

DECISION

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

FILE: B-218150 **DATE:** May 30, 1985
MATTER OF: Marine Logistics Corporation

DIGEST:

1. Where protest apprises agency of specific aspects of procurement to which objection is made, protester has met requirement to provide a detailed statement of the grounds of protest under GAO's Bid Protest Regulations.
2. Navy decision to include shipment of household goods and bulk fuel for Bureau of Indian Affairs in existing requirements contract for transportation of cargo to Alaska will not be disturbed on the grounds that it is tantamount to a change in existing contract outside the scope of work originally competed where (1) nature of work to be performed, (2) type of equipment to be utilized by contractor in performing additional work, and (3) delivery sites for additional work are substantially similar to existing work under contract, notwithstanding an approximately 25-percent increase in quantity of work to be done.

Marine Logistics Corporation (MLC) protests the decision by the Military Sealift Command (Command), Department of the Navy, to include certain shipments under an existing contract for the carriage of cargo with Crowley Maritime Corporation (Crowley). The shipments consist of household goods and bulk fuel to be carried for the Bureau of Indian Affairs (BIA) from Seattle, Washington, to various destinations in western Alaska. MLC protests that the work to be done for BIA should be opened to competition rather than included in Crowley's existing contract.

We find the protest to be without merit.

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The Command is the contracting authority for combined ocean and land transportation of government cargo to Alaska under the "Cool Barge--Pacer Alaska" project. The project, originally established in 1956, is designed to take advantage of the economies of large quantity procurement and transportation by commercial barge and tug carrier in delivering fuel and supplies to remote government stations throughout Alaska. The project principally involves a single annual delivery to each station. The success of the project depends on the cooperation and participation of many government agencies. (The project is described in a regulation of the Alaskan Air Command (AAC), Department of the Air Force, AAC Reg. 75-1, July 1982.)

In order to minimize the annual amortization costs of contractor equipment, the Command has reportedly awarded long-term (usually 5-year) contracts. Since 1965, a subsidiary of Crowley, the Puget Sound Tug and Barge Company doing business as the Alaska-Puget-United Transportation Company (APUTCO), has been awarded these contracts. The most recent contract with APUTCO was awarded November 19, 1982 (contract No. N0003383C1002). According to the contract's "Description of Services" clause:

"The Contractor will furnish the transportation and allied services required for the Gulf-Aleutian-Sheyma, Bering Sea, Arctic, and Kuskokwim River Sectors of Alaska for the years 1983 through 1987 as described in Request for Proposals [RFP] No. N0003382R1003, as amended."

The type of commodities, along with the tonnages of cargo to be transported and the origins and destinations of such cargo, is incorporated in the contract by reference to the RFP. The contract specifies that the basic annual compensation to the contractor is \$7,335,158, "based on the annual forecasted tonnage of 60,939 short tons of POL [petroleum, oil and lubricants] and dry cargo which includes 2,500 short tons of lateral and retrograde, and subject to discounts, options and adjustments" Finally, the contract provides for the negotiation of an equitable adjustment in the event of a substantial

increase or decrease in the contractor's cost of performance by reason of a change in tonnage.

MLC's protest is based on the Command's decision to include cargo shipments in APUTCO's 1985 deliveries which were previously transported on the M/V North Star III, a ship operated by BIA. According to MLC, the M/V North Star III had performed these services for BIA since 1961, and they were not included in the cargo forecast contained in the RFP incorporated in APUTCO's current contract.

MLC concludes that the BIA M/V North Star III cargo represents such a significant increase in the quantity of cargo, the number of destination sites serviced and the amount to be paid the contractor that the work should be competitively bid as a new procurement rather than included in APUTCO's existing contract.

The Navy contends that MLC's protest lacks "a detailed statement of the factual and legal grounds," contrary to our Bid Protest Regulations, 4 C.F.R. § 21.1(c)(4) (1985). While recognizing that a protester is responsible under our regulations to provide a detailed statement of the facts and legal arguments relevant to its protest, we believe that responsibility is met where, as here, the protest is stated in such a way as to apprise the agency of the specific aspects of the procurement to which objection is made. Here, it is sufficiently clear to us, and the Navy's report evidences the agency's understanding, that MLC protested the Command's inclusion of the BIA cargo in the existing contract with Crowley (i.e., APUTCO). Therefore, dismissal of the protest, which was not raised by the Navy until the submission of its report, is not warranted. See Rosemount, Inc., B-218121, May 16, 1985, 85-1 CPD ¶ _____.

In response to the merits of MLC's allegations, the Navy states that the existing contract with APUTCO is a requirements-type contract providing for all of the government's transportation requirements for the aforementioned sectors of Alaska for the years 1983 through 1987. Although the BIA M/V North Star III shipments were not

originally forecast in the RFP, the Navy points out that they are in fact requirements which can be accommodated under the existing contract with the contractor's existing equipment. Furthermore, other similar BIA cargo has been transported by APUTCO in small quantities, and many of the destination sites for the BIA M/V North Star III cargo are the same as sites already served by APUTCO. Finally, the Navy states that although it is likely an equitable adjustment will have to be made as a result of the increased cargo, this is not tantamount to a modification of the contract beyond its originally contemplated scope. Instead, it was clear from the RFP that fluctuations in tonnage would occur which could be accommodated by the contract's equitable adjustment provisions. In any event, the Navy believes any additional costs under the contract would be less than the costs of contracting with another shipper.

As a general matter, contract administration is primarily the responsibility of the contracting agency. However, we have held that if a contract is changed and the resulting contract is materially different from the contract for which competition was held, the contract should be terminated and the new requirement competed. American Air Filter Co, Inc.--DLA Request for Reconsideration, 57 Comp. Gen. 567 (1978), 78-1 CPD ¶ 443. We have also recognized that it is not always easy to determine whether a changed contract is materially different from the competed contract. Id. We will, however, examine the facts and circumstances in each case to determine whether the additional work is significantly different from that for which competition was originally held. Indian and Native American Employment and Training Coalition, B-216421, Apr. 16, 1985, 64 Comp. Gen. _____, 85-1 CPD ¶ 432. In this case, although the contract has not been formally changed, MLC protests that the additional work is tantamount to a change which is outside the scope of the original competition.

For the reasons set forth below, we are unable to conclude that the BIA M/V North Star III cargo represents work which is significantly different from that originally competed. First, although we acknowledge that the BIA M/V North Star III cargo was not mentioned in the RFP's original forecast, we believe it to be substantially similar in nature to the work for which the competition was

held, that is, the shipping of fuel and household goods for government agencies to coastal Alaska. Examination of the RFP discloses that some BIA shipments, although in smaller quantities, were included in the original forecast. Second, it appears that the work in question can be performed by the contractor with the same equipment as is presently utilized. Third, although the Navy concedes that 15 of the 64 delivery sites for the BIA cargo are different from those now served, the sites are generally near existing delivery points and within the Alaskan sectors designated in the original RFP. Finally, although both the Navy and APUTCO concede that the quantity of cargo to be delivered represents a significant increase which will likely result in an equitable adjustment to the basic annual compensation amount, we do not find the increase to be so great as to render the work beyond the scope of the initial competition. The protester has estimated the increase to be approximately 15,100 tons annually. Compared to the 60,939-ton estimate contained in the original forecast, we do not find this approximately 25-percent increase significant, especially in light of the above-mentioned similarities. (Compare National Data Corp., B-207340, Sept. 13, 1982, 82-2 CPD ¶ 222, where we held that a change involving a less than one-third increase in the quantity of work would not require a new procurement where the additional work was essentially the same type of work that the contractor was already performing.)

Therefore, we cannot conclude that the original purpose of the contract has been so substantially changed by the additional work that the contract for which competition was held and the contract to be performed are essentially different.

Accordingly, the protest is denied.

for *Raymond E. Egan*
Harry R. Van Cleve
General Counsel