USING BRIDGE CONTRACTS: A BRIDGE TO TROUBLE

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Many Contracting Officers believe that if they need a short extension of time in an existing service contract which requires recurring services, they can easily execute a "bridge" contract to cover this requirement while they conduct a competition. The facts are otherwise. A bridge contract is subject to important FAR and Competition in Contracting Act ("CICA") requirements. *Innovation Development Enterprises of Am, ("IDEA") Inc. v. United States*, Fed. Cl. No. 11-217C (Jan. 29, 2013) is an example of a contracting officer who built himself a "bridge to trouble," very much like the $200 million "Bridge to Nowhere" in Gravina Alaska, which was to be built in a very sparsely populated region, but was eventually canceled.

At the outset, it should be noted that most service contracts will include the clause at FAR 52.217-8, Option to Extend Services, which states:

> The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within [insert time].

This clause provides flexibility to the contracting officer when circumstances beyond his/her control occur, such as bid protests or mistakes in bids. However, as the language indicates, the clause may be used for a maximum of only 6 months of performance. What must a contracting officer do when he/she needs more, and there are no options (including the extension clause) left in the contract?

The contract in *IDEA* was for an Air Force Reserve and National Guard personnel management system. It was initially designed and programmed by an Air Force Reservist, Mr. Lawrence Crain, who retired, but continued to provide support through his company, IDEA, which was a subcontractor to Harris Corp. Harris had received the contract in 1999, and whose contract, including the six month extension noted above, ran through March 31, 2010. Mr. Crain repeatedly contacted the Air Force to propose IDEA as a responsible source that could provide these services when the contract ended. Instead, on April 15, 2010, the Air Force, without posting anything on FedBizOpps.gov, produced a draft sole-source one year bridge contract for these services, and shortly thereafter awarded it to the incumbent, Harris. After award, the Air Force posted a Justification and Approval document, relying on the exception that there was "only one responsible source," and secondly, the exception for "unusual and compelling urgency." Mr. Crain protested this sole source protest to the Air Force, and when he received no

response, took the case to the Court of Federal Claims after the Government Accounting Office ruled his protest untimely.

The Court found the sole source bridge contract unlawful for numerous reasons:

(1) The Air Force violated 10 USC Sec. 2304(f)(4)(A) because it was based on lack of advance planning—something the Air Force knew about for 5 ½ years but did nothing about.
(2) The Air Force found that Harris was the only responsible contractor, but it had conducted no market research, and its conclusion was unreasonable
(3) The Air Force Violated FAR 6.302-1(b), which prohibits reliance on the "sole source" exception (FAR 6.302-1) when the "unusual and compelling urgency" authority in FAR 6.302-2 is applicable. ("When a contracting officer is faced with a situation which can be addressed by applying the "unusual and compelling urgency provisions"…he or she may not rely on the "only one responsible source" provisions….")
(4) The Air Force failed to conduct market research as required by FAR Part 10.
(5) The bridge contract synopsis was never posted as required by FAR 5.207(c)(15)(ii) and FAR 6.302-1(d)(2).
(6) There was no real explanation in the Justification and Approval, and no reasons cited therein, for failure to post a synopsis.
(7) The Air Force never mentioned IDEA as an interested source as required by FAR 6.303-2(a)(10)
(8) The Air Force failed to solicit offers from as many sources as practicable, as required by FAR 6.3022(c)(2).

Even though Harris's bridge contract had already been fully performed, the Court sustained the protest, and awarded IDEA its bid preparation costs.

TIPS: Contracting Officers must realize that bridge contracts are subject to CICA and Part 6 of the FAR and they should try to obtain as much competition for them as possible. If no competition is possible, they should rely solely on the "sole source" exception, but they must conduct the market research and justify the sole source. Contracting officers must comply with the FAR and CICA, even when awarding urgent bridge contracts for important and critical requirements. Good justification and approval documents, properly noticed, are essential.