

OUT OF SCOPE MODIFICATION

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A recent Navy contract modification of a weapon scope is an example of a classic out of scope modification that will be reviewed by the Government Accountability Office as an improper award without competition. *Leupold Stevens, Inc.*, B-417796, Oct. 30, 2019.

Leupold Stevens protested as out of scope a modification to a contract held by Sig Sauer, Inc. for the purchase of the second focal plane squad variable powered scope (“S-VPS”). The challenged modification was for purchase and installation of a Horus T-8 glass etched internal reticle (aiming point) in the Sig Sauer S-VPS

October 2018, the Navy awarded Sig Sauer a \$12 million contract, noting that this price was much lower than any other offeror. All offerors except Sig Sauer proposed using a more expensive glass etched or hybrid reticle, while Sig Sauer offered a wire reticle.

In December 2018, the Navy approached Sig Sauer about replacing its wire reticle in the S-VPS with the Horus T-8, a more expensive glass etched reticle. The Navy anticipated that Sig Sauer would provide not only the Horus T-8 reticle, but also edge illumination and circuit for such illumination. (The current S-VPS illumination could only function with a wire reticle and Sig Sauer needed to modify the illumination method of its scope to accommodate a glass-etched reticle). The Navy modified the contract to add a line item for The Horus T-8, and increased the contract value by \$9.3 million, or approximately 77 percent, to \$21.4 million.

Sig Sauer’s contract (and the underlying solicitation) included two pertinent sections:

3.17 Future Reticles

3.17.1 The vendor shall allow for future reticle designs and operational needs.[]

3.172 There shall be no changes to the S-VPS Scope design when changing to a new reticle, other than the reticle itself.

The GAO normally does not review protests of improper contract modifications because they normally rate to contract administration and are beyond the scope of GAO’s bid protest function. However, GAO will consider protests where, as here, the protester alleges that the contract modification exceeds the scope of the contract and should be the subject of a new procurement. In such a protest, the allegation is that the agency has subverted competition by awarding—without competition—work that would otherwise be subject to the requirement for full and open competition under the Competition in Contracting Act.

GAO rejected both Sig Sauer’s and the Navy’s arguments that this change was within the contract scope. GAO noted that the illumination modifications required for the etched glass scope were outside the contract scope. GAO read both Sections 3.17.1 and 3.172 together, noting that there was no inconsistency between the two provisions. Rather, it was clear that the scopes in the original procurement must allow for “future reticle designs” but, “when changing to a new reticle, “there shall be no changes to the S-VPS scope design other than the reticle

itself.” GAO noted that the only reasonable interpretation of the solicitation language and contract is that it means what it says—namely, that any changes to the scope design are not permitted.

GAO concluded that the contract modification was material in terms of contract value (see dollar increase above), and “in light of the restrictive solicitation language and the significant cost increase of the modification, the change to the Horus T-8 reticle is a material change and outside the scope of Sig Sauer’s contract.

Takeaway. GAO used a traditional and preferred method of contract interpretation, that the solicitation and contract language was clear on its face. Had the Navy wanted to permit modification of the contract to permit changes to *both the reticle* and the S-VPS scope design, it could have so stated in the solicitation.

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