



Comptroller General  
of the United States

Washington, D.C. 20548

McArthur  
145093

## Decision

**Matter of:** Westinghouse Electric Corporation

**File:** B-244339

**Date:** October 10, 1991

Rand L. Allen, Esq., and Paul F. Khoury, Esq., Wiley, Rein & Fielding, for the protester.  
John L. Rich, Esq., for McDonnell Douglas Corporation, an interested party.  
Paul Brundage, Esq., National Aeronautics and Space Administration, for the agency.  
C. Douglas McArthur, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Protest that task assignment for support of geostationary operational environmental satellite (GOES) project is outside the scope of contract for mission support services is denied where agency issued competitive solicitation for such services advising offerors that it was issuing solicitation in an effort to consolidate existing support service contracts, specifically identifying GOES support previously provided by protester as falling within contractual effort.
2. Protester's assertion that only its employees have the expertise to perform support services for geostationary operational environmental satellite project is not reviewable by General Accounting Office (GAO), since it amounts to an argument that the protester is the only firm capable of performing; the purpose of the GAO's bid protest function is to insure full and open competition.
3. Record contains no evidence that in issuing task order, agency depended upon any improper representation or promise by the awardee to employ protester's personnel.

### DECISION

Westinghouse Electric Corporation protests the issuance of task assignment No. 415-01 under National Aeronautics and Space Administration (NASA) Contract No. NAS5-30363 with McDonnell Douglas Corporation. The protester contends that it is uniquely qualified to perform the work under the task assignment, which is different in kind and nature from the

tasks McDonnell Douglas has been performing under its contract, and that the work under the task assignment is, in fact, beyond the scope of the McDonnell Douglas contract.

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

Since 1974, the protester has provided engineering and operations support for the geostationary operational environmental satellite (GOES), a weather satellite used by the National Oceanic and Atmospheric Administration (NOAA) to provide high quality earth and cloud imagery and atmospheric soundings for the National Weather Service. The data provided are important for predicting severe storms and flash floods, as well as for improving long-range numerical simulation forecasts.

NASA is responsible for management, design, purchase, launch, and initial checkout of GOES on behalf of NOAA. The protester has provided services to support the agency in carrying out its responsibilities to NOAA for management, design and purchase of the satellite, as well as for launch and post-launch checkout services. In December 1986, the agency modified the protester's contract for GOES support to set forth the protester's responsibility for transfer of GOES support activities to a successor contractor, which the agency would select later under a planned procurement to consolidate similar efforts into a single contract.

On April 13, 1987, the agency issued the planned solicitation, request for proposals (RFP) No. 5-11054/352, for a cost-plus-award-fee level-of-effort contract for support services for its Flight Projects Directorate (Flight Projects Directorate Multidisciplinary Support Services or FPDMS contract) for a period of 3 years, with two options for additional 1-year periods and options for increased levels of effort within each performance period. In the statement of work, the agency advised offerors that it would expect them to provide personnel corresponding to the levels of current support for task assignments under 13 on-going support contracts, including the protester's contract for GOES support. The statement of work also listed the GOES effort as a Flight Projects Directorate (FPD) activity to be supported by the FPDMS contractor.<sup>1/</sup>

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<sup>1/</sup> The agency also expressed its intention of turning over 13 programs including GOES support to the FPDMS contractor in a report of November 30, 1987, responding to Westinghouse's prior protest No. B-228599, dated October 22, 1987, regarding the rejection of its proposal for the FPDMS effort. Westinghouse alleged that its incumbency status merited more

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Specifically, the solicitation sought the services of a contractor to replace and augment the existing capabilities of the FPD, which is responsible for planning and managing space flight projects engaged in science and applications research. The FPD's responsibilities include spacecraft flight hardware systems, launch vehicles and research instrumentation payloads, and its work encompasses all phases of project implementation from conceptual studies through definition, design and development, fabrication, integration, launch and post-launch operations, including satellite servicing and data acquisition, processing, distribution, analysis, and archiving. The statement of work provided a list of functions falling generally into 12 areas and intended to be "illustrative of the support to be provided and performed by the contractor."

On October 17, 1988, the agency awarded contract No. NAS5-30363 for the FPDMS effort to McDonnell Douglas. Because of delays during the acquisition process and with the launch of a new generation of GOES satellites scheduled for March 1990, the agency determined that there was insufficient time to implement plans to train a new missions operations support team prior to launch. Accordingly, on February 1, 1989, upon the expiration of the protester's contract, the agency awarded another contract, on a sole-source basis to the protester, providing for GOES support for a 27-month period ending on April 30, 1991. The 1989 contract contained a general provision for "phase-over" of the GOES effort to a successor contractor.

The increasing complexity of the GOES satellites and instruments resulted in further delay of the planned GOES launch past the expiration date for the 27-month contract awarded to Westinghouse in 1989. As a consequence, the agency issued a notice in the Commerce Business Daily of February 26, 1991, of its intention to issue a sole-source contract to the protester for support services for the first two GOES launches, scheduled to begin in July 1992.

On March 29, McDonnell Douglas advised the agency by letter of its interest in performing GOES support under the FPDMS contract; McDonnell Douglas advised the agency of its belief that "there are no technical, programmatic or contract constraints that preclude an effective transition from the current Westinghouse contract." With many of the supporting tasks already complete and with the further postponement of

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consideration during the technical evaluation than it received; Westinghouse withdrew its protest on December 8, 1987.

the launch date for GOES until September-October 1992, the agency determined that there was no longer any reason to delay transition of the GOES effort to McDonnell Douglas. On May 6, 1991, the agency advised the protester that it would award the remaining GOES effort to McDonnell Douglas, and this protest followed.

The protester argues that the initial FPDMS contract excluded GOES operations support and that McDonnell Douglas has never performed flight operations under the FPDMS contract, as it would have to do under the GOES support effort. The FPDMS contract, the protester argues, limits the contractor to management and oversight of work actually performed by other contractors, as the functions listed in the statement of work describe the contractor's tasks as an effort to "monitor," "assess," "review," and "assist" in certain activities. The protester contends that the contractual statement of work does not provide for hands-on efforts such as flight operations and that the complexity and separability of such services render them outside the scope of the FPDMS contract. The protester asserts that only Westinghouse employees have performed such services in the past and that only Westinghouse employees are capable of performing them in the future. The protester believes that the agency must award a sole-source contract to Westinghouse, but that if the agency does not choose to do so, NASA should at least seek to procure such support on a competitive basis.

In determining whether a contract 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. Clean Giant, Inc., B-229885, Mar. 17, 1988, 88-1 CPD ¶ 281. In determining the materiality of a modification, we consider such factors as the extent of any changes in the type of work, performance period and costs between the contract as awarded and as modified, as well as whether the modification is of a nature that potential offerors would reasonably have anticipated under the changes clause. American Air Filter Co., Inc.--DLA Request for Recon., 57 Comp. Gen. 567 (1978), 78 1 CPD ¶ 443. We also consider whether the solicitation for the original contract adequately advised offerors of the potential for the type of changes during the course of the contract that in fact occurred. CAD Language Sys., Inc., B-233709, Apr. 3, 1989, 89-1 CPD ¶ 342.

Here, during the FPDMS competition, the agency specifically told potential offerors that the FPDMS contractor would take over the GOES project. The RFP listed the GOES effort among those to be supported and listed the protester's contract among those to be consolidated under the FPDMS contract, thus requiring the FPDMS contractor to provide staffing sufficient

for the GOES effort. Thus, notwithstanding the "monitor," "assess," "review," and "assist" language in the statement of work, the protester, advised of these plans 1 year prior to the solicitation, competed for the FPDMS contract with knowledge that the effort included GOES support. The agency has issued the task assignment for GOES support with no change to the contract work statement, the level of effort or the contract value; the work involved represents less than 1 percent of the contractual effort. The record shows that the agency delayed the contractor's assumption of GOES support solely because of the administrative problems associated with award of the FPDMS contract and the agency's anticipation that the time period between award and the GOES launch was too short to train new personnel to assume the GOES effort. NASA explains that further delays in GOES' launch now allow sufficient time for training and McDonnell Douglas, which successfully competed for the right to perform the GOES support effort, has the desire and capability for assuming the tasks under Westinghouse's contract in accordance with the anticipated launch schedule.

The statement of work for the FPDMS contract encompasses a broad range of services and describes these services in general terms, which are themselves described as "illustrative" of the work to be performed. Furthermore, it is clear that the statement of work for GOES support, like the statements of work for other consolidated efforts, was effectively incorporated by reference into the contract. We conclude that task assignment 415-01 does not constitute a significant departure from the tasks contemplated by the solicitation or from those tasks already being performed by the FPDMS contractor. Since the GOES support tasks were part of the effort awarded to McDonnell Douglas, for which both McDonnell Douglas and the protester have already competed, the agency is not obligated to seek further competition for GOES support.


As a separate ground of protest, the protester contends that whether or not the FPDMS contract is sufficiently broad to include GOES support, the work requires the use of Westinghouse engineers. The protester argues that only Westinghouse employees have the necessary experience in GOES launch operations and the requisite understanding of spacecraft procedures, the dynamic nature of the GOES simulation system and procedures associated with the GOES project. The protester contends that NASA, having determined that only the protester's employees have the requisite experience to provide support services for GOES missions operations, prepared a justification and approval (J&A), as required by 10 U.S.C. § 2304(f) (1988). That J&A cited the authority of 10 U.S.C. § 2304(c) (1), which allows the head of an agency to use procedures other than competitive procedures when the services

needed are available from only one responsible source or a limited number of responsible sources and no other type of services will satisfy the needs of the agency. Although the J&A was never executed, the protester therefore concludes that the only proper means for the agency to acquire GOES missions operations support is by awarding a contract to the protester on a sole-source basis, as the agency had done previously in 1989.

Our bid protest review does not extend to such claims, where the sole premise is that no other contractor than Westinghouse can supply a adequate level of services. The protester's economic interest in maintaining its position as the sole provider of GOES support is not protectable under our bid protest function, the purpose of which is to insure that full and open competition to the maximum practicable extent is obtained. Turbine Components Corp., B-216079, Jan. 18, 1985, 85-1 CPD ¶ 55. We therefore dismiss this ground of protest.

The protester also complains of the awardee's efforts to hire its employees, arguing that it is improper for the agency to assist these efforts and contending that the awardee enticed the agency into issuing the task assignment through "bait and switch" tactics, promising to provide the protester's employees, when in fact such employees were not available. The protester's assertions in this regard have no factual foundation on this record. Documentation submitted by McDonnell Douglas shows that it initially proposed its own staff to perform the work, although it states that it would give consideration to hiring Westinghouse employees if they subsequently became available. We find no merit to this allegation.

The protest is denied in part and dismissed in part.

  
for James F. Hinchman  
General Counsel