistan and other operations in support of Operation Enduring Freedom. The protester contends that the modification violates the competition requirements of the Competition in Contracting Act of 1984 (CICA).

We deny the protest.

BACKGROUND

In 2005, INSCOM began planning for the award of a contract for linguist and interpretation services in support of military operations in Afghanistan as well as other operations in support of Operation Enduring Freedom. Aside from simply

providing actual linguists and translators to the military, this effort includes the recruitment, testing, training, transport, billeting, feeding, and payment of these individuals at facilities located throughout Afghanistan, among other locations. On September 7, 2007, INSCOM awarded a small business set-aside, indefinite-delivery/indefinite-quantity contract for this work to MEP (contract No. W911W4-07-D-0010). MEP's contract, as initially awarded, included a 5-year ordering period (through September 2012) with a total ordering ceiling of \$703 million. At the time of award, the agency estimated that it would need approximately 3,000 linguists to support the military's operations in Afghanistan. Agency Report (AR), Tab 6, Justification and Approval (J&A), May 3, 2010, at 4.

In the years subsequent to MEP's award, the military's need for linguists has exceeded the numbers estimated by INSCOM. Presently, MEP's contract supports approximately 6,826 linguists at up to 200 locations in Afghanistan. Id. at 3. The agency identifies two specific events which have spurred the significant growth in the linguist requirement. The first was an August 2009 review of the U.S. Afghanistan strategy directed by the President. Based on this review, the estimated requirement increased to 5,000 linguists per year in anticipation of greater U.S. involvement in Afghanistan. Id. The second event was the "surge" decision of December 2009, which provided for sending an additional 30,000 U.S. forces to Afghanistan by the end of the summer in 2010. This surge of U.S. forces has driven the need for linguists to their current levels since they are an integral component of the expanding U.S. combat operations in Afghanistan. Id.

Prior to the events of August and December 2009, INSCOM, in May 2009, initiated the process of planning for the competitive award of a new contract for the linguist requirements in Afghanistan. In August 2009, it became apparent to INSCOM that the funding needed under MEP's current contract would exceed the contract ceiling sooner than originally planned due to the increasing need for linguists. INSCOM estimated that the ceiling would be reached in March 2010. Contracting Officer's (CO) Statement at 2. INSCOM therefore began to plan for the competitive award using a streamlined schedule. Id. This schedule currently provides for an award under the competitive solicitation by March 2011.

In early November 2009, INSCOM began the process of conducting market research, which included releasing a request for information (RFI) on FedBizOpps with questions for firms regarding the procurement and their linguist and translation services capabilities. Twenty-eight firms provided information in response to the RFI, which INSCOM detailed in a March 2010 market research report. As it relates to the protest, WorldWide did not respond to the RFI with any information regarding its capabilities; rather, it simply added its name to the "Interested Vendors List." Protester's Comments, July 1, 2010, at 2.

As part of its market research, INSCOM requested a cost estimate from Global Linguist Solutions (GLS) for providing linguist services in Afghanistan at their

current levels to cover the period until the agency completes its planned competition for linguist services. GLS had responded to the RFI, expressing its interest in the competitive procurement; the firm currently holds a \$4.5 billion contract for linguist services in Iraq. GLS replied to the agency's request for additional information on March 8, 2010, informing INSCOM that it could provide all linguist services in Afghanistan within 90 days of a contract award through the use of a joint venture team. AR, Tab 9, J&A, Mar. 15, 2010, at 4.

Because MEP's contract was imminently reaching its \$703 million contract dollar ceiling, on March 18, INSCOM modified the contract to increase the ceiling amount by \$78.5 million. This modification was supported by a J&A stating that only MEP was in a position to provide the required linguist services in Afghanistan without interruption or degradation. Id. According to the J&A, INSCOM anticipated that the \$78.5 million increase would cover approximately 6 weeks of performance by MEP based on known requirements. While the agency had received a response from GLS indicating that it could provide all services within 90 days of award, the J&A explained that the modification to increase the ceiling was necessary to allow for uninterrupted services until the agency could assess whether GLS's proposal was "feasible and [could] be executed without significant risk to the Warfighters." Id.

After modifying MEP's contract to increase the ceiling by \$78.5 million, INSCOM sent GLS follow-up questions in order to better assess GLS's ability to meet the Afghanistan linguist requirements then being performed by MEP. After considering GLS's additional response, correspondence from another company (CALNET, which informed the agency that it would be interested in providing interim linguist services in Afghanistan), as well as the capabilities of several other firms, INSCOM decided to again increase the ceiling of MEP's contract. This time the modification was in the amount of \$679 million dollars, thereby allowing MEP to continue providing linguists until the agency is able to make an award under the competitive procurement for linguist services, which has an anticipated award date of March 2011, and INSCOM is able to shift performance to that contract. INSCOM executed the modification on May 7, supported by another J&A stating, again, that only MEP was in a position to provide the required linguist services. AR, Tab 6, J&A, May 3, 2010, at 3. This second modification increased the dollar ceiling under MEP's contract to \$1.460 billion.

The J&A describes the services provided under MEP's contract as "critical" and "essential" to the U.S. military mission in Afghanistan. Id. According to the J&A, the linguists provide U.S. forces with the ability to communicate with the local populace, gather information for force protection, and interact with foreign military units. The ability to effectively communicate with the local population through the use of qualified linguists and translators, as explained in the J&A, is essential to the entire U.S. counterinsurgency strategy, which depends on gaining the support of the local Afghan populace. Id.

Due to the criticality of the linguist services to U.S. operations in Afghanistan, the agency concluded that it needed to maintain the linguist services without interruption. INSCOM was also advised by the Chief of Intelligence for the International Security Assistance Force in Afghanistan that the method chosen to obtain the services should avoid any additional strain on military resources given the significant build-up of U.S. troops in Afghanistan in connection with the “surge,” which the J&A characterizes as “one of the largest movements of troops and material since World War II.” Id. at 5.

As explained in the J&A, providing linguist services in Afghanistan presents many difficult and unique challenges, which makes establishing, managing, and sustaining linguist support services particularly difficult. In contrast to Iraq, Afghanistan’s population is widely dispersed, and can be located in remote and isolated regions; there are literacy problems within the population; dozens of languages and dialects are spoken; and there are few locals capable of acting as linguists. In addition, the J&A notes that these issues are compounded by the fact that the national infrastructure and central government remain limited, and the economy is rudimentary. Id. at 4.

Given these constraints, INSCOM considered two courses of action to satisfy the current need for linguists in Afghanistan until the requirements can be transitioned to a competitively awarded contract in March 2011. Specifically, the agency considered: (1) conducting a limited competition among possible offerors and awarding a bridge contract to cover the period until the March 2011 award; and (2) the option ultimately selected, increasing the ceiling under MEP’s contract and thereby having MEP continue providing linguist services in Afghanistan.

INSCOM had several concerns regarding the first option. First, based on the results of its market research, INSCOM concluded that only MEP had sufficient resources in place in Afghanistan and could seamlessly transition the work without presenting a risk to the U.S. mission. In this regard, INSCOM considered the capabilities of GLS and noted that the joint venture assets it identified to support the effort were fully encumbered and obligated to other government contracts. INSCOM also noted that GLS’s ability to fulfill the Afghanistan linguist requirement was dependent on its ability to recruit all of the incumbent’s linguists, an assumption which was not realistic based on INSCOM’s experience with the transition of other linguist contracts. Id. at 8. According to the J&A, experience indicated that there would be an immediate loss of approximately 10 percent (or over 500) of the deployed linguist workforce, thereby increasing operational risk at a time when theater resources were strained due to the surge. Id. at 5.

INSCOM considered several other firms as well, including CALNET, which, the agency concluded, did not present a viable option since it has only provided linguists on a much smaller scale and did not have a presence or assets in Afghanistan. The agency also considered six of MEP’s subcontractors, and nine other firms identified

by the Joint Contracting Command-Iraq/Afghanistan, all of which were rejected because INSCOM concluded that they did not have the capacity or capability to assume an effort of the magnitude required. INSCOM also evaluated other linguist contracts, but determined that none of the contractors could assume the Afghanistan linguist requirements. As it relates to the protest, INSCOM specifically considered WorldWide, which had a contract with the Army to provide approximately 100 linguists in Afghanistan. INSCOM noted that the contract had expired in March 2010 and that all the qualified linguists on that contract had transitioned to MEP's contract. Id. at 9.

Even assuming that there were in fact firms capable of meeting the agency's needs, and that some form of limited competition could be held, INSCOM concluded that conducting such a competition and transitioning to a new contractor would not be practicable given the limited time until the anticipated March 2011 award. In this regard, INSCOM explained that the process of issuing a solicitation, obtaining proposals, conducting an evaluation, and making an award would take approximately 6 to 8 months. With the projected follow-on contract scheduled for award by March 2011, the bridge contract would have a performance period of only 3 to 5 months and would require a transition period with an estimated cost of \$30 million, if the contract were awarded to a firm other than MEP. INSCOM also indicated that conducting the limited competition would likely delay its implementation of the long-term solution--the award of the follow-on contract based on full and open competition--due to the need to conduct two procurements simultaneously using the same contracting personnel with the requisite expertise. Id. at 6. INSCOM also considered the disruption to the U.S. mission associated with a need for multiple linguist contractor transitions during "a period of high operational stress"--one for the bridge contract award and a separate transition for the March 2011 award--and concluded that the potential need for multiple transitions militated against conducting a limited competition. Id.

Upon learning of the agency's modification of MEP's contract to increase the contract ceiling by an additional \$679 million, WorldWide filed this protest arguing that the modification is contrary to the competition requirements mandated by CICA.¹

¹As a result of WorldWide's protest, INSCOM stayed performance of MEP's contract pursuant to the stay provisions set forth in CICA. Because the agency needed to continue obtaining linguist services, however, INSCOM awarded MEP a separate interim contract to bridge the time between the implementation of the CICA stay and the agency's approval of an override of the stay. WorldWide protested the interim award. INSCOM overrode the CICA stay on May 28 and ultimately terminated the interim contract awarded to MEP for convenience on June 21. Given the termination of the interim contract, the parties all agree that WorldWide's protest of the interim
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DISCUSSION

WorldWide challenges the modification of MEP's contract to increase the contract ceiling by \$679 million, arguing that the modification was outside the scope of MEP's underlying contract and therefore constitutes an improper noncompetitive award in contravention of the competition requirements established by CICA, specifically, 10 U.S.C. § 2304(f)(1)(C) (2006). To the extent the agency has justified its actions based on a finding that only MEP can meet the agency's interim need for linguists—a conclusion disputed by the protester—WorldWide asserts that the noncompetitive extension of MEP's existing contract was attributable to a lack of advance procurement planning, which is also precluded by CICA. 10 U.S.C. § 2304(f)(5).

CICA requires that an agency obtain full and open competition in its procurements through the use of competitive procedures. 10 U.S.C. § 2304(a)(1)(A). Exceptions are provided under CICA, however, where (among other specified exceptions) there is only one responsible source able to meet the agency's requirements, 10 U.S.C. § 2304(c)(1). CICA also provides that noncompetitive procedures may not be used where agency contracting officials failed to perform advance planning. 10 U.S.C. § 2304(f)(5); HEROS, Inc., B-292043, June 9, 2003, 2003 CPD ¶ 111 at 6; New Breed Leasing Corp., B-274201, B-274202, Nov. 26, 1996, 96-2 CPD ¶ 202 at 6. Our Office has recognized that the requirement for advance planning does not mean that such planning must be completely error-free, but, as with all actions taken by an agency, the advance planning required under CICA must be reasonable. Barnes Aerospace Group, B-298864, B-298864.2, Dec. 26, 2006, 2006 CPD ¶ 204 at 4-5.

Here, WorldWide is challenging the modification of MEP's existing contract, not the award of a sole-source contract per se. As a general rule, our Office will not consider protests against contract modifications, since they involve matters of contract administration and are beyond the scope of our bid protest function. See 4 C.F.R. § 21.5(a) (2010); DOR Biodefense, Inc.; Emergent BioSolutions, B-296358.3, B-296358.4, Jan. 31, 2006, 2006 CPD ¶ 35 at 6. An exception to this general rule is where a protester alleges that a modification is beyond the scope of the original contract, as WorldWide argues in this case, since, absent a valid sole-source justification, the work covered by the modification would be subject to the competition requirements established under CICA. Engineering & Prof'l Servs., Inc., B-289331, Jan. 28, 2002, 2002 CPD ¶ 24 at 3.

In determining whether a modification triggers CICA's competition requirements, we look to whether there is a material difference between the modified contract and the contract that was originally awarded. Engineering & Prof'l Servs, Inc., supra, at 4.

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contract award is academic at this juncture; we therefore dismiss WorldWide's protest of that award.

Evidence of a material difference between the modification and the original contract is found by examining changes in the type of work, performance period, and costs between the contract as awarded and as modified. Atlantic Coast Contracting, Inc., B-288969.2, June 21, 2002, 2002 CPD ¶ 104 at 4.

The agency and the intervenor argue that modifying MEP's contract to increase the contract ceiling by \$679 million is not outside the scope of MEP's underlying contract. In this regard, they principally assert that the increase in the ceiling level does not change the type of work required under the contract and offerors could have reasonably anticipated a modification to increase the contract ceiling. WorldWide maintains that the magnitude of the increase in the dollar ceiling implicitly reflects a change in the nature of the agency's original requirement and the basis of the original competition, and therefore renders the modification outside the scope of the original award.

As discussed below, we do not need to decide the question of whether the modification is within the scope of MEP's contract because, even assuming that it was not, the agency properly supported the modification with a reasonably based J&A under 10 U.S.C. § 2304(c)(1).

In challenging the agency's decision to increase the ceiling under MEP's linguist contract, WorldWide does not in any way contest the vital role that the linguists play in support of the U.S. mission in Afghanistan. Rather, WorldWide argues that the need for a noncompetitive modification was the result of the agency's failure to adequately plan for the award of a competitive contract. According to WorldWide, it should have been "obvious" to the agency by April 2009 that there would be a need for additional linguists as of that time given that the military was requesting additional troops and support services for the efforts in Afghanistan, yet the agency waited until 2010 to take any action to ensure that it could meet the increased need for linguists. Protester's Opposition to Dismissal Request, June 8, 2010, at 2, 9; Protester's Comments, supra, at 2. WorldWide also suggests that the agency's planning for the award of a competitive contract was unreasonable given the length of time scheduled for the procurement, approximately 22 months. According to WorldWide this time period should have been significantly reduced and can still be shortened further so as to minimize the period needed for the noncompetitive modification.

The record reflects that the agency initiated the process of planning for a competitive award in May 2009. When the need for greater numbers of linguists became apparent in August 2009, and was further defined as a consequence of the surge decision in December 2009, the agency took steps to set an expedited schedule for the award of a competitive linguist contract—a process requiring numerous steps, reviews, and milestones.

While WorldWide believes that this period of time could be greatly compressed, the record does not support its opinion in this regard. As discussed in the May 3 J&A, the linguist services are vitally important to the U.S. war effort in Afghanistan. Further, the anticipated size of the award at issue is very large; it will be a contract with a value likely in excess of \$1 billion, involving performance by thousands of contractor personnel at remote locations throughout Afghanistan. In light of the complexity, scope, and criticality of the requirements, we have no basis to conclude that the procurement planning for the competitive linguist award reflects unreasonable delay or a lack of diligence by the agency. On the contrary, the record shows that, beginning in May 2009, the agency has engaged in appropriately deliberate efforts to ensure a competitive award of a new long-term contract by March 2011. As noted above, an agency's procurement planning need not be error-free, it need only be reasonable. Based on the record in this case, we think that WorldWide's challenge to the agency's procurement planning efforts are without merit.

We next turn to WorldWide's assertion that the agency's decision not to compete the interim linguist requirement was unreasonable. WorldWide challenges the agency's conclusion that MEP was the only source capable of providing the required linguist services, arguing that INSCOM's determination was based on incomplete and flawed market research regarding the capabilities of potential offerors--WorldWide declares that it can meet the Army's urgent short-term needs without any degradation of service. In representing that it is capable of meeting the agency's requirements, WorldWide relies on its own linguist assets, as well as those of its potential "teammates" which are currently performing linguist contracts for U.S. and coalition forces in Afghanistan and Iraq. Protester's Opposition to Dismissal Request, supra, at 4.

WorldWide's challenge to the agency's decision is flawed in several respects. As an initial matter, WorldWide does not address the agency's determination that even if there were firms capable of meeting the linguist requirements, conducting a limited competition among such firms was not a practicable alternative. As noted above, the J&A expressly found that conducting a limited competition was not a viable option given that the award would be for a very short duration (approximately 3 to 5 months), coupled with the fact that conducting such a competition would undermine the agency's ability to timely award the long-term linguist contract, and would introduce multiple transitions during a period of high stress for U.S. forces in Afghanistan.

The agency has set forth in its J&A, and in its response to the protest, the challenges associated with awarding and transitioning a contract of this importance to the military mission and magnitude--one involving thousands of contractor personnel operating at over 200 locations throughout Afghanistan. In this regard, the agency reasonably questioned the advisability of awarding, and transitioning to, an interim contract of this size, based on limited competition, only to have it displaced shortly

thereafter by a long-term competitive contract requiring the same type of large-scale contractor transition; as indicated by the J&A, the agency reasonably was concerned that multiple large-scale transitions for these vital services would increase risk and disruption to U.S. military capabilities and thereby endanger the military mission and the lives of U.S. troops. See, e.g., Vertol Sys. Co., Inc., B-293644.6 et al., July 29, 2004, 2004 CPD ¶ 146 at 3 (where requirement relates to national defense, agency has the discretion to seek not just reasonable results, but the highest possible effectiveness). Given this context, we find the agency reasonably weighed and balanced the impact of conducting a limited competition against the relatively short duration of any resulting award, and reasonably concluded that conducting such a competition was not a viable option. Under these circumstances, the agency had no alternative other than modifying MEP's contract so that it could continue providing linguist services until the agency is able to award the follow-on competitive contract.

We likewise are not persuaded by WorldWide's challenges to the market research underlying the J&A prepared by INSCOM. The record reflects that the agency considered the capabilities of numerous firms, to include WorldWide, and solicited specific information regarding the capabilities of GLS, which apparently is the largest provider of linguist services to the military and was then operating in Iraq. The agency concluded that none of the firms, including GLS, was a viable alternative to having MEP continue providing linguists in Afghanistan. In reaching this conclusion, the agency reasonably gave paramount consideration to military operations in Afghanistan, noting that they were at a critical juncture given the implementation of the U.S. troop surge. As explained in the J&A, the surge presents a period of logistical strain and "high operational stress." AR, Tab 6, J&A, May 3, 2010, at 6. Given the underlying military considerations, the agency did not believe any contractor could transition the contract--which, as explained in the J&A and discussed above, presents unique and difficult challenges, entails providing more than 6,000+ linguists at 200 locations throughout Afghanistan, during the surge--without an adverse impact on U.S. forces and potentially compromising the military's ability to execute its mission in Afghanistan.

WorldWide maintains that the agency's transition concerns are overstated, arguing that any transition would have limited impact since its "team" has a presence in Afghanistan, and the vast majority of linguist personnel would simply transition to the new vendor. In this regard, WorldWide cites the J&A, which states that experience shows that approximately 90 percent of the incumbent's workforce transitions to the new contractor, and notes that the agency transitioned GLS's Iraq contract, which was actually larger, without any difficulty. The record reflects that the agency considered each of these points, yet concluded that continuing to obtain linguist services from MEP was the only viable option given the state of military operations in Afghanistan.

First, it is important to recognize that this contract involves more than simply providing a particular number of qualified linguists. It requires transporting,

billeting, feeding, and paying these individuals at over 200 locations throughout Afghanistan. While the transition thus must address these requirements as well, WorldWide focuses almost exclusively on transitioning the linguist assets themselves. In any event, to the extent WorldWide complains that the agency did not give sufficient consideration to its own capabilities, the record shows that the agency had no basis to believe that WorldWide was capable of performing the large-scale requirement at issue, particularly since WorldWide did not provide the agency with any information regarding its capabilities in response to the RFI and WorldWide has never performed a contract of this magnitude in the past. In this regard, the agency expressly concluded that WorldWide was not a viable source for the current requirements in view of the small size of its prior Afghanistan linguist contract, which involved providing approximately 100 linguists, all of whom had transitioned to MEP's contract when it was concluded in March 2010. Nor should the agency be faulted for its failure to have considered WorldWide's "team," given that the agency did not know, or have reason to know, that any such team existed.² Under these circumstances, the agency did not act unreasonably in not contacting WorldWide or further investigating its capabilities or interest. See Chicago Dryer Co., B-401888, Dec. 8, 2009, 2009 CPD ¶ 253 at 2 (denying challenge to an agency's market research in support of a sole-source award and explaining that an agency is not required to contact all potential sources when conducting market research regarding the feasibility of sole-source procurement).

Further, the agency specifically considered the difficulty associated with transitioning the incumbent workforce, and expressly noted that a 90 percent transition rate for the incumbent's linguists would result in an immediate loss of 500 linguists, thereby increasing operational risk at a time of significant stress on the military due to the surge. AR, Tab 6, J&A, May 3, 2010, at 4. Moreover, WorldWide's reference to the alleged ease of the transition under GLS's Iraq linguist contract is misplaced since the J&A describes the greater challenges posed by the requirement for linguist services in Afghanistan. As noted above, the J&A explains that establishing, managing, and sustaining linguist support services in Afghanistan is particularly difficult due to the country's widely dispersed population, which can be located in remote and isolated regions; literacy problems within the population; the fact that there are dozens of languages and dialects, and few locals capable of acting as linguists; and the fact that the national infrastructure and central government

² In support of its protest, WorldWide cites a letter to the agency from one of its team members indicating interest in the interim requirement. See Protester's Opposition to Dismissal Request, supra, Attach. 2. This letter, however, does not refer to any teaming arrangement with WorldWide, or any other firms for that matter. Moreover, WorldWide's purported team does not appear to be viable on its face since the linguist assets identified by WorldWide appear to be committed to performing other contracts.

remain limited, and the economy is rudimentary. Id. Given this record, we have no basis to question the reasonableness of agency's actions.

In sum, we find that the J&A supports the reasonableness of the agency's decision to increase the ceiling under MEP's contract, thereby allowing MEP to continue providing vitally important linguist services to U.S. forces in Afghanistan, until the time when the agency can award a competitive contract for these services.

The protest is denied.

Lynn H. Gibson
Acting General Counsel