



Comptroller General
of the United States

90079

Washington, D.C. 20548

Decision

Matter of: National Linen Service

File: B-257112; B-257312

Date: August 31, 1994

Jed L. Babbin, Esq., Tighe, Patton, Tabackman & Babbin, for the protester.
Riggs L. Wilks, Jr., Esq., and Paul A. Debolt, Esq., Department of the Army, and Gregory H. Petkoff, Esq., Department of the Air Force, for the agencies.
Jacqueline Maeder, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Modification of existing Department of the Army contract to add laundry services for Department of the Air Force unit is proper where the additional services are within the general scope of the contract as originally awarded, which specifically provided for centralization of such services at the Army base.
2. Agency may cancel an invitation for bids for laundry services based on the potential cost savings that will be achieved by obtaining required laundry services under a proper modification to an existing contract.

DECISION

National Linen Service protests the modification of fixed-price contract No. DACA21-91-C-0045, awarded to Crown Management Services, Inc. by the Department of the Army, Fort Jackson, South Carolina, for laundry and dry cleaning services. National contends that the modification, which expands the services under the original contract to include laundry services for Shaw Air Force Base, South Carolina, is beyond the scope of the contract and amounts to an improper sole source award. National also protests the Department of the Air Force's cancellation of invitation for bids (IFB) No. F38601-93-B-8009, issued by Shaw Air Force Base for these services.

We deny the protests.

Shaw Air Force Base issued IFB No. F38601-93-B-R009 on January 7, 1994, to obtain laundry and dry cleaning services for a base year and 4 option years. By letter dated February 1, Army contracting officials at Fort Jackson informed Shaw officials of Fort Jackson's newly constructed laundry facility and its existing contract with Crown to operate that facility. Army contracting officials also discussed with Shaw personnel the advantages to both the Air Force and the Army of having Shaw's laundry needs met by Crown under Crown's existing contract, and Crown submitted a price proposal to Fort Jackson for those services.

On February 8, Shaw received two bids under its IFB, including one from National, which was providing temporary laundry services to Shaw. After comparing the prices in National's low bid to the prices in Crown's contract with the Army, the contracting officer determined that obtaining the laundry services under the existing contract offered the Air Force a savings of approximately \$24,000 for the first year and approximately \$140,000 for the anticipated 5-year period. Based on this determination, Air Force officials requested that the Army modify its Fort Jackson contract to include these Air Force requirements. The Army issued modification P00010 to the Crown contract to cover laundry and dry cleaning services for Shaw, including pick up and delivery at Shaw three times a week. Crown signed the modification on April 8.

The Army states that the modification was proper under Crown's contract and points to paragraph 5.1.1, titled "Specific Tasks," in the scope of work (SOW) of the original RFP and contract, which states in part:

"In keeping with its area support mission, Fort Jackson provides laundry service to other Department of Defense components such as other Active Army units, Air Force, Navy, Marine Corps, National Guard, Reserves and other Government agencies. The requirement to provide intra and inter-service support services shall be part of this contract. Intra and inter-service units supported presently are listed at Section J,

¹In 1988, the Army Corps of Engineers awarded a contract to Crown for the construction of the laundry facility at Fort Jackson and the 20-year operation of the facility. Construction of the facility was completed in 1993 and laundry operations began on August 1, 1993.

Exhibit 6.² These supported units require no pick-up or delivery services. All items will be delivered to the laundry facility by unit personnel and, upon completion of laundry services will be picked up and transported to the respective unit by unit personnel."

By letter dated April 20, the Air Force advised National that No. IFB F38601-93-B-8009 had been canceled and that the required laundry services would "be added to the Fort Jackson contract." These protests followed.

As a general rule, our Office will not consider protests against contract modifications, as they involve matters of contract administration that are the responsibility of the contracting agency. 4 C.F.R. § 21.3(m)(1) (1994). We will, however, consider a protest that a modification is beyond the scope of the original contract, and that the subject of the modification thus should be competitively procured absent a valid sole-source justification. Neil R. Gross & Co., Inc., 69 Comp. Gen. 292 (1990), 90-1 CPD ¶ 212.

In weighing the propriety of a modification, we look to whether there is a material difference between the modified contract and the prime contract that was originally competed. Neil R. Gross & Co., Inc., supra; Indian and Native Am. Employment and Training Coalition, 64 Comp. Gen. 460 (1985), 85-1 CPD ¶ 432. In determining the materiality of a modification, we consider such factors as the extent of any changes in the type of work, performance period, and costs between the contract as awarded and as modified. Id. We also consider whether the solicitation for the original contract adequately advised offerors of the potential for the type of changes that in fact occurred, or whether the modification is of a nature which potential offerors would reasonably have anticipated under the changes clause. Id.

Here, there were no significant changes in the services to be performed, in the performance period, or in the prices under the Crown contract. Under the original contract, Crown was to perform organizational laundry (cleaning individual items such as sleeping bags, sheets and pillowcases), and special services, including hospital laundry and bundle services for individual soldiers. Under the modification, Crown will perform only organizational laundry services for the Air Force, and will launder and dry

²Exhibit 6 lists 24 Reserve Officer Training Corp (ROTC) units located at South Carolina colleges and universities, military academies and high schools that are presently being serviced by the Fort Jackson facility.

clean the same items for Shaw as it does for Fort Jackson, including, for example, sleeping bags, blankets, mattress covers and pads; sheets, pants, shirts, and flight jackets; and insulated jackets and parkas. The contract period was not modified and the modification will result in only a minimal increase in the contract price; contract billings are expected to average \$2.1 million annually (including \$500,000 for debt retirement for the facility built by Crown at Fort Jackson); the Air Force's annual billings on the contract are expected to be only \$36,900.

National asserts, however, that it does not matter that the addition of the Shaw Air Force requirement to the Fort Jackson contract changed neither the period of performance nor the nature of the work because, according to National, the language of the original RFP and the contract specifically excludes the addition of laundry services from outside Fort Jackson. To support this contention, National argues that the Army's reliance on paragraph 5.1.1 of the SOW is misplaced and ignores the previous paragraph, 5.1, which states that:

"The Contractor shall provide laundry and dry cleaning services to individuals and organizations stationed at or satellited on Fort Jackson, South Carolina. . . ."

Because Shaw is not "satellited on Fort Jackson", National argues that it cannot be served under Crown's contract.

The protester also argues that the modification is improper because SOW paragraph 1.2 of the original solicitation and contract provides that an on-post facility:

"can only be used in direct support of work required to serve Fort Jackson and customers listed in Exhibit 6, other Federal Government work shall be approved by the Contracting Officer and DCSLOG [Deputy Chief of Staff for Logistics] as per AR [Army Regulation] 210-130 Paragraph 5-2d. Any other outside work cannot be accommodated at the on-post facilities."

Because the laundry facility is located at Fort Jackson and because Shaw is a Department of Defense (DDO) agency and not a facility listed in Exhibit 6, National maintains that the contract cannot now be modified to include the Shaw work.

Where a dispute exists as to the actual meaning of a solicitation clause, we will resolve the matter by reading the solicitation as a whole and in a manner that is reasonable and which gives effect to all its provisions. See DDD Co., B-250213, Jan. 15, 1993, 93-1 CPD ¶ 48.

Applying this standard here, contrary to National's contention, we find that the Army intended under the original RFP and the contract, as stated in paragraph 5.1.1 of the SOW, that Fort Jackson would serve as a centralized laundry facility--providing such services to other DOD units as well as to other government agencies. While National believes that paragraph 5.1 limits services to those individuals and organizations "stationed at or satellited on Fort Jackson," we believe that this paragraph merely describes the general purpose of obtaining laundry service for Fort Jackson; the following paragraph, 5.1.1, as noted above, specifically authorized the centralization of DOD and other federal agency laundry services at Fort Jackson. The protester's reliance on the introductory paragraph fails to read the RFP and the contract as a whole, ignoring the following paragraph and the specific statement in that paragraph that "intra and inter-service support services shall be part of this contract."

For the same reasons the protester's assertion that paragraph 1.2 precludes the Fort Jackson facility from providing laundry services to other DOD agencies also conflicts with the obvious intent and specific language of the original RFP and contract. Moreover, this interpretation disregards a relevant section of AR 210-130, which, although not cited in the solicitation, specifies at paragraph 5-2c that inter-service support for Air Force and Navy units "will be provided under the terms of an ISSA [Interservice Support Agreement]." The Army reports that it is in the process of finalizing an ISSA, having stopped work on this agreement in the face of the protest. Thus, the modification was within the scope of the Fort Jackson contract.

³While National argues that the agreement did not exist at the time of contract modification, the regulation is an internal instruction to aid agency personnel and the fact that the agency may have deviated from the precise requirement in the regulation does not provide outside parties with any legal rights. Sabreliner Corp., B-242023; B-242023.2, Mar. 25, 1991, 91-1 CPD ¶ 326.

⁴National also argues that the off-post pick ups and deliveries as provided for in the modification are outside the scope of the original contract. We find no merit to this argument. While the off-post ROTC units listed in Exhibit 6 in the original contract deliver their laundry to Fort Jackson, there is nothing in the solicitation that precludes laundry pick up for units, such as Shaw, not located at the base. Moreover, the original RFP and contract state that the contractor will pick up laundry from
(continued...)

National also argues that the Air Force improperly canceled the IFB for laundry and dry cleaning services at Shaw. As the low bidder under the Air Force's IFB, National argues that it should be awarded the laundry services contract for Shaw.

An IFB may be canceled after bid opening only where there is a compelling reason to do so. Federal Acquisition Regulation (FAR) § 14.404-1(a); Xactex Corp., B-247139, May 5, 1992, 92-1 CPD ¶ 423. FAR § 14.404-1(c)(10) specifically permits cancellation, consistent with the compelling reason standard, where cancellation is clearly in the public's interest. Here, where the government has evidence that an award under the canceled solicitation would require the government to pay more for the required services than it would pay under the proper modification of an existing contract, cancellation is clearly in the public's interest and therefore proper. See Color Dynamics, Inc., B-236033.2, Oct. 27, 1989, 89-2 CPD ¶ 391, aff'd, Color Dynamics, Inc.--Recon., B-236033.3, Dec. 22, 1989, 89-2 CPD ¶ 583 (compelling basis for cancellation exists where the agency has specific evidence suggesting that resolicitation would yield lower prices); see also JA & Assocs., Inc.; Son's Quality Food Co., B-256280.2; B-256280.4, Aug. 19, 1994, 94-2 CPD ¶ ____ (solicitation for services was properly canceled where the agency determined after receipt of proposals that it was in the government's best interest to novate the existing contract for the services).

Finally, the protester alleges that after the bid opening at Shaw, the Army "told Crown what price [it] should offer" for each item to be laundered or dry cleaned and improperly

⁴(...continued)

approximately 60 locations on-post. The fact that the contractor currently picks up and delivers laundry on-post suggests that pick up and delivery services off-post, especially where such services are not specifically excluded by the contract, could have been reasonably anticipated and are not outside the scope of the contract.

⁵National also argues since the Air Force was considering canceling the solicitation and obtaining the services from Fort Jackson, the agency had an obligation to cancel the IFB before bid opening. While we agree with the protester that it is generally poor procurement practice to cancel a procurement after it has reached an advanced stage, we are aware of no statute or regulation that was violated here. See Essex Electro Eng'rs, Inc., B-206012.3, Oct. 4, 1982, 82-2 CPD ¶ 307.

manipulated the prices by dictating their increase to raise Crown's profits to a level just below the prices bid by National.

The record shows that on February 3, Crown submitted a proposal to the Army for services for Shaw under its current contract. Although Crown's proposed unit prices were not the same as the unit prices under the original contract, those unit prices were lower than National's prices under the Air Force solicitation, which opened 5 days later. Upon receipt of Crown's proposal, the Army informed Crown that it would be paid the same unit prices extant in its contract except that the cost of delivery would be a separate monthly line item. The Army calculated the unit prices for the modification by increasing each of the original contract unit prices by an amount which represents the Air Force's share of management and overhead (for organizational laundry), which was a separate monthly line item under the original contract. These adjusted unit prices, which were even lower than Crown's February 3 proposed unit prices, were submitted to and accepted by the Air Force. Thus, under the contract, as modified, the Air Force pays the Army for laundry and dry cleaning services based on the unit prices set forth in the modification, and the Army in turn pays Crown at the same unit prices set forth in the original contract.⁶ Consequently, although the Army dictated that Crown would be paid under the modification based on the unit prices in the original contract, we see nothing improper in its doing so.

The protests are denied.

/s/ James A. Spangenberg
for Robert P. Murphy
Acting General Counsel

⁶Based on our review, the record does not support National's assertion that the Air Force will pay higher prices than the Army for the same services.