



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: August 14, 2017

CBCA 3516, 3749

COAST TO COAST COMPUTER PRODUCTS,

Appellant,

v.

DEPARTMENT OF AGRICULTURE,

Respondent.

Cynthia Malyszek of Malyszek & Malyszek, Westlake Village, CA, counsel for Appellant.

Patricia Leigh Disert, Office of the General Counsel, Department of Agriculture, Albuquerque, NM, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **SHERIDAN**, and **ZISCHKAU**.

ZISCHKAU, Board Judge.

Appellant, Coast to Coast Computer Products (CTC or contractor), appeals the denial of its certified claims seeking \$680,638.86 in breach of contract damages, increased costs, constructive changes, and consulting and legal fees arising under its blanket purchase agreement (BPA), and resulting call orders, with respondent, the Department of Agriculture (USDA) Forest Service (Forest Service or agency). The parties have submitted the case for decision on the written record pursuant to Board Rule 19 (48 CFR 6101.19 (2016)). For the reasons discussed below, we deny the appeals.

Background

I. RFQ and Award

On March 7, 2009, the Forest Service issued request for quotes (RFQ) AG-7604-S-09-0004 under the General Services Administration Federal Supply Schedule (FSS). Appeal File, Exhibit 3 (all exhibits are in the appeal file unless otherwise noted). The RFQ was issued for the award of “one (1) or more single-award BPAs” to provide, on an as-needed basis, printers, plotters, scanners, peripherals, and ancillary services. *Id.* at 82-83 (emphasis omitted). The BPA was divided into three categories: (1) printers/plotters and installation; (2) scanners; and (3) external hard drives. *Id.* at 82. Bidders could submit quotes on any one or more of the three categories. *Id.* at 83.

The agency did not provide an estimate of the quantity of products it would require under any one of the three categories. Actual quantities, according to the RFQ, would be determined on an as-needed basis, subject to the Government’s determination of need and the availability of funding. Exhibit 3 at 83. Furthermore, the RFQ provided that the Government would be “obligated only to the extent of authorized BPA Calls actually placed against the BPA,” and that “[n]o funds are obligated by issuance of this BPA.” *Id.* at 83-84 (emphasis omitted).

The RFQ listed a ceiling price for the first year of the BPA of \$18 million, with a minimum order of \$100. The total ceiling price over the term of the BPA, including all option periods and all three categories, was \$24 million. Exhibit 3 at 84. CTC alleges that it submitted its quote for category 1 based on an estimated sales volume of \$9 million to \$12 million out of the first year’s \$18 million ceiling. Complaint at 10.

CTC received notice of the BPA award for category 1 on October 21, 2009. Exhibit 8 at 194. The contractor’s award was split into two sub-categories. The first sub-category was for printers, plotters, and installation, and the second was for Sharp Multifunction printers. *Id.* The period of performance for the BPA was set for October 20, 2009, to October 20, 2010. Exhibit 4 at 121.

II. Terms of the BPA

The BPA incorporated the RFQ and CTC’s proposal, and set forth the performance requirements for CTC. Under section 6.13.1 of the BPA, the contractor was required to participate in a post-award teleconference or on-site meeting to be held within five calendar days after BPA award. Exhibit 4 at 143.

Section 6.4 (“Warranties”) required that “to promptly fulfill warranty requests, the Contractor shall maintain the necessary spare parts inventory of components that have historically been determined within the industry to require frequent replacement.” Exhibit 4 at 134. Section 9.0 (“Ordering Information”) required the “contractor and Government [to] work together to provide Government offices a catalog listing of approved supplies/services available for purchasing under this BPA.” *Id.* at 146. The listing was required to include a “description of the supply/service and its applicable BPA pricing,” and the “Contractor’s secure web-site ordering address for internet orders (if available).” *Id.* For this online ordering system, the RFQ also provided that:

Testing, image load integration, and verification by the Government is a pre-requisite to any Category 1, 2, and 3 configurations being placed in the Government’s catalog listing of approved supplies/services available for purchase under the BPA. . . . The Contractor shall assist the Government in populating this catalog by providing the necessary written or electronic product and product ordering information as requested by the Government.

Id. at 179.

Section 13.1 outlined the roles and responsibilities of the agency contracting officer. The BPA gave the contracting officer responsibility for administration of the BPA, and provided that “[n]o individual other than the signatory [Forest Service contracting officer] for this BPA has authority to modify or terminate this BPA on behalf of the Government for any reason.” Exhibit 4 at 147.

III. Performance under the BPA

A post-award conference was held three months following award of the BPA, on January 27, 2010. It was attended (in person or by telephone) by CTC’s Attila Galamb (government sales manager) and Rick Vogel (document and data system support specialist), representatives of CTC’s subcontractors, and five representatives of the Forest Service, including Gilbert Massiatt (contracting officer), Robert Topic (contracting officer’s representative (COR)), and Gina Thomas (Asset Management Specialist). Exhibit 9 at 196-98. The meeting began with introductions and a discussion of the BPA. *Id.* at 196-99. The discussion topics included the division of categories, the call minimum and maximum not-to-exceed dollar amounts, and the fact that “[o]nly the Contracting Officer can add, subtract or change in any way the contract.” *Id.* at 199. The Forest Service filed an affidavit in which the contracting officer described his discussions at the meeting. Exhibit 20 (Affidavit of Gilbert Massiatt (Oct. 9, 2015)). In his affidavit, Mr. Massiatt states that a “considerable amount of time was expended to explain to Coast to Coast and attending Government

personnel that any change to the BPA must be approved by the Contracting Officer and be effected through formal written modification.” *Id.* ¶ 5. He further explained that if a change were to be contemplated, the contractor would be notified in writing through a “formal letter” and asked to “provide [its] cost in time, resources and dollars.” *Id.* Furthermore, if “agreement is reached during the negotiation on proposed change, then the change would be effective through a formal written modification.” *Id.* Finally, the contracting officer explained that the “contractor was told not to expend any time, effort or costs unless authorized by the Contracting Officer; the COR could not require any changes to the BPA.” *Id.* Although CTC claims that Ms. Thomas held herself out as “implementing” changes to the BPA, both she and Mr. Massiatt deny she had any authority to change the terms of the BPA. Massiatt Affidavit ¶ 5; Affidavit of Gina Thomas (July 30, 2015) ¶ 6. Ms. Thomas states clearly in her affidavit that she had no authority to change the BPA or any contract terms and never claimed to have such authority. Thomas Affidavit ¶ 6.

CTC’s Mr. Galamb does not dispute that the contracting officer made the statements referenced above at the January 27 meeting. Mr. Galamb explains in his affidavits that after the January 27 meeting, CTC had no further communication with Mr. Massiatt and that Ms. Thomas “was left in control of the contract implementation.” Affidavit of Attila Galamb (June 1, 2015) (“Galamb Affidavit I”) ¶ 8. “Gina Thomas told [Mr. Galamb] on several conference calls that anything relating to the implementation of [the] change orders would be discussed only with her and she would communicate on [CTC’s] behalf with the CO.” Affidavit of Attila Galamb (Jan. 22, 2016) (“Galamb Affidavit II”) ¶ 8; Affidavit of Attila Galamb (Oct. 12, 2016) (“Galamb Affidavit III”) ¶ 9. Mr. Galamb states that “Gina [Thomas] was in charge of the implementation and rollout of the contract from a technical perspective, which included the mechanics of order delivery and receipt, as well as oversight of the devices being offered.” Galamb Affidavit III ¶ 9. Ms. Thomas, however, denies that she ever discussed “changes” or “change orders” with Mr. Galamb or anyone else at CTC. Thomas Affidavit ¶ 12.

At the January 27 meeting, there was discussion of procurement questions submitted by the Forest Service to CTC, including the following:

- What type of on-line web page do you plan to set up for procurement?
- Will the customer be able to print their order?
- Will the system produce a ‘trackable’ order number?
- What type of ancillary device/supplies do you plan to add to the procurement web page?
- Will the order page contain an order tracking option . . . ?
- Will the procurement web page contain contact information in case an escalation is needed by the customer?

Appellant's Rule 19 Filing, Attachment 2. Mr. Galamb acknowledged receipt of these questions. Galamb Affidavit III ¶ 8. Mr. Galamb addresses these questions relating to the "Contracting Officer's request for Coast to Coast to set up an on-line webpage and ordering portal" and states that there "was no such requirement in the Request for Proposal, and no such online procurement/ordering portal requirement was spelled out in the Award document." *Id.* Mr. Galamb states that he considers that the "fact that the Contracting Officer went into details asking about the mechanics of a web portal he knew Coast to Coast was going to have to create and design, is clear evidence that [the Forest Service] requested this constructive change order to be made." *Id.*

Attendees also discussed a list of questions prepared by CTC. Exhibit 9 at 205-06. The list provided to the Board included the questions asked and the Forest Service's answers. *Id.* CTC asked: "How will the devices be procured? Will this be a number of micro-purchases, or a single blanket rollout? Will the individual Regional offices order themselves?" The Forest Service answer was: "ALL FS [Forest Service] locations will place their own orders using Government VISA or ETF (PO) [purchase order]. This is why an electronic catalog with all options is now needed." *Id.* at 205. To another question as to whether the Forest Service could estimate the number of devices it would need in a year, the Forest Service replied: "Cannot answer. This is totally dependent on if local sites will be replacing their inventory, consolidating or making other decisions, such as repair services vs. replacement." *Id.*

At the conclusion of the January 27 meeting, Mr. Galamb signed an acknowledgment that he had heard and understood all topics discussed. Exhibit 9 at 199. According to affidavits submitted by the Forest Service representatives who worked on CTC's BPA, CTC never said during the meeting or at anytime thereafter that the Forest Service had directed a change or required CTC to perform extra work related to CTC's web portal or online ordering system. Affidavit of Robert Topic (July 31, 2015) ¶ 10 ("Coast to Coast never raised or discussed in telephone calls or emails any of the issues claimed in their complaint or in Mr. Galamb's declaration."); Thomas Affidavit ¶ 10 ("To the best of my knowledge (not being privy to all calls), Coast to Coast never raised issue with or stated they were required by the FS to make such requests."); Affidavit of James R. Jefferis (Sept. 23, 2015) ¶ 12 ("The FS never requested these or any other potential 'constructive change.' Nor did Coast to Coast raise or notify the government of any of these purported changes in any emails I received."). In a February 3, 2010 email message from Mr. Galamb to the contracting officer and other Forest Service representatives, including Ms. Thomas, memorializing results of a telephone conference earlier that day, Mr. Galamb states: "We need to finalize the master list of all purchasing contacts to load to our website ordering portal. Which names do we put with which addresses on the list we have?" Respondent's Motion to Dismiss, Attachment 1 at 1. There is no indication in this communication that

CTC considered there to have been a constructive change regarding its website ordering portal. In an email message of January 14, 2011, in which Mr. Galamb requests that the contracting officer extend the BPA for one additional year, there is no reference to any constructive change being made to the BPA or to an order issued under the BPA. *Id.*, Attachment 3 at 1.

CTC first raised its claims of constructive changes relating to its web portal and online ordering system nearly two years after its initial certified claim and notice of appeal were submitted. In his affidavit of October 12, 2016, Mr. Galamb concedes that the alleged constructive changes were not requested in writing by anyone with the Forest Service. He asserts that they were requested by Ms. Thomas in “numerous telephone conversations between the date of the Initial PreWork Conference and the end of 2010.” Galamb Affidavit III ¶ 7. Mr. Galamb further states that CTC “did not invoice the USDA Forest Service for the changes that were requested by Gina Thomas because we anticipated that we would be able to defray the increased cost of these changes, by the USDA provided estimate of \$18 million dollars in sales we anticipated receiving from the Forest Service over the life of the BPA.” *Id.* ¶ 10. There is no contemporaneous communication in the record where CTC gave notice to the Forest Service that it considered Ms. Thomas’ requests regarding CTC’s web portal and online ordering to be a change to the BPA or any subsequent order. In sum, we find that CTC’s web portal and online ordering work, to allow Forest Service procurement representatives to order products and services from CTC’s web portal, was undertaken voluntarily by CTC and Mr. Galamb to maximize Forest Service ordering of CTC products and services.

In his affidavits, Mr. Galamb asserts that the Forest Service made nine constructive changes to the BPA and subsequent orders by requiring creation and/or modification of CTC’s existing web portal to provide the Forest Service additional functionality when agency representatives sought to place orders for CTC’s products and services. CTC describes its claimed changes as follows: (1) information technology (IT) customer relationship management (CRM) changes to the CTC website; (2) IT setup and development of logins and passwords for all 1100 Forest Service locations; (3) “setup and addition” for import of 1100 locations on the CTC customer database; (4) cataloging of “online inventory for cloning out to all other locations” to ensure the BPA catalog would be available to all 1100 Forest Service locations for online ordering; (5) website content review and approval to ensure that CTC’s online ordering tool was functioning correctly and had all required elements; (6) “website design and compilation of pages containing unique USDA part numbers, prices, customer support information, warranty information, device drivers and software,” and other unspecified changes; (7) requesting CTC to procure and store extra random access memory (RAM) chips for devices to ensure CTC’s ability to meet rapid delivery deadlines; (8) time spent by Mr. Galamb to deal with the Forest Service BPA

changes described above; and (9) time spent by Mr. Rick Vogel, another CTC employee, to deal with the BPA changes described above. Galamb Affidavit I ¶¶ 9-17.

Following the January 27, 2010 meeting, the first call order under the BPA was processed on March 20, 2010. During the next year, 107 individual orders were placed against the BPA, totaling \$1,729,000, or a little over 9% of the first year's ceiling price. Complaint at 7; Galamb Affidavit I ¶ 18.

CTC also alleges that the Forest Service interfered with CTC's ability to market its products and services to Forest Service buyers by preventing CTC sales representatives from directly contacting Forest Service buyers. During performance under the BPA, the Forest Service reported two incidents of improper communications by CTC employees with Forest Service representatives. On one occasion, the contracting officer advised Mr. Galamb that a CTC sales person had communicated with a Forest Service representative in an "aggressive, hostile, and . . . inappropriate" manner. Exhibit 13 at 235. On another occasion, CTC was reminded that communications with the Forest Service regarding pending requirements must include a contracting officer during such a discussion. Exhibit 14 at 250. CTC sales representatives had been directed not to contact Forest Service employees directly regarding CTC's BPA or to solicit orders. Exhibits 13 at 235, 14 at 250; Galamb Affidavit III ¶ 11 ("I was warned and admonished in a telephone call that Coast to Coast should cease and desist from making any efforts to promote, market, or advertise the BPA to USDA Forest Service Customers."). At no time, however, prior to filing this appeal, did CTC notify the contracting officer that CTC considered these admonitions to constitute a change to the BPA or an order.

IV. Modifications to the BPA

Three bilateral modifications were made to the BPA. Each modification provided that "[a]ll other terms and conditions remain unchanged." Exhibits 5, 6, 7. The first modification, number 0001, was issued on January 21, 2010. Exhibit 5. Modification 0001 changed CTC's vendor code on the BPA to correct a previous mistake. Exhibit 9 at 204. CTC did not allege at any time before or after this modification was issued that a constructive change was being made to the BPA, or that additional work would be required. Topic Affidavit ¶ 10.

A second bilateral modification was issued on March 4, 2010. This second modification, number 0002, extended the termination date of the BPA in response to CTC's request for a three-month extension of the BPA period to account for the delay in holding the post-award conference. Exhibit 6; Complaint at 8. A new termination date was set for January 30, 2011. Exhibit 6. In addition, the modification replaced a page of the RFQ, at

the request of CTC, to remove a warranty option from one offered product. Exhibit 10 at 208. Again, there were no discussions between the parties regarding any alleged change, or claim of extra work, under a BPA order. Topic Affidavit ¶ 10.

The final bilateral modification, number 0003, was issued on August 31, 2010. This modification incorporated a revised negotiated price list. Exhibit 7. The price list was revised because the Forest Service had noticed a discrepancy in the part number and the item descriptions for two of three items provided by CTC. *Id.* The modification corrected the discrepancy without making any further changes to CTC's price list or the BPA. *Id.* At no time leading up to this modification did CTC allege a constructive change or extra work claim. Topic Affidavit ¶ 10.

It was not until August 2013 that CTC alleged that the Forest Service had constructively changed the BPA. Complaint, Count IV. Furthermore, CTC waited until June 2015 to allege that extra work was added to CTC's scope of work. Galamb Affidavit I ¶¶ 9-17; Topic Affidavit ¶ 10. Both the Forest Service COR and asset management specialist, who worked on CTC's BPA, stated that they never suggested, requested, or directed CTC to make any changes to the BPA. Topic Affidavit ¶ 9; Thomas Affidavit ¶ 9.

V. Request for Equitable Adjustment and Appeal to the Board

CTC filed a certified claim for a sum of \$680,638.86, alleging breach of contract and lost income. According to CTC, the claim was submitted on August 31, 2012. The Forest Service contracting officer denied having received the claim and, therefore, did not issue a final decision. CTC treated the non-response as a deemed denial and filed an appeal with the Board on August 29, 2013; it was docketed as CBCA 3516. CTC resubmitted the certified claim with documentation on December 5, 2013. The contracting officer issued a final decision denying the claim on January 24, 2014. CTC's notice of appeal of this decision was docketed as CBCA 3749. The two cases were subsequently consolidated.

In its complaint, CTC alleges four constructive changes to the BPA. The first change concerns delay and disruption. CTC claims that "[b]ecause of the Government's issuing of defective specifications, the contract was delayed and constructive change orders were issued." The alleged delay lasted from October 29, 2009, through April 1, 2010. Galamb Affidavit I ¶ 7. Mr. Galamb argues that the delay was the fault of the Government because "the internal award paperwork at the USDA Forest Service contracting offices was never fully completed and filed," and, therefore, the BPA was never finalized internally within the agency. Mr. Galamb does not remember if CTC "formally vocalized in writing, at the time of delay, that [CTC was] incurring damages resultant from the government's delay." The only evidence CTC offers of its damages is Mr. Galamb's statement that when "all of the

costs represented in [its claim] have been factored, Coast to Coast has incurred a loss on this contract.” Galamb Affidavit II ¶ 11.

The second change alleged by CTC is that the Forest Service “actively interfered with Coast to Coast’s ability to sell under this contract,” violating its duty of good faith, fair dealing, and not to hinder performance. The third change alleged is that the Forest Service “entered into another contract for the same products and directed customers to [the] new contract.” Finally, CTC alleges as a fourth constructive change that the Forest Service prepared a negligent estimate of its requirements.

The agency filed a motion for summary relief and to dismiss for failure to state a claim. In its motion, the Forest Service argued that because a BPA is not a contract under the CDA, the Board does not have jurisdiction. In addition, the agency argued that CTC can only claim a constructive change against an order that has been placed under the BPA, that the Forest Service here did not place any call orders creating requirements in addition to those under the BPA, and that CTC is not claiming constructive changes under any specific call orders. The agency denies issuing defective specifications or constructively changing any call order contract. Finally, the agency denies that it caused any delay, and states that the BPA was extended by three months at the request of CTC to account for any lost time after BPA award, and this agreement was embodied in a bilateral modification.

On June 21, 2016, the parties agreed to submit the consolidated appeals for resolution under Board Rule 19 based on a written record without a hearing.

In its Rule 19 submission, CTC argues that because it filed a proper certified claim, jurisdiction should be found over the individual call orders placed under the BPA. Furthermore, CTC argues that the Board “should grant in favor of a contractor’s belief and reliance that a BPA is a contract” and that a “contractor is not trained in the legal sense and assumes that a BPA is an agreement and contract.” As to the constructive change allegations, CTC states that it believes all changes made by agency representatives were being authorized by the contracting officer. Finally, CTC alleges that the BPA did not prevent CTC from advertising its BPA award or call orders.

Discussion

The Contract Disputes Act (CDA) grants the Board jurisdiction when there is “any express or implied contract . . . made by an executive agency for” any of four matters, one of which is “the procurement of property, other than real property in being.” 41 U.S.C. § 7102(a) (2016). A BPA is not considered a contract under the CDA because it lacks mutuality of consideration. *Crewzers Fire Crew Transport, Inc. v. United States*, 741 F.3d

1380, 1382-83 (Fed. Cir. 2014); *Zhengxing v. United States*, 71 Fed. Cl. 732, 738, *aff'd*, 204 F. App'x 885 (Fed. Cir. 2006); *Sylvan B. Orr v. Department of Agriculture*, CBCA 5299, 16-1 BCA ¶ 36,522, at 177,924. Instead, a BPA is “a simplified method of filling anticipated repetitive needs for supplies or services by establishing ‘charge accounts’ with qualified sources of supply.” 48 CFR 13.303-1(a) (2015). A BPA is essentially a “framework for future contracts, which come into being when orders are placed and accepted under it.” *Dr. Lewis J. Goldfine v. Social Security Administration*, CBCA 2549, 12-1 BCA ¶ 34,926, at 171,741. Thus, the Board lacks jurisdiction under the CDA to consider claims arising under a BPA.

Individual authorized call orders actually placed under a BPA do, however, create a contractual obligation. *Zhengxing*, 204 F. App'x at 886-87. All terms and conditions of the BPA become part of those separate call orders, or contracts. *Hewlett-Packard Co.*, ASBCA 57940, *et al.*, 13 BCA ¶ 35,366, at 173,551-52. Any interpretation required of the terms of the BPA is treated as an interpretation of the terms of the call orders. *Id.*; *see also Brent Packer v. Social Security Administration*, CBCA 5038, *et al.*, 16-1 BCA ¶ 36,260, at 176,898 (interpreting the termination clause in the BPA in finding jurisdiction over call orders).

In this case, the Board does not have jurisdiction to address the claims arising out of the BPA itself, but it does have jurisdiction over the claims arising out of the individual call orders placed pursuant to the BPA. We will accordingly address CTC's claims as arising under the call orders actually placed by the Forest Service.

CTC first claims that the agency issued defective specifications, which delayed the performance of the contract. The alleged delay, according to CTC, necessitated change orders and extra work, resulting in damages. There is no evidence of defective specifications. The post-award meeting was, in fact, delayed three months past the required five days following award of the BPA, during which time the agency placed no call orders. Because there was no consideration under the BPA that the Forest Service would in fact place call orders, we cannot find any liability arising from the delay. Furthermore, CTC requested that the BPA be extended to compensate for the delay following BPA award. The Forest Service agreed and extended the BPA for three additional months as requested, and the agreement was memorialized in bilateral modification number 0002. During the period of the alleged delay, CTC did not state that it was sustaining damages, and it fails to point to any evidence of damages actually incurred.

Second, CTC claims that the Forest Service interfered with its ability to sell under the BPA. The BPA contains no requirement, however, that the Forest Service use the BPA in procuring printers and plotters, and the BPA was only one of many vehicles available to the

agency for procuring those goods. The Forest Service contracting officers retained discretion to decide which method of procurement to use for obtaining goods and services. *Crewzers Fire Crew Transport*, 741 F.3d at 1383 (finding that the Government was not bound to purchase from the BPA where the language of the BPA did not limit the Government's options for purchasing services provided under the BPA). CTC was instructed not to have its sales representatives directly contact Forest Service employees after at least two allegedly inappropriate contacts were made by CTC. Under the circumstances presented here, we conclude that the Forest Service did not wrongly interfere with CTC's ability to market its products and services.

Third, CTC alleges, without any evidentiary support, that the Forest Service entered into another contract for the same products and services as listed in the BPA, and directed agency customers to that new contract rather than to CTC's BPA. The BPA is not a requirements contract and the Forest Service could legitimately use any proper contracting vehicle or other valid method to procure necessary items, and was not required to place call orders under CTC's BPA beyond the minimum amount. *See Crewzers Fire Crew Transport*, 741 F.3d at 1383. We conclude that this claim is without merit.

As a fourth claim, CTC alleges negligent and "non-estimates" on the part of the Forest Service in issuing the RFQ. A BPA may be established when the "exact items, quantities, and delivery requirements are not known in advance and may vary considerably." 48 CFR 13.303-2(a)(1). An agency is not required to provide an estimate of the number of products it expects to order under a BPA, and cannot be held liable for a negligent estimate. Here, the Forest Service did not provide an actual estimate to CTC, and specifically stated that it could not estimate the number of products and services it would need over the term of the BPA. The agency merely provided a ceiling price that was not to be exceeded. This ceiling price is not an estimate. Accordingly, this claim is also without merit.

CTC alleges nine other constructive changes made by the Forest Service to the BPA that required CTC to perform extra work. Even if we were able to find that these were covered by the initial certified claim, there is no evidence in the record to show that CTC contemporaneously believed these to be changes to the scope of work. CTC did not raise issue with any of the alleged changes until five years after the termination of the BPA at issue. Rather than being changes directed by the Forest Service, we find that CTC's effort to modify its web portal and online ordering system, so that Forest Service buyers would be able to place orders more efficiently, amounted to a business decision by CTC to aid the marketing of its goods and services to the Forest Service. The web portal and online ordering were topics discussed at the post-award conference held between CTC and Forest Service personnel. The Forest Service questions posed to CTC do not suggest that the Forest Service was dictating to CTC how to change or create its online ordering system.

Rather, the questions sought information on what CTC's online system could accomplish, entirely consistent with the RFQ and awarded BPA. CTC never advised the Forest Service at the post-award meeting or at any other time during performance that CTC believed it was being required to perform extra work beyond contract requirements. Accordingly, we cannot sustain CTC's claim that its work was constructively changed.

Decision

We have considered all of CTC's arguments and conclude that it has not demonstrated entitlement to recover on any of its claims. The appeals are **DENIED**.

JONATHAN D. ZISCHKAU
Board Judge

We concur:

STEPHEN M. DANIELS
Board Judge

PATRICIA J. SHERIDAN
Board Judge