



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: E. L. Hamm & Associates, Inc.

File: B-242645

Date: February 11, 1991

Michael L. Sterling, Esq., Vandeventer, Black, Meredith & Martin, for the protester.

Anne B. Perry, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency, through contract modification, is improperly attempting to convert protester's firm, fixed-price leasing contract into a cost reimbursement supply contract is dismissed as a matter of contract administration within the discretion of the contracting agency and for review by a cognizant board of contract appeals or the United States Claims Court.

DECISION

E. L. Hamm & Associates, Inc. protests the proposed conversion of a firm, fixed-price contract into a cost reimbursement supply contract by the Department of the Navy through a modification to Hamm's contract No. N00189-86-C-0515 for a relocatable electronic warfare facility.

We dismiss the protest for failure to establish a valid basis for protest.


Our Office considers bid protest challenges to the award or proposed award of contracts. 31 U.S.C. § 3552 (1988). Therefore, we generally do not exercise jurisdiction to review matters of contract administration, which are within the discretion of the contracting agency and for review by a cognizant board of contract appeals or the United States Claims Court. See 4 C.F.R. § 21.3 (m) (1) (1990); C3, Inc., B-233742.11, Dec. 27, 1990, 90-2 CPD ¶ 522. One of the few exceptions to this rule is where it is alleged that a contract modification improperly exceeds the scope of the contract and therefore should have been the subject of a new procurement. CAD Language Sys., Inc., 68 Comp. Gen. 376 (1989), 89-1 CPD ¶ 364.

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The protester alleges that the Navy's actions under this contract fall under the above exception in that the agency's attempt to convert the leasing contract into a cost reimbursement contract constitutes an illegal sole-source award to E. L. Hamm itself. The protester argues that while the agency may properly conduct a sole-source award with it for this facility, the agency must first follow the applicable regulations governing sole-source awards.

We are not persuaded that E. L. Hamm's position falls within the cited exception. The exception raised by the protester is intended to apply to situations wherein it is alleged that the agency's action in modifying an existing contract of a competitor of the protester's goes beyond the scope of the contract, and thus constitutes an improper sole-source award in which the protester was foreclosed from competing. Since the circumstances herein are dissimilar, the exception does not apply.

The protest is dismissed.


for John F. Mitchell
Assistant General Counsel