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Decision

Matter of: Adams and Associates, Inc.

File: B-417249

Date: February 26, 2019

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Jose Otero, Esq., and Dennis A. Adelson, Esq., Department of Labor, for the agency.
Evan D. Wesser, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest alleging that a proposed task order is outside of the scope of the underlying indefinite-delivery, indefinite-quantity (IDIQ) contract is dismissed where the protester effectively challenges the agency's decision not to exercise an available option on its incumbent contract, and therefore raises a matter of contract administration not for our consideration as part of our bid protest function.
 2. Protest alleging that the agency's selection of a contract vehicle was made in bad faith is dismissed because the protester's allegation involves the proposed award of a task order valued at less than \$10 million, and therefore the protest is outside of our Office's jurisdiction to consider protests of the award or proposed award of a task order under an IDIQ contract.
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DECISION

Adams and Associates, Inc., of Reno, Nevada, protests the decision of the Department of Labor (DOL) to obtain services for the operation of the Woodstock Job Corps Center and Career Transition Services in Woodstock, Maryland, under a multiple award, indefinite-delivery, indefinite-quantity (IDIQ) contract. Adams, the incumbent contractor for the services at issue, asserts that the proposed task order is beyond the scope of the underlying IDIQ contract. The protester also alleges that DOL's selection of the specific IDIQ contract is tainted by bad faith because DOL selected the contract vehicle because Adams is ineligible to compete for the task order.

We dismiss the protest.

BACKGROUND¹

The Woodstock Job Corps Center and Career Transition Services provides academic, career technical, career success skills, career development training, and related support services for approximately 300 residential students and additional nonresidential students. Request for Quotations (RFQ) at 3. In addition to providing the above services, DOL's contractor operating the Woodstock facility also provides residential and other services to the students. Id. Adams has been the incumbent contractor for the operation of the Woodstock facility since 1994. Protest at 2. Adams' current contract to operate the Woodstock facility was due to expire on January 31, 2019, although DOL had the option to exercise an additional six-month option pursuant to Federal Acquisition Regulation (FAR) clause 52.217-8. Id.

On August 16, 2018, DOL issued request for proposals No. 1630J2-18-R-00007 for the follow-on operation of the Woodstock facility. Id. On December 27, DOL announced that award had been made to Management and Training Corporation, of Centerville, Utah. Adams filed a protest with our Office challenging the follow-on award, which was docketed as B-417239. On February 11, 2019, the agency notified our Office of its intent to take corrective action in response to the protest. Based on DOL's proposed corrective action, we dismissed the protest as academic. Adams and Assocs., Inc., B-417239, Feb. 12, 2019 (unpublished decision).

Pending resolution of the corrective action in response to Adams' protest challenging the follow-on award, DOL continues to require a contractor to operate the Woodstock facility. DOL elected not to exercise the remaining six-month option pursuant to FAR clause 52.217-8 available on Adams' incumbent contract. Rather, DOL elected to compete the bridge requirements under DOL's multiple-award IDIQ Contracts for Contingency Job Corps Center Operations (hereinafter, the Contingency Contracts). DOL explained that the purpose of the Contingency Contracts is "to provide the Government with a rapid replacement mechanism that will give the Government a viable alternative for uninterrupted operation of a Job Corps center in the event that it is not in the Government's best interest to continue performance under existing conditions." Protest, exh. 2, Adams' Contingency Contract, at 8.² Relevant here, the Contingency Contracts further provide that "[i]t is understood and agreed that if an awardee operates a Center for which operation is being changed (e.g., contract terminations or DOL

¹ Because we are deciding this protest prior to the submission of the agency's report, we accept the protester's allegations as true for purposes of resolving the protest.

² Adams asserts it "understood that the agency would only use the [Contingency Contracts] when there was a problem with the incumbent's performance." Protest at 9. Our Office previously rejected a similar proffered interpretation of the same provision, explaining that the provision contains no such limitation. See MINACT, Inc., B-414615, B-414615.2, July 12, 2017, 2017 CPD ¶ 221 at 3.

determination not to exercise a contract option period), the incumbent is ineligible for award of the task order.” *Id.* at 7. On January 10, DOL issued a RFQ to holders of the Contingency Contracts for a fixed-price task order with a six month period of performance for operation of the Woodstock facility. RFQ at 1, 3. The agency did not solicit a quotation from Adams. Protest at 2. Adams subsequently filed this pre-award protest with our Office.

DISCUSSION

Adams protests the terms of a solicitation for the issuance of a task order under DOL’s multiple-award IDIQ Contingency Contracts pursuant to FAR subpart 16.5. Protests filed with our Office in connection with the issuance or proposed issuance of a task or delivery order under a civilian agency IDIQ contract are not authorized except where the order is valued over \$10 million, or where the protester can show that the order increases the scope, period, or maximum value of the contract under which the order is issued. 41 U.S.C. § 4106(f)(1); AMAR Health IT, LLC, B-414384.3, Mar. 13, 2018, 2018 CPD ¶ 111 at 3.

Adams raises two interrelated challenges to the agency’s decision to compete the Woodstock operations bridge requirements for a task order under the Contingency Contracts. First, the protester alleges that the anticipated task order is beyond the scope of the Contingency Contracts. Adams alleges that use of the Contingency Contracts is limited only to when continued performance of an existing Job Corps Center contract is not in the government’s best interest, and continued performance of Adams’ incumbent contract is in the government’s best interest. Second, Adams alleges that DOL’s use of the Contingency Contracts is improper because the agency is biased and retaliating against the protester for its prior protests of other Job Corps Center procurements, and the agency intentionally opted to use the Contingency Contracts because Adams is precluded from award by virtue of the Contingency Contracts’ provision prohibiting award of a follow-on contingency task order to the immediate incumbent contractor.

For the reasons that follow, we find that Adams’ protest that the anticipated task order is outside the scope of the Contingency Contracts presents a question of contract administration not for our consideration as part of our bid protest function. Additionally, in the absence of a legally or factually sufficient protest allegation that the anticipated task order is beyond the scope of the Contingency Contracts, we must dismiss Adams’ bias allegations because the anticipated value of the resulting task order is under \$10 million, and therefore the protest is outside of our jurisdiction to hear protests in connection with the award or proposed award of a task order.

Our Office considers bid protest challenges to the award or proposed award of contracts. 31 U.S.C. § 3552. Therefore, we generally do not review matters of contract administration, which are within the discretion of the contracting agency and for review by a cognizant board of contract appeals or court. Bid Protest Regulations, 4 C.F.R. § 21.5(a); Colt Def., LLC, B-406696.2, Nov. 16, 2012, 2012 CPD ¶ 319 at 5.

Here, Adams argues that the anticipated task order exceeds the scope of the Contingency Contracts because that contracting vehicle may only be used when continued performance of an existing contract is “not in the Government’s best interest.” Protest, exh. 2, Adams’ Contingency Contract, at 8. Effectively, Adams calls upon our Office to determine whether continued performance of Adams’ incumbent contract would be in the government’s best interest. This question, however, necessarily would require our Office to determine whether the government reasonably declined to exercise an option period of Adam’s incumbent contract. We have repeatedly determined that protests challenging an agency’s decision not to exercise an option concern matters of contract administration outside the scope of our bid protest function, and we will not consider the matter even where the protester argues that the agency’s decision not to exercise an option was made in bad faith. See, e.g., Jones, Russotto & Walker, B-283288.2, Dec. 17, 1999, 99-2 CPD ¶ 111 at 4; Fjellestad, Barrett and Short, B-248391, Aug. 21, 1992, 92-2 CPD ¶ 118 at 3; Walmac, Inc., B-244741, Oct. 22, 1991, 91-2 CPD ¶ 358 at 2. Therefore, because Adams’ protest would necessarily require our Office to resolve a quintessential question of contract administration, the protest fails to state a valid basis of protest for our consideration, and therefore must be dismissed. See, e.g., DNC Parks & Resorts at Yosemite, Inc., B-410998, Apr. 14, 2015, 2015 CPD ¶ 127 at 10-12 (dismissing solicitation challenge where our Office would be required to resolve a dispute as to the fair value of property to be transferred from the protester, the incumbent, to any resulting awardee); Colt Def., LLC, supra (same, where our Office would be required to resolve a royalty dispute between the protester and procuring agency).³

³ Adams argues that our Office has sustained protests where there was no reasonable analysis in the contemporaneous record indicating that the decision was in the government’s best interest. Protest at 9 (citing Para Scientific Co., B-299046.2, Feb. 13, 2007, 2007 CPD ¶ 37, and Diagnostic Imaging Tech. Educ. Center, Inc., B-257590, Oct. 21, 1994, 94-2 CPD ¶ 148). The decisions relied upon by Adams are readily distinguishable because neither concerned a question of contract administration. As discussed above, the protester’s allegations here would effectively require us to resolve whether the government’s declination to exercise an available option on Adams’ incumbent contract was in the government’s best interest. In contrast, the cases relied upon by Adams involved questions regarding the reasonableness of an award decision where the government justified its decision on the basis that the award was in its best interest. See Para Scientific Co., supra (sustaining protest where the agency did not adequately address why making award of all 22 procured items to the awardee was in the government’s best interest when the solicitation contemplated multiple awards and the protester was lower-priced for six of the 22 items); Diagnostic Imaging Tech. Educ. Center, Inc., supra (same, where agency determined that continuing with a small business set-aside award to the original awardee, who was subsequently found to be other than small, was in the government’s best interest).

As a consequence of our conclusion that Adams' protest fails to sufficiently allege that the anticipated task order is beyond the scope of the Contingency Contracts, we are compelled to dismiss the remaining protest allegation because it involves a challenge to the terms of a solicitation for a task order valued at less than \$10 million. As addressed above, our Office is only authorized to hear protests of task orders that are issued under multiple-award contracts (or protests of the solicitations for those task orders) where the task order is valued in excess of \$10 million, or where the protester asserts that the task order increases the scope, period, or maximum value of the contract under which the order issued. AMAR Health IT, LLC, supra. Here, the apparent successful offeror proposed a total price of approximately \$8.6 million, and therefore the anticipated maximum value is below the \$10 million floor necessary to invoke our bid protest jurisdiction. See Request for Dismissal, exh. No. 1, Contracting Officer's Decl. at 1.

The protest is dismissed.

Thomas H. Armstrong
General Counsel