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**Comptroller General  
of the United States**

**United States General Accounting Office  
Washington, DC 20548**

# Decision

**Matter of:** Engineering & Professional Services, Inc.

**File:** B-289331

**Date:** January 28, 2002

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Francesco A. Musorrafiti for the protester.

Kevin C. Dwyer, Esq., David A. Churchill, Esq., and Nathan C. Guerrero, Esq., Jenner & Block, for General Dynamics Communications Systems, an intervenor.

Maj. Edward Beauchamp, and Gary Theodore, Esq., Department of the Army, for the agency.

Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## **DIGEST**

Contract modification resulting from an engineering change proposal (ECP) to provide technologically advanced ruggedized handheld computers is not beyond the scope of the basic contract where the original request for proposals (RFP) called for a wide array of hardware and software; the RFP contemplated that the successful contractor would use the ECP process to incorporate technological advances to the required products; and the modification does not change the fundamental nature and purpose of the underlying contract.

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## **DECISION**

Engineering & Professional Services, Inc. (EPS) protests the issuance by the Army's Communications-Engineering Command (CECOM) of modification No. P00204 to contract No. DAAB07-94-C-N853 (hereinafter referred to as contract No. N853). The modification is to acquire a quantity of ruggedized handheld computers (RHC).

We deny the protest.

## **BACKGROUND**

In 1995, CECOM awarded a 10-year requirements contract to GTE Government Systems Corporation to support the Army's Common Hardware Software-2 (CHS-2)

program.<sup>1</sup> The CHS-2 program provides command and control computer workstations, server hardware, handheld terminal units (HTU), peripherals, software, operating systems, and databases for the military. These systems support Department of Defense customers worldwide in managing information for intelligence, maneuver control, combat artillery, combat support, and air defense, allowing critical instantaneous communications during times of war and peace. Contracting Officer's (CO) Statement at 1; AR exh. C, Contract No. N853, Statement of Work (SOW), Executive Summary. The contract contemplated that during the first 5-year performance period, the Army would acquire a full range of ruggedized and commercial off-the-shelf computer equipment ranging from the HTUs to high capacity workstations; the contractor was to provide maintenance and support for the last 5 years of the contract.

In 2000, Litton Data Systems, the original equipment manufacturer (OEM) of the HTUs acquired under GD-CS's contract, announced that it would not extend its then-current pricing for the units beyond the contract's initial 5-year ordering period. As a result, the Army determined that Litton was no longer a viable source for the HTUs, and embarked on a joint market research effort with GD-CS to find a vendor to replace Litton. CO Statement at 2; AR exh. H, CO Determination, Sept. 15, 2000.

The market research identified six firms that manufacture the units. One of those firms, Talla-Tech, was developing a handheld computer with improved features. In July 2000, GD-CS submitted an engineering change proposal (ECP) under contract No. N853 to the Army proposing Talla-Tech's improved handheld computer, the Tacter-31.<sup>2</sup> The agency describes the Tacter-31 as a compact, messaging terminal, designed to serve all combat echelons on the digital battlefield. According to the Army, the Tacter-31 is equipped with many technological advances not available in the CHS-2 HTU, at a comparable overall cost. Some of those improved features include a 256-color display versus 4 colors, with touch screen capability; embedded

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<sup>1</sup> After award, the Army and GTE executed a novation reflecting that General Dynamics Corporation had acquired GTE, and had changed its name to General Dynamics Government Systems Corporation (GD-GSC). Agency Report (AR) exh. D, modification No. ARZ999, Sept. 30, 1999. Pursuant to that document, the parties agreed, among other things, that GD-GSC would assume all of GTE's then-existing obligations to the government, including performance of contract No. N853. For clarity, we refer to General Dynamics-Communications Systems (GD-CS), an operating unit of GD-GSC, as the awardee of the basic contract.

<sup>2</sup> The parties do not dispute that the Tacter-31 was tested and selected by the Marine Corps Systems Command as the preferred system to handle the Corps's battlefield computing needs. Talla-Tech is also the OEM for handheld computers EPS provides under a different contract (No. M67854-97-D-2086) the Corps's awarded to EPS in 1997.

Global Positioning System; enhanced computing performance (Pentium III 500 megahertz (MHz) central processor unit (CPU) versus the 586 133 MHz CPU; increased RAM (128 MB RAM versus 64 MB RAM); a larger, removable hard-disk drive (10 gigabytes versus 512 MB); and a more robust, fully functional, backlit, keyboard. The Army states that the Tacter-31 will allow the military to perform its mission faster, thereby reducing the soldiers' risk of exposure in a hostile environment.

Based on its review, the Army deemed GD-CS's ECP technically acceptable, and changed the acronym of the units to RHC to differentiate them from the HTUs previously acquired under the basic contract. The Army also extended the original ordering period under GD-CS's contract by 3 years, through April 2003. AR exh. F, amend. No. P00153, Apr. 5, 2000. In August 2001, the agency issued modification P00204 to GD-CS's contract for the RHCs. This protest followed an agency-level protest which the Army denied.

#### PROTESTER'S CONTENTIONS

EPS contends that the modification is beyond the scope of GD-CS's contract. In this connection, EPS explains that soon after the Army awarded the basic contract to GD-CS, during the initial 5-year ordering period, the agency acquired HTUs that incorporated improved features over those specified in the original solicitation. The protester does not take issue with that acquisition. EPS maintains, however, that since the Army extended the contract's initial 5-year ordering period, and since it had already acquired advanced HTUs which met its needs during the initial ordering period, the contract modification to acquire the RHCs at issue here--with even more enhanced features--is beyond the scope of the original contract because the RHCs respond to agency needs that arose subsequent to the term of the original contract. Alternatively, EPS maintains that since the Marine Corps is the requiring activity for the items being acquired under the modification, and since EPS has a contract with the Marine Corps to provide handheld computers, the Marine Corps should be required to meet its needs by exercising production options under EPS's contract.

#### DISCUSSION

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) (2001); 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) (Supp. IV 1998), we look to whether there is a material difference between the modified contract and the contract that was originally awarded. Neil R. Gross & Co., Inc., *supra*, at 2-3; *see AT&T Communications, Inc. v. Wiltel, Inc.*, 1 F.3d 1201, 1205 (Fed. Cir. 1993). 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. Access Research Corp., B-281807, Apr. 5, 1999, 99-1 CPD ¶ 64 at 3-4; MCI Telecomms. Corp., B-276659.2, Sept. 29, 1997, 97-2 CPD ¶ 90 at 7-8. The question for our review is whether the original nature or 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. Everpure, Inc., B-226395.4, Oct. 10, 1990, 90-2 CPD ¶ 275 at 4. Here, as explained in greater detail below, the record is clear that the purpose and nature of the original contract were not substantially changed by the modification.

As a preliminary matter, the request for proposals (RFP) that led to the award of GD-CS's basic contract informed all potential offerors of the broad scope both of the CHS-2 program, and the wide range of supplies and services to be obtained under the contract. In particular, the RFP explained that the Army has a continuing requirement for a family of common hardware, peripherals, and software to satisfy the CHS-2 requirements. AR exh. C, RFP, attach. 8, SOW, at 7. The introduction to the SOW also listed a diverse array of hardware, software, and support services that would be acquired under the resulting contract. Id.

To further reinforce the broad scope of the contract, the SOW contained the following description of the supplies and services required:

A CHS-2 item is defined as any of the hardware components, software cables, manuals, services, and ancillary components needed to satisfy the Government's requirements as expressed in this [RFP] which are not currently in the Army inventory. These items constitute an interoperable family of modular building blocks, both Non-Developmental Items (NDIs) and developmental items (DIs) whose design and implementation is based upon the open systems architecture concept.

Id. (emphasis in original).

The RFP's SOW also made it clear that the Army contemplated that the technical requirements of the CHS-2 program would change over time as technological advances and innovations became available during the relatively long term of the contract. To that end, the SOW specifically required the successful offeror to incorporate those new technologies into the products required under the contract, setting forth the following provision:

The Army desires to obtain a family of common computer items that have [the] potential to take advantage of future advances in computer technology. Those CHS-2 items must exhibit a high degree of flexibility, including upgradeability and expandability to facilitate insertion of technology improvements to the CHS-2 hardware and software.

Technology Insertion is defined as the modification, enhancement or addition of CHS-2 products and services to incorporate technology advances which add value to the CHS-2 program, products and services, as these advances become available in the marketplace.

The contractor shall establish a technology insertion program to maintain cognizance of applicable advances in technology, identify these advances to the items, propose the necessary modifications, enhancements or additions to the Government through the ECP process and if the proposed improvements are acceptable to the Government, implement the changes [in accordance with] approved ECPs. Incorporation of the changes proposed shall not preclude full implementation of all hardware and software supported previously.

AR exh. C, Contract No. N853, attach. No. 8, SOW, Task No. 11--TECHNOLOGY INSERTION, at 188.

The intervenor points out, correctly we believe, that the quoted language is not limited to the enhancement or modification of existing items offered under the basic contract. Indeed, the provision itself defines “technology insertion” as referring to “the modification, enhancement or addition of CHS-2 products and services . . . which add value to the CHS-2 program, products, and services, as these advances become available in the marketplace.” *Id.* (emphasis added). The RFP thus clearly described the CHS-2 program as dynamic, and contemplated that the contractor would incorporate new technologies as they became available. The quoted provision also listed several specific areas and items the agency considered candidates for technology insertion, including “[a] lighter HTU . . . with functionality equal to or better than the CHS-2 HTU.” *Id.* ¶ 11.18 at 189. The record shows that, consistent with this provision, the contractor had previously added several new products to the CHS-2 contract. *See, e.g.*, AR exh. H, Modification No. P00070, Dec. 4, 1997, and No. P0061, Aug. 2, 2000.

In our view, the modification at issue in the protest does not alter the fundamental nature and purpose of the contract. Rather, modification No. P00204 merely serves to replace the HTUs acquired under the basic contract with the updated, technologically advanced RHCs with the same basic functionality, as was clearly contemplated by the RFP and the basic contract. The fact that the RHCs acquired under the modified contract incorporate advanced features not found in the original

HTUs does not render the RHCs entirely different or new items requiring competition, as EPS maintains. Where, as here, a contractor provides more technologically advanced equipment pursuant to a modification within the scope of the basic contract--i.e., the fundamental nature and purpose of the underlying contract remains unchanged--the modification is not improper. See Hewlett Packard Co., B-245293, Dec. 23, 1991, 91-2 CPD ¶ 576 at 3-4.

The agency further points out that the basic contract contemplated acquiring a maximum of 8,000 HTUs. Of that quantity, 4,576 had already been delivered prior to the issuance of the modification; the remaining 3,424 units will be the RHCs acquired under the modification. AR exh. H, CO Determination, supra, at 2-3. Thus, the modification does not expand on the total number of units contemplated by the basic contract. The agency further explains that, while unit prices will vary depending on configurations and year ordered, any differences in total costs will be negligible. EPS does not take issue with the agency's position in this regard.

In view of the broad scope and nature of the underlying contract, and especially in light of the contract's "Technology Insertion" provision--which explicitly contemplated that the contractor would use the ECP process to add new items and incorporate technological advancements to the required CHS-2 products--we think that potential offerors under the RFP reasonably could have anticipated the modification. See Paragon Sys., Inc., B-284694.2, July 5, 2000, 2000 CPD ¶ 114 at 3. In short, EPS has not established that the fundamental nature and purpose of GD-CS's contract was so materially changed by modification No. P00204 so as to require a separate competition.<sup>3</sup> See Hughes Space and Communications Co., B-276040, May 2, 1997, 97-1 CPD ¶ 158 at 4; Master Sec., Inc., B-274990, B-274990.2, Jan. 14, 1997, 97-1 CPD ¶ 21 at 6.

The protest is denied.

Anthony H. Gamboa  
General Counsel

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<sup>3</sup> EPS also challenges the Army's decision to extend the ordering period of the basic contract to acquire the remaining units. Since we conclude that the modification does not change the fundamental nature, scope, or overall term of the initial contract, and since the Army had identified its needs for the units during the initial 5-year ordering period, there is no basis to object to the extension. Similarly, we will not consider EPS's allegation that the Marine Corps should exercise an option under EPS's existing contract, since the decision whether to exercise the option is a matter of contract administration outside the scope of our bid protest function. 4 C.F.R. § 21.5(a) (2001). AVW Elec. Sys., Inc., B-252399, May 17, 1993, 93-1 CPD ¶ 386 at 3.