



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

Comptroller General
of the United States

Decision

DOCUMENT FOR PUBLIC RELEASE

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Matter of: Epsilon Systems Solutions, Inc.

File: B-414410.4

Date: November 6, 2017

David B. Dixon, Esq., Meghan Doherty, Esq., and Richard Starling, Esq., Pillsbury Winthrop Shaw Pittman LLP, for the protester.

Richard B. O'Keeffe, Jr., Esq., William A. Roberts, III, Esq., and Gary S. Ward, Esq., Wiley Rein LLP, for URS Federal Services, Inc., an intervenor.

Bruce S. Potocki, Esq., Department of the Navy, for the agency.

Nora K. Adkins, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest asserting that the agency improperly relaxed certain requirements during performance of a task order is dismissed where protester failed to demonstrate an exception to the general rule that our Office does not review matters of contract administration.

DECISION

Epsilon Systems Solutions, Inc., of San Diego, California, protests the Department of the Navy, Naval Sea Systems Command's (NAVSEA) modification of task order No. N5523617F3001, which was awarded to URS Federal Services, Inc., of Germantown, Maryland, for engineering and technical support services at the Navy's Southwest Regional Maintenance Center (SWRMC). The protester, the incumbent contractor, alleges that the Navy improperly relaxed the requirements by removing two statement of work (SOW) provisions, which materially changed the scope of work anticipated by the solicitation and resulted in an improper sole-source contract for the modified work in violation of the Competition in Contracting Act (CICA).

We dismiss the protest because it raises a matter of contract administration over which we do not exercise jurisdiction.

BACKGROUND

The Navy's SWRMC has primary responsibility for the provision of support services to "Fleet units and Type Commanders" in matters of waterfront fleet technical assistance, assessment techniques, and training supporting the operations, installation, maintenance, repair, and readiness of shipboard equipment and systems. SOW at 2. On November 22, 2016, the agency issued request for proposals (RFP) No. N00024-17-R-3019 for a cost-plus-fixed-fee level-of-effort task order pursuant to Federal Acquisition Regulation (FAR) Part 16.¹ RFP at 1, 78. The RFP was issued to holders of Navy Seaport-e Multiple Award Zone 6 (Southwest) indefinite-delivery, indefinite-quantity (IDIQ) contracts for the provision of engineering and technical services in support of hull, mechanical and electrical systems testing, evaluation, and assessment aboard U.S. Navy ships. Id. at 2. The solicitation provided for a period of performance of one base year and three option years. Id. at 78.

The RFP's SOW defined the required services, which ranged from administrative responsibilities, such as meeting with government management, to providing advisory services, such as technical guidance and troubleshooting. SOW at 3, 6. The SOW additionally provided requirements for security, personnel qualifications, and mandatory nuclear and safety training, as well as detailed, program-specific requirements such as: engineering operations management, assessments, project support engineers, elevator systems, electrical, and steam/main propulsion. Id. at 6-7, 8-9, 10-77.

As relevant here, SOW section 8.7 required certain Metrology and Calibration (METCAL) field calibration activity (FCA) support including: on-site training to shipboard personnel in pressure, temperature, and torque calibration, and the proper operation, care, and maintenance of Shipboard Gage Calibration Program test equipment; updating of course material as calibration equipment and techniques change; maintaining knowledge and process repository for the Shipboard Gage Calibration Program; coordinating and conducting on site FCA certification inspections; and maintaining a certification schedule for each FCA visit. Id. at 13. Also relevant here, SOW 9.5 required certain submarine total ship readiness program support including: supporting the submarine fleet technical support and total ship readiness assessment program requirements as described in the Joint Fleet Maintenance Manual, Commander Navy Regional Maintenance Center Instruction 4790.2, and COMSUBLANT/COMSUBPAC² Instruction 9010.5B; coordinating with other internal and external stakeholders to provide feedback to their client; and preparing and delivering products in accordance with requirements stated in the submarine total ship readiness assessment test plan. Id. at 20.

¹ All references herein are to the final version of the solicitation, which was issued as amendment No. 2.

² COMSUBLANT is the Commander, Submarine Force Atlantic Fleet and COMSUBPAC is the Commander, Submarine Force Pacific Fleet.

On February 16, Epsilon received notice of the agency's issuance of the task order to URS. Protest, Exh. F, at 1. On February 27, Epsilon filed a protest with our Office challenging multiple aspects of the agency's evaluation and award decision including: the agency's evaluation of Epsilon's and URS' proposals under the technical capability and management approach factors; the agency's failure to make required adjustments to URS' costs; and the agency's award determination.³

On June 6, our Office issued a decision denying Epsilon's protest. Epsilon Sys. Sols., Inc., B-414410, B-414410.2, June 6, 2017, 2017 CPD ¶ 199. On June 16, Epsilon sought reconsideration, of our decision and supplemented its request for reconsideration to raise allegations similar to its previously raised arguments regarding the agency's evaluation. Our Office issued a decision denying Epsilon's request for reconsideration on September 20. Epsilon Sys. Sols., Inc., B-414410.3, Sept. 20, 2017, 2017 CPD ¶ 292.

Thereafter, between the time period of September 14 and September 21, Epsilon alleges that it received communications from its exclusive teaming partners indicating that certain of the field technical assistance requirements were removed from URS' task order. On September 25, Epsilon filed this protest challenging the agency's relaxation of these requirements. Since the current protest involves a contention that the task order has been sufficiently modified such that its scope has been materially changed, the dollar threshold limitation on our jurisdiction to hear protests involving task orders has no application here. See 10 U.S.C. § 2304c(e)(1)(A).

DISCUSSION

Epsilon argues that the Navy improperly relaxed two statement of work specifications, which materially changed the scope of work anticipated by the RFP and resulted in an improper sole-source contract for the modified work in violation of the Competition in Contracting Act (CICA).

CICA requires "full and open" competition in government procurements as obtained through the use of competitive procedures. 10 U.S.C. § 2304(a). Once a contract is awarded, however, our Office will generally not review modifications to that contract because such matters are related to contract administration and are beyond the scope of our bid protest function. 4 C.F.R. § 21.5(a); Zodiac of North America, Inc., B-414260, Mar. 28, 2017, 2017 CPD ¶ 107 at 4. An exception to this rule arises where a protest alleges that a contract modification changes the work from the scope of the original contract, since the work covered by the modification would otherwise be subject to the statutory requirements for competition absent a valid determination that the work is appropriate for procurement on a sole-source basis. Chase Supply, Inc., B-411528.2,

³ Since the task order at issue in this earlier protest was valued in excess of \$25 million, our Office had jurisdiction to consider Epsilon's protest. 10 U.S.C. § 2304c(e)(1)(B).

B-411529.2, Dec. 7, 2015, 2015 ¶ 384 at 4. Although challenges to the relaxation of contract requirements are less common than challenges to contract modifications that enlarge a contract's scope of work, our Office recognizes that both fall within the scope of this exception, and we will consider whether modification of performance requirements result in work that should be subject to competition. Zodiac of North America, Inc., supra at 4-5.

Epsilon alleges that on June 23, Epsilon learned that its exclusive teaming partner had been approached by URS to perform SOW section 8.7. Protest, Exh. H, Epsilon Program Manager Declaration at 1. Epsilon also alleges that on September 18, its teaming partner informed Epsilon's program manager that the Navy intended to bring the shipboard gage calibration program back online via a General Services Administration contract. Id. These actions, Epsilon argues, led the program manager to believe that, in his opinion, the "information indicates that SWRMC has removed the SGCP [shipboard gage calibration program] requirements from the current FTA [field technical assistance] Contract held by URS." Id. at 2.

Epsilon also alleges that on September 14, one of its managers was informed by another exclusive teaming partner that one of its subject matter experts was supporting the ship service motor generator portion of the total ship readiness assessment on the USS Louisville under the teaming partner's combat systems contract. Protest, Exh. I, Epsilon Manager Declaration at 1-2. Epsilon argues, that this information led the manager to believe that, in his opinion, the "information indicates that SWRMC has removed the submarine TSRA [total ship readiness assessment] SSMG [ship service motor generator] support [SOW 9.5] requirements from the current FTA Contract." Id. at 2.

Based on our review of the record, we find no valid basis to support the protester's argument, beyond the protester's speculation, that the task order SOW provisions in question have been modified in any way. In this regard, in response to Epsilon's allegations, the Navy provided a declaration from the contracting officer, URS' task order, and all task order modifications, which demonstrate that no modifications have been issued with respect to these two portions of the SOW.⁴ Specifically, the contracting officer explains that the SOW section 8.7--field calibration activity support work has not been deleted from the task order and URS continues to perform the work for the Navy under the task order. Contracting Officer Declaration at 1. With respect to SOW section 9.5--submarine support, the contracting officer similarly explains that the work has not been deleted from the task order and URS continues to perform the work. Id. at 1-2. While the protester objects to the agency's declarations, we have no basis to

⁴ Task order modifications Nos. 1, 2, 3, 5, and 6 were incremental funding actions citing FAR clause 52.232-22. Agency Emails (Oct. 25-26, 2017). Modification No. 4 was executed under the authority of the changes clause, FAR clause 52.243-1 alt. 1, and updated the place of performance in Section F, Deliverables or Performance, to include both San Diego, California and Honolulu County, Hawaii. Id.

question the veracity of the agency's statements.⁵ Moreover, a review of the task order modifications demonstrates that the protester's allegations are speculative and provide no basis in fact, as the modifications did not alter the portions of the SOW at issue here. Agency Emails (Oct. 25-26, 2017). Because we find no evidence of any change to the task order requirements at issue here we conclude that there is no basis to grant an exception to our general rule that these are matters related to contract administration and are beyond the scope of our bid protest function.

The protest is dismissed.

Susan A. Poling
General Counsel

⁵ Government officials are presumed to act in good faith, and a protester's contention that procurement officials are motivated by bias or bad faith must be supported by convincing proof; our Office will not consider allegations based on mere inference, supposition, or unsupported speculation. C&S Corp., B-411725, Oct. 7, 2015, 2015 CPD ¶ 311 at 7.