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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Atlantic Coast Contracting, Inc

File: B-288969.4

Date: June 21, 2002

Hugh R. Overholt, Esq., Jennifer L. Bowman, Esq., and Albert R. Bell, Jr., Esq., Ward and Smith, for the protester.
Reginald M. Jones, Esq., and Karl F. Dix, Jr., Esq., Smith, Currie & Hancock, for Mark Dunning Industries, an intervenor.
Captain Ronald D. Sullivan, Department of the Army, for the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Modification to contract for refuse collection and disposal services, which only shifted the responsibility of the contractor to perform front-end industrial refuse collection with its own vehicles and containers instead of with government-furnished vehicles and containers, did not exceed the scope of the original contract because the fundamental nature or purpose of the contract remained unchanged.

DECISION

Atlantic Coast Contracting, Inc. protests the Department of the Army's modification to contract No. DABT01-01-C-0006, for refuse collection and disposal services at Fort Rucker, Alabama, with Mark Dunning Industries. The modification is for Dunning to perform the requirement for front-end industrial refuse collection under the contract with its own trucks, instead of with government-furnished vehicles. Atlantic contends that the modification exceeded the scope of the contract and resulted in an improper sole-source award.

We deny the protest.

The refuse collection and disposal services contract, competitively solicited under invitation for bids (IFB) No. DABT01-01-B-0005, and awarded to Dunning on September 14, 2001, was to obtain solid waste collection and disposal services at Fort Rucker Alabama, for a base year with four yearly options. The total contract award price was \$2,819,990. Atlantic did not submit a bid under the IFB. Due to two

unrelated protests, performance of the contract was delayed until March 1, 2002. Since July 2001, Atlantic had performed solid waste collection and disposal services at Fort Rucker under monthly purchase orders to cover these services until this contract went into effect.

The contract specifications required the contractor to furnish all labor, supervision, materials, supplies, and equipment necessary to collect and dispose of solid wastes resulting from residential activities, as specified by the contract. Contract § C.1.b. The contract also provided that “[t]he Contractor shall provide collection of solid wastes from residential, commercial, industrial, and community areas as shown in Attachment J-2.” Id. § C.5. Attachment J-2 identified the location and frequency of pick-up of refuse involving the various refuse collection services. The contractor was also required to collect “all types of commercial and industrial solid wastes” at locations and frequencies set forth in paragraphs 1 through 3 of Attachment J-2, and that “[u]nscheduled (on-call) collections and other nonscheduled services are included in the indefinite quantity portion of the contract.” Id. § C.5.c.(3)(B). Regarding the indefinite collection requirements, the contract stated the following:

f. INDEFINITE COLLECTION SERVICE REQUIREMENT. The Contractor shall provide two (2) refuse vehicle operators to perform the tasks listed below.

- (1) Landfill. The Contractor shall transport all refuse to [Alabama Department of Environmental Management] approved Subtitle “D” landfill designated by the [contracting officer].
- (2) Vehicle. The Contractor shall use Government furnished front-loading refuse collection vehicles, which are specifically designed for refuse collection and are compatible with Government furnished 8 cubic-yard refuse containers. The Contractor shall be provided two (2) Government vehicles to be utilized for this service.
 - (A) The Government will provide all fuel, maintenance and any required repair work to the two (2) Government furnished vehicles.
- (3) Refuse Containers. The Government will furnish all refuse containers covered under this section.

....

g. INDEFINITE COLLECTION SERVICE SCHEDULED TASKS. The Contractor shall perform the tasks below on a recurring or scheduled

basis. A summary of scheduled task requirements is provided in Attachment J-5.

- (1) Refuse Collection. Refuse shall be collected at regularly scheduled intervals as specified herein. . . . Refuse shall be collected using a Government furnished front-loading garbage truck that lifts the dumpster over the truck cab and empties it into a hopper behind the cab where the refuse is compacted.

Id. § C.5.¹ Attachment J-5 lists the locations for the indefinite collection service scheduled task.

In January 2002, the Army decided that furnishing government-owned vehicles to the refuse collection contractor to perform this service was not practical. Initially, the Army had included the requirement to have the contractor furnish drivers and perform this service only until the agency could outsource the requirement under a commercial activities contract, since government personnel traditionally had performed the service. See Contracting Officer's Statement, Tab H2, at 1-2. However, Atlantic advised the Army during the course of its interim contract (in October 2001) that the two government-owned vehicles were not in working order. Thus, the Army added the responsibility of providing the trucks to Atlantic's purchase order at an additional cost of \$19,500 per month. The Army then decided that it might be more feasible to have Dunning provide both the drivers and the trucks, and in January 2002, solicited a proposal from Dunning, which also included providing new containers because the existing containers were damaged. Id. at 2-3.

On March 15, the Army issued modification No. P00002 to Dunning's contract to add the requirement to provide trucks and containers under Item No. 0003AD. This increased the unit cost for the item from \$11,399 to \$22,467.25--this was \$3,012.75 less than Atlantic's interim contract for the services (which did include the cost of supplying the containers). Id. This portion of this contract modification to Dunning's contract represents a \$603,220 increase in the total contract price for the remaining 4 years and 6 ½ months of Dunning's contract term.² On that same date, Atlantic protested the modification as being outside the scope of the contract.

¹ Separate monthly and extended prices for the indefinite collection services was covered by Section B, Item No. 0003AD, of the schedule.

² This modification made a variety of other changes to the contract price, e.g., obtaining a credit from the contractor for tipping fees, none of which has been protested. The total result of the changes was to increase the contract price to \$3,068,874.73.

Once a contract is awarded, our Office will generally not consider protests against modifications to that contract, because such matters are related to contract administration and are beyond the scope of our bid protest function. 4 C.F.R. § 21.5(a) (2002); Stoehner Sec. Servs., Inc., B-248077.3, Oct. 27, 1992, 92-2 CPD ¶ 285 at 4. The exception to this general rule is where, as here, a protester alleges that a contract modification is beyond the scope of the original contract, because, absent a valid sole-source determination, the work covered by the modification would otherwise be subject to the statutory requirements for competition. Neil R. Gross & Co., Inc., B-237434, Feb. 23, 1990, 90-1 CPD ¶ 212 at 2, aff'd, Department of Labor--Recon., B-237434.2, May 22, 1990, 90-1 CPD ¶ 491.

In determining whether a modification triggers the competition requirements in the Competition in Contracting Act of 1984, 10 U.S.C. § 2304(a)(1)(A) (2000), we look to whether there is a material difference between the modified contract and the contract that was originally awarded. Evidence of a material difference between the modification and the original contract is found by examining any changes in the type of work, performance period and costs between the contract as awarded and as modified. The question for our review is whether the original nature and purpose of the contract is so substantially changed by the modification that the original and modified contract would be essentially different and the field of competition materially changed. Engineering & Professional Servs., Inc., B-289331, Jan. 28, 2002, 2002 CPD ¶ 24 at 4.

Here, the Army's modification did not make any changes to the original nature and purpose of the contract. First, the front-loading refuse collection service is but one of multiple refuse collection services to be performed under the contract, the bulk of which were to be performed using the contractor's trucks. Contract § C.4. Moreover, the contract specifically included as one of the multiple line items the requirement that the contractor would perform the very front-loading refuse collection services that were the subject of this modification, albeit with government furnished vehicles.³ As noted, the decision to modify the requirement to have the contractor perform this task with its own vehicles and containers--as the contractor does on other contract line items--rather than with government-furnished equipment--as originally required by the contract--came about only because of the condition of the government's equipment (and at Atlantic's suggestion). Since the essence of the requirement was for the contractor to provide front-loading refuse collection, the Army's modification, merely shifting the responsibility for the vehicles and the containers needed to carryout the service to the contractor, did not substantially change the contract, nor make it essentially different. Finally, there is nothing in the record evidencing, nor has Atlantic shown, that if this portion of the

³ Contrary to the protester's arguments, we find no confusion in the contract as to whether the requirements to perform front-loading refuse collection services were included.

modification had been included in the original contract, the field of competition would have materially changed, particularly given that the contractor generally has to provide its own vehicles under the contract.

Atlantic also argues that the significantly increased cost to the unit price for this line item of services establishes that the modification exceeded the scope of the contract. However, where, as here, it is clear that the nature and purpose of the contract have not changed, a substantial price increase alone does not establish that the modification is beyond the scope of the contract. While the contractor's unit price for the service did substantially increase, the Army noted that this price was lower than Atlantic's price for performing the same service. Thus, we find that the increased cost is not in this case persuasive evidence that the modification exceeded the contract's scope. See Techno-Sciences, Inc., B-277260.3, May 13, 1998, 98-1 CPD ¶ 138 at 8; Defense Sys. Group et al., B-240295 et al., Nov. 6, 1990, U.S. Comp. Gen. LEXIS 1182 at *11-13.

In sum, we find that the modification did not exceed the scope of the contract, because it did not materially change the purpose of the contract.

The protest is denied.

Anthony H. Gamboa
General Counsel