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# Decision

**Matter of:** Leupold Stevens, Inc.

**File:** B-417796

**Date:** October 30, 2019

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Stephanie B. Magnell, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protest that contract modification seeks services beyond the scope of the underlying contract is sustained, where the modification includes changes prohibited by the contract and the modification causes a material increase in the contract's value.

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## DECISION

Leupold Stevens, Inc., of Beaverton, Oregon, protests a modification to a contract held by Sig Sauer, Inc., of Newington, New Hampshire, which was issued by the Department of the Navy, Navy Surface Warfare Center, for purchase of the second focal plane squad variable powered scope (S-VPS).<sup>1</sup> The challenged modification is for the purchase and installation of the Horus T-8 glass-etched internal reticle in the Sig Sauer S-VPS. Leupold argues that the modification is outside the scope of Sig Sauer's awarded contract.

We sustain the protest.

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<sup>1</sup> The S-VPS "is a low profile, wide field of view, passive scope for near-range engagements out to and beyond the maximum effective range of the weapon system, for small arms employed by Special Operations Forces (SOF)." Agency Report (AR), Tab 6A, Contract Business Clearance Memorandum (BCM) at 1. "The S-VPS includes a non-caliber specific reticle, is variable power, and incorporates an illuminated aim-point." *Id.* at 10.

## BACKGROUND

On November 9, 2017, the Navy issued request for proposals (RFP) No. N00164-18-R-JQ30 in accordance with the procedures of Federal Acquisition Regulation (FAR) part 15. RFP at 1. The solicitation anticipated the award of a fixed-price indefinite-delivery, indefinite-quantity (IDIQ) contract with a 5-year base period and five 1-year option periods to the offeror proposing the best value to the agency, considering the following factors in descending order of importance: technical, past performance, and price. AR, Tab 6A, Contract BCM at 12-13.

The agency received seven proposals by the January 12, 2018 deadline.<sup>2</sup> Id. at 14-15. Sig Sauer proposed a wire reticle at a price of \$13,803,359.50. Id. at 15, 41. Leupold proposed a “more expensive” glass-etched reticle at a price of \$[DELETED].<sup>3</sup> Id.; Contracting Officer’s Statement (COS)/Memorandum of Law (MOL) at 9. According to the Navy, either “most” or “all” other offerors “proposed using a more-expensive glass-etched or hybrid reticle.” COS/MOL at 9. The other offerors’ prices ranged from approximately \$27 million to \$41 million. AR, Tab 6A, Contract BCM at 41. With their proposals, offerors provided the Navy with 12 scope samples for testing against the solicitation’s performance specifications, including the performance specifications for reticle performance and illumination. AR, Tab 10, Navy Decl. ¶ 4; COS/MOL at 5; see also AR, Tab 6A, Contract BCM at 35, 39.

On September 24, after noting that Sig Sauer offered a much lower price than any other offeror, the agency made award to Sig Sauer at a price of \$12,077,565. AR, Tab 6A, Contract BCM at 46, 49-50; AR, Tab 2, Sig Sauer Contract at 14.

About three months after award, in December 2018, the Navy approached Sig Sauer about replacing its wire reticle in the S-VPS with the Horus T-8 reticle.<sup>4</sup> AR, Tab 8A,

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<sup>2</sup> The RFP contained two major contract line item numbers (CLINs): CLIN 1100, a small-business set-aside for a first focal plane S-VPS; and CLIN 2100, an open competition for a second focal plane S-VPS. AR, Tab 6A, Contract BCM at 11, 14. This protested modification concerns only CLIN 2100 and related CLINs.

<sup>3</sup> According to the Navy, while “[a] wire reticle is simpler to manufacture and allows a simpler fiber-optic illumination method [, manufacture of a] glass-etched reticle is a significantly more detailed process and requires a more complex ‘edge-lit’ illumination method requiring additional wiring and circuitry for the illumination control to meet the performance specification.” AR, Tab 8A, Modification BCM at 12.

<sup>4</sup> According to the Navy, “[t]he [Horus] T-8 is a patented reticle from Horus Vision Reticle Technologies, Corp.[.] (HVRT) [which] provides unique capabilities that can only be accomplished through a glass etched reticle.” AR, Tab 8A, Modification BCM at 9. The agency noted that none of the original proposals could have included the Horus T-8 reticle because “it was not developed until December 2018.” Id. at 13.

Modification BCM at 12. The Navy calculated the elements of the cost increase for the Horus T-8 reticle as follows:

<b>Additional Aspects</b>	<b>Price Per Component</b>
Licensing Fee	\$125
Glass-Etched Reticle Cost	\$125
Lenses for Glass-Etched Reticle	\$75
Edge Illumination for LED Module	\$250
Circuit for Edge Illumination	\$100
<b>Total Increase in Cost per Sig Sauer S-VPS for Horus T-8 Illuminated Reticle</b>	<b>\$675</b>

Id. As shown above, the Navy anticipated that Sig Sauer would purchase not only the Horus T-8 reticle, but also edge illumination and the circuit for such illumination. Id. According to the Navy, because the current S-VPS illumination can only function with a wire reticle, “Sig Sauer must modify the illumination method of its scope to accommodate a glass-etched reticle.” COS/MOL at 16.

On June 19, 2019, the Navy modified Sig Sauer’s contract to add a CLIN for a version of the S-VPS with a Horus T-8 reticle at the following prices:

<b>Quantity</b>	<b>Sig Sauer Proposed Price</b>
1 – 500	\$860 <sup>5</sup>
501 – 2000	\$800
2000+	\$600

AR, Tab 3, Horus T-8 Contract Modification at 3-4. The modification increased the contract value by \$9,338,800--or approximately 77 percent--to \$21,416,365.<sup>6</sup> AR,

<sup>5</sup> In later contract years, the initial price for the S-VPS with the Horus T-8 reticle rises from \$860 to \$878, and then to \$895. AR, Tab 3, Horus T-8 Contract Modification at 3-4. Due to the difference between the agency’s cost calculation and the awarded modification, GAO asked the agency to provide “a breakdown of the underlying costs of the contract modification.” First GAO Notice, Oct. 2, 2019. During a conference call on October 4, the agency committed to providing GAO with the elements of the awarded price, and Sig Sauer’s counsel affirmed that Sig Sauer would provide this breakdown to the Navy, if needed. On the basis of the parties’ representations, GAO set a submission deadline. Second GAO Notice, Oct. 4, 2019. However, neither the Navy nor Sig Sauer’s counsel provided the agreed information. Navy Resp. to Second GAO Notice, Oct. 4, 2019; Sig Sauer Resp. to Agency Supp. Submission, Oct. 7, 2019, at 2.

<sup>6</sup> It appears that the total price for the S-VPS with the Horus T-8 reticle is the price of the S-VPS with the wire reticle and original wire illumination plus the price of the Horus  
(continued...)

Tab 3, Horus T-8 Contract Modification at 1-2; AR, Tab 8A, Modification BCM, at 1, 9. The agency characterized “[t]his reticle change [as] an in-scope modification<sup>7</sup> in accordance with (IAW) paragraph 3.17 of the [solicitation and contract performance] specification,” which states:

### 3.17 Future Reticles

#### 3.17.1 Reticle

The vendor shall allow for future reticle designs and operational needs to include in the Dayscope: Mil Dot, Milliradian Line, Ballistic, Velocity, and Grid hybrids. Ballistic reticles shall be designed to match the ballistics of various ammunitions. Graduated grid shall provide a method that supports the ability to use windage hold offs and elevation holds and holdovers accurately. There shall also be coarse and fine methods to quickly range targets. A method to allow for rapid engagement of moving targets shall be provided on the main horizontal.

#### 3.17.2 Configurations

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

AR, Tab 8A, Modification BCM, at 8-9 (citing AR, Tab 2B, RFP Performance Specifications).

The Navy published the notice of contract modification in the Department of Defense Daily Digest Bulletin on July 17, describing the modification as “an in-scope change to

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(...continued)

T-8 glass-etched reticle and the new illumination, i.e., that the price of the modified S-VPS includes two reticles and two illumination methods. AR, Tab 3, Horus T-8 Contract Modification at 4.

<sup>7</sup> In addition to the Navy’s conclusion that the modification was “a Government requested, in-scope change to the internal reticle in the scope,” the agency also found other grounds for not competing the scope, including that due to Sig Sauer’s data rights in the SU-293/PVS systems, “the Government does not have adequate information to solicit scope modifications [i.e., modifications to the purchased scope] from another source” and these data rights . . . render a competitive solicitation “not cost effective.” AR, Tab 8A, Modification BCM at 2, 10. Alternatively, the modification BCM provides that “Sig Sauer [was] the only source capable of meeting the Government’s requirements without unacceptable delays.” Id. Leupold also protested the modification as an inadequately-documented sole-source award. Protest at 6. We do not address this protest ground or reconcile the inconsistent bases for not competing the requirement because the Navy here only defended the position that the modification was within the scope of the original contract.

the internal reticle of the SU-293/PVS Second Focal Plane (SFP) Squad-Variable Powered Scope (S-VPS) to add a glass etched reticle.” Protest, exh. A, at 4. This protest followed on July 26.

## DISCUSSION

Leupold argues that the modification to add the Horus T-8 glass-etched reticle is outside of the scope of Sig Sauer’s awarded contract. Among its arguments, the protester contends that changing from a wire reticle to a glass-etched reticle requires a change to the illumination mechanism in the S-VPS, which Leupold contends is prohibited by section 3.17.2 of the contract. In this vein, the protester asserts that “[t]he [s]olicitation specifically required that the S-VPS . . . be designed so that, when changing the reticle, no other design changes were necessary to the S-VPS.” Protest at 4-5. Leupold contends that the modification for “the inclusion of a glass-etched reticle in the S-VPS” should have been separately competed. *Id.* at 4. The protester also contends that the size of the modification places it outside the scope of the contract. *Id.* at 5.

The Navy explains that, when changing from the Sig Sauer wire reticle to the Horus T-8 glass-etched reticle, other parts of the scope will also change. COS/MOL at 17-18 (“There are approximately [DELETED] parts required for the S-VPS scope, and only a sum of [DELETED] of those parts, including the reticle, were modified in some way to accommodate the change from wire to glass reticle.”).<sup>8</sup> Sig Sauer confirms that, “[t]o accomplish the reticle change, Sig Sauer made adjustments to the scope’s interior design (principally for reticle illumination).” Intervenor’s Resp. to Agency’s Supp. Submission at 4. The agency’s position is that the solicitation was unambiguous, *i.e.*, that the “Future Reticles” provisions in the performance specifications anticipated modifications of this type and scope. COS/MOL at 11. The Navy interprets section 3.17.2 to mean that “[t]he prohibition on changes to scope design applies to the external configuration and features of the scope, not the internal mechanisms that must change due to differing reticle requirements.” *Id.*

Our Office will generally not review protests of allegedly improper contract modifications because such matters relate to contract administration and are beyond the scope of our bid protest function. 4 C.F.R. § 21.5(a); DOR Biodef., Inc.; Emergent BioSols., B-296358.3, B-296358.4, Jan. 31, 2006, 2006 CPD ¶ 35 at 6. Even if a contract modification arguably is significant, absent a showing that the modification is beyond the scope of the original contract, we view the modification as matter of contract administration. Alliant Sols., LLC, B-415994, B-415994.2, May 14, 2018, 2018 CPD ¶ 173 at 7. However, we will consider protests 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. See Western Pilot Serv. et al., B-415732

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<sup>8</sup> The agency states that “[t]he primary change between scopes is the method of illumination.” COS/MOL at 18. Neither the Navy nor Sig Sauer detailed the non-illumination changes to the S-VPS.

et al., Mar. 6, 2018, 2018 CPD ¶ 104 at 6. We do so because the protester is alleging that the agency has subverted competition by awarding--without competition--work that would otherwise be subject to the statutory requirement for full and open competition under the Competition in Contracting Act of 1984 (CICA). See 10 U.S.C. § 2304(a); Makro Janitorial Servs., Inc., B-282690, Aug. 18, 1999, 99-2 CPD ¶ 39 at 3 (sustaining protest where contract modification and task order were beyond the scope of the underlying IDIQ contract).

In determining whether a contract modification is beyond the scope of the underlying contract and thereby triggers applicable competition requirements, we look to whether there is a material difference between the modified contract and the contract that was originally awarded. Makro Janitorial Servs., Inc., supra, at 3; see also Booz Allen Hamilton Eng'g Servs., LLC, B-411065, May 1, 2015, 2015 CPD ¶ 138 at 6-7; MCI Telecomms. Corp., B-276659.2, Sept. 29, 1997, 97-2 CPD ¶ 90 at 7. To determine whether such a material difference exists, we review the circumstances attending the procurement that was conducted; examine changes in the type of work, performance period, and costs between the contract as awarded and as modified; and consider whether the original contract solicitation adequately advised offerors of the potential for this type of modification and thus whether the modification could have changed the field of competition. Alliant Sols., supra, at 7; see also Western Pilot Serv., et al., supra, at 6.

Where, as here, a dispute exists as to a solicitation's actual requirements, we begin by examining the plain language of the solicitation. Valkyrie Enters., LLC, B-415633.3, July 11, 2019, 2019 CPD ¶ 255 at 5; Point Blank Enters., Inc., B-411839, B-411839.2, Nov. 4, 2015, 2015 CPD ¶ 345 at 4. We resolve questions of solicitation interpretation by reading the solicitation as a whole and in a manner that gives effect to all provisions; to be reasonable, and therefore valid, an interpretation must be consistent with such a reading. Desbuild Inc., B-413613.2, Jan. 13, 2017, 2017 CPD ¶ 23 at 5. Furthermore, we defer to the plain meaning of the provision. Valkyrie, supra, at 5; see also ManTech Adv. Sys. Int'l, Inc., B-416734, Nov. 27, 2018, 2018 CPD ¶ 408 at 7.

The plain meaning of the "Future Reticles" provisions shows that the illumination modifications--which according to the Navy and the intervenor say must accompany the change to a glass-etched reticle--are outside of the scope of the contract. As noted above, the RFP provides that "[t]he vendor shall allow for future reticle designs." AR, Tab 2B, RFP, Performance Specifications § 3.17.1. However, the following section prohibits concurrent changes to the scope design. Id. § 3.17.2 ("There shall be no changes to the S-VPS Scope design when changing to a new reticle, other than the reticle itself."). There is no inconsistency between these two provisions. Reading the clauses together, it is clear that offerors' proposed scopes shall allow for "future reticle designs" but, "when changing to a new reticle," "[t]here shall be no changes to the S-VPS Scope design" "other than the reticle itself." Id.

The agency's and intervenor's arguments that section 3.17.2 allows for design changes that are internal to the S-VPS are not consistent with the plain meaning of the provision, which explicitly prohibits concurrent changes to the design of the S-VPS. Indeed, there

is no textual support for the agency's and intervenor's position that permits "internal changes" while prohibiting changes to the "external configuration and features" from any "internal mechanism." The only reasonable interpretation of the solicitation language is that it means what it says, *i.e.*, that any changes to the scope design are not permitted. ManTech Advanced Sys. Int'l., Inc., *supra*, at 7. The agency's reading is simply at odds with the plain meaning of the solicitation language and, as such, is unreasonable. Colt Def., LLC, B-406696, July 24, 2012, 2012 CPD ¶ 302 at 7; Valkyrie, *supra*, at 5; *see also* Raytheon Co., B-404998, July 25, 2011, 2011 CPD ¶ 232 at 17 (sustaining protest where the agency's interpretation of the solicitation was unreasonable because it was inconsistent with the plain meaning of the solicitation provisions).

The intervenor also asserts that "[e]ven if PS [performance specification] § 3.17.2 prohibited ancillary changes, the offerors nonetheless would have reasonably anticipated that a change to the reticle would constitute a permissible change to [performance specification] § 3.17.2 within the scope of the contract and its Changes clause." Intervenor Supp. Response at 5. The agency also argues that offerors reasonably understood that the solicitation's language contained an unstated exception to the "no changes" language. COS/MOL at 11-12. First, to the extent that the Navy argues that we should look beyond the RFP to offerors' proposals to deduce the meaning of "Future Reticles" provision, it is not necessary to do so when the RFP is unambiguous. Colt Def., LLC, *supra*, at 7. Second, the record does not support the agency's and intervenor's position. The Navy alleges that Sig Sauer's proposal included the following relevant paragraph showing that offerors anticipated future reticle changes:

Sig Sauer can offer both glass and electroformed reticles<sup>9</sup> without impacting the design of the scope, other than the form of illumination. As with any scope, if you modify from an electroformed reticle to a glass reticle the method of illumination changes.

AR, Tab 10, Navy Decl., at 4-5. While this language is consistent with section 3.17.1, it does not show, as the agency intends, that a "reticle change" may allow changes to the S-VPS design. In contrast, it indicates that Sig Sauer itself viewed a change in "the form of illumination" as affecting "the design of the scope," because it cautioned the agency that it could offer both glass and wire reticles "without impacting the design of the scope, other than the form of illumination." *Id.* (emphasis added). Furthermore, this passage does not support the agency's position that offerors distinguished between prohibited external design changes and permitted internal design changes. As such, the Navy was on notice, prior to award, that at least the awardee viewed a change in illumination as a change in the design of the scope.

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<sup>9</sup> The Navy did not address whether an "electroformed reticle" was the same as a wire reticle, but from its arguments, it appears these are the same.

The Navy also asserts that the protester also understood that the scope should accommodate future reticles. COS/MOL at 2. While that may be, Leupold's decision to propose a glass-etched reticle is not inconsistent with the understanding that the RFP prohibited a change in illumination parts when changing reticles. Indeed, it simply suggests that Leupold was, correctly it seems, anticipating that the agency would prefer a glass-etched reticle, and selecting the appropriate illumination in advance. AR, Tab 13, Leupold Technical Proposal at 3 ("No changes are required to the Leupold S-VPS dayscope design when changing to a new reticle other than the reticle itself.").

The Navy further argues that the Horus T-8 modification is permitted by the contract's changes clause, set forth at FAR clause 52.243-1. As relevant here, this clause provides that the contracting officer "may at any time . . . make changes within the general scope of this contract in any one or more of the following: (1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government"<sup>10</sup> in accordance with the drawings, designs or specifications." FAR clause 52.243-1(a)(1). Because the FAR provision states that such changes must be "within the general scope of this contract," we read it as subject to the other contract terms addressing the contract scope, including section 3.17.2. Even without this internal hierarchical language, under the principles of contract interpretation, if there were a conflict, the rule is that the more specific clause takes precedence over the more general clause. Mevacon-NASCO JV; Encanto Facility Servs., LLC, B-414329 et al., May 11, 2017, 2017 CPD 144 at ¶ 8. Where, as here, the changes clause is more general than the limitation in section 3.17.2, the latter will govern. Id. Therefore, our reading of the "Future Reticles" provisions remains consistent with the changes clause.<sup>11</sup>

The intervenor also contends that, even if there are design modifications, they are not material. Intervenor's Resp. to Agency's Supp. Submission at 2-3. The Navy contends that, "when compared to the entirety of all of the contract specifications performance requirements, and scope components, the reticle change is a minor aspect of the overall requirement." COS/MOL at 18. The protester counters that the modification increases the contract price by approximately 77 percent. Protester Comments at 4.

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<sup>10</sup> Because the Sig Sauer S-VPS is a "commercial off the shelf" product, it does not appear to be "specially manufactured for the Government." COS/MOL at 9; FAR clause 52.243-1(a).

<sup>11</sup> The agency also argues that the modification is within the contract scope due under the RFP's technology improvements provision. COS/MOL at 10; RFP at 43. The record does not show that the Navy considers a glass-etched reticle to be a technological improvement over a wire reticle. See, e.g., AR, Tab 6A, Contract BCM at 36-37 (summary of Sig Sauer technical evaluation), 47-50 (best value tradeoff decision).



On the record here, we find that the contract modification is material in terms of contract value. For the first Horus T-8 reticles, the change is approximately 95 percent of the base requirement (\$860/\$899). Furthermore, even if the purchase of a standalone glass-etched reticle is permitted by the RFP, the illumination is a material part of the modification. Here, the cost of the reticle is \$125 and the lenses are \$75. AR, Tab 8A, Modification BCM, at 12. Even adding a “licensing fee”<sup>12</sup> of \$125, which raises the reticle cost to \$325, the reticle itself is less than 40 percent of the overall contract modification. In contrast, the illumination is \$350 (consisting of \$250 for the edge illumination and \$100 for the circuit), *i.e.*, the illumination is more than the reticle, lens, and licensing fee together.<sup>13</sup> *Id.* On this record, in light of the restrictive solicitation language and the significant cost increase of the modification, we find the modification for Horus T-8 reticle to be a material change and therefore outside the scope of Sig Sauer’s contract.

## CONCLUSION AND RECOMMENDATION

Competitive prejudice is an essential element of a viable protest, and where the protester fails to demonstrate prejudice, our Office will not sustain a protest. Alliant Sols., LLC, B-415994; B-415994.2, May 14, 2018, 2018 CPD ¶ 173 at 9; Emergent BioSolutions, Inc., B-402576, June 8, 2010, 2010 CPD ¶ 136 at 14. We resolve any doubts regarding prejudice in favor of a protester since a reasonable possibility of prejudice is a sufficient basis for sustaining a protest. See Kellogg, Brown & Root Servs., Inc.--Recon., B-309752.8, Dec. 20, 2007, 2008 CPD ¶ 84 at 5.

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<sup>12</sup> This reticle was co-designed by the U.S. Army and Horus. See AR, Tab 10D, Navy Affidavit, Oct. 3, 2019, ¶ 4 (“The United States Army Special Forces Command . . . designed the reticle in concert with the patent holder Horus (HVRT).”).

<sup>13</sup> The intervenor argues that our decision in Emergent BioSolutions, Inc., *supra*, stands for the proposition that where the research objectives remained the same, changes in types of services were not a substantial change to the type of work. Intervenor Supp. Briefing at 3-4. The intervenor describes the modification as “ancillary work necessary to incorporate the reticle” and “a change to any components necessary to make the reticle function.” *Id.* at 4. In Emergent BioSolutions, GAO concluded that, despite the fact that the original solicitation did not provide for the performance of certain studies, the later performance of those studies was not outside of the scope of the original contract because their performance was simply a change in the performance entity that did not “change[] the type of work required under the original contract, or the original field of competition.” *Id.* at 13-14. In contrast, as discussed below, we conclude that the agency’s approach here likely had a material effect on the field of competition and this thus differs factually from the scenario in Emergent BioSolutions. Furthermore, the intervenor selectively frames the “type of work” of S-VPS contract as simply “manufacturing scopes that incorporate a reticle,” thereby avoiding a central protest argument about the interaction between section 3.17.2 and whether there are prohibited design changes that accompany a change from a wire reticle to a glass-etched reticle.

The Navy contends that “it is unlikely [that] the competition would have materially changed had the Government required a glass-etched reticle in the RFP.” COS/MOL at 18. Again, the Navy’s position is at odds with the record. Sig Sauer proposed an S-VPS with a wire reticle, and its proposed price was approximately half the price of all other offerors. AR, Tab 6A, Contract BCM at 41. The Navy states that a wire reticle offers cost savings over “a more-expensive glass-etched or hybrid reticle”; this claim is supported by the prices proposed in the original competition. Id.; COS/MOL at 9. Performance specification 3.17.2 of the RFP prohibits changes to the design of the S-VPS when changing the reticle. The record also reflects that at least Sig Sauer understood a change in illumination to be a scope design change. The agency considered Sig Sauer’s substantially lower cost when making award. AR, Tab 6A, Contract BCM at 46, 49-50. Had Leupold known that despite the language of section 3.17.2 the Navy would nevertheless allow for a later change in the reticle illumination, it too could have proposed a lower-priced wire reticle and substantially improved its competitive position. On this record, we conclude that the protester was prejudiced because the agency’s approach changed the field of competition. See Emergent BioSolutions, supra, at 14.

We recommend that the Navy rescind modification No. N00164-18-D-JQ30 P00001 and reexamine its options to procure a glass-etched reticle for the S-VPS, if it concludes it still requires such a reticle and accompanying illumination changes.<sup>14</sup> We further recommend that the agency either conduct a full and open competition for a glass-etched reticle with illumination changes or prepare the appropriate justification required by CICA to limit the competition. We also recommend that the agency reimburse the protester the reasonable costs of filing and pursuing its protest, including attorneys’ fees. 4 C.F.R. § 21.8(d)(1). The protester must submit its certified claim for costs, detailing the time expended and the costs incurred, directly to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Thomas H. Armstrong  
General Counsel

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<sup>14</sup> One issue not raised by the protester was the agency’s conflation of a general requirement for “a glass-etched reticle” with a specific, name-brand requirement for the Horus T-8 reticle. Because the record is unclear, the agency should determine whether it intends to procure any glass-etched reticle or the Horus T-8 reticle specifically.