

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

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**FILE:** B-215535 **DATE:** May 15, 1985  
**MATTER OF:** Wayne H. Coloney Co., Inc.

**DIGEST:**

1. Generally, GAO will not consider protests against contract modifications, since these involve contract administration; however, where, as here, a protester alleges that a modification went beyond the scope of an existing contract and should have been the subject of a new procurement, GAO will determine whether the nature of the original contract has been changed so substantially that a new procurement should be conducted.
2. When disputed modifications do not make the contract to be performed essentially different from the one originally competed, the additional work is within the scope of the contract and a new procurement is not required.
3. When improper conduct on the part of government officials is alleged, the protester has the burden of proof, and the GAO will not rely on inferences alone to find misconduct. In a case where the protester's evidence is nothing more than its suspicion that the contracting agency may have released or will release its proprietary data to a competitor, but the agency denies any such intention, the protester has not met its burden of proof.
4. If a protester intends to argue that its competitor is independently gaining unauthorized access to its proprietary data, i.e., without agency involvement, then this is a dispute between private parties and thus is beyond the scope of GAO's bid protest function.

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5. When a protester questions its competitor's capacity to perform the additional work under a proposed contract modification, it is either protesting against the agency's affirmative responsibility determination--a matter that GAO does not review except under certain limited circumstances not present here--or raising a question of contract administration--generally beyond the scope of GAO's bid protest function.

Wayne H. Coloney Co., Inc., protests the Department of the Air Force's decision to modify contract No. F19630-81-D-0002 to allow the Sperry Corporation to modernize an Automated Fuels Accounting System (AFAS) which Coloney originally designed. The firm contends that the Air Force should instead conduct a new, competitive procurement for the work in question.

We deny the protest.

BACKGROUND:

Contract -0002 calls for Sperry to modernize 277 computer systems worldwide for the Air Force, the Defense Mapping Agency, and the North Atlantic Treaty Organization. Sperry was awarded the contract in January 1983 after participating in a technical evaluation, or "Compute-Off," with the Burroughs Corporation. After a number of modifications, contract -0002 now has a total estimated value of \$548,725,895.

The major objective of contract -0002 is to update "base-level computer systems"--in other words, to modernize the computer systems that help large military installations and their satellite units keep track of day-to-day activities. The Air Force has designated this modernization drive the "Phase IV Program" and has made the Automated Systems Program Office at Gunter Air Force Station, Alabama, responsible for its implementation.

One of the tasks assigned to Sperry under the Phase IV Program is updating the Standard Base Supply System (SBSS). The SBSS is a software package designed to provide the management information necessary to track and order base-level supplies. The AFAS is a sub-element of the SBSS. Coloney designed the AFAS in 1979 under an Air Force contract, No. F09603-79-C-1527, for the purpose of monitoring and recording data on the fuel and oil dispensed by base service stations. Under Coloney's system, the data is recorded on a punched paper tape which is then transported physically to another office to be entered into the SBSS. Sperry's new Phase IV hardware for the SBSS will not accept this punched tape. The information, therefore, would have to be converted manually before it could be put into the SBSS data base.

Unknown to Gunter Air Force Station, Warner Robins Air Force Base, Georgia, the command that had awarded the original AFAS contract to Coloney, had contacted Coloney on its own authority about having Coloney update the AFAS and provide an automated link, or interface, between AFAS and SBSS. However, after studying Coloney's plan, Warner Robins concluded that Coloney's proposed price was too high and that Coloney wanted data about the Sperry system which the Air Force could not release. Consequently, Warner Robins decided to drop the idea of having Coloney do the modernization and submitted a recommendation through channels that Sperry be authorized to do the work.

The Air Force modified Sperry's contract under contract line item number 0034, "Special Studies, Analysis, and Tests," so that Sperry could develop alternatives for linking AFAS and SBSS. Upon completion of this study, Sperry proposed a number of alternatives. The Air Force selected a plan calling for Coloney's punched paper tape to be replaced by a modem that would link the AFAS computer to the SBSS system and transmit the data collected to a terminal already supplied under the SBSS modernization program. Before the Air Force could modify contract -0002 to include this project, however, Coloney filed its protest.

COLONEY'S PROTEST:

Coloney's protest can be summarized as follows:

- The requirement of Defense Acquisition Regulation (DAR) § 1-300.2, reprinted in 32 C.F.R. pts. 1-39 (1984), that all contracts be made "on a competitive basis to the maximum practicable extent"<sup>1/</sup> has not been met--that is, Coloney is a qualified contractor, ready and able to compete for and perform the work in question, yet the Air Force has in effect awarded a sole-source contract to Sperry for a study of the AFAS system and now proposes to award Sperry a sole-source contract to modernize the system.
- Sperry cannot accomplish the AFAS/SBSS interface without access to the technical data and computer software used in the current AFAS system; there is evidence from an attempted hookup of a modem to the AFAS at McGuire Air Force Base, New Jersey, that the Air Force has given Sperry access to proprietary Coloney data even through Coloney furnished that data to the agency under limited rights in accordance with contract -1527 and has not authorized its release.
- In Coloney's opinion, both the contract modification that originally authorized Sperry to study how to interface the AFAS system with the SBSS and the proposed

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<sup>1/</sup>This regulation was based on the statutory requirement for "maximum practicable" competition in negotiated procurements found in 10 U.S.C. § 2304(g) (1982). Under the Competition in Contracting Act of 1984, which applies to solicitations issued after March 31, 1985, the standard becomes "full and open" competition. See 10 U.S.C. §§ 2301(a)(1), 2304(a)(1)(A), as amended by the Competition in Contracting Act of 1984, Pub. L. No 98-369, §§ 2721-2723, 2751, 98 Stat. 1185-1203 (1984).

modification that would authorize Sperry to undertake the work are outside the scope of work of contract -0002. Coloney, therefore, requests our Office to recommend that the Air Force cancel the proposed modification and conduct a new competitive procurement.

THE AIR FORCE'S RESPONSE:

The Air Force, on the other hand, finds no merit in any of Coloney's arguments. As to Coloney's charge that the award of the AFAS interface study violated statutory and regulatory requirements regarding competition, the Air Force emphasizes that contract -0002 was awarded to Sperry only after a 2-year competition between Sperry and the Burroughs Corporation. The agency argues that one of the key objectives of contract -0002 is the modernization of the SBSS system, that data is accumulated under the AFAS so that it can be fed into the SBSS system, and that contract -0002 specifically provides at line item 0034 that studies such as the AFAS interface study can be authorized. The Air Force states that it does not see how Coloney can claim that the interface study was awarded on an improper sole-source basis: the original contract was competitively awarded; the computer system under study is clearly a sub-unit of the larger system; and specific contract authority exists for initiating such a study. The Air Force also points out that the study that Warner Robins requested from Coloney was unauthorized and had no relation to the modification of Sperry's contract.

Regarding the alleged release of proprietary Coloney data, the Air Force denies that it has given Sperry access to any such information. The agency agrees that Coloney furnished the AFAS technical data and computer software to it with limited rights and assures Coloney that it will not turn over any such data to Sperry without first obtaining Coloney's permission.

Based on the foregoing, the Air Force requests that our Office deny the protest, so that it may proceed with the proposed contract modification and the subsequent modernization of the AFAS system.

GAO ANALYSIS:

As a general rule, our Office will not consider protests against contract modifications since these involve contract administration, a responsibility of the procuring agency. Symbolic Displays, Inc., B-182847, May 6, 1975, 75-1 CPD ¶ 278. We will, however, review an allegation that a modification exceeds the scope of an existing contract and therefore should be the subject of a new procurement. American Air Filter Co.--Reconsideration, 57 Comp. Gen. 567 (1978), 78-1 CPD ¶ 493; Aero-Dri Corp., B-192274, Oct. 26, 1978, 78-2 CPD ¶ 304. In determining whether a modification is beyond the scope of the contract, our Office looks to whether the original purpose or nature of a particular contract has been changed so substantially that the contract for which the competition was held and the contract to be performed are essentially different. E.J. Murray Co., Inc., B-212107.3, Dec. 18, 1984, 84-2 CPD ¶ 680.

According to Coloney, the contract modifications in question here go beyond the scope of Sperry's contract -0002 and thus require a new procurement. We do not agree. First, we believe Sperry's contract is worded broadly enough so that the initial study concerning methods for interfacing AFAS with SBSS fell within its scope. Line Item 0034 provides that separate studies, analyses, and tests will be described by separate statements of work; it requires the contractor to submit separate technical and price proposals and states that after negotiation and definitization, studies will be incorporated into the contract as separate sub-line items.

Second, as the Air Force has pointed out, the overall purpose of contract -0002 is the modernization of nearly 300 base-level computer systems, including the SBSS. Since, as the Air Force further points out, the AFAS is a sub-unit of the SBSS, it follows that any modernization of the AFAS undertaken so that data from it can be automatically transferred to SBSS would fall within the scope of contract -0002. In our opinion, therefore, the Air Force's two disputed contract modifications (the completed one for study of the AFAS interface and the proposed one for its completion) do not make the contract to be performed essentially different from the one originally competed. Rather, the modifications do no more

than logically extend the overall objective of the Phase IV program. Under these circumstances, we find no basis to question the Air Force's decision to update the AFAS system by modifying contract -0002, rather than by conducting a new procurement. Nor can we conclude that either modification constituted an improper sole-source award.

We also find no basis to conclude that the Air Force has given Sperry access to proprietary Coloney data. Other than Coloney's general allegation that the Air Force has turned over its proprietary data to Sperry, the only proof offered is Coloney's statement that it discovered what it believes to be an attempt at McGuire Air Force Base to hook up a modem to that facility's AFAS system. The Air Force, on the other hand, denies giving Sperry access to any of Coloney's proprietary data and states that before ever doing so it would first obtain Coloney's permission.

When improper conduct on the part of government officials is alleged, the protester has the burden of proof, and our Office will not rely on inferences alone to find such misconduct. Davey Compressor Co., B-215028, Nov. 30, 1984, 84-2 CPD ¶ 589. In our opinion, Coloney has not presented any evidence that the Air Force has in fact given Sperry access to Coloney's proprietary data. All Coloney presents is its suspicion that, at least tacitly, the Air Force is allowing Sperry to have access to its technical information. In the face of the Air Force's denial, this is not sufficient to carry the protester's burden of proof.

If Coloney believes that Sperry, on its own, has gained unauthorized access to Coloney's technical data and software, our Office can take no remedial action. It would be a dispute between private parties, and we have held that such a dispute is beyond the scope of our bid protest function. See, for example, Garrett Corp., Pneumatic Systems Division, B-207294, May 10, 1982, 82-1 CPD ¶ 451.

Coloney further argues that Sperry lacks the capacity to modernize the AFAS system without access to Coloney's proprietary data and states that, if Sperry succeeds, this will be prima facie evidence that the firm has improperly obtained such data. To the extent that Coloney is questioning whether Sperry is a responsible contractor--in other words, whether Sperry has the capability to implement

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the AFAS modernization, it is well established that our Office does not review affirmative responsibility determinations except under certain limited circumstances not present here. E.A.R. Division of Cabot Corp., B-215032, July 5, 1984, 84-2 CPD ¶ 19; 4 C.F.R. § 21.3(g) (4) (1984). And in view of our finding that the Air Force properly modified Sperry's contract to include modernization of the AFAS system, whether Sperry will have the capacity to do so without Coloney's technical data, or whether arrangements will need to be made for Coloney to release this data, are matters of contract administration, also beyond the scope of our bid protest function.

The protest is denied.

*for Seymour Efron*  
Harry R. Van Cleve  
General Counsel