



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: King-Fisher Company

File: B-224341

Date: August 28, 1986

DIGEST

1. Normally, the General Accounting Office (GAO) will not review protests concerning contract modifications, as they involve contract administration. Where, however, protest alleges that modification is beyond the scope of an existing contract and should be the subject of a new procurement, GAO will consider whether the modification has changed the original contract so substantially that a new procurement is appropriate.

2. When disputed modifications do not change the essential nature of the contract originally competed, the additional work is within the scope of the contract and a new procurement is unnecessary.

DECISION

King-Fisher Company protests the Department of the Army's decision to modify contract No. DAHA30-84-C-0020 to require the performance of additional electrical and fire protection work by Burns Electric Company, Inc., in connection with the construction of a fire suppression/alarm system for the New York Air National Guard. King-Fisher contends that the Army should conduct a new procurement because the work in question is beyond the scope of the original contract.

We deny the protest.

The original, formally advertised, contract was awarded to Burns in August 1984 at a price of \$649,200. Burns has performed nearly 75 percent of the contract. The protested modification changes various specifications applicable to both the fire suppression and the alarm aspects of the system, for a price increase of \$170,000.

036540

King-Fisher contends that the combination of additional work at different locations, subject to altered performance standards, for an increased price, renders the modification beyond the scope of the original contract. King-Fisher is specific only with regard to the telecommunications portion of the system (radio alarm transmitters, receivers, etc.), arguing that the modified system does not retain the original performance standards requiring Underwriters Laboratories, Inc. (UL) or Factory Mutual Systems (FM) listing, compliance with National Fire Protection Association (NFPA) standards as required by the Occupational Safety and Health Administration (OSHA), and Buy American Act compliance.

The Army report addresses only the telecommunications aspects of the modification, since that is the only detailed area of King-Fisher's protest, and explains why the Army thinks the modification is within the scope of the original contract. For the same reason, our decision is limited to the matters covered by the agency report.

The Army reports that the modification changed the frequency assigned to the system's radio alarm transmitters from a previous range of between 138 to 174 Mhz to a specific frequency of 403.00 MHz. This change cost \$17,433. It was necessitated by the discovery after award that the radio frequency range originally specified was subject to interference from commercial telecommunications emanating from nearby Hancock Field International Airport, which could result in false alarms and the erroneous discharge of sprinkler systems. The Army acknowledges that the original contract called for UL or FM listing and that the modification deletes the listing requirement; however, the contract retains a requirement for conformance to UL or FM standards. The Army reports it understands that the Motorola telecommunications equipment to be furnished under the modification will meet both UL and FM standards and that Burns will also comply with Buy American Act requirements.

As a general rule, we will not consider protests against contract modifications, as they involve matters of contract administration, which are the responsibility of the contracting agencies. Educational Computer Corp., B-221276, Mar. 7, 1986, 86-1 C.P.D. ¶ 230. 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 C.P.D. ¶ 222. In deciding 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. E.J. Murray Co., Inc., B-212107.3, Dec. 18, 1984, 84-2 C.P.D. ¶ 680.

We do not agree with King-Fisher's assertion that this contract modification is beyond the scope of the original contract and therefore requires a new procurement. Regarding the modification's frequency change, the contract provides that after award the contracting officer will pick a specific frequency for the radio alarm transmitters. While the frequency picked by the modification is beyond the range initially set out in the contract, we do not think that this fact warrants the conclusion that the modification is beyond the scope of the original contract, since the parties' basic contractual relationship is not significantly changed. See Rolm Corp., B-218949, Aug. 22, 1985, 85-2 C.P.D. ¶ 212. We also note that the increase in contract price for the change in frequency is minimal. See Marine Logistics Corp., B-218150, May 30, 1985, 85-1 C.P.D. ¶ 614. Under these circumstances, we find no basis to question the Army's decision to modify the contract by specifying a higher transmission frequency to avoid radio interference. See Wayne H. Coloney Co., Inc., B-215535, May 15, 1985, 85-1 C.P.D. ¶ 545.

We also find no impropriety in the Army's deletion of the UL and FM listing requirements, and of NFPA standards. Once a contract is awarded, issues involving the waiver of requirements generally are matters of contract administration. E.J. Murray Co., Inc., B-212107.3, supra. While King-Fisher argues the significance of the modification's effect by saying that the abandonment of the noted standards should lessen instead of increase the contract price, the firm has not established that the contract as modified is essentially different from the one competed. Moreover, requirements that products have UL or FM approval/listing generally only serve to prove that the product conforms to UL or FM standards. See King-Fisher Co., B-205003, June 16, 1982, 82-1 C.P.D. ¶ 592. We have questioned the value of such proof and allowed its waiver when, as here, the initial bid obligated the bidder to furnish items conforming to such standards. See B-161839, Nov. 2, 1967; B-140505, Dec. 8, 1959. As to NFPA standards, compliance with which King-Fisher argues is required by OSHA, such matters are not enforceable by our Office. See King-Fisher Co., B-209097, July 29, 1983, 83-2 C.P.D. ¶ 150.

Finally, regarding King-Fisher's Buy American Act allegations, we will not investigate Burns' intended method of compliance with its obligations to provide American-made

items except under circumstances not applicable here, since that is a matter of contract administration and thus beyond the scope of our bid protest function. Sony Industries, B-197300, June 4, 1980, 80-1 C.P.D. ¶ 382.

It is clear from the record that the overall purpose and nature of the contract--installation of an operational fire suppression/alarm system on a specific Air National Guard base--has not substantially changed. The protest is denied.

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