

BCA ALLOWS CLAIM BECAUSE AGENCY DID NOT UNDERSTAND ITS OWN SOLICITATION AND CONTRACT

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In an interesting Armed Services Board of Contract Appeals case, the Board sustained a contractor's claim for \$962,020 for increased scope of work in creating technical manuals. *Command Languages, Inc. d/b/a/ CLI Solutions*, ASBCA No. 61216, Feb. 7, 2020. The contract was awarded by the Army Contracting Command for manuals for training the Afghanistan National Army to maintain armored vehicles.

The Army classifies equipment maintenance by four levels:

Level 10- Maintenance performed by the equipment operators

Level 20-Maintenance performed by the organizational unit which operates the equipment

Level 30-Tasks that are more than a unit can perform, including some refurbishing

Level 40-Maintenance that are performed at a national depot level, such as refurbishment and Overhauls.

When the Army considered new maintenance manuals for the Mobile Strive Force Vehicle ("MSFV"), Original Equipment Manufacturer ("OEM") level 10 and level 20 manuals were already in use in Afghanistan, and had been translated into Dari and Pashtu. The Army did not have 30 and 40 level manuals to support more advanced training, and sought more accurately translated 30 and 40 level manuals that could more easily be understood by Afghan personnel. The 10 and 20 level manuals were written at 7th-10th grade reading level, and the Army wanted more accurately translated 30 and 40 level manuals but at a 3rd grade reading level. The Army's goal was to procure technical manuals that would allow primarily people from an agrarian background with an average 3rd grade level of literacy the ability to look at a pictorial display and understand how to perform the maintenance tasks, thinking pictures would be easier to understand rather than using just words.

CLI came up with a low cost proposal, and prior to commencing performance, made it clear to the Army that it planned to "refer only" to level 10 and 30 manuals wherever possible to reduce its cost of performance. The idea was that CLI would reference (rather than reproducing) all remove and install tasks already in the 10 and 20 level manuals. During performance, the Government in the second Pre-Technical Manual ("PTM") for the first time indicated that the work packages could not include references to the 10 and 20 level manuals. CLI considered this additional work involving 10 and 20 level manuals to be outside the scope of the contract, but prepared a plan to incorporate 10 and 20 level manuals into the 30 and 40 manuals. CLI submitted a claim for \$962,020 for the increased scope of work, which the contracting officer denied.

The Board sustained the full claim, noting that "the plain terms of the statement of work excluded 10 and 20 level tasks. The contract required production of 30 and 40 level manuals and...no more." The contract did not require CLI to achieve the Army's goal, but only to create and produce simplified 30 and 40 level manuals at a third grade literacy. "Whatever aspirational

goals the Army finds in the contract, without more, they did not bind CLI to performed work that was otherwise excluded from the contract.” The Army never articulated in the contract its desire to obtain simplified pictorial 10 and 20 level manuals—it only contracted for 30 and 40 level manuals. The Board noted that there was a specific pre-bid inquiry and an explicit answer by the Army prior to Army, a response that CLI could rely upon.

Takeaway: An Agency must understand the exact requirements in its own solicitation and resulting contract. If the agency seeks work outside the scope of the written contract, the contract must be amended to include that work, and the contractor must be granted an equitable adjustment.

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