



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Lockheed Martin Fairchild Systems

File: B-275034

Date: January 17, 1997

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John R. Tolle, Esq., and Monica C. Gray, Esq., Barton, Mountain & Tolle, LLP, for Universal Systems & Technology, Inc., an intervenor.

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DIGEST

The issuance of a delivery order for the modernization of precision gunnery training systems and the acquisition of additional systems under an existing contract for automated data processing systems integration and support services is within the scope of the tasks called for in that contract, which specifically include the manufacture and integration of components in developing new or modifying existing training systems and the manufacture of prototype and production units of weapons system trainers.

DECISION

Lockheed Martin Fairchild Systems protests the Department of the Navy's issuance of a delivery order to Universal Systems & Technology, Inc. (UNITECH), for the modernization of the Marine Corps's TOW Precision Gunnery Training System (PGTS) and the acquisition of new PGTS units under UNITECH's existing level-of-effort, indefinite quantity contract No. N00600-95-D-1367 for automated data processing (ADP) systems integration and support services. Lockheed contends that the delivery order is beyond the scope of UNITECH's contract.

We deny the protest.

The PGTS is an interactive computer-based simulator, which replicates the operating characteristics of the TOW anti-tank weapon and allows TOW operators to conduct tactical anti-armor training by simulating the fire and tracking of TOW missiles using different target scenarios contained on a video disk and displayed on a monitor. The PGTS provides feedback to both the trainee gunner and the

instructor on the gunner's performance and consists of a student station with a TOW weapon with computer link and an instructor operator station with a computer display that allows for instructor evaluation.

Lockheed is the prime contractor under a 1987 fixed-price Navy contract No. N61339-87-C-0056 for the development and supply of TOW PGTS to the United States Army and the Marine Corps. Subsequently, the computer, monitor, and other components of the PGTS were discontinued by the original equipment manufacturers or became outdated, and the Army issued a firm, fixed-price modification for the Lockheed contract, based on a Lockheed engineering change proposal, for upgrading the Army's PGTS with up-to-date computers, monitors, and other components.

The Marine Corps also has a need to modernize its TOW PGTS, and the Navy has determined to obtain this work through UNITECH's level-of-effort, indefinite quantity contract for ADP systems integration and support services. While the Navy also considered obtaining this work under Lockheed's contract, the Navy believed that UNITECH, which it considered to be an experienced and capable contractor, offered a lower cost to the government with a faster delivery schedule than Lockheed.

The UNITECH contract was awarded to that firm on June 9, 1995, under request for proposals (RFP) No. N00600-95-R-1367, pursuant to section 8(a) of the Small Business Act, as amended, 15 U.S.C. § 637(a) (1994),¹ for a base period of 12 months with four yearly options. The contract was for the support of the Weapons Simulation and Information Services departments of the Indian Head Division, Naval Sea Systems Command, which, according to the Navy, have a specific mission to design, develop, modify, document, implement and logistically support training/simulation systems for the Navy, including the Marines Corps, and other sponsored Department of Defense programs.

The contract's statement of work (SOW) requires UNITECH to provide software, equipment/materials, contractor support services and personnel required for the performance of a broad variety of ADP systems integration and support service tasks to be ordered via individual delivery orders, including "the assessment, design, development, test and evaluation, manufacture and documentation of technical training systems." Under various tasks listed in the SOW, the contractor is to develop training system support documentation; perform on-site training; design and develop hardware and software to develop new integrated systems or modernize or

¹Section 8(a) authorizes the Small Business Administration to enter into contracts with government agencies and to provide for the performance through subcontracts with socially and economically disadvantaged small business concerns.

upgrade existing systems (including utilizing commercial-off-the shelf hardware components wherever possible); develop and provide complete life-cycle integrated logistics support to integrated systems and training programs; and install and test developed or modified training programs and integrated devices at government sites. One of the tasks, entitled "training simulator/device manufacturing," requires that:

"[t]he contractor shall manufacture and integrate components as required in developing new or modifying existing training systems and devices. The contractor shall be required to manufacture prototype and production units to include flight simulators, operator trainers, maintenance trainers, weapon system trainers, part task trainers, crew training aids, and interactive PC [personal computer] based devices."

The cost-plus-fixed-fee contract contains a schedule of supplies or services with line items stating not-to-exceed estimated costs for performance in accordance with the contract's SOW, as well as other direct costs for travel, materials/supplies, and subcontracting, and the contractor's fixed fee. The contract established an estimated level of effort in manhours, including authorized subcontract labor, broken down by labor category. The total estimated and ceiling cost of the contract for the base year and the option years is \$25 million.

For the Marine Corps's TOW PGTS modernization effort, the Navy issued a delivery order to UNITECH on September 30, 1996, in the amount of \$5,340,955.23 (later increased to \$5,442,658) for the modernization of 37 existing indoor training systems and the acquisition of 43 additional new indoor training systems and 17 outdoor training systems.² With regard to the PGTS modernization work, the delivery order specified that:

"[t]he contractor shall rehost the instructor operator station (IOS) with a modern commercially-available PC, utilizing the existing video disc player. The contractor shall be responsible for the redesign of the IOS to remove the current Commodore computer and replace it with a commercial IBM compatible PC, and a larger IOS display. The contractor's design responsibilities include proper interfacing to the existing video disc player; all interfaces within the existing IOS cabinet; and proper interfaces and operation with the existing Commodore computer shall be removed and returned to the Government for disposition. The contractor is responsible for assuring

² The outdoor training systems also consist of a TOW weapon platform with instructor station, but with a firing simulation system and modifications for live target engagements. One version can be mounted on a light armored vehicle.

that modifications are compatible with the existing 37 student stations."

"The contractor shall update logistic and technical documentation to ensure the documentation reflects the new configuration. . . . The Contractor is responsible for re-engineering the current indoor training system software baseline to operate properly on the new IBM compatible PC based IOS, while ensuring the functionality of the software remains unchanged."

According to its proposal for the work, UNITECH will upgrade the existing PGTS units at its own facilities using modern commercial-off-the-shelf components, as well as with software developed by the original equipment manufacturer (OEM). UNITECH will subcontract the actual design and production of the 43 new indoor training systems to the OEM and will subcontract the manufacture of the outdoor training systems to another firm. The delivery order also requires UNITECH to deliver and install the training systems and provide technical documentation, on-site training, spare parts, and logistical and maintenance support.

Lockheed contends that the Navy's acquisition of a significant number of new and retrofitted TOW trainers and related supplies and services is beyond the scope of, and cannot be ordered, under the UNITECH contract.³

In determining whether a delivery order issued under an existing contract is beyond the contract's scope of work, we look to whether there is a material difference between the contract, as modified by the delivery order, and the original contract. Indian and Native Am. Employment and Training Coalition, 64 Comp. Gen. 460 (1985), 85-1 CPD ¶ 432; Dynamac Corp., B-252800, July 19, 1993, 93-2 CPD ¶ 37. As to the materiality of a modification, we consider factors such as the extent of any changes in the type of work, performance period and costs between the contract as awarded and as modified by the delivery order, as well as whether the original contract solicitation adequately advised offerors of the potential for the type of

³The agency initially argued that Lockheed's protest was untimely filed under section 21.2(a)(2) of our Bid Protest Regulations, 61 Fed. Reg. 39039, 39043 (1996) (to be codified at 4 C.F.R. § 21.2(a)(2)) because it advised Lockheed in July 1996 that it intended to place this order with UNITECH, but Lockheed did not protest to our Office until October 9. However, the record shows that in response to Lockheed's inquiries on the matter in July, the Navy advised Lockheed that it was still "currently investigating potential acquisition strategies" and would advise Lockheed some time in the future of its "formal decision" in the matter, and that Lockheed protested to our Office within 10 days of being apprised of the agency's placement of the delivery order.

delivery order issued. Data Transformation Corp., B-274629, Dec. 19, 1996, 97-1 CPD ¶ __.

Here, the delivery order did not change the nature or purpose of UNITECH's contract for ADP systems integration and support services, and was clearly within the scope of that contract. As described above, the Navy broadly specified in the SOW in the UNITECH contract a series of tasks it required to support its mission, including manufacturing and integrating components in developing new or modifying existing training systems, and manufacturing prototype and production units of weapons system trainers.⁴ Although the UNITECH contract did not refer to the PGTS or other specific components or systems by name, under the terms of the SOW it reasonably encompasses the upgrade and production of existing training systems, such as the PGTS, as well as the associated installation, training, documentation, and logistical and maintenance support. The Navy did not raise the total cost ceiling of the contract by virtue of this delivery order, nor was the term of the contract extended. Accordingly, we conclude that the issuance of a delivery order under the UNITECH contract was proper. See Astronautics Corp. of Am., 70 Comp. Gen. 554 (1991), 91-1 CPD ¶ 531.

Lockheed contends that the delivery order violates the subcontracting limitation clause, Federal Acquisition Regulation (FAR) § 52.219-14, contained in UNITECH's contract. Contrary to Lockheed's contention, this clause, by its terms, only applies to the contract as a whole and does not require that each delivery order placed under the contract satisfy the requirements of that clause. Whether a contractor complies with the subcontracting limitation in performing a contract is a matter of contract administration which is within the ambit of the contracting agency, not our Office.⁵ Bid Protest Regulations, § 21.5(a), 61 Fed. Reg. 39039, 39045 (1996) (to be codified at 4 C.F.R. § 21.5(a)); Corvac, Inc., B-254757, Jan. 11, 1994, 94-1 CPD ¶ 14.

Lockheed also contends that the delivery order was improperly issued on a cost-plus-fixed fee basis, rather than a fixed-price basis, in violation of FAR § 16.301-2, which provides that cost reimbursement contracts should only be used where a fixed-price contract cannot be used. However, here too, by its terms, FAR § 16.301-2 only applies to contracts, not to delivery orders under contracts. Since the UNITECH contract is of a cost-plus-fixed fee type, there is no basis to object to

⁴Other documentation in the record evidences that the UNITECH contract was specifically developed and negotiated for the design, development, modification, documentation and implementation of training systems.

⁵Likewise, whether UNITECH's apparent use of foreign personnel in performing the delivery order contravenes the terms of the original contract is a contract administration matter.

the issuance of a delivery order on a cost-plus-fixed fee basis. See Astronautics Corp. of Am., supra.

Finally, Lockheed contends that the Navy is not obligating the proper funds to this delivery order. Since we find that the delivery order was within the scope of UNITECH's contract, the Navy's funding of this delivery order is also a matter of contract administration, not appropriate for our review. Bid Protest Regulations, § 21.5(a), supra.

The protest is denied.

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