

DECISION

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

FILE: B-209723

DATE: May 10, 1983

MATTER OF: CDI Corp.

DIGEST:

1. Acceptance of a proposal which does not conform with a material solicitation requirement without amending solicitation to provide offerors an opportunity to respond to changed requirements is improper.
2. A contract modification, issued 2 months after contract award, which represented exercise of a contract option to expand the contractor's level of effort, did not exceed the scope of the contract or have the effect of circumventing the procurement statutes.

CDI Corporation protests the award of a contract to Technicolor Government Services, Inc. under request for proposals (RFP) No. FWS-9-0BS-82-068 issued by the Fish and Wildlife Service, Department of the Interior. CDI contends that the agency prevented it from competing on an equal basis with Technicolor by effectively relaxing a solicitation requirement for Technicolor without informing CDI. We deny the protest.

The RFP was issued to secure technical support services for the Western Energy and Land Use Team. The technical support is required to obtain, enter, manipulate, display and analyze geographic data relating to management and protection of fish and wildlife in areas in which energy resources are being developed. The scope of work statement sets forth numerous job titles and positions (e.g., remote sensing specialist, computer systems analyst) relating to the technical services and describes the activities each of these contractor employees is expected

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to perform. For each job category, the solicitation sets forth a quantity of hours (base hours) for a base year (fiscal 1983) and 1 option year (fiscal 1984). It also sets forth a total number of hours ceiling for the base and option years. The Government reserves the right to increase actual hours worked under the contract from the base hour amount up to the ceiling.

Offerors were to propose fixed hourly rates for each job category. The fixed hourly rates are computed in the price schedule by multiplying the hourly wage to be paid the employee by a multiplier that represents overhead, general and administrative expenses, fees and profits. This fixed hourly rate is then multiplied by the number of base hours for the labor category to arrive at a total amount for the category. The total amount for all the categories is added to relocation and equipment costs, if any, to produce the total evaluated price. The contract is to be awarded to the technically acceptable offeror that offers the lowest total evaluated price for the base year and the option year. Offerors are required to submit prices for the ceiling amounts, but these prices are not used in evaluating the bids.

The solicitation includes a Service Contract Act (SCA) minimum wage determination issued by the Department of Labor (DOL) for twelve classifications of employees employed on the contract for drafting, engineering, mapping, surveying and related services. One classification is "cartographic technician" with an hourly minimum wage of \$9.49. The RFP describes the services to be performed by cartographic technicians and specifies a base amount of 4160 hours of cartographic technician services in both 1983 and in 1984.

It appears that CDI and Technicolor believed that the services the RFP designated to be performed by a cartographic technician could adequately be performed with a less skilled job classification. Technicolor surmised that the services could be performed by a "terminal operator," a classification in the DOL Dictionary of Occupational

titles, but for which there was no wage determination. On this basis, Technicolor entered \$5.25 as the wage rate for a cartographic technician. CDI submitted two price schedules with its initial proposal, "Schedule A," which designated a "cartographic technician," as required by the RFP, to be paid \$9.49 per hour in fiscal year 1983 and \$10.15 in 1984, and alternate "Schedule B," identical to Schedule A except that it designated a "cartographic aide," rather than a "cartographic technician," to be paid \$6.11 per hour in fiscal 1983 and \$6.54 in 1984. The wage determination attached to the RFP fixed the minimum wage for a cartographic technician at \$6.11 per hour.

The Fish and Wildlife Service evaluated the initial proposals and determined that the proposals of Technicolor and CDI, as well as that of one other offeror, were technically acceptable. Technicolor submitted the low price of \$525,725 for the 2 years of base labor. CDI was the second-low offeror with a Schedule A price of \$727,272 and a Schedule B price of \$689,507.20.

In the course of negotiations, the contracting officer informed CDI that the Government was not interested in CDI's alternative price Schedule B because it would result in an unfair evaluation of the other proposals, and advised it to formulate its best and final offer on the basis of the job categories and wage rates prescribed by the RFP. The contracting officer disclosed that if there was in fact a discrepancy between the job category and the job description, an adjustment could be made after award based on a review by the DOL. CDI thereafter submitted a best and final offer which included a cartographic technician to be paid \$9.49 in 1983 and \$10.15 in 1984.

Following the receipt of best and final offers, the contracting officer noticed that Technicolor used a lower rate (\$5.25) for a cartographic technician than specified by the wage determination. It appears that at this point the contracting officer found that the cartographic technician classification did not match the job description in the RFP. Ostensibly, the contracting officer concurred with Technicolor's assertion that the services described are those of a "terminal operator," a job title for which there was no wage determination. In this regard, DOL

regulations provide that if a wage determination is attached to the solicitation, and the determination does not list a class of service employees to be employed under the contract, the employees:

"shall be classified by the contractor so as to provide a reasonable relationship between such classifications and those listed in the attachment, and shall be paid such monetary wages and such fringe benefits as are determined by agreement * * * of the contracting agency, the contractor and the employees who will perform on the contract or their representatives." 29 C.F.R. § 4.6(b)(2) (1982).

The contracting officer has found that the classification "terminal operator," to be paid \$5.25 per hour, constitutes a proper wage conformance under DOL guidelines.

Recognizing that the proposals of CDI and Technicolor were not submitted on an equal basis, the contracting officer recalculated Technicolor's price on the basis of a \$9.49 wage rate, which resulted in a total price of \$569,946. Since this price is approximately \$169,000 less than CDI's total price of \$739,079, the Fish and Wildlife Service awarded the contract to Technicolor.

CDI contends that Technicolor's proposal materially deviated from the requirement of a cartographic technician, to be paid at least \$9.49 as prescribed in the RFP and that the agency did not evaluate the proposals on a common basis. We agree.

It is a fundamental principle of Federal procurement that offerors must be treated equally and be provided a common basis for the preparation of their proposals. Host International, Inc., B-187529, May 17, 1977, 77-1 CPD 346. In negotiated procurements such as this, any proposal which ultimately fails to conform with the material terms of the solicitation should be considered unacceptable and should not form the basis of an award. See Computer Machinery Corporation, 55 Comp. Gen. 1151 (1976), 76-1 CPD 358. If an agency wishes to accept such a proposal, it must place the other offerors on notice of the specification changes

and provide an opportunity for all offerors to compete for the requirement. Union Carbide Corporation, 55 Comp. Gen. 802 (1976), 76-1 CPD 134; Motorola Inc., Communications Group, B-200822, June 22, 1981, 81-1 CPD 514.

Clearly, Technicolor offered a different category of labor as a substitute for the cartographic technician specified in the RFP and its proposal does not therefore fully conform with the material requirements of the RFP. It is also clear that the contracting officer in effect concluded that a terminal operator, rather than a cartographic technician, would meet the agency's minimum needs. This change, however, was not communicated to the offerors by means of an amendment to the solicitation. Thus, we find that the Fish and Wildlife Service's actions in this regard were improper. The uncommunicated change is especially objectionable in view of the fact that the contracting officer specifically advised CDI that the agency was not interested in CDI's Schedule B which was based on the job category "cartographic aid" with a wage of \$6.11.

Nonetheless, we fail to perceive how CDI was prejudiced by the unequal treatment because even if CDI and Technicolor had competed on an equal basis with respect to the classification in question, Technicolor's offer would have remained low by a substantial margin. The effect of the agency's actions on the relative standing of CDI and Technicolor is unusually predictable because the pricing schedule requires offerors to enter a wage rate and overhead and profit multiplier for each job category. As noted, Technicolor's evaluated price for the 2 years was \$525,725 compared to CDI's price of \$739,079, a difference of \$213,354. Over the 2 years, Technicolor's price for the services associated with the cartographic technician classification was \$54,735 ($\$5.25 \text{ hourly rate} \times 1.2616 \text{ overhead/profit} \times 4160 \text{ hours} = \$27,539 \text{ for } 1983$; $\$5.25 \text{ hourly rate} \times 1.2453 \text{ multiplier} \times 4,160 \text{ hours} = \$27,206 \text{ for } 1984$) and CDI's price was \$118,851 ($\$9.49 \text{ hourly rate} \times 1.47 \text{ multiplier} \times 4160 \text{ hours} = \$58,032 \text{ for } 1983$; $\$10.15 \text{ hourly rate} \times 1.44 \text{ multiplier} \times 4160 \text{ hours} = \$60,819.20 \text{ for } 1984$). If CDI's wage for the category is reduced to \$5.25, the amount entered by Technicolor, its price for the category would be \$63,564.80 and its total price would be

\$683,792.80, still \$158,067.20 higher than Technicolor's total price. In view of the fact that the entire proposal amount for the services in question is less than one-half of the cost advantage represented by Technicolor's proposal, it is unquestionable that had the Fish and Wildlife Service amended the solicitation to change the classification from cartographic technician to terminal operator and reopened negotiations with respect to that labor category, as it clearly should have done, Technicolor would have remained the low offeror by a substantial margin. In our view, the record adequately demonstrates that the relaxation of the requirement did not affect the relative standing of the protester and awardee and, therefore, CDI was not prejudiced.

Last, CDI contends that a modification of Technicolor's contract shortly after award, expanding the required level of effort, further demonstrates preferential treatment of Technicolor. CDI claims that the modification, which increased the contract amount by \$127,894, was issued 4 days after award, suggesting that the Fish and Wildlife Service was aware of the increased requirement prior to award. CDI contends that instead of awarding a contract and immediately modifying it, the agency should have amended the solicitation to reflect the increased requirement and reopened negotiations.

Generally, an allegation concerning a contract modification is not for resolution under our bid protest function since it involves contract administration, a matter within the authority of the contracting agency. Symbolic Displays, Incorporated, B-182847, May 6, 1975, 75-1 CPD 278. We will review such allegations, however, when it is alleged that the modification exceeds the scope of the contract and has the effect of circumventing the procurement statutes. Die Mesh Corporation, B-190421, July 14, 1978, 78-2 CPD 36.

We find that the modification neither exceeded the scope of the contract nor had the effect of circumventing the procurement statutes. The RFP states:

"The Government may require the offeror to expand the base hours and/or add new labor categories in the level of effort at fixed

ceiling hours and ceiling rates. The Government reserves the right to exercise any or all of the types of labor and quantity of hours up to the respective ceilings."

In our view, the modification did not exceed the scope of the contract, but rather merely represented the exercise of the option delineated above by expanding the hours and labor categories. Moreover, we disagree with CDI that the agency was aware of the increased need prior to award. The contract was awarded on September 29, with performance to begin on October 1. The modification was issued on November 30 with an effective date of October 4. The inference to be drawn from these facts is that during the first 2 months of performance, a greater level of effort than anticipated was required to perform the support services. Thus, CDI has not presented a basis upon which to disturb the contract award.

The protest is denied.



Acting Comptroller General
of the United States