



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Techplan Corporation

File: B-232187

Date: December 12, 1988

DIGEST

Protest is sustained where an agency obtained support services from a contractor on a noncompetitive basis without proper justification and approval.

DECISION

Techplan Corporation protests the Navy's noncompetitive acquisition of support services from Quest Research Corporation under Quest's contract No. N0014-88-C-2106 with the Naval Research Laboratory (NRL), which is under the Office of the Chief of Naval Research. The NRL admits that services beyond the scope of Quest's contract were obtained improperly by an office under the Chief of Naval Operations (CNO), and has decided to disallow any payments to Quest for that work, but, for reasons discussed below, urges dismissal of Techplan's protest. We sustain the protest.

Quest's contract with the NRL, which the agency awarded on the basis of full and open competition, is for technical and engineering services in connection with the Airborne Active Expendable Decoy (AAED) program managed by the NRL. The contract describes the services to be performed in general terms and allows the NRL contracting officer's technical representative (COTR) to define the specific tasks to be performed. One of the tasks the COTR authorized Quest to perform was to review and organize files located in the office of the CNO's Assistant for International Research and Development in order to locate material relevant to the AAED program.

On July 20, 1988, Techplan learned that Quest and its subcontractor had performed services for the Assistant beyond what the COTR had authorized. The additional services are similar to those Techplan had performed for the Assistant under a contract the Navy had terminated in February. Techplan had thought the Navy would conduct a

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competitive procurement for whatever support services the Assistant required,^{1/} and filed this protest when it learned that at least some of the services had been obtained noncompetitively.

The NRL has confirmed upon its review of progress reports submitted to it by Quest that the firm indeed performed work that had not been authorized by the NRL. Although it is not known prior to audit exactly how much additional work was performed, the NRL reports that at least \$100,000 in services performed by Quest's subcontractor were not authorized by the COTR. The NRL has directed Quest to stop performing work for the Assistant and reports that it has taken steps to have any requests for payment for unauthorized work disallowed and to recover prior payments for any work performed by Quest's subcontractor.

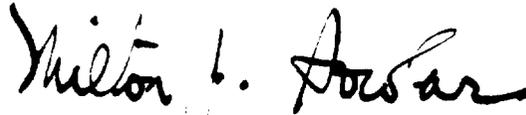
The NRL, in urging that we not consider Techplan's protest, recognizes that this Office will consider a protest alleging that goods or services acquired through modification of an existing contract should have been procured competitively. Educational Computer Corp., B-221276, Mar. 7, 1986, 86-1 CPD ¶ 230. The agency argues, however, that because no one with authority to modify Quest's contract instructed Quest to perform any additional work, there has been no contractual action by the NRL that properly may be the subject of a protest. The NRL contends that what is involved here is only an issue of cost allowability under Quest's contract, which, the NRL points out, is a matter of contract administration that this Office generally does not review. See Bid Protest Regulations, 4 C.F.R. § 21.3(m)(1) (1988).

Our fundamental concern here is that, even though competition was available, services were obtained from Quest on a noncompetitive basis without justification and approval as required under 10 U.S.C. § 2304 (Supp. IV 1986). We recognize that the COTR did not authorize a modification of Quest's contract, but the services nevertheless were obtained under the guise of that contract and it does not appear that the NRL would have taken corrective action here in the absence of Techplan's protest. In this regard, the record indicates that when the COTR reviewed Quest's progress reports prior to this protest, he noticed that some

^{1/} Following the termination of Techplan's contract, the agency informed Techplan that the support services for OP-098F would be obtained from another Navy contractor. Techplan filed a protest with this Office, B-230776, but withdrew the protest when the Navy informed it that a competitive solicitation would be issued.

of the work performed was "slightly beyond the original task," but did not consider this to be improper. It was only as a result of the protest that the Navy determined that corrective action was required. In short, because the Navy obtained services from Quest improperly, and decided to take corrective action only as a result of Techplan's protest, we think that consideration of the protest is appropriate and is consistent with the purposes of our Bid Protest Regulations.

Because the record shows that services were obtained improperly, we sustain the protest. We make no recommendation for corrective action because the NRL is taking such action already. We find, however, that Techplan is entitled to the costs of filing and pursuing this protest. 4 C.F.R. § 21.6(d)(1). Techplan should submit a claim for these costs directly to the Navy.

for 
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