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Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Saratoga Industries, Inc.

**File:** B-247141

**Date:** April 27, 1992

Jacob B. Pompan, Esq., Pompan, Ruffner & Bass, for the protester.

Dan Grossman for Starwin Industries, Inc., an interested party.

Michael J. Kraft, Esq., Defense Logistics Agency, for the agency.

Paula A. Williams, Esq., Glenn G. Wolcott, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Contract modification resulting from deficiencies in an engineering change proposal which was incorporated into the solicitation requirements was not outside the scope of the contract where the nature and purpose of the original contract remains unchanged.

### DECISION

Saratoga Industries, Inc., a division of Espey Manufacturing Corporation, protests the Defense Logistics Agency's issuance of contract modification No. P00002, under contract No. DLA900-91-C-1720, for antenna reflectors. This item is a component of the radio set used by the Department of the Army for military communications.<sup>1</sup> The contract is held by Starwin Industries, Inc. Saratoga, a previous supplier of this item, contends that the modification is beyond the scope of Starwin's original contract and argues that the changed requirements should be obtained by a competitive procurement.

<sup>1</sup>The antenna reflector when combined with the antenna feed assembly, AS-3415, becomes the antenna system, AS-3047. The antenna is a component of the radio set, AN/GRC-103(V), which is a portable communication system within the Department of the Army.

We deny the protest.

The contract, awarded to Starwin on May 8, 1991, required the contractor to deliver a quantity of antenna reflectors, NSN 5985-01-085-3747, manufactured in accordance with Army Drawing No. SM-B-710064, Revision A, 89-02-07. As initially issued, the specifications required that the antenna reflectors include a mounting plate made of aluminum in which "clinch nuts" were imbedded to attach the antenna reflector to the mast. Amendment No. 1 of the solicitation modified the specification by requiring that the antenna reflectors be manufactured in accordance with engineering change proposal (ECP) E9GU773001.<sup>2</sup> The ECP was issued to correct a problem relating to the antenna mounting plate; specifically, because of the malleable nature of aluminum and the fact that "clinch nuts" were pressed into the aluminum mounting plate, those nuts could come loose from the plate after significant use, making it difficult or impossible to mount the antenna reflector. The ECP modified the mounting plate specifications to require that the plate be manufactured from stainless steel rather than aluminum and that "weld nuts," spot welded in three places, be used in place of "clinch nuts."

By letter dated June 12, Starwin identified certain errors in ECP E9GU773001. The Army's technical personnel reviewed Starwin's letter and, on December 9, the agency issued modification No. P00002 acknowledging and correcting the specification errors identified by Starwin; this modification also extended Starwin's delivery schedule.<sup>3</sup>

On December 30, Saratoga filed its protest with our Office, alleging that the technical changes made to the specification and the extension of the delivery schedule constituted out-of-scope cardinal changes to the contract

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<sup>2</sup>This ECP had been submitted by Saratoga under a prior Army contract.

<sup>3</sup>While the technical evaluation of Starwin's request for clarification was pending, the contracting officer issued modification No. P00001 on October 9. This modification terminated for the convenience of the government 121 of the 224 units due to a decrease in the supply requirements for this item and changed the delivery due date for the remaining quantity to November 15.

which necessitate recompetition.<sup>4</sup> For the reasons discussed below, we do not find that the changes encompassed in modification No. P00002 were beyond the scope of Starwin's contract.

As a general rule, our Office will not consider protests challenging contract modifications, as they involve matters of contract administration that are the responsibility of the contracting agency. 4 C.F.R. § 21.3(m)(1) (1992); American Air Filter Co., Inc., 57 Comp. Gen. 285 (1978), 78-1 CPD ¶ 136; Central Texas College Sys., B-215172, Feb. 7, 1985, 85-1 CPD ¶ 153. One exception to this rule exists where, as here, 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. Neil R. Gross & Co., Inc., 69 Comp. Gen. 292 (1990), 90-1 CPD ¶ 212; Everpure, Inc., B-226395.4, Oct. 10, 1990, 90-2 CPD ¶ 275. In determining whether a modification improperly exceeds the scope of the contract, we consider whether there is a material difference between the modified contract and the contract originally competed. CAD Language Sys., Inc., 68 Comp. Gen. 376 (1989), 89-1 CPD ¶ 364; Clean Giant, Inc., B-229885, Mar. 17, 1988, 88-1 CPD ¶ 281. The materiality of a modification is determined by examining factors such as the magnitude of the changes in relation to the overall effort, CAD Language Sys., Inc., *supra*, whether the nature and purpose of the contract has been altered by the modification, Clean Giant, Inc., *supra*, and whether the field of competition would be materially changed by the contract modification. Rolm Corp., B-218949, Aug. 22, 1985, 85-2 CPD ¶ 212.

The solicitation, as amended, required offerors to deliver antenna reflectors manufactured in accordance with Army Drawing No. SM-B-710064, Revision A, 85-02-07, as modified by ECP E9GU773001. This ECP required that: (1) the antenna mounting plate be manufactured from stainless steel rather

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<sup>4</sup>Saratoga also protests that Starwin did not timely acknowledge receipt of solicitation amendment No. 1 which incorporated the ECP, and that the no-cost contract modification was illegal for lack of consideration. In its report, the agency furnished evidence that Starwin's signed acknowledgment of the solicitation amendment, was, in fact, timely received as evidenced by the time and date-stamp on the envelope containing the acknowledgment. Saratoga did not respond to this evidence and, therefore, we consider it to have abandoned the matter. Regarding the agency's alleged lack of authority to issue a no-cost contract modification, this issue involves a matter of contract administration which is not for consideration by our Office. 4 C.F.R. § 21.3(m)(1).

than aluminum; (2) "weld nuts," spot welded in three places, be use in place of "clinch nuts"; (3) the dimension of the holes in which the nuts were inserted be changed from .500 inches to .406 inches; (4) the thickness of the mounting plate be changed from .187 inches to .062 inches; (5) the length of the plate be changed from 6 to 7 inches; and (6) a .200 inch deep fold-over edge be provided on the sides of the mounting plate.

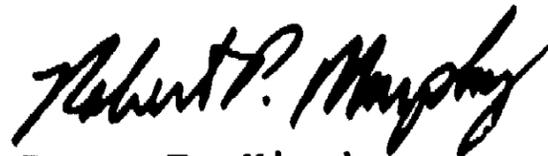
In its letter of June 12, Starwin pointed out that: (1) the ECP incorrectly referred to stainless steel bar stock rather than stainless steel sheet stock; (2) the ECP incorrectly referred to a finishing process applicable only to aluminum; and (3) increasing the length of the plate from 6 to 7 inches would cause the plate to protrude from its imbedded position in the back of the antenna reflector. After reviewing Starwin's letter, the agency issued modification P00002 on December 9, in which it: (1) deleted the finish requirement for aluminum and added a finish requirement for stainless steel; (2) deleted the requirement for stainless steel bar stock and added a requirement for stainless steel sheet; (3) changed the length of the mounting plate from 7 inches to 6 inches; (4) eliminated the requirement for folded edges; and (5) extended the delivery schedule.

Saratoga asserts that removing one inch from the length of the plate and eliminating the requirement for folded edges negatively affects the structural integrity of the unit. However, other than its conclusory assertions regarding its assessment of the functional capabilities of the product following contract modification, Saratoga offers no explanation as to how the modifications alter the nature or purpose of the antenna reflectors being acquired; nor does Saratoga argue that the modifications would in any way affect the field of competition for antenna reflectors.

We find that the technical changes included in modification No. P00002 did not alter the nature or purpose of Starwin's contract. The changes made to the mounting plate specifications were minor and had nothing to do with the operational characteristics or capabilities of the antenna reflectors. Further, the changes did not materially alter even the mounting plate specifications created by ECP E9CU773001; that is, Starwin is still obligated to manufacture the mounting plate from stainless steel rather than aluminum, use "weld nuts" rather than "clinch nuts," and spot weld the nuts in 3 places. In short, we do not view the magnitude of the technical changes in modification No. P00002 as significant with regard to the overall contract requirements for antenna reflectors, nor is there any indication that the field of competition would change as a result of the modification. See Rolm Corp., supra.

We similarly find that the modification of Starwin's delivery schedule provides no basis for re-competing the requirement. The record shows that Starwin's delay in producing the antenna reflectors was associated with the agency's correction of the defective specification, and that the defects themselves were attributable, in part, to Saratoga since Saratoga created the ECP.<sup>5</sup> Where, as here, a delay in production is caused by the agency's inability to provide a contractor with adequate specifications, a resulting adjustment to the delivery schedule does not constitute an out-of-scope modification to the contract. See Ingersoll-Rand, B-225996, May 5, 1987, 87-1 CPD ¶ 474. Accordingly, we find no significant change to the fundamental requirements of the contract. See Defense Sys. Group et al., B-240295 et al., Nov. 6, 1990.

The protest is denied.

  
James F. Hinchman  
General Counsel

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<sup>5</sup>Saratoga notes that the issue regarding the length of the mounting plate had been addressed and resolved in an ECP revision dated March 14, 1990, and that, therefore, this matter provided no legitimate basis for delaying contract performance. The agency responds that the March 14, 1990, ECP revision was inadvertently omitted from the solicitation package and, therefore, Starwin had no way to know that the specification had been previously clarified. Since Saratoga received the same solicitation package provided to Starwin, to the extent Saratoga is now protesting the agency's omission of the March 14, 1990, revision from the solicitation, its protest is untimely. 4 C.F.R. § 21.2(a)(1).