The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: CAD Language Systems, Inc.

File: B-233756

Date: April 10, 1989

DIGEST

1. Protest that a contract modification was beyond the scope of the contract is denied where the modification did not result in the procurement of services materially different from the services competed under the original contract.

2. Protest of a subcontract awarded by a government prime contractor is dismissed where the subcontract is not "by or for" the government.

DECISION

CAD Language Systems, Inc. (CLSI), protests the Department of the Air Force's modification of contract No. F33615-87-C-1401, a cost-reimbursement research and development contract awarded to Honeywell, Inc., for development of an engineering information system (EIS). CLSI contends that the work called for under the modification is beyond the scope of work set out in the prime contract, and argues that the work should be obtained by competitive procurement. CLSI further contends that Honeywell improperly awarded a subcontract without competition for part of the work required by the modification.

We deny the protest in part and dismiss it in part.

The prime contract grew out of The Department of Defense Requirement for Engineering Information Systems, July 2, 1986 (DOD Requirement), which generally describes the background and purpose of EIS and provides a full set of requirements for the system. The DOD Requirement notes that advances in the miniaturization of electronics resulting in increasingly complex electronic designs have necessitated

the use of computer-aided engineering (CAE)1/. Current electronic systems are so complex that it is practically impossible to engineer them without CAE tools2/ and support systems. As stated in the DOD Requirement, the problem is that:

> "[T]he usefulness of these tools and systems is reduced . . . since no particular vendor has an integrated toolset that performs all of the steps needed and/or desired for engineering a system from the requirements phase, through specification and design, all the way to manufacturing and maintenance."

Anticipating that introduction of very high speed integrated circuits (VHSIC) technology will further increase design complexity and worsen the tool integration problem, the DOD Requirement outlines EIS as a means of providing a framework for tool integration based on information sharing. Two of EIS's five basic functions are:

> "Tool Integration--the ability to operate, efficiently and uniformly, a number of tools [applications] with different data and hardware requirements, [and]
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> "Data Exchange--the ability to translate and to communicate data among different hosts [types of computers] and tools not only within the EIS but also between the EIS and external systems (including other EISs)."

The idea behind tool integration is to provide the user with an environment where the most appropriate tool can be used without concern for the kind of computer on which the tool is installed. The DOD Requirement specifies that EIS "must be able to function efficiently in a distributed environment that includes different types of mainframes and workstations . . . the system itself must be portable across different systems." In other words, EIS integrates various CAE tools in a standard environment and allows the linking of different CAE environments. Finally, the DOD Requirement

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1/ CAE is a generic term which encompasses computer-aided design, computer-aided manufacturing, and computer-integrated manufacturing.

2/ Generally, the word tool is used in this decision to refer to an entire software package or application.

states that it is critical that EIS achieve industry acceptance on a large scale by appealing both to end-users and decision-makers.

CLSI, a Honeywell subcontractor, designs, develops and markets computer software in the area of computer-aided design (CAD). As a subcontractor, CLSI is responsible for integrating government-furnished VHDL3/ software with EIS on host computer systems manufactured by Digital Equipment Corporation (DEC) and Sun.

In June 1987, the agency awarded Honeywell the $17,184,503 prime contract entitled "Engineering Information System." The contract consists of two line items: item 0001, Research and Data, and item 0002, Computer Software. The contract calls for the work to be performed in three phases: (1) develop an EIS specification meeting the DOD Requirement, and plan how that specification can be implemented and demonstrated to users; (2) build an EIS prototype by writing and testing software that implements the phase one specification and demonstrates the usefulness of EIS in integrating disparate design tools; and (3) install the phase two EIS prototype software on a computer at a government specified site, ensure that it functions correctly, and demonstrate the end product.

In August 1988, the agency asked Honeywell to submit a change proposal that would make the required demonstration more realistic by showing how the CAE tool VHDL could be used with EIS to design large integrated circuits on a high performance super mini-computer system. The agency decided that the completed prototype could best be demonstrated by running real designs through the system showing an actual operational use. The agency required the use of a super mini-computer because such a machine would substantially increase system performance and because industry representatives advised the agency that something had to be done to increase the efficiency and speed of the EIS prototype demonstration if the agency wanted to prove a realistic EIS capability.

On September 28, after evaluating Honeywell's change proposal, the agency modified the prime contract (modification P0003 for $2,058,725) by specifying how the contractor was to perform the phase three installation and demonstra-

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3/ VHDL is a Department of Defense (DOD) developed text-oriented language, which stands for VHSIC (very high speed integrated circuits) Hardware Description Language, and is used in designing digital systems.

tion. The modification required: (1) purchase of a super mini-computer; (2) 1 year of maintenance for the super mini-computer; (3) the modification of a set of government-furnished VHDL tools to operate using the super mini-computer; and (4) training. Since the protester concedes that training was part of the prime contract, we will not consider the matter of training further.

We generally do not consider protests against contract modifications since modifications involve contract administration, which is the responsibility of the contracting agency, not our Office. Wayne H. Coloney Co., Inc., B-215535, May 15, 1985, 85-1 CPD ¶ 545. We will consider, however, situations where it is alleged that a modification improperly exceeds the scope of the prime contract and therefore should be the subject of a new procurement. Clean Giant, Inc., B-229885, Mar. 17, 1988, 88-1 CPD ¶ 281. In weighing the propriety of a modification, we look to whether there is a material difference between the modified contract and the prime contract that was originally competed. Aero-Dri Corp., B-192274, Oct. 26, 1978, 78-2 CPD ¶ 304.

In determining the materiality of a modification we consider factors such as the extent of any changes in the type of work, performance period and costs between the modification and the prime contract. See American Air Filter Co., Inc., 57 Comp. Gen. 285 (1978), 78-1 CPD ¶ 136, aff'd on reconsideration, B-188408, June 19, 1978, 78-1 CPD ¶ 443. In this regard, we also consider whether the prime contract solicitation adequately advised offerors of the potential for the type of changes during the course of the contract that in fact occurred. National Data Corp., B-207340, Sept. 13, 1982, 82-2 CPD ¶ 222.

CLSI urges that the work called for under the modification is beyond the scope of work set out in the prime contract, and therefore required a new procurement. Based on a thorough review of the record, we find that the modifications were within the scope of the prime contract. Accordingly, the agency was not required to conduct a new procurement for the work in question.

The protester offers several challenges to the propriety of modification P0003 contending that: (1) the modification is improper because it is not related to the prime contract's EIS prototype demonstration requirement; (2) even if the modification is related to the demonstration requirement, a workstation should be used for the demonstration instead of the super mini-computer because it is uncertain that a super mini-computer can provide the desired results (ability to design large integrated circuits, improve EIS performance,

and facilitate industry acceptance of EIS standards); and (3) purchase of computer hardware is beyond the scope of the contract.

Regarding CLSI's contention that the modification was made for a purpose unrelated to the prime contract, this argument rests upon the assumption that the EIS prototype will not be used with the VHDL tool on the super mini-computer. CLSI reads modification P0003 as requiring two separate and independent products: (1) a completed EIS prototype which the agency would receive anyway under the prime contract; and (2) the modified VHDL software on the super mini-computer. The protester speculates that the two products will be installed separately and that the EIS prototype cannot be used with the super mini-computer. The protester further speculates that the agency's only intended use for the super mini-computer is demonstrating Intermetrics' VHDL software. We disagree. The modification clearly states that the "[the EIS] prototype delivered . . . shall include the hardware and software necessary to generate . . . VHDL descriptions of large VHSIC integrated circuits," and that the "contractor shall rehost . . . the . . . VHDL toolset . . . to the proposed super mini-computer." Obviously, the super mini-computer is being purchased for a purpose related to the prime contract's EIS prototype demonstration requirement.

CLSI's argument that the EIS prototype demonstration should use a workstation instead of the super mini-computer, because it has not been technically established that a super mini-computer can provide the results the agency desires, is equally lacking in merit. Essentially, the protester contends that the EIS prototype demonstration should be restricted to a workstation environment using Sun, Vax, Apollo and similar sized computers often used for engineering operations. We disagree. The DOD Requirement explicitly requires EIS to "function efficiently in a distributed environment that includes different types of mainframes and workstations." (Emphasis supplied). Since the DOD Requirement contemplates efficient EIS functioning in a mainframe environment we do not think it unreasonable that the agency should select a super mini-computer which has capabilities greater than a workstation, but less than a mainframe, as a demonstration vehicle.

We also see no merit in the protester's assertion that the prime contract does not contemplate the purchase of computer hardware. The agency reports that both the computer and the software will become integral parts of the EIS prototype. We note that the super mini-computer is the second computer purchased by Honeywell during the course of contract performance, and that both computers will be delivered to the government upon completion of the contract. The agency advises that it required Honeywell to obtain the maintenance

provided under the modification in order to protect the government's investment in the machine.

We think the need for Honeywell to obtain computer hardware is clear since the prime contract requires the contractor to install the EIS prototype on a computer and ensure that it functions correctly before demonstrating it, and the agency has not undertaken to provide the computer as government furnished property. Since the contract does not express a preference for hardware lease or purchase, and requires the installation of the EIS prototype software at a government site, on a computer not currently owned by the government, we think the prime contract's scope is sufficiently broad to contemplate either contractor lease or contractor purchase as a means of obtaining the required computer hardware for the EIS prototype demonstration. Moreover, as this is a research and development contract, we think it was reasonable for the agency to postpone its decision on computer hardware acquisition, thereby keeping its options open, until it had a better idea of the EIS prototype's capabilities and the best means of demonstrating them. Further, the modification did not expand the delivery schedule nor add unreasonably to the costs given the uncertain nature of the effort.

Finally, CLSI protests Honeywell's award of a subcontract to Intermetrics for VHDL software changes required by modification P0003. The protester alleges that the agency directed Honeywell to purchase the modified VHDL software from Intermetrics even though Honeywell already had a subcontract with CLSI for the same kind of effort (i.e., internal modification of the government-furnished VHDL software, replacing sections of existing source code with new code) and could either have been directed to do the work or competed for it. The record shows that Honeywell selected Intermetrics for the work because modification P0003 required work on the VHDL simulator's source code which Intermetrics had written.

The agency maintains that we should not consider this aspect of the protest because it involves the award of a subcontract by a government prime contractor and the circumstances under which we consider such protests do not exist here. We agree.

Our Office does not review subcontract awards by government prime contractors except where the award is by or for the government. Bid Protest Regulations, 4 C.F.R. § 21.3(m)(10) (1988). This limitation on our review is derived from the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. §§ 3551 et seq. (Supp. IV 1986), which provides for our consideration of bid protests concerning procurements by federal agencies. In the context of subcontractor selections, we interpret CICA to authorize our Office to review

protests only where, as a result of the government's involvement in the award process or the contractual relationship between the prime contractor and the government, the subcontract in effect is awarded on behalf of--"by or for"--the government.

Here, notwithstanding the protester's contention that Honeywell acts as the government's agent under the prime contract, we find that the prime contract--a typical cost-reimbursement contract--merely requires contractor management of its own internal administrative and financial functions during contract performance, and the periodic provision of status reports on schedule and cost matters under the contract data requirements list. Such minor management responsibilities in a cost-reimbursement contract do not make any subcontract awards under that contract "by or for" the government, and mere approval of a subcontract does not establish the direct and active participation in the subcontractor selection process that is required to find that a subcontract award was "by or for" the government. Edison Chouest Offshore, Inc., et al., B-230121.2, B-230121.3, May 19, 1988, 88-1 CPD ¶ 477. Accordingly, we see no basis to review the subcontract award by Honeywell.

The protest is denied in part and dismissed in part.

James F. Hinchman
General Counsel