



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Shihadeh Carpets and Interface Flooring Systems,
Inc.
File: B-225489
Date: March 17, 1987

DIGEST

1. Although General Accounting Office does not consider issues relating to the acceptance of first articles or the modification of specifications after award since these are contract administration matters, allegations that a modification went beyond the scope of the contract are reviewed since such a modification would represent a new procurement.
2. Where a company protesting award to another bidder has a fundamental disagreement with the contracting agency about the meaning of certain specifications, the agency's interpretation of the specifications, which are subject to varying interpretations, does not constitute a cardinal change.

DECISION

Shihadeh Carpets and Interface Flooring Systems, Inc., jointly protest against the alleged waiver of provisions of solicitation No. FNP-F5-1946-N-1-16-86 by the General Services Administration (GSA). The solicitation was for the supply and installation of carpet tiles containing an anti-microbial function at the Social Security Administration, Philadelphia, Pennsylvania. Interface is the manufacturer of the carpet tiles which Shihadeh offered. We deny the protest.

The protesters allege that GSA accepted a first article test from the awardee, Metropolitan Contract Carpets, Inc., despite the inadequacy of Metropolitan's test report and the fact that it shows that the carpet fails to comply with the specifications.

The purchase description contained in the solicitation states that the carpet is to have a "permanent antimicrobial . . . protection" and that the carpet "shall demonstrate

antibacterial activity . . . and shall be unaffected after carpet samples have been subjected to repeated washings following recognized laboratory procedures."

The protesters take issue with the degree of protection afforded by Metropolitan's carpet and the number of washings to which it was subjected in testing. The protesters conclude that GSA waived these two requirements and that the waiver constitutes a cardinal change to the contract.

We do not consider issues relating to the acceptance of a first article, or, generally, to the modification of specifications after award, since they concern contract administration, an area we do not consider under our protest function. 4 C.F.R. § 21.3(f)(1) (1986); Rubber Crafters, Inc., B-225421, Oct. 31, 1986, 86-2 C.P.D. ¶ 508. However, because a contract modification that goes beyond the scope of the contract is tantamount to a sole-source award that may not be justified, we will review an allegation that a modification goes beyond the contract's scope and should be the subject of a new procurement. Cray Research, Inc., 62 Comp. Gen. 22 (1982), 82-2 C.P.D. ¶ 376.

In determining whether a changed contract would be materially different from the contract originally awarded so that the modified contract should be the subject of competition, for guidance, we have looked to the "cardinal changes" doctrine developed by the Court of Claims to deal with contractors' claims that the government breached a contract by ordering changes that were outside the scope of the contract's Changes clause. See American Air Filter Co., 57 Comp. Gen. 285 (1978), 78-1 C.P.D. ¶ 136. The basic standard defined by the court for determining when a cardinal change has occurred is whether the modified work is essentially the same as the work for which the parties contracted. See Air-A-Plane Corp. v. United States, 408 F.2d 1030 (Ct. Cl. 1969).

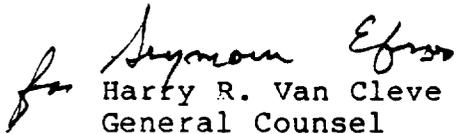
Thus, where it is alleged that a proposed contract modification will be outside the scope of the original contract, the question is whether the original purpose or nature of the contract would be so substantially changed by the modification that the original contract and the modified contract would be essentially different. See American Air Filter Co., 57 Comp. Gen. 285, supra, and ROLM Corporation, B-218949, Aug 22, 1985, 85-2 C.P.D. ¶ 212.

Initially, we note that these GSA specifications for anti-microbial carpet have been the subject of a recent decision by our Office in which we sustained a protest filed by

Interface. See Interface Flooring Systems, Inc., B-225439, Mar. 4, 1987, 87-1 C.P.D. ¶ _____. We found the specifications were ambiguous and subject to varying interpretation by bidders as to what constituted permanent antimicrobial protection and "repeated washing." Therefore, we recommended that GSA revise the specifications to more clearly set forth its requirements.

In this case, no protest was filed prior to bid opening, and all bidders competed under the specifications that resulted in the award to Metropolitan. While Shihadeh is now disputing GSA's interpretation of the contract specifications, since these specifications are subject to varying interpretations, we fail to see how GSA's interpretation represents a cardinal change. The crucial question to be answered in making a finding that a cardinal change occurred is whether the work, as modified, is essentially the same work the parties bargained for when the contract was awarded. Here, the work called for--the supply and installation of carpet tiles--has remained the same. While Shihadeh disputes the amount of antimicrobial protection that is required by the specifications, the basic contract has not been changed. Compare American Air Filter, 57 Comp. Gen. supra, where we found a modification which substituted a diesel engine for a gasoline engine, increased the price by 29 percent, and doubled the delivery time, was a cardinal change. No such major changes are involved here.

The protest is denied.


Harry R. Van Cleve
General Counsel