



The Comptroller General  
of the United States

Washington, D.C. 20548

*C. McLeod*

## Decision

Matter of: Northeast Air Group, Inc.

File: B-228210

Date: January 14, 1988

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### DIGEST

1. Protest challenging contracting agency's decision to order services under existing contract with another firm instead of exercising option under protester's contract is timely when filed within 10 days after protester was notified of agency's final decision.
2. Incumbent contractor's challenge to contracting agency's failure to exercise option is dismissed since decision whether to exercise option is a matter of contract administration outside General Accounting Office bid protest function.
3. Protest challenging contracting agency's decision to order aircraft maintenance and comprehensive logistical support services under requirements-type contract for maintenance services only is sustained where services being procured are materially different from those contemplated by the contract.

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### DECISION

Northeast Air Group, Inc. (NEA) protests the Air Force's decision to acquire maintenance and supply services for C-22A/B aircraft under a contract with Lockheed Support Systems, Inc. instead of exercising an option for the services under NEA's existing contract. We dismiss the protest in part and sustain it in part.

On August 19, 1986, NEA was awarded a contract by the Air Force to provide maintenance and logistical support services for C-22A/B aircraft for a 1-year base period and 4 option years. When the base period expired in September 1987, the Air Force decided not to exercise NEA's option and instead acquire the services under an existing contract with Lockheed. Lockheed's contract is part of the Air Force's Contractor Field Team (CFT) program under which contractors

supplement the government's own maintenance resources. The CFT program contemplates the award of requirements-type contracts to several firms with individual task orders being placed under the contracts as needed during the contract term. A CFT contract was competitively awarded to Lockheed on September 24, 1986.

The Air Force states that it decided to acquire the needed services under Lockheed's CFT contract instead of by exercising NEA's option because some of its requirements had changed or increased and the cost of acquiring the services from Lockheed was substantially lower than under NEA's option. As a result, the Air Force placed an order for the services with Lockheed on September 17, 1987 for the 4-month period September 25, 1987 through January 28, 1988.

NEA challenges the Air Force's decision to order the services from Lockheed under its CFT contract, arguing that the Air Force instead should have exercised the option under NEA's contract or at a minimum conducted a new procurement. As discussed in detail below, we dismiss the protest to the extent it relates to the exercise of the option, but sustain it in part based on our finding that the services significantly exceeded the scope of Lockheed's contract and should have been the subject of a new procurement.

As a preliminary matter, the Air Force argues that the protest is untimely. The Air Force states that under NEA's contract, it was required to notify NEA 30 days before expiration of the base period if it planned to exercise the option. According to the Air Force, because the base period expired on September 30, NEA was on notice that the option would not be exercised as of September 1, since NEA had not received the required notice from the Air Force by that date. Since the protest was not filed until September 18, the Air Force argues that it is untimely under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1987). We disagree.

The record shows that the Air Force first advised NEA on August 31 that its option would be exercised. While NEA had several conversations with Air Force officials from September 1 through September 15, there is no indication in the record that NEA definitely was told that its option would not be exercised until its conversation on September 16 with an Air Force official who at that time also advised NEA that the services would be acquired from Lockheed. Under these circumstances, NEA reasonably believed that no final decision had been made regarding its option until September 16; since the protest challenging the failure to exercise the option was filed 2 days later, it is timely. In addition, the protest is timely to the extent it

also challenges the Air Force's decision to procure the services from Lockheed, since NEA clearly was not on notice of that decision before September 16.

NEA first challenges the Air Force's failure to exercise its option on grounds that the Air Force's requirements for the option period were not so substantially changed as to preclude exercise of the option and that the Air Force's decision not to exercise the option was the result of bias against NEA. As a general rule, option provisions in a contract are exercisable at the sole discretion of the government. See Federal Acquisition Regulation, 48 C.F.R. § 17.201 (1986). For that reason, we do not consider an incumbent contractor's allegation that an option should be exercised under an existing contract since the decision whether to exercise an option is a matter of contract administration outside the scope of our bid protest function. Sylvan Service Corp., B-223533, July 24, 1986, 86-2 CPD ¶ 109. Accordingly, we dismiss the protest on this ground.

In any event, NEA has failed to make a showing that the decision not to exercise the option was the result of bias by Air Force officials. As evidence of the alleged bias, NEA argues that during the evaluation of its proposal before the contract was awarded, NEA was subjected to repeated and unnecessary questions concerning minor technical matters. In addition, NEA relies on a memo from the Air Force program manager concerning a problem with an aircraft that had arisen during NEA's contract; the memo and a related letter from NEA at most show that the parties strongly disagreed as to who was responsible for the problem. Neither NEA's speculation as to the technical evaluation of its proposal nor the contents of the correspondence in any way demonstrate that the decision not to exercise the option was motivated by bias.

NEA next argues that once the Air Force decided not to exercise its option, it was required to conduct a new procurement for the services. NEA contends that the order for the services placed with Lockheed under its CFT contract constitutes an improper modification of the contract because the services significantly exceed the scope of the contract. We generally will not consider protests against an agency's decision to modify a contract since modifications involve contract administration, which is the responsibility of the contracting agency, not our Office. Wayne H. Coloney, Inc., B-215535, May 15, 1985, 85-1 CPD ¶ 545. We will review, however, an allegation that a modification exceeds the scope of the existing contract and therefore should be the subject of a new procurement. Educational Computer Corp., B-221276, Mar. 7, 1986, 86-1 CPD ¶ 230. In determining whether a

modification is beyond the scope of the contract, we look to whether the contract as modified is materially different from the contract for which the competition was held. Indian and Native American Employment and Training Coalition, 64 Comp. Gen. 460 (1985), 85-1 CPD ¶ 432. In this case, we agree with NEA that the order placed with Lockheed constituted a material change to its CFT contract because a substantial portion of the services being acquired fall outside the terms of the contract.

Lockheed's order incorporates a statement of work (SOW) which corresponds to the SOW in NEA's contract. With regard to logistical support, the SOW, like the one in NEA's contract, calls for total materials support for the C-22 aircraft, including a program for repair of spare parts and operation of a contractor-operated and maintained base supply (COMBS). The Air Force contends that both the maintenance and the logistical support services ordered from Lockheed are covered by line items 0001 and 0005 of its CFT contract, which provide in pertinent part as follows:

"TIME AND MATERIAL (LABOR)

0001 Perform modification/maintenance on aircraft support equipment; overhaul and maintenance of engines; modification and/or installation of communication equipment, cryptologic equipment, electronics and meteorological automatic data processing equipment in aircraft or missile weapons systems; and such additional services as required by the Government, in accordance with Orders issued from time to time by the Contracting Officer . . . .

0005 Perform, with Contractor's Field teams, at sites as the Contracting Officer shall direct, such maintenance and modification of weapons systems, and/or support equipment, and such additional services as required by the Government, in accordance with Orders issued from time to time by the Contracting Officer."

Since line items 0001 and 0005 clearly call for aircraft maintenance services on an as-needed basis, we agree that the services ordered from Lockheed fall within those line items to the extent they relate to maintenance. We do not agree, however, that the logistical support services, which make up a substantial portion of the Lockheed order, are covered by line items 0001 and 0005. On the contrary, the CFT contract contemplates only limited contractor-furnished

logistical support incidental to the maintenance services. In this regard, section H-903 of the CFT contract provides that any parts and materials required in connection with work performed under line items 0001 and 0005 usually will be provided by the government; the contractor is authorized to purchase materials only if they cannot be provided by the government. In contrast, the Lockheed order calls for the contractor to act as the principal supply source for C-22 spare parts through operation of the COMBS with its comprehensive inventory of supplies, as well as the program for repairing used spare parts for reuse in the COMBS inventory.

Moreover, the logistical support services constitute a substantial portion of the total price of the Lockheed order (\$124,000). Of the 11 priced line items, 8 (0001AB, 0001AC, 0001AE, 0001AF, 0001AG, 0002AA, 0002AB, 0002AC), relate to various support functions such as the spare parts repair program and operation of the COMBS. These eight line items total \$66,500, approximately one-half of the total order price. Since a substantial portion of the services ordered from Lockheed consists of logistical support services not contemplated by Lockheed's CFT contract, we find that the Lockheed order constitutes an improper material modification to the CFT contract.

Although it appears that the services ordered from Lockheed will be required through the end of fiscal year 1988, Lockheed's order extends only until January 28, 1988, apparently because its CFT contract will expire at that time. As discussed above, the SOW in the current CFT contracts does not encompass the logistical support services being provided by Lockheed for the C-22A/B aircraft. Accordingly, if the Air Force wishes to continue to procure the services under the CFT contracts, we recommend that the SOW contained in the solicitation for the new CFT contracts be amended to include that type of logistical support services. If the Air Force instead wishes to have a separate contract for the C-22 services it should conduct a new procurement for the services. In addition, we find that NEA is entitled to recover its protest costs, including attorney's fees, since NEA has been permanently deprived of the opportunity to compete for a contract for those services for the period covered by Lockheed's order. See 4 C.F.R. §§ 21.6(d)(1), (e).

The protest is dismissed in part and sustained in part.

*for*   
Comptroller General  
of the United States