



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Data Transformation Corporation

File: B-274629

Date: December 19, 1996

Michael R. Lemov, Esq., and Eric J. Marcotte, Esq., Winston & Strawn, for the protester.

Evelyn S. Tang, Esq., Department of Justice, for the agency.

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DIGEST

1. In determining whether a task order under a contract was issued properly, the General Accounting Office (GAO) will look to whether there is a material difference between the contract, as modified by the task order, and the original contract. In determining the materiality of a modification, the GAO considers factors such as the extent of any changes in the type of work, performance period and costs between the contract as awarded and as modified, as well as whether the original contract solicitation adequately advised offerors of the potential for the type of task order issued.

2. The General Accounting Office will consider whether the agency itself has historically procured allegedly "beyond-the-scope" task order services under a separate and independent contract, and whether the agency has previously awarded the requirement on a basis of a different statement of work, such that it appears that the agency itself has viewed the task order services as separable and essentially different in nature from the contract under which the task order was issued.

DECISION

Data Transformation Corporation (DTC) protests the Department of Justice's (DOJ) decision to issue a task order to CACI, Inc. under contract No. 3C-G-ENR-0051, for services to operate DOJ's Nationwide Central Intake Facility (NCIF). DTC, which had been operating the NCIF for DOJ since November 1993, contends that the task order is beyond the scope of CACI's contract and that DOJ should have conducted a competition for the acquisition.

We sustain the protest.

THE DTC CONTRACT

Request for proposals (RFP) No. JHJMD-92-R-0059 was issued on August 31, 1992 and awarded to DTC on November 18, 1993. Section C of the RFP, entitled "Nationwide Central Intake Facility Statement of Work," advised offerors of the historical background and objective of the RFP, which follows.

The RFP stated that it is the policy of the government to make every effort to collect debts owed to the United States. Such debts arise under a myriad of federal programs, including direct, guaranteed or insured student loans made by the Department of Education, loans for veterans by the Department of Veterans Affairs, loans to farmers, small business loans made by the Small Business Administration, and many other programs. In fact, the RFP stated that "almost every [f]ederal agency has some program for lending money or guaranteeing or insuring loans to citizens for an infinite variety of purposes."

The RFP also stated that when these loans or other types of debt go into default, creditor agencies, after their own efforts to collect, refer the debts to DOJ for litigation and judgment "pursuant to the Federal Debt Collection Procedures Act of 1990, 28 U.S.C. § 3001 et seq." Before 1986, these debts were referred directly to the United States Attorney's Offices (USAOs) in whose federal judicial districts the debtors resided. The basic problem with this procedure was that all federal debts were coming to DOJ "through 94 separate 'doors'" (the 94 USAOs), making it very difficult for DOJ to keep accurate and reliable data on the number and dollar value of debts. In 1986, the Congress enacted the Federal Debt Recovery Act, 31 U.S.C. § 3718(b) (1994), which authorized DOJ to "run a pilot project of contracting with lawyers and law firms in the private sector to help the [USAOs] handle the litigation to collect delinquent debts." The Office of Debt Collection Management (DCM), the organization within DOJ charged with implementing the pilot project, decided to require that all debts be referred for litigation through a single "door," a Central Intake Facility (CIF), which would then refer the debts to the USAOs and private counsel in the districts. The concept proved so successful that it was expanded into the existing NCIF, which began receiving all civil debts being referred to all 94 USAOs and all debts in bankruptcy where the creditor agencies wanted to file Proofs of Claims.¹ The RFP stated DOJ's objective as follows:

"The purpose of this contract is to establish and operate a NCIF to receive, process, track and provide litigative support for the DOJ debt collection activities and perform other related tasks as discussed

¹Debt referrals to DOJ in 1991 alone approached half a billion dollars with a total inventory of 50,355 pending civil debts valued at \$1.3 billion.

herein. In general, the DOJ requires that the NCIF have as its centerpiece a computer with a data base containing information about debts owed to the United States that have been referred to the DOJ for litigation, with the capability to communicate electronically with all 94 USAOs, the Department's legal divisions, any private counsel under contract with the Department to litigate Federal debts, and Justice's various client agencies."²

The RFP required the successful contractor to provide specific staff positions, including NCIF Project Manager; NCIF Operations Manager; Computer Operations Manager; Manager of Financial Operations; Training Manager; Senior Systems Analyst; Programmer; Management Analyst; Data Entry Technician as well as other personnel. The RFP specified the required qualifications for each position. The RFP also required the successful contractor to produce detailed and specialized management reports relating to the debt collection effort.

The contract awarded to DTC included a base period and four option years. DOJ exercised options for fiscal year 1995 and 1996. However, on August 16, 1996, just before the expiration of the option year for fiscal year 1996, DOJ notified DTC that it would not exercise the option for fiscal year 1997. According to DOJ, it also informed DTC that the agency "was planning to conduct a full and open competition for operation of the NCIF within the next year."³ In the meantime, DOJ, having failed to exercise DTC's option and not having conducted a competitive procurement to replace DTC, issued a task order under CACI's contract, which contained the following "[s]cope of [w]ork":

"The contractor shall provide all professional, technical and clerical services, including supervision and labor, required to perform the tasks

²DOJ requested a Delegation of Procurement Authority (DPA) from the General Services Administration (GSA) to conduct the procurement. The DPA request emphasized that the sole purpose of the procurement was to acquire services necessary to operate the NCIF and that DOJ would conduct the procurement under full and open competition.

³The agency states that the DTC contract called for implementation of an "off-the-shelf" automated debt tracking and litigation support system as proposed by DTC. The delivery and implementation of the software are not a part of the task order that was issued to CACI and are not a part of this protest. The agency notes that there were "multiple delays" in implementation of the automated systems which was not "off-the-shelf" as represented by DTC. DTC delivered the software in May 1996 and acceptance testing is currently underway. As the protester states, however, the actual operation of the NCIF, which is the subject of the task order issued to CACI, was the most significant portion of DTC's contract from a cost standpoint.

specified herein, which shall include: (a) complete processing of all cases referred to the Department of Justice (DOJ) for litigation, to include receipt, entry and forwarding to the appropriate judicial districts; (b) processing of any payments (e.g., cash, checks and other negotiable instruments such as money orders, cashiers checks and electronic fund transfers) whether received directly or through physical or electronic transmission of data from a lock box facility; (c) communication of deposit information to the Debt Accounting Operations Group (DOAG) for subsequent disbursement to the referring agencies; (d) performing monthly quality control reviews over all areas of data entry; (e) maintaining proper records, including reconciliations, according to all applicable Federal Government standards; (f) providing reports to the government; (g) providing training and help-support for all users of the NCIF system(s); and (h) performing, on an as needed basis, tasks related to DOJ's debt collection activities. . . ."

Upon learning that a task order would be issued by DOJ under CACI's contract, DTC filed this protest with our Office.

THE CACI CONTRACT

The RFP (No. JSNER-92-R-0027) that resulted in a contract award to CACI was issued on October 26, 1992 for litigation support services for DOJ's Environment and Natural Resources Division (ENRD). The procurement was conducted within approximately the same timeframe as the NCIF procurement. The RFP stated that DOJ has litigation support programs in three of its litigating divisions, Antitrust, Civil and ENRD. The RFP stated that "[a]ll three programs consist of government specialists who define case/project-specific requirements and then manage contractor-provided case/project support using contracts designed for that division's unique mission."⁴ ENRD, formerly known as the Lands Division, was created on November 16, 1909, as the Public Land Division. For the first 50 years, the Division's litigation was primarily concerned with federal lands, water and Indian disputes. ENRD's responsibilities grew to use and development of the nation's natural resources and public lands, wildlife protection, Indian rights and claims, cleanup of the nation's hazardous waste sites, and defense of environmental challenges to government programs and activities. The client agencies served by ENRD include the Departments of Agriculture, Commerce, Defense, Energy, the Interior, and Transportation, as well as the Environmental Protection Agency. The RFP stated that the objective of the contract was to obtain nonpersonal professional and other services and products to "support ENRD case managers in

⁴DOJ's Acquisition Plan noted that "each litigating component [of DOJ] has tailored its contract requirements to meet the specific needs of [that] component."

the whole range of litigation support activities," such as document acquisition; database creation; database utilization; specialized services in support of litigation; pre-trial and trial support; administrative systems support; and management and control. The "[s]cope of [c]ontract" was as follows:

"This contract will be utilized to provide Litigation Support Services⁵ to the Department of Justice and other Federal agencies on an indefinite delivery, indefinite quantity, task order basis. Individual task orders issued under this contract may support any DOJ organization or Federal agency on a local and/or nationwide basis. This contract will also be utilized to support case-related administrative functions."

The RFP further explained that ENRD "is organized into nine litigating sections, each specializing in different areas of the law and the environment." In addition to the litigating divisions, "an Executive Officer performs administrative support functions for the Division." Organizational charts for ENRD were included in the RFP. There was no mention in the ENRD RFP (or the ENRD Acquisition Plan) of the possibility or potential for providing NCIF (that is, nationwide debt collection) support services.

ANALYSIS

The protester argues, for a variety of reasons, that once the agency decided not to exercise the option, it was required to conduct a new procurement for the NCIF services. In support of its actions, the agency argues that the task order issued to CACI was within the scope of its contract because the CACI RFP "[s]cope of [c]ontract" provision, quoted above, permitted support to "any DOJ organization or Federal agency on a local and/or nationwide basis." The agency also notes that the general requirements under the CACI RFP provided for "Litigation Support Services for [ENRD], other Department of Justice (DOJ) components, and other Federal agencies." The agency also argues that the litigation services support contract consists of "generic work," such as document acquisition, database creation, database design and manuals, data conversion, data entry, pre-trial and trial support, administrative systems support and management and control which is the same "type of work" as required under the NCIF effort. In other words, the agency argues that both involve "litigation and support functions" such as data entry and

⁵The agency's Acquisition Plan explained the purpose of litigation support as consisting of "a wide range of services and products that help attorneys acquire, screen, analyze and organize evidentiary and other documents to prepare for and to conduct trials. Through the use of computer data processing, microfilming, document scanning/imaging and other technologies, litigation materials are effectively organized so that the litigating attorney can rapidly locate and use information to win lawsuits."

database creation. Additionally, the agency argues that the CACI solicitation advised offerors that task orders could be issued for "extremely broad range of project requirements." Finally, the agency states that the task order is approximately \$2.1 million, which is well below the maximum order limitation of the CACI contract.⁶ For the reasons discussed below, we reject the agency's arguments.

In determining whether a task order is proper, we look to whether it is beyond the scope of the original contract. Indian and Native Am. Employment and Training Coalition, 64 Comp. Gen. 460 (1985), 85-1 CPD ¶ 432. We consider factors such as the extent of any changes in the type of work, performance period and costs between the contract as awarded and as modified by the task orders, as well as whether the original contract solicitation adequately advised offerors of the potential for the type of task order issued. See Dynamac Corp., B-252800, July 19, 1993, 93-2 CPD ¶ 37. Additionally, we consider whether the agency itself has historically procured the task order services under a separate contract, previously awarded the requirement on a basis of a different statement of work, such that it appears that the agency itself has viewed the task order services as separable and essentially different in nature. See Neil R. Gross & Co., Inc., 69 Comp. Gen. 292 (1990), 90-1 CPD ¶ 212.

In this case, our review of the ENRD litigation support services contract finds no mention of the possibility of performing the services necessary to operate the NCIF. While, as the agency argues, the ENRD litigation support services contract is intended to provide a general range of litigation support services, we think the scope of those services is reasonably limited to serving the purpose for which the contract was awarded. The ENRD contract defines that purpose as helping "attorneys acquire, screen, analyze and organize evidentiary and other documents to prepare for and to conduct trials" and using technology to ensure "litigation materials are effectively organized so that the litigating attorney can rapidly locate and use information to win lawsuits." We do not believe that a litigation support contract for one specific division of DOJ, engaged generally in the litigation of environmental and Indian disputes, contemplated taking over the entire nationwide debt collection efforts of the federal government; certainly, there was nothing in the CACI RFP which reasonably advised offerors of this possibility.⁷ Our views that the

⁶CACI's contract was valued at \$12.1 million in fiscal year 1996 and \$14 million in fiscal year 1995.

⁷Congress recently codified authorization for the use of task and delivery order contracts in the Federal Acquisition Streamlining Act (FASA) of 1994, Pub. L. No. 103-355, §§ 1004, 1054, 108 Stat. 3243, 3249, 3261 (1994). Although the CACI contract predates the effective date of FASA, the Senate Governmental Affairs (continued...)

operation of the NCIF was beyond the contemplation of offerors when the ENRD litigation support contract was awarded is further supported by the fact that DOJ conducted two separate concurrent procurements for the two requirements and intends to again conduct a separate procurement for the NCIF operation within the next 12 months. We conclude that the agency's issuance of the task order to CACI was an improper sole source award. We therefore sustain the protest.

We recommend that the agency expeditiously conduct a competitive procurement to meet its requirements for the operation of the NCIF in the shortest practicable time. We further recommend that upon selection of the successful offeror, the agency terminate the CACI task order. Additionally, we recommend that the protester be reimbursed its costs of filing and pursuing the protest, including reasonable attorneys' fees. Bid Protest Regulations, § 21.8(d)(1), 61 Fed. Reg. 39039, 39046 (1996) (to be codified at 4 C.F.R. § 21.8(d)(1)). The protester should submit its certified claim for costs to the contracting agency within 60 days of receiving this decision. Bid Protest Regulations, 61 Fed. Reg. supra (to be codified at 4 C.F.R. § 21.8(f)(1)).

The protest is sustained.

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⁷(...continued)

Committee Report on FASA expressed concern about "indiscriminate use of task order contracts for broad categories of ill-defined services." S. Rep. No. 103-258, 103d Cong., 2d Sess. 15 (1994); see 41 U.S.C. § 253h(b).