

DECISION

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

FILE: B-221276

DATE: March 7, 1986

MATTER OF: Educational Computer Corporation

DIGEST:

1. Contracting agency's plan to acquire aircraft maintenance training equipment under an existing contract for development and production of the aircraft is proper where the contract provides for issuance of change orders for production of the training equipment by the contractor. Since acquisition of the equipment directly from the contractor was authorized, it also was proper for the agency to allow the contractor to select a subcontractor to produce the equipment.
2. Contracting agency is not required to conduct a separate procurement for aircraft maintenance training equipment where production of the equipment is within the scope of the existing contract for development and production of the aircraft.
3. Contracting agency had a reasonable basis for its decision to allow the contractor under an existing contract for aircraft production to select a subcontractor to produce the maintenance training equipment for the aircraft, where agency reasonably concluded that high degree of coordination necessary to ensure system compatibility was best achieved through a prime contractor/subcontractor arrangement.

Educational Computer Corporation (ECC) protests the Air Force's decision to acquire aircraft maintenance training equipment under a contract with McDonnell Douglas Aircraft Corp. for the design, development and testing of the F-15E aircraft weapons system. The protester contends that the Air Force should conduct a competitive procurement for the training equipment rather than acquire it under the contract with McDonnell.

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We deny the protest.

The contract for development of the F-15E aircraft was awarded to McDonnell in March 1985. Section 2120 of the contract in part called for McDonnell to conduct development studies for aircraft maintenance trainers (AMTs), freestanding devices with related software and accessories to be used for maintenance training for the F-15E avionics, power plant and lighting systems. The contract provided that McDonnell's development studies were to be used to prepare engineering change proposals (ECPs) under the contract for "the design, development and production or retrofit" of training equipment for the F-15E.

According to the Air Force, before the F-15E contract was awarded to McDonnell, the Air Force began studying whether any components of the F-15E system should be broken out from the basic contract for separate acquisition. As part of this effort, the Air Force published a notice in the Commerce Business Daily on July 15, 1985, asking interested firms to submit information on design and production of the AMTs. The notice stated that it was issued "for planning purposes only and does not constitute a commitment by the government." Responses were received from 26 firms.

At the same time, McDonnell briefed the Air Force on the results of its development studies for the training equipment. McDonnell's position was that breaking out the AMTs as a separate procurement was not feasible due to the preliminary stage of development of the F-15E. McDonnell suggested that the AMTs be supplied by a McDonnell subcontractor, to better allow McDonnell to oversee integration of the AMTs with the F-15E system as it developed.

The protester states that in late September 1985, it learned informally that the Air Force had decided to allow McDonnell to develop a technical data package (TDP) for the AMTs and then conduct a procurement for production of the AMTs by a subcontractor. In a letter dated October 4, 1985, the Air Force confirmed that McDonnell had been requested to prepare a TDP and outline its plans for selecting a subcontractor to produce the trainers. The protester then filed a protest with the Air Force challenging its decision to acquire the AMTs through McDonnell rather than as a separate procurement. After the Air Force denied the protest by letter of November 7, ECC filed a protest with our Office.

ECC argues that acquisition of the AMTs by McDonnell under an ECP constitutes a modification beyond the original scope of the F-15E contract and results in an improper sole-source award to McDonnell. ECC contends that the Air Force itself was required to conduct a separate procurement for the AMTs.

The Air Force states that it decided to acquire the AMTs through McDonnell because development of the F-15E was still at a preliminary stage and the TDP necessary for the Air Force to procure the AMTs separately thus was not yet available. Further, the Air Force decided that a prime contractor/subcontractor relationship between McDonnell and the AMT supplier would allow McDonnell the degree of control necessary to ensure compatibility between the AMTs and the F-15E as its development progressed. The Air Force contends that the original contract contemplated this type of arrangement between McDonnell and the AMT supplier, and, as a result, the planned AMT acquisition is clearly within the scope of the original 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. National Data Corp., B-207340, Sept. 13, 1982, 82-2 CPD ¶ 222. 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. Cray Research, Inc., B-207586, October 28, 1982, 82-2 CPD ¶ 376.

Here, section 2120 of the contract clearly calls for preliminary studies and preparation of a TDP by McDonnell, culminating in issuance of ECPs to McDonnell for production of the AMTs:

"The contractor shall conduct development studies for . . . Aircraft Maintenance Trainers (AMT) . . . as the initial step in TE [training equipment] acquisition as outlined in the F-15 SE [support equipment] and TE Plan (P026 Addendum 1 to Appendix C) . . . The results of these studies shall be used in subsequent preparation of ECPs for the design, development and production or retrofit of TE to support the F-15."

(Emphasis added.)

The protester argues, however, that the issue is not whether the AMTs can be acquired directly from McDonnell, but whether it is within the scope of the original contract for McDonnell to select a subcontractor to produce the AMTs. In the protester's view, the original contract does not contemplate selection of the contractor by McDonnell; rather, ECC argues, the Air Force itself should conduct a separate procurement for the AMTs. We disagree. Since, as noted above, the contract allows for acquisition of the AMTs directly from McDonnell as part of the overall F-15E acquisition, we see no obstacle to allowing McDonnell to select a subcontractor to produce the AMTs. In fact, the McDonnell contract contemplates just such an arrangement; sections 2.3.3.3(a), (c), and 2.3.3.3.2 of appendix "C" (which describes in detail the procedures for developing training equipment) refer to production of the AMTs by a third party, called the "AMT supplier," which is to coordinate its efforts with McDonnell's. Thus, in our view, it is within the original scope of the contract for the Air Force to negotiate ECPs with McDonnell pursuant to which McDonnell could acquire the AMTs under a subcontract with a third-party AMT producer.

Since the planned acquisition through McDonnell is proper, there is no merit to ECC's argument that the Air Force itself is required to conduct a separate procurement for the AMTs. As support for its position, ECC relies on the Air Force's obligation under the Competition in Contracting Act of 1984, 10 U.S.C.A. § 2304(a)(1)(A) (West Supp. 1985), to obtain full and open competition "in conducting a procurement for property or services." This requirement, however, would apply here only if the AMT acquisition fell outside the scope of the original contract. See Federal Acquisition Regulation, 48 C.F.R. § 6.001(d) (1984). Since the planned acquisition is within the scope of the original contract, it is not a separate procurement subject to the statutory competition requirements.

The protester also argues that as a matter of policy, the Air Force should have chosen to break out the AMTs from the F-15E contract and procure them separately. As discussed earlier, the Air Force's decision to acquire the AMTs through the existing McDonnell contract is a matter of contract administration which we will not review where, as here, the modification is within the scope of the original contract. Symbolic Displays, Inc., B-182847, May 6, 1975, 75-1 CPD ¶ 278. In any event, the Air Force's decision

clearly has a reasonable basis. The principal reason for the decision was the Air Force's determination that close coordination between McDonnell and the AMT supplier was necessary to ensure ultimate compatibility between the F-15E and the training equipment. In the Air Force's view, the required degree of coordination was best achieved through a prime contractor/subcontractor relationship between McDonnell and the AMT supplier.

With regard to ECC's argument that selection of the subcontractor by McDonnell deprives potential AMT suppliers of the benefits of a procurement by the Air Force itself, the Air Force has decided to oversee McDonnell's efforts in order to insure that the subcontractor is selected on a competitive basis. The Air Force thus has acted to maximize the competitive nature of the subcontractor selection.^{1/}

The protest is denied.

for Seymour E. Gross
Harry R. Van Cleve
General Counsel

^{1/}Although ECC was one of the firms which received a request for information from McDonnell regarding the AMT subcontract, ECC apparently has decided not to participate in the competition.