



**Comptroller General  
of the United States**

Washington, D.C. 20548

# Decision

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**Matter of:** L-3 Communications Aviation Recorders

**File:** B-281114

**Date:** December 28, 1998

John H. Horne, Esq., and Carl A. Gebo, Esq., Powell, Goldstein, Frazer & Murphy, for the protester.

Philip J. Davis, Esq., and Eric W. Leonard, Esq., Wiley, Rein & Fielding, for ARINC, Inc., an intervenor.

Jeffrey I. Kessler, Esq., and Howard J. Bookman, Esq., U.S. Army Materiel Command, for the agency.

David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## **DIGEST**

Issuance of a delivery order for engineering and logistics capabilities needed to accomplish the C/KC-135 aircraft navigation and safety system upgrade, including the procuring and integrating of flight data recorders, cockpit voice recorders and emergency locator transmitters for all C/KC-135 aircraft, is within the scope of the existing contract, where that contract specifically includes such work as the integration of new equipment technologies into existing system architectures by means of the manufacture, acquisition, assembly and installation of necessary equipment.

## **DECISION**

L-3 Communications Aviation Recorders protests the decision of the U.S. Army Materiel Command, Communications-Electronics Command (CECOM), to issue a delivery order (No. 0003) to ARINC, Inc. under contract No. DAAB07-98-D-H502. L-3 argues that the delivery order, for engineering and logistics capabilities needed to upgrade the C/KC-135 aircraft with flight data recorders, cockpit voice recorders and emergency locator transmitters, is beyond the scope of ARINC's contract and that CECOM instead should have conducted a competition for the requirement.

We deny the protest.

ARINC's contract was awarded under request for proposals (RFP) No. DAAB07-98-R-H002, issued by CECOM on January 8, 1997 as part of its Rapid

Response to Critical Systems Requirements program. As explained in the solicitation,

[i]n the past, once a system was extended beyond its originally projected life cycle and Operation and Sustainment Plan, a breakdown of a part(s) would necessitate either a new solicitation to locate a contractor willing to provide the part(s) or often, due to obsolescence of the item, a return to the original manufacturer. As a result, the required repair(s) was either greatly delayed, excessively priced, or both. The intent of The Rapid Response To Critical Systems Requirements (R2CSR) Program contract is to provide multiple prime contractors with multiple subcontractors available for quick and less costly solutions. These solutions may require engineering services, including reverse engineering, acquisitions from vendors, manufacture, integration, installation, studies or analyses. The critical element is that these contractors will be on contract and, with the variety of Delivery Orders expected, be able to satisfy the Government's needs rapidly and cost-effectively.

RFP, Executive Summary.

The solicitation specifically provided for award of an indefinite-delivery, indefinite-quantity contract (or contracts) for a 2-year base period, with three 1-year options, for

engineering and [operation and support] services, providing integrated and effective maintenance and upgrade of systems across all phases of the life cycle. The contract(s) shall provide a single integrator for the immediate acquisition of an item that is essential to sustain an existing Federal system. Delivery of hardware and software will be in limited quantities to meet immediate [operation and support] needs.

Statement of Work (SOW) § 1.0. The SOW listed a number of "general support requirements which will be definitized in individual Delivery Orders," id., including requirements for: "Technology Insertion/Systems Integration," that is, for the contractor to "integrate new equipment technologies into existing system architectures in accordance with applicable Delivery Orders," SOW § 3.3.1; to "install equipment into systems in accordance with applicable Delivery Orders," SOW § 3.3.2; and to "manufacture, acquire and assemble limited quantities of hardware and software in accordance with applicable Delivery Orders." SOW § 3.3.3.

Offerors were advised prior to issuance of the solicitation that the agency projected making multiple awards and that the estimated total cost of the procurement would

be \$1.5 billion. Pre-Solicitation Conference/Advanced Planning Briefing to Industry, Acquisition Strategy, January 29, 1998, at 2. CECOM received six proposals in response to the solicitation. On July 29, 1998, three contracts were awarded, to: ARINC, with a contract ceiling amount of \$1,413,760,989; Lockheed Martin Integrated Systems, Inc., with a contract ceiling amount of \$1,782,435,309; and Lear Siegler, Inc., with a contract ceiling amount of \$1,852,324,738.

The protested delivery order, issued to ARINC under its contract on September 15, requires the contractor to provide "engineering and logistics capabilities" needed to accomplish the C/KC-135 navigation and safety system upgrade, including "technology insertion, engineering analysis, design, prototyping, fabrication, testing and calibration." Delivery Order, SOW § 1.1. In this regard, as noted in the underlying operational requirements document, existing C/KC-135s were not equipped with cockpit voice recorders or emergency locator transmitters, and only 25 aircraft were scheduled to receive rudimentary, less capable flight data recorders. Final Operational Requirements Document, KC-135 Cockpit Voice Recorder (CVR), Flight Data Recorder (FDR), and Emergency Locator Transmitter (ELT) Communications Upgrade, §§ 1-3. Accordingly, under the delivery order, all C/KC-135 aircraft were to be modified with all three systems. The delivery order provided for the contractor to furnish 580 upgrade kits--approximately 1 for each aircraft in the inventory--at a rate of 20 per month beginning in January 1999. The delivery order, issued on a time-and-materials basis, included an estimated total price of \$49.6 million for all of the work; based on the prices under a subsequent subcontract, the price for fabrication of the kits will be [DELETED].

L-3 characterizes the delivery order as one for the acquisition of production quantities for an entire fleet of aircraft; it argues that such a production buy exceeds the scope of ARINC's contract because that contract essentially covers comprehensive engineering and operational support services. Although L-3 acknowledges that the contract SOW includes fabrication as one of the tasks that might be assigned to the contractor, it notes that the SOW describes the quantity of hardware and software to be manufactured and/or acquired as only "limited quantities." SOW §§ 1.0 and 3.3.3. L-3 maintains that the quantity covered by the delivery order cannot reasonably be viewed as "limited."

With certain exceptions not relevant here, the Competition in Contracting Act (CICA) requires that full and open competition be obtained in government procurements through the use of competitive procedures. 41 U.S.C. § 253(a)(1)(A) (1994). Once a contract is awarded, our Office generally will not review modifications to that contract, such as task orders, 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) (1998); MCI Telecomms. Corp., B-276659.2, Sept. 29, 1997, 97-2 CPD ¶ 90 at 7. An exception to this rule is where it is alleged that the task order is beyond the scope of the original contract, since the work covered by the task order would otherwise be subject to the statutory requirements for

competition (absent a valid determination that the work is appropriate for procurement on a sole-source basis). MCI Telecomms. Corp., *supra*; Data Transformation Corp., B-274629, Dec. 19, 1996, 97-1 CPD ¶ 10 at 6; Indian and Native Am. Employment and Training Coalition, B-216421, Apr. 16, 1985, 85-1 CPD ¶ 432 at 2.

In determining whether a task order triggers the competition requirements of CICA, we look to whether there is a material difference between the task order and that contract. Sprint Communications Co., B-278407.2, Feb. 13, 1998, 98-1 CPD ¶ 60 at 6; MCI Telecomms. Corp., *supra*; see AT&T Communications, Inc. v. Witel, Inc., 1 F.3d 1201, 1205 (Fed. Cir. 1993). Evidence of such a material difference is found by reviewing the circumstances attending the procurement that was conducted; examining any changes in the type of work, performance period, and costs between the contract as awarded and as modified by the task order; and considering whether the original contract solicitation adequately advised offerors of the potential for the type of task order issued. Sprint Communications Co., *supra*; Indian and Native Am. Employment and Training Coalition, *supra*; Data Transformation Corp., *supra*. The overall inquiry is "whether the modification is of a nature which potential offerors would reasonably have anticipated." Neil R. Gross & Co., Inc., B-237434, aaaaaaFeb. 23, 1990, 90-1 CPD ¶ 212 at 3, *cited in* AT&T Communications, Inc. v. Witel, Inc., *supra*, at 1207.

Here, we conclude that the delivery order is within the scope of ARINC's contract. By focusing on isolated language in the solicitation, L-3 has failed to account for the broad, stated purpose and resulting scope of the procurement leading to the award to ARINC. As noted in the solicitation, the Rapid Response To Critical Systems Requirements Program procurement was intended to avoid the necessity for issuing solicitations to procure the "engineering services . . . acquisitions from vendors, manufacture, integration, installation, [and] studies or analyses" required for the "effective maintenance and upgrade of systems across all phases of the life cycle," and instead to meet the agency's requirements in this regard "rapidly and cost-effectively" through the use of "Delivery Orders" issued to "multiple prime contractors with multiple subcontractors available for quick and less costly solutions." Executive Summary, SOW § 1.0. (Indeed, in its pre-solicitation briefing to potential offerors, the agency specifically identified the KC-135 aircraft as an example of one of the systems for which support could be procured under the contemplated contract. Technical Requirements, Jan. 29, 1998, at 5.) Further, consistent with this broad purpose, the tasks to be performed by the contractor were broadly defined to include a wide variety of work, such as, of relevance here, the integration of "new equipment technologies into existing system architectures in accordance with applicable Delivery Orders" and by means of manufacture, acquisition, assembly and installation. SOW §§ 3.31, 3.3.2 and 3.3.3. Likewise, the announced, estimated value of the procurement--\$1.5 billion--reflected the agency's intention that the contract encompass larger scale tasks.

Although the solicitation referred to acquiring "limited quantities" of hardware and software, it did not restrict the quantities to a particular number of units, and when asked to define the term as calling only for prototype quantities, the agency declined to do so. Specifically, the agency was asked, "What is the definition of 'limited production'? Does this mean only a prototype quantity?" Pre-Award Briefing to Industry, Rapid Response To Critical Systems Requirements (R2CSR) Support Program, DAAB07-98-R-H002, Questions & Answers, No. 49. The agency responded in writing that "[t]he quantity required to fulfill an immediate contract requirement will be determined on an individual delivery order basis." *Id.* As noted by the agency, to the extent that the term "limited" was defined at all in the solicitation, it was defined in terms of the quantity set forth in the delivery orders and required "to meet immediate [operation and support] needs." SOW §§ 1.0 and 3.3.3.<sup>1</sup> Moreover, we agree with the agency that it is reasonable to interpret the term "limited" in the context of the dollar value of the expected work; we think a quantity of hardware costing [DELETED] reasonably can be viewed as limited in the context of a contract, during the award of which offerors were advised that the cost of the procurement was expected to be \$1.5 billion.<sup>2</sup>

L-3 argues that ARINC's submission in response to a requirement in RFP-H502 for offerors to address five sample tasks shows that ARINC did not anticipate the acquisition of production quantities under the contemplated contract. In this

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<sup>1</sup>The underlying operational requirements document for the C/KC-135 upgrade explained the immediate operational need requiring acquisition of this equipment. Specifically, the operational requirements documents noted that existing C/KC-135s were not equipped with cockpit voice recorders or emergency locator transmitters, and only 25 aircraft were scheduled to receive rudimentary flight data recorders. According to the operational requirements document, the flight data recorders and cockpit voice recorders were necessary because they provide the ability to reconstruct events after an aircraft crash or ditching, thereby facilitating the modification of procedures and systems to prevent a recurrence, while the emergency locator transmitters were necessary because they facilitate expeditious rescue in the event of a crash or ditching, thereby increasing the survival chances of any survivors. Final Operational Requirements Document, section 1.

<sup>2</sup>L-3 questions whether the flight data recorders, cockpit voice recorders and emergency locator transmitters to be installed under the order come within the stated purpose of the contract, that is, to "provide a single integrator for the immediate acquisition of an item that is essential to sustain an existing Federal system," SOW § 1.0; according to the protester, the "acquisition of an item such as a flight recorder is in no way essential to sustain an existing Federal system." L-3 Comments, November 6, 1998, at 6. However, we find nothing unreasonable in the agency's determination that increasing the safety of the C/KC-135 aircraft fleet was essential to the continued operation of the aircraft.

regard, L-3 points out that in response to sample task No. 2, for installation of "a military wideband . . . communication subsystem into a military fixed or rotary winged aircraft," ARINC proposed to install a single [DELETED] system. Sample Task No. 2 Videotaped Presentation. Likewise, L-3 points out that in response to sample task No. 4, for location and qualification of sources to construct two different floor panels for the E-3 aircraft, ARINC stated that it anticipated the issuance of only limited quantity delivery orders and indicated that its approach would result in identification of sources that can be qualified to produce limited quantities. Sample Task No. 4 Videotaped Presentation. This argument is not persuasive. As noted above, sample task No. 2 itself specified installation of a single subsystem into a single aircraft. Likewise, sample task No. 4 itself asked the offeror to "[d]escribe how the Offeror would prepare for future delivery of limited quantities of the floor panels" for the E-3 aircraft; there are only approximately 33 E-3 Sentry Airborne Warning and Control System aircraft in the United States inventory. Thus, the fact that ARINC's response to the sample tasks assumed only limited quantities appears to have been simply a reflection of the terms of the sample tasks themselves, rather than an indication of ARINC's understanding of the overall work to be ordered under the contract. In this regard, nothing in the terms of the sample tasks, or of the solicitation as a whole, precluded the issuance of delivery orders of the magnitude of the order protested here.

We conclude that the issuance of the delivery order for the C/KC-135 navigation and safety system upgrade was of a nature which potential offerors for the Rapid Response To Critical Systems Requirements contract would reasonably have anticipated from the terms of the solicitation, and that the delivery order therefore is within the scope of ARINC's contract.

The protest is denied.

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