30386

DECISION

THE COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-215172 **DATE:** February 7, 1985

MATTER OF: Central Texas College System

DIGEST:

1. There is no indication that protester was prejudiced by modifications of a contract for the provision of courses of instruction where modifications did not change the type of work to be performed, effect of one modification was so minimal that price remained essentially unchanged, and effect of other modification was to increase the number of hours of instruction and the contract price by reasonably close percentages and there is no indication in the record that this increase in hours of instruction would have resulted in a lower percentage increase in price on the part of the protester. Thus, we will not examine allegation that contract as changed exceeded the scope of the contract on which competition was held.

2. Since there is no showing of competitive prejudice relating to contract modifications which may have been intended at the time the contract was awarded, the modifications will not be questioned.

Central Texas College System protests the U.S. Army's modifications of contract No. DAJA37-84-D-0156 with Big Bend Community College for the provision of courses of instruction covering The Army Maintenance Management System (TAMMS) and Prescribed Load List (PLL). Central Texas primarily contends that the modifications went beyond the scope of the original contract. We do not agree.

Request for proposals No. DAJA37-83-R-0067, issued November 8, 1983, called for the provision of an estimated 22 courses of instruction aimed at providing TAMMS and PLL clerks with the required technical skills to

effectively prepare and maintain all of the maintenance forms and records necessary in a unit maintenance operation in the U.S. Army, Europe. It provided that each course of instruction shall provide 68 hours of instruction over a period of 10 days for no more than 40 students. It further provided that the contractor shall be prepared to provide four instructors per course and that the contractor will not be required to provide more than three courses simultaneously; therefore, the contractor shall be prepared to provide 12 instructors at any time. Finally, it provided that each contractor shall provide instruction conforming to the government-approved program of instruction which was attached to the solicitation.

Offers were sought from 10 sources, but Big Bend and Central Texas submitted the only offers. The two offers were evaluated on the basis of three equal factors: technical adequacy, "institutional responsibility," and cost. Central Texas received a higher ranking than Big Bend on technical adequacy and institutional responsibility, but Big Bend received the higher total ranking due to its lower cost. It therefore was awarded the contract for $97,900 on January 16, 1984.

On February 1, Big Bend submitted a Value Engineering Change Proposal (VECP) in accordance with the solicitation instructions. In the VECP, based on its perception of how it could perform the contract more efficiently and less expensively, Big Bend recommended that the number of students per course be halved and that the number of courses be doubled from 22 to 44 (thus serving the same number of students); that the number of hours of instruction per course be increased from 68 to 80; and that the number of instructors per course be reduced from four to one but that the number of courses which could be conducted at any one time be doubled from three to six. In its VECP, Big Bend maintained that this restructuring of the classes would permit cost savings while allowing for the same instructional objectives to be met; would eliminate situations where instructors needed for only parts of courses would be idle; would greatly increase flexibility, in that small and remote locations could have classes; and would permit twice as many classes to be offered at one time. Although Big Bend did not break out the price impact of

each change which it proposed, it offered to conduct 44 classes at $2,125 each in lieu of the contract requirement for 22 classes at $4,450 each--a proposed savings of $4,400 during the first year of the contract.

The VECP reflected concerns which had been expressed by one or both of the offerors during contract negotiations prior to award, to the effect that the number of instructors required by the statement of work would be too costly to the government and unworkable at remote sites. At that time, the requiring activity, the Seventh Army Combined Arms Training Center, determined that the statement of work should not be changed so that it would remain consistent with the government's program of instruction. However, upon receipt of the VECP, the requiring activity reevaluated the statement of work and, in light of the numerous complaints received by units in the field about the statement of work, the fact that only one course had been offered as of that date, and the realization that instructors would be left idle most of the time, it determined that consistency with the government's program of instruction was no longer necessary.

The contracting officer subsequently determined that the VECP was within the scope of the contract, would result in a savings to the government and, therefore, was acceptable. Consequently, modification P00002, dated April 16, was issued to incorporate the VECP into the contract; however, the modification failed to reduce the required number of instructors per course as intended and, therefore, modification P00004, dated June 7, was issued to correct this omission. Only one course had been taught prior to the incorporation of the VECP on April 16 and, therefore, these changes were to apply to the estimated 43 courses which would be provided during the remainder of the year.

The contracting officer adjusted the $4,400 savings proposed by Big Bend to account for the fact that one course of instruction had already been completed and he determined that the contract savings amounted to $2,075. The contractor would share in 50 percent of these savings, resulting in a $1,037.50 decrease in the contract price ($97,900 - $2,075 + $1,037.50 = $96,862.50). (We cannot explain the 21-cent difference in the price of $96,862.29 used by the Army.)

The requiring activity requested that the contract be further modified to provide for 50 1-week (40 hours) courses of instruction for either TAMMS or PLL, in addition to the 44 2-week courses covering both subjects. According to the agency, it became apparent during the performance of the contract that there was a need for more hours of instruction in these subjects and, since more soldiers needed TAMMS instruction than PLL, the requiring activity wanted to add 39 courses covering TAMMS and 11 covering PLL. Modification P00003, dated April 19, fulfilled this request. As a result, the total amount of hours of instruction increased from 3,520 to 5,520 and the contract price increased from $96,862.29 to $162,112.27.

Central Texas contends that these modifications went beyond the scope of the contract and, therefore, should be the subject of a new procurement. It states that the modifications improperly made two cardinal changes in the nature of the contractor's obligations: (1) the separation of the TAMMS and PLL instruction into two different courses, and (2) the decrease in the number of required instructors from 12 (four instructors per course with no more than three courses being conducted at the same time) to six (one instructor per course with no more than six courses at the same time). It explains that the difficulty in having available 12 qualified instructors at all times as required under the original contract may have eliminated qualified offerors. Central Texas also seems to argue that since the selection of Big Bend as contractor was largely based on price and these modifications resulted in substantial price changes, these modifications should lead to a new procurement.

Central Texas next contends that it can be "presumed" from the agency report that the contracting agency improperly intended to modify the contract prior to award. It maintains that the chronology of events raises a question about the agency's intentions: it challenged the cost effectiveness of the statement of work during the contract negotiations prior to award, the VECP was submitted only 2 weeks after award, and then the modifications were issued shortly thereafter.

The Army responds that the changes to the original contract were not intended at the time of award and that they were within the scope of the contract. As to those changes arising from the acceptance of the VECP, it states that the same courses and students would be taught and that the reductions in class size and teaching staff and increases in the number of classes and hours of instruction were of minimal magnitude. It similarly argues that modification P00003 had the net effect of only increasing the hours of instruction by approximately 50 percent. It adds that the doctrine of cardinal change relied upon by the protester does not apply to cases such as this one where the contractor and the government agreed on the changes.

While we recognize the necessity for modifications and the efficiency of the VECP procedure in general, we have held that the integrity of the competitive system dictates that contracting parties may not employ changes in the terms of a contract, whether by VECP or other modification, that have the effect of circumventing the competitive procurement statutes. Lamson Division of Diebold, Incorporated, B-196029.2, June 30, 1980, 80-1 C.P.D ¶ 447. Therefore, even though we generally will not consider a protest concerning a contract modification or acceptance of a VECP since such matters involve contract administration, which is the responsibility of the procuring agency, we do review allegations that the procuring agency awarded the contract with the intention to alter its terms after award to the prejudice of the prospective awardee's competitors, or that the contract as changed exceeded the scope of the contract on which competition was held. Frankford Management Group, B-212285.2, Nov. 4, 1983, 83-2 C.P.D. ¶ 527.

With regard to Central Texas' allegation that these modifications exceeded the scope of the original contract, there is no prejudice evident in the record stemming from the modifications. First, the type of work to be performed here remained unchanged by the modifications to the contract in that Big Bend was still to provide courses of instruction on TAMMS and PLL. Furthermore, the VECP, which was incorporated into the contract by modifications P00002 and P00004, did not substantively change the nature of the contract as demonstrated by the fact that the contract price remained essentially the same after these changes were made

($97,900 initially and $96,862.29 after these two modifications). Finally, there is no indication that the changes resulting from modification P00003 would have changed the relative standing of the offerors. The primary effect of modification P00003 was to increase the number of hours of instruction from 3,520 to 5,520, an increase of approximately 60 percent, with a corresponding increase in the price of the contract from $96,862.29 to $162,112.27, an increase of approximately 67 percent. Obviously, the percentage increase in contract price is reasonably close to the increase in the number of hours of instruction. Since there are no apparent economies of scale to be realized by an increased number of hours of instruction and there is no indication in the record that the increase in hours here would have resulted in a lower percentage increase in price on the part of Central Texas, we conclude that Central Texas' contract price would have also increased by a proportion similar to the increase in hours and Central Texas therefore would still not be the low offeror. Since there is no showing of prejudice from these changes, we will not examine this allegation.

As to whether the contracting agency intended to modify the contract prior to award, the chronology of events suggests the possibility that the contracting agency might well have awarded the contract with the intent to issue the VECP. However, as discussed above, there is no showing of prejudice from any of the changes, and we therefore will not question the modifications on this basis either. See Tricentennial Energy Corporation, B-197829, Oct. 21, 1980, 80-2 C.P.D. ¶ 303.

The protest is denied.

for Milton J. Socolar
Comptroller General
of the United States