

MR. GORDON



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Hewlett-Packard Company

File: B-254162

Date: July 26, 1993

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

Daniel I. Gordon, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency decision not to agree to contractor's request to modify a contract to add items which did not satisfy the original contract requirements is a matter of contract administration which the General Accounting Office will not consider.

DECISION

Hewlett-Packard Company (HP) protests the refusal by the General Services Administration (GSA) to agree to modify HP's Federal Supply Schedule Contract No. GS-00F-5944A, to add additional products within the scope of the contract.

We dismiss the 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 Court of Federal Claims. See 4 C.F.R. § 21.3(m) (1) (1993).


One of the few exceptions to this rule involves a contract modification which is alleged to exceed the scope of the contract, because such a modification would circumvent the general requirement for competition. CAD Language Sys., Inc., 68 Comp. Gen. 376 (1989), 89-1 CPD ¶ 364. In those circumstances, our Office will consider a protest alleging that the agency's modified needs should have been the subject of a new procurement. Id.

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HP asserts that its protest fits within this exception because the products which it wants to add to its contract are new items which allegedly do not satisfy the original solicitation requirements. HP is thus contending that the agency should agree to modify the contract to add products previously outside its scope, and that the agency's refusal to expand the contract's scope through the modification is subject to review by our Office because it involves a modification exceeding the scope of the contract.

As explained above, for the agency to agree to such a modification might be improper, and our Office could, therefore, consider a protest brought by a competitor. See American Air Filter Co., Inc., 57 Comp. Gen. 285 (1978), 78-1 CPD ¶ 136. Where the agency declines a contractor's request to modify the scope of a contract, however, that contractor cannot reasonably contend that the agency has improperly circumvented the requirement for competition. This is true both because the scope of the contract has not been expanded, and because, even if the modification had been accepted, the contractor would not have been prejudiced by the circumvention of the competition requirement (on the contrary, the contractor would have benefited from the modification). For this reason, GSA's decision not to accede to HP's request to modify the contract does not fall within the exception to the general limit to our jurisdiction; we will not consider HP's protest of GSA's administration of the protester's contract.

The protest is dismissed.



Paul Lieberman
Assistant General Counsel