

DECISION



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

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FILE: B-211273

DATE: December 5, 1983

MATTER OF: The Lawyers Cooperative Publishing Company

DIGEST:

1. While contract modifications generally are the responsibility of the procuring agency in administering the contract, GAO will consider a protest that a modification went beyond the contract's scope and should have been the subject of a new procurement, since such a modification has the effect of circumventing the competitive procurement statutes. A modification does not exceed the contract's scope, however, as long as the modified contract is substantially the same as the contract that was competed.
2. GAO finds that the agency's modification of a contract for a computer-assisted legal research system to include party names, year of the decision, and court jurisdiction of the cited cases is not outside the contract's purpose of obtaining legal research through the use of computers.

The Lawyers Cooperative Publishing Company (LCP) protests the addition of an "Insta-Cite" capability to the contract awarded to West Publishing Company under request for proposals (RFP) DCXOH-82-026 issued by the Administrative Office, United States Courts, for a full-text, computer-assisted legal research system for the federal judiciary for fiscal year 1983. The contract also reserves to the government the option to renew on an annual basis for an additional 4 years.

LCP contends that the addition of a "citation verification" capability to West's contract through Insta-Cite is a cardinal change which, by not being separately procured, violates the competitive procurement statutes--in particular the Brooks Act, 40 U.S.C. § 759 (1976). For the reasons set forth below, we find LCP's protest to be without merit.

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The United States Courts received three proposals in response to the RFP. Two were found to be technically acceptable--one proposal from Mead Data Central offering the Lexis System and one from West offering the Westlaw System. The proposals of Mead Data Central and West were evaluated in the areas of the 12 mandatory RFP citation features, mandatory RFP support requirements, offeror experience and business reputation, optional features, and cost. Responding to one of the 12 mandatory features (citor capability), Mead Data Central offered an internal citator, Shepard's citations, and a citator developed by LCP named "Auto-Cite." West offered an internal citator and Shepard's citations. From the evaluation, West's proposal was the highest rated. Consequently, a contract was awarded to West.

Following the award to West, LCP submitted an unsolicited proposal to the United States Courts requesting that a noncompetitive award be made to the company for its Auto-Cite. Despite the fact that the United States Courts had already evaluated Auto-Cite and its relative merit as a single feature in the proposal of Mead Data Central, the procuring activity considered LCP's unsolicited proposal. However, LCP was notified that a noncompetitive award could not be made to it for Auto-Cite because of "budgetary limitations."

Thereafter, West increased its Westlaw System by adding a citator similar to Auto-Cite known as "Insta-Cite." The United States Courts amended West's contract in order to add this citator at no extra or special charge.

LCP asserts that West's Insta-Cite is a new and different computer-assisted legal research service which should have been acquired by a new and additional, competitively awarded contract. According to LCP, the modification to West's contract renders the contract materially different from the contract for which competition was held pursuant to the above-described RFP. LCP argues that West's system, prior to the addition of Insta-Cite, merely produced in list form the volume number and page of the Federal Reporter for every subsequent federal case in which the accessed case was cited. LCP argues that a citation verification system like Auto-Cite or Insta-Cite also provides the party names, year of the decision, and the court of jurisdiction for not only the accessed case, but also all the cases in which that case is cited. Thus, LCP takes the position that the United States Courts' addition of Insta-Cite to West's computer

research system is more than just increasing the amount of data to West's computer software; it is the acquisition of a totally distinct computer-assisted legal research system.

The United States Courts states that the purpose of the RFP under which West was awarded a contract was to secure a computer-assisted legal research system consisting of telecommunications, support services, legal data bases, and terminals capable of providing timely full-text retrieval of legal materials for approximately 41 to 50 locations. The United States Courts also states that the RFP specifically required this legal research system to have "citor capability." Consequently, the United States Courts argues that the modification which added Insta-Cite is within the scope of West's contract.

In response, LCP asserts that the RFP under which West was awarded the contract did not request a "citation verification service." LCP emphasizes that, unlike "citors" such as Shepard's, a citation verification service verifies the accuracy of citations and analyzes the continued validity of the particular case being researched. In addition, LCP argues that if a citation verification service had been sought by the United States Courts as part of the original RFP, the competitive factors might have been different and West might not have won the award. Finally, LCP argues that the addition of a citation verification service is a material addition from a cost standpoint. In this regard, LCP points out that Mead Data Central's use of its Auto-Cite under a prior contract with the United States Courts accounted for at least 13 percent of that contract's total cost.

We generally will not consider a protest against a contract modification, since modifications involve contract administration which is the responsibility of the procuring agency, not this Office. Memorex Corporation, 61 Comp. Gen. 42 (1981), 81-2 CPD 334. We will review, however, an allegation that a contract modification went beyond the contract's scope and should have been the subject of a new procurement. American Air Filter, 57 Comp. Gen. 285 (1978), 78-1 CPD 136. The reason is that such a modification could be viewed as an attempt to circumvent the competitive procurement statutes. Cray Research, Inc., 62 Comp. Gen. 23, 82-2 CPD 376; Tilden-Coil Constructors, Inc., B-211189.3, August 23, 1983, 83-2 CPD 236.

It is not a simple matter to determine whether a changed contract is materially different from the competed so that the contract as modified should have been the subject of a new competition (unless a sole-source acquisition was justified). Cray Research, Inc., supra. For guidance, we have looked to Court of Claims decisions involving the "cardinal changes" doctrine, which was developed to deal with contractors' claims that the government had breached its contracts by ordering changes that were outside the scope of the changes clause. See American Air Filter Co.--DLA Request for Reconsideration, 57 Comp. Gen. 567, 572 (1978), 78-1 CPD 443.

The Court of Claims defined the basic standard for determining whether a cardinal change occurred as whether the modified work is essentially the same as that for which the parties contracted. See Air-A-Plane Corporation v. United States, 408 F.2d 1030 (Ct. Cl. 1968). In applying this standard to situations where, as here, a firm that is not a party to the contract complains that a modification is not within the scope of the competition that initially was conducted, we have stated that the question is whether the original purpose or nature of the contract has been so substantially changed by the modification that the contract to be performed is essentially different from the contract for which the competition was held. Cray Research, Inc., supra.

From our review of the circumstances of the modification to West's contract, we conclude that the United States Courts' action was not tantamount to conducting a new procurement within the meaning of the competitive procurement statutes and regulations. Contrary to LCP's assertions, we see no significant difference between the added Insta-Cite and West Shepard's citations in terms of being something other than another type of research aid. As noted by the United States Courts, the purpose of the RFP under which West was awarded a contract was to secure a legal research system using the computer. While West's Insta-Cite (or LCP's Auto-Cite) may add to research capability, it is still a legal research service. Consequently, we find irrelevant LCP's attempts to characterize Insta-Cite or Auto-Cite as citation verification rather than citation capability.

We deny LCP's protest.


for Comptroller General
of the United States