



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Clean Giant, Inc.
File: B-229885
Date: March 17, 1988

DIGEST

1. Protest that a contract modification was beyond the scope of the contract and thereby circumvented the competitive procurement process is denied where the modification did not result in the procurement of services materially different from the contract for which the competition was held.
2. There must be irrefutable proof that procuring officials had malicious and specific intent to injure a protester before we will presume bad faith on their part toward the protester.

DECISION

Clean Giant, Inc. protests the decision by the Air Force to allow ITT Base Services, Inc. (BSI), the prime contractor under Department of the Air Force contract No. F05603-87-C-008, to operate the dining facility at Cape Cod Air Force Station, Massachusetts. We deny the protest.

The Air Force awarded a prime contract for operation, maintenance and support of the Phased Array Radar Systems, PAVE PAWS site 1, at Cape Cod Air Force Station on April 8, 1987. The original contract did not include operation of the dining facility at Cape Cod, which was being provided at the time by Clean Giant. Clean Giant's contract originally ran through September 30, but later was extended until December 31. In October, BSI, the prime contractor, issued a request for quotations (RFQ) for operation of the dining facility; only one firm, Clean Giant, responded. Clean Giant quoted a total price of \$1.6 million for the base year and 3 option years. BSI determined that Clean Giant's price was excessive and that BSI could perform the services itself

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for \$800,000. The Air Force then amended BSI's prime contract to specifically include food service. The Air Force later further modified the prime contract to allow BSI to provide box lunches instead of the cafeteria-style meals called for by the RFQ.

The protester contends that the modification is outside the scope of work of BSI's prime contract and argues that the Air Force should conduct a new competitive procurement for the food services.

As a preliminary matter, the Air Force argues that our Office does not have jurisdiction in this case since it involves the award of a subcontract by a government prime contractor and the award is not "by or for" the government. See Bid Protest Regulations, 4 C.F.R. § 21.3(f)(10) (1987). To the extent that Clean Giant challenges BSI's failure to award it a subcontract under the RFQ, the protest does not present an issue subject to our review because at the time the RFQ was issued, BSI did not hold a prime contract which called for providing food services. As explained below, however, we will review Clean Giant's challenge to the Air Force's modification of BSI's prime contract to include operation of the dining facility.

We generally will not consider protests against an agency's decision to modify a contract since modifications involve contract administration, which is the responsibility of the contracting agency, not our Office. Northeast Air Group, Inc., B-228210, Jan. 14, 1988, 88-1 CPD ¶ 33. We will review, however, an allegation that a modification exceeds the scope of the existing contract and therefore should be the subject of a new procurement. Wayne H. Coloney, Inc., B-215535, May 15, 1985, 85-1 CPD ¶ 545. In determining whether a modification is beyond the scope of the contract, we look to whether the contract as modified is materially different from the contract for which the competition was held. Indian and Native American Employment and Training Coalition, 64 Comp. Gen. 460 (1985), 85-1 CPD ¶ 432.

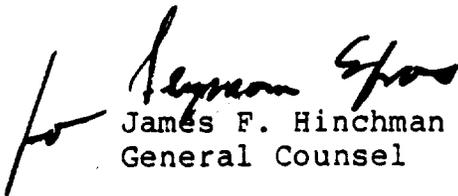
The statement of work set forth in the contract between the Air Force and BSI requires BSI to operate, maintain and support the phased array radar systems at the site. The protester has not argued and we do not believe that the initial modification of that contract to include food service was beyond the scope of the original contract between BSI and the Air Force. The subsequent modification of the prime contract which changed the requirement for cafeteria-style lunches to box lunches does not make BSI's prime contract materially different from the prime contract as originally competed. The modification has little effect on the scope of the support services provided by BSI under

the prime contract and constitutes only an insignificant portion of the total cost of those services. Under the circumstances, we find no basis to question the Air Force's decision to modify the prime contract instead of conducting a new procurement.

The protester also alleges bad faith on the part of the agency and BSI. Clean Giant contends that the base commander at Cape Cod improperly accepted employment with the prime contractor after leaving the Air Force, that the agency failed to adequately supervise Clean Giant's performance under the prior contract, and that Clean Giant employees were approached by BSI concerning employment opportunities prior to the date Clean Giant was informed that it was not the successful offeror.

Before we will presume bad faith, there must be irrefutable proof that the agency has a malicious and specific intent to injure the protester. SITEK Research Laboratories, B-228084, Dec. 28, 1987, 87-2 CPD ¶ 630. Here, the protester's allegations, even if true, do not evidence a specific and malicious intent on the part of the contracting officials to injure the protester. There is no indication, for example, that the base commander who allegedly accepted employment with BSI was involved in any way with the decision to modify BSI's contract. Similarly, to the extent that Clean Giant argues that the Air Force was negligent in failing to adequately supervise Clean Giant's contract performance, that contention is not sufficient to meet the high standard necessary to show bad faith. Reclamation Technology, Inc., B-225223, et al., Dec. 5, 1986, 86-2 CPD ¶ 650. Accordingly, we find that Clean Giant has failed to show that the contracting officials acted improperly.

The protest is denied.


James F. Hinchman
General Counsel