



Decision

Matter of: American Systems Group

File: B-418469

Date: April 7, 2020

Ritobrata Banerjee, for the protester.
Geoffrey Chun, Esq., Department of the Navy, for the agency.
Mary G. Curcio, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest that services requested under a task order solicitation are outside the scope of the underlying multiple-award contract is dismissed where the protester cannot demonstrate prejudice.

DECISION

ASG Solutions Corporation d/b/a American Systems Group (ASG), of San Diego, California, protests the terms of task order request for proposal (TORP) No. N33191-20-R-3001, issued by the Department of the Navy for an engineering technician assistant. The protester asserts that the services sought under the TORP are beyond the scope of the indefinite-delivery, indefinite-quantity (IDIQ) contract under which the TORP was issued.

We dismiss the protest.

On June 1, 2018, the agency issued solicitation No. N00178-18-R-7000 for the Seaport-Next Generation IDIQ multiple-award contract for engineering, technical, and programmatic support services. IDIQ Solicitation at 1, 7. The solicitation provided that task orders would be issued under the IDIQ contract for two areas of support-- engineering services and program management services. Id. at 7, 8. The solicitation further divided these areas of support into 23 functional areas. Id. Offerors were required to submit a technical proposal which demonstrated experience performing some effort related to at least one of the areas identified by the scopes of work. Id. at 62. Technical proposals were evaluated as acceptable or unacceptable. Id. Price was not evaluated. Id. The solicitation provided that the government would make an award to all qualifying offerors. Id. A qualifying offeror was defined as a responsible

offeror that submitted a technical proposal that was rated acceptable, and was likely to offer fair and reasonable pricing. Id. ASG was awarded a Seaport-Next Generation IDIQ contract.

On January 15, 2020, the Navy issued TORP No. N33191-20-R-3001, to holders of the Seaport-Next Generation IDIQ contract, for an engineering technician to assist the Naval Facilities Engineering Command in monitoring construction contracts. RFQ at 1-2. Proposals were due on February 14. Id. at 1. On February 14, ASG protested to our Office that the TORP was seeking services that were outside the scope of the IDIQ contract under which it was issued. ASG specifically argues that the IDIQ contract does not encompass the award of a contract for construction professional services. Protest at 6-9. The agency asserts in response that the services requested are within the scope of the IDIQ contract. Req. for Dismiss at 5-7. The agency also argues that ASG is not prejudiced because it can submit a proposal in response to the TORP. Id. at 8-9.¹

Under the Federal Acquisition and Streamlining Act of 1994, as modified by the National Defense Authorization Act for Fiscal Year 2017, our Office is authorized to hear protests of task orders that are issued under multiple-award contracts established within defense agencies (or protests of the solicitations for those task orders) where the task order is valued in excess of \$25 million, or where the protester asserts that the task order increases the scope, period, or maximum value of the contract under which the order is issued.² 10 U.S.C. § 2304c(e)(1); see also Threat Mgmt. Grp., LLC, B-413729, Dec. 21, 2016, 2017 CPD ¶ 9 at 1-2 n.1.

The Competition in Contracting Act (CICA) requires agencies to obtain “full and open competition” in procurements through the use of competitive procedures. 41 U.S.C. § 3301(a); see also 10 U.S.C. § 2304(a). Task orders that are outside the scope of the underlying multiple-award contract are subject to the statutory requirement for full and

¹ Protests that services requested under a task order solicitation are outside the scope of the underlying multiple-award contract are usually filed by protesters that have not been awarded one of the underlying contracts, and therefore cannot participate in the task order competition. See e.g., People, Technology, and Processes, LLC, B-417273, May 7, 2019, 2019 CPD ¶ 173; Dyncorp International LLC, B-402349, Mar. 15, 2010, 2010 CPD ¶ 59. Contractors that have been awarded a contract under the multiple-award solicitation are not barred from competing for the alleged out of scope task order and therefore are not generally competitively prejudiced. But see Western Pilot Service; Aerial Timber Applicators, Inc.; Evergreen Flying Services, Inc.; G.B. Aerial Applications, Inc., B-415732 et al., Mar. 6, 2018, 2018 CPD ¶ 104 at 10 (sustaining protest arguing that a TORP is outside the scope of the IDIQ contract under which it was issued where the protester demonstrated that it had been prejudiced because out-of-scope work resulted in offerors not competing on a level playing field).

² The estimated value of this task order is less than \$25 million. See Req. for Dismissal at 7.

open competition set forth in CICA, absent a valid determination that the work is appropriate for procurement on a sole-source basis or with limited competition. 10 U.S.C. § 2305(a)(1)(A)(i); 41 U.S.C. § 3301; see DynCorp Int'l LLC, B-402349, Mar. 15, 2010, 2010 CPD ¶ 59 at 6.

Our Office will sustain a protest arguing that a TORP is outside the scope of the IDIQ contract under which it was issued only where the protester demonstrates that it has been competitively prejudiced. Western Pilot Service; Aerial Timber Applicators, Inc.; Evergreen Flying Services, Inc.; G.B. Aerial Applications, Inc., supra. That is, the protester must establish a reasonable possibility that had it known of the changed requirements (i.e., the alleged out-of-scope work on the TORP), it would have altered its proposal on the IDIQ contract to its competitive advantage or done something to enhance its chances for award of the task order. See id.; Datastream Systems, Inc., B-291653, Jan. 24, 2003, 2003 CPD ¶ 30 at 6.

Here, we will not consider whether the task order is outside the scope of the IDIQ contract under which it was issued because the protester has not demonstrated prejudice. The agency asserts, and the protester does not deny, that as the holder of an IDIQ contract the protester is not precluded from competing for the allegedly out-of-scope order. Req. for Dismissal at 8-9. While this is not the only issue we consider in assessing prejudice, ASG's only basis for asserting prejudice is that it will be complicit in responding to an allegedly out of scope task order.³ Protest at 2, 9-10 (arguing that ASG is prejudiced because it is "unable to bid on this despite having a Seaport NxG IDIQ contract unless it agrees to violate the contract by agreeing to increase the scope."); Response to Req. for Dismissal at 3; ASG Response, Feb. 24, 2020, at 4-6; ASG Response, Feb. 26, 2020, at 5-7.

ASG has not demonstrated that it will be competitively prejudiced in responding to the solicitation. That is, ASG has not demonstrated that it would have submitted a different technical or price proposal in response to the IDIQ solicitation that would have made it more advantageous to respond to the TORP, if it knew the agency planned to procure these services under the IDIQ contract. In fact, as noted above, under the IDIQ contract the technical proposals were evaluated on an acceptable/unacceptable basis to ensure that the contractor had experience performing in one of the functional areas. Price was not evaluated at all. It therefore appears that there is nothing that ASG could have changed in responding to the IDIQ solicitation which would have made it more competitive in responding to the TORP. In other words, the protester is not constrained

³ In responding to the agency's dismissal request, ASG asserts that if the procurement was conducted outside the Seaport Next Generation IDIQ contract, "ASG would respond . . . with the confidence that any irregularity/impropriety in the procurement process that ASG has experienced . . . would have a redressal mechanism in the form of GAO protests . . ." Response to Req. for Dismissal at 4. This argument does not demonstrate competitive prejudice, that is, that ASG would have altered its proposal on the IDIQ contract to enhance its chance for award.

under the TORP by the pricing and overall proposal strategy utilized for the IDIQ contract. Accordingly, since ASG can respond to the TORP, ASG has not demonstrated that it is prejudiced.

The protest is dismissed.

Thomas H. Armstrong
General Counsel