



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Hewlett Packard Company

**File:** B-245293

**Date:** December 23, 1991

William M. Weisberg, Esq., Barton, Mountain & Tolle, for the protester.

Carleton S. Jones, Esq., and Mark A. Singley, Esq., Shaw, Pittman, Potts & Trowbridge, for Prime Computer, Inc., interested parties.

Sherry Kinland Kaswell, Esq., and Justin P. Patterson, Esq., Department of the Interior, 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.

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### DIGEST

Contract modification resulting from an engineering change proposal to provide a significantly less expensive and more powerful UNIX operating system was not outside the scope of the contract where the original solicitation requested offerors to propose a UNIX operating system which was evaluated and included as part of the original contract.

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### DECISION

Hewlett Packard Company protests modification No. 14 to the Department of the Interior contract No. YA-551-CT8-440008, for data processing system and hardware requirements. The protester contends that the modification, based upon an engineering change proposal (ECP) that the awardee had submitted, allows the awardee to deliver equipment "differing dramatically from the original contract requirements" and constitutes a cardinal change to the contract.

We deny the protest.

On June 5, 1986, the agency awarded a fixed-price indefinite quantity requirements contract to Prime Computer, Inc., for minicomputer-based systems and associated software for support of the agency's geographic information system through fiscal year 1987, with four 1-year options. The agency has since extended the contract through fiscal year 1992.

The computer systems were to be installed at various sites across the United States, and the contract contemplated that the systems would independently operate at each location. The contract provided for the awardee to supply the agency's requirements for four levels of equipment, from level A--a central processing unit (CPU) with floating point 4-megabyte (MB) memory, 350-MB fixed disk (drive and controller), printer, 16 local asynchronous ports, four modem ports and communications processor--through level D--a CPU with 1-MB memory and 100-MB fixed/removable drive and controller with system console.

The statement of work essentially described performance specifications regarding the systems solicited. (For example, the line printer must meet a "target range of 800-1200 lines per minute," and the central processing unit had to meet "32-bit or greater architecture.") The contract provided for various elements of software, with an operating system allowing users to access the system by direct-connect and remote terminals; paragraph C.1.3 of the statement of work, relating to software requirements, required the operating system to "be compatible across all classes/levels of machines so that user software converted to or developed on one class/level can be run unchanged on the other classes/levels."

The contract also contained an engineering changes clause, which provided that:

" . . . the Contractor is encouraged to propose independently, engineering changes to the equipment, software specifications, or other requirements of this contract. These changes may be proposed to save money, to improve performance, to save energy, or to satisfy increased data processing requirements."

Paragraph C.14 of the statement of work designated certain evaluated optional features, one of which was a UNIX operating system. The record shows that all competitors had offered an optional UNIX operating system; the awardee had offered its UNIX operating system product, known as PRIMIX, a full UNIX implementation that runs on top of PRIMOS, Prime Computer's proprietary operating system, by passing commands and files to PRIMOS during processing. The awarded contract gave ordering activities the option of ordering equipment with the PRIMIX UNIX implementation.<sup>1</sup>

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<sup>1</sup>Forty-two of 110 systems delivered and accepted under the contract include PRIMIX.

In February 1988, the awardee acquired rights to manufacture and distribute Sun UNIX platforms with a UNIX operating system. On March 11, 1991, the awardee submitted an ECP, in accordance with the engineering changes clause, to supply the Sun hardware with an optional native UNIX operating system in place of the optional PRIMIX UNIX implementation. The change proposal provided a substantial price reduction for all operating levels and except for level A equipment, provided increased operating capacity. In addition, the change proposal created a more efficient software/hardware interface by eliminating the need for passing commands through PRIMIX during processing. On June 25, 1991, the agency executed modification 14, accepting the ECP.

The protester argues that modification 14 constitutes an out-of-scope cardinal change to the contract. The protester specifically argues that the proposed Sun hardware does not meet the requirement for operating systems compatibility across all classes/levels of equipment. The protester contends that the Prime equipment already delivered is incompatible with the Sun equipment that the agency may order under modification 14.

In determining whether a modification constitutes a cardinal change, i.e., whether it improperly exceeds the scope of the contract and should be the subject of a new procurement, we look to whether there is a material difference between the modified contract and the contract originally competed. CAD Language Sys., 68 Comp. Gen. 376 (1989), 89-1 CPD ¶ 364. The materiality of a modification is determined by examining whether the alteration is within the scope of the competition which was initially conducted; ordinarily, a modification falls within the scope of the procurement provided that it is of a nature that potential offerors would have reasonably anticipated under the changes clause. American Air Filter Co.--DLA Request for Recon., 57 Comp. Gen. 567 (1978), 78-1 CPD ¶ 443. Where the contractor provides better or more advanced equipment at no additional cost and the original contract specifications remain unchanged, so that the parties' basic contractual relationship is not otherwise altered, the potential field of competition is not changed sufficiently to constitute a cardinal change. Rolm Corp., B-218949, Aug. 22, 1985, 85-2 CPD ¶ 212.

Here, the awardee is supplying an upgraded UNIX operating system. The UNIX system was an option under the original solicitation, and all competitors offered to provide the optional feature. The feature was evaluated and an award

was made which included this feature. The RFP contained a provision which permitted acceptance of equipment changes which would save money and improve performance, and the record shows that the UNIX system added by modification 14 meets or exceeds all requirements of the original solicitation at a substantial decrease in contract price. We conclude that the modification, to replace one UNIX operating system with another simpler, more efficient one, was of a type that competitors under the original solicitation could reasonably have anticipated.

Further, we do not agree with the protester's assertion that acceptance of the ECP is contrary to the compatibility requirements of the statement of work and therefore represents a dramatic change in requirements. The protester interprets paragraph C.1.3 as requiring that there be compatibility between the Sun equipment and the Prime equipment previously purchased. We agree with the agency that the C.1.3 language clearly defines compatibility as the ability to run the software converted to or developed on one class of machine on other classes/levels. Thus, the software must be able to run unchanged on all classes/levels of either Sun or Prime machines. The provision itself does not explicitly require that the user be able to run the software on the different manufacturers' machines, and neither the agency nor the original solicitation suggests that compatibility between any new upgraded equipment and previously purchased machines operating at different sites would be required. In short, there is simply no evidence in the record that the agency was looking for the type of compatibility urged by the protester.


The record shows that the agency will be able to run software developed on one level of the Sun equipment with the UNIX operating system on other levels of Sun equipment, as required. Moreover, the agency reports that it can run most of the software developed on the Prime equipment unchanged under the UNIX operating system of the Sun equipment. While the protester claims that the software could be converted for use on the new system only by a long and expensive effort, there is no evidence that this would be the case.

We find that the agency's determination that there is no need to waive any of the contract requirements to accept the engineering change proposal was reasonable, and we find no reason to conclude that there is any material difference between the modified contract and the contract originally awarded. Accordingly, on this record, we think the

fundamental purpose and nature of the contract remains the same after acceptance of the engineering change proposal. See Rolm Corp., B-218949, supra.

Therefore, the protest is denied.



 James F. Hinchman  
General Counsel