



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Wyle Laboratories, Inc.

File: B-413989

Date: December 5, 2016

Lee P. Curtis, Esq., Andrew E. Shipley, Esq., Seth H. Locke, Esq., and Andrew J. Victor, Esq., Perkins Coie LLP, for the protester. Marcia G. Madsen, Esq., Cameron S. Hamrick, Esq., Roger V. Abbott, Esq., Polly A. Myers, Esq., and David F. Dowd, Esq., Mayer Brown LLP, for Booz Allen Hamilton, Inc., the intervenor. Caroline Cobb, Esq., Robin Ray Coll, Esq., and Jessica K. Eddy, Esq., Department of the Navy, for the agency. Heather Weiner, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's challenge to the issuance of a task order to another offeror is dismissed because the statutory grant of jurisdiction to the Government Accountability Office to consider protests in connection with task and delivery orders valued above \$10 million, issued under civilian agency multiple-award indefinite-delivery, indefinite-quantity contracts, has expired.

DECISION

Wyle Laboratories, Inc., of Lexington Park, Maryland, protests the issuance of a task order by the Department of the Navy, Naval Air Systems Command, Naval Air Warfare Center Aircraft Division (NAVAIR), to Booz Allen Hamilton, Inc., of McLean, Virginia, under request for proposals (RFP) No. N68335-15-R-0343, for comprehensive life cycle and sustainment support services. The solicitation contemplated the issuance of a task order against an existing multiple-award indefinite-delivery, indefinite-quantity (IDIQ) contract known as the General Services Administration's (GSA) One Acquisition Solution for Integrated Services (OASIS) contract. Wyle challenges the agency's evaluation and source selection decision.

We dismiss the protest because it is not within our jurisdiction.

On November 15, 2015, the Navy issued the RFP under the provisions of Federal Acquisition Regulation subpart 16.5 to existing OASIS contractor holders, including Wyle and Booz Allen, to procure life cycle logistics and sustainment support services for the F-35 Lightning II Joint Program Office. Agency Dismissal Request at 1. The solicitation anticipated the issuance of a single cost-plus-fixed-fee, level-of-effort task order, on a best-value basis, for a base year, with four 12-month options.

On September 28, the Navy notified Wyle that a task order, valued at approximately \$145 million, had been issued to Booz Allen. Protest, Exh. 2, Award Notice, at 1. On October 12, Wyle filed this protest challenging the award. In response, both the agency and intervenor seek dismissal of the protest, arguing that our jurisdiction to hear the protest, which is grounded in the Federal Acquisition Streamlining Act (FASA), has expired. For the reasons discussed below, we agree that GAO's jurisdiction to hear the protest has lapsed, and dismiss the protest on this basis.

GAO's jurisdiction to hear protests in connection with orders issued under the authority and procedures established by Title 41 of the United States Code, valued in excess of \$10 million, expired on September 30, 2016.¹ Pub. L. No. 112-81, 125 Stat. 1298, 1491 (2011).² Accordingly, as of October 1, 2016, our Office no longer has jurisdiction to hear protests of orders issued against task and delivery order contracts entered into by civilian agencies under Title 41, *i.e.*, multiple-award IDIQ contracts awarded by civilian agencies. See Analytic Strategies LLC; Gemini Indus., Inc., supra, at 3, and HP Enter. Services, LLC, supra, at 3.

Here, there is no reasonable dispute that Wyle is challenging the issuance of a task order issued against a multiple-award IDIQ contract vehicle (*i.e.*, OASIS) awarded by GSA, a civilian agency, under the authority and procedures set forth in Title 41. Further, there is no dispute that the protest at issue was filed after September 30, 2016, when our jurisdiction to consider such protests expired. In short, Wyle filed its

¹ Although our jurisdiction with respect to protests of task and delivery orders issued pursuant to Title 41 expired on September 30, 2016, section 830 of the National Defense Authorization Act (NDAA) for Fiscal Year 2013 amended Title 10 to delete the sunset language with respect to non-civilian agency task and delivery orders. See Pub. L. No. 112-239, 126 Stat. 1632, 1842 (2013) (codified at 10 U.S.C. § 2304c(e)). This change had the effect of permanently establishing GAO's jurisdiction to hear protests in connection with Title 10 task and delivery orders valued in excess of \$10 million.

² See Analytic Strategies LLC; Gemini Indus., Inc., B-413758.2, B-413758.3, Nov. 28, 2016, 2016 CPD ¶ ___ at 3, and HP Enter. Servs., LLC, B-413382.2, Nov. 30, 2016, 2016 CPD ¶ ___ at 3, for a detailed recitation of the history of GAO's task order jurisdiction.

protest after the sunset of our jurisdiction to resolve protests in connection with task and delivery orders issued under civilian agency IDIQ contracts.

Wyle argues, however, that our Office has jurisdiction over its protest pursuant to 10 U.S.C. § 2304c(e), rather than 41 U.S.C. § 4106(f), because the task order here was issued by the Navy, a Department of Defense (DOD) agency; the evaluation was conducted by DOD personnel; the procurement is subject to certain DOD regulations; and performance will be funded by DOD to support a major DOD weapon system.³ Protester's Response to Dismissal Request (Oct. 27, 2016), at 9; Protester's Supp. Response to Dismissal Request (Nov. 3, 2016), at 1. In this regard, the protester asserts that our task order jurisdiction is based on the agency that issued the task order, rather than the agency that awarded the task order contract. For the reasons discussed below, we disagree.

We have recently held that the bar to our task order jurisdiction is "established under the statutory framework authorizing multiple-award IDIQ contracts within Title 41." Analytic Strategies LLC; Gemini Indus., Inc., *supra*, at 5; HP Enter. Servs., LLC, *supra*, at 5. Under Title 41, the authority for civilian agencies to award IDIQ contracts, like the GSA OASIS IDIQ contract at issue here, is established in Section 4103, and the process for issuing orders under those contracts is governed by Section 4106.⁴ As we previously explained, Section 4106 by its terms "applies to task and delivery order contracts entered into under section[] 4103" of Title 41, and provides the process for issuing orders under those contracts. Analytic Strategies LLC; Gemini Indus., Inc., *supra*, at 4; HP Enter. Servs., LLC, *supra*, at 4.

Accordingly, although Wyle argues that we should exercise jurisdiction under Title 10 because of DOD's role in this procurement, we see nothing in the relevant provisions of Titles 10 or 41 that authorizes a different result because the agency that issued the task order, or will fund the task order, is an agency covered by Title 10.⁵ See id. Rather, the statutory scheme under Title 41 sets forth the

³ The authorities to award IDIQ contracts and to issue orders under IDIQ contracts are codified under Titles 10 (for military departments or agencies) and 41 (for civilian agencies) of the U.S. Code. See 10 U.S.C. §§ 2304a, 2304b, 2304c; 41 U.S.C. §§ 4103, 4105, 4106.

⁴ This provision states, in relevant part, that "[s]ubject to the requirements of this section, section 4106 of this title, and other applicable law, the head of an executive agency may enter into a task or delivery order contract" for procurement of services or property. 41 U.S.C. § 4103(a).

⁵ Specifically, the procurement provisions of Title 10 apply to the Secretaries of Defense, Army, Navy, Air Force, Homeland Security (for the Coast Guard), and the Administrator of the National Aeronautics and Space Administration (military
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authority of civilian agencies to award IDIQ contracts, describes the process for ordering against those contracts, and in some instances, limits the jurisdiction of forums like GAO to hear protests in connection with the placement of those orders. Id. Accordingly, we conclude that we lack jurisdiction to hear the instant protest because it concerns a task order issued against a multiple-award IDIQ contract vehicle awarded by a civilian agency, under the authority and procedures set forth in Title 41.⁶

The protest is dismissed.

Susan A. Poling
General Counsel

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departments or agencies). 10 U.S.C. §§ 2302, 2303. Title 41 applies to executive agencies (civilian agencies). 41 U.S.C. § 4103.

⁶ We note that Wyle does not otherwise argue that the order to be issued under the RFP increases the scope, period, or maximum value of the underlying IDIQ contract.