



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: ICI Services Corporation

File: B-418255.4

Date: September 23, 2020

Shomari B. Wade, Esq., Michael J. Gardner, Esq., Timothy J. Jessell, Esq., Danielle K. Muenzfeld, Esq., and Brett A. Castellat, Esq., Greenberg Traurig, LLP, for the protester. Daniel R. Forman, Esq., Mark A. Ries, Esq., and James G. Peyster, Esq., Crowell & Moring LLP, for Alion Science and Technology Corporation, an intervenor. Sabrina Hay, Esq., Gwendolyn Iaci, Esq., and William A. Longwell, Esq., Department of the Navy, for the agency. Louis A. Chiarella, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Our Office will not consider a protest from an offeror in the competitive range challenging an agency's decision to include another offeror in the competitive range, where the protest was filed prior to the agency's award decision, and the possibility remains that the protester could yet receive the award.

DECISION

ICI Services Corporation, of Virginia Beach, Virginia, protests the agency's planned corrective action under request for proposals (RFP) No. N00164-19-R-3502, issued by the Department of the Navy, Naval Sea Systems Command, for support services. ICI contends that the Navy's decision to include Alion Science and Technology Corporation, of McLean, Virginia, among those offerors in the competitive range and with whom discussions are held is improper.

We dismiss the protest.

BACKGROUND

ICI's current protest arises after a series of earlier protests filed with our Office. The RFP was issued on April 26, 2019, to holders of the Navy's SeaPort-Next Generation indefinite-delivery, indefinite-quantity (IDIQ) contracts. In general terms, the solicitation seeks program management and acquisition support, engineering and technical

support, test and evaluation support, and production management and information technology support, for the Navy's Program Manager, Ships (PMS) 317 program.¹ *Id.* at 5, 9. The solicitation contemplated the award of a cost-plus-fixed-fee task order for a base year with four 1-year options. Four offerors, including ICI and Alion submitted task order proposals by the June 4 closing date.² On October 24, after completing its evaluation of proposals, the agency made task order award to Alion.

On November 6, ICI filed a protest with our Office challenging the award to Alion. Protest at 9. Among other things, ICI protested that Alion's proposal and the Navy's evaluation thereof failed to reasonably reflect the manner in which the contract would be performed as well as reflect the corporate entity that would perform the contract, in light of the corporate sale of Alion's naval systems business unit to Serco, Inc., during the pendency of proposal evaluations. *Id.* On January 8, 2020, the agency informed our Office that it was taking corrective action by performing a review of its source selection decision and taking any additional corrective action as deemed appropriate. Navy Corrective Action Notice (B-418255; B-418255.2), Jan. 8, 2020. On January 13, we dismissed ICI's protests as academic. *ICI Servs. Corp.*, B-418255, B-418255.2, Jan. 13, 2020 (unpublished decision).

On March 30, the Navy notified Alion of its exclusion from award of the PMS 317 task order. On April 9, Alion filed a protest with our Office challenging the exclusion of its proposal from award consideration. Protest at 10. On April 20, the Navy notified our Office that it was again taking corrective action by including Alion's proposal among those still considered eligible for award, conducting discussions with offerors including Alion, evaluating revised proposals, and making a new award decision. Navy Corrective Action Notice (B-418255.3), Apr. 20, 2020. We then dismissed the Alion protest as academic. *Alion Sci. & Tech. Corp.*, B-418255.3, Apr. 23, 2020 (unpublished decision).

On June 18, after learning of the Navy's planned corrective action and before the RFP's next closing date, ICI filed its protest here with our Office.³

¹ The mission of PMS 317 is to design, build, outfit, and test the Landing Platform Docking amphibious ships, and to provide for related maintenance support. Protest, exh. A, RFP at 9.

² Although firms that compete for task orders under IDIQ contracts are generally referred to as "vendors" who submit "quotations" and are "issued" task orders, the record and the parties' briefings primarily use the terms "offerors," "proposals," and "award." For the sake of consistency with the record, we refer to the firms that competed here as offerors who submitted proposals for the award of a task order.

³ ICI represents that the value of the task order here is approximately \$67 million, which the Navy does not dispute. Protest at 1 n.2; see Agency Dismissal Request, June 25, 2020 *passim*. Because the value of the anticipated task order is over \$25 million, this procurement is within our jurisdiction to hear protests related to the issuance of orders

DISCUSSION

ICI challenges the agency's planned corrective action. Specifically, ICI argues that the Navy's decision to include Alion among those offerors with whom discussions are held will result in a competition that improperly favors Alion.⁴ Protest at 11-13. ICI also alleges that conducting discussions with Alion is unfair because it will either: (1) allow Alion to engage in negotiations when it lacks the requisite assets to perform the contract and cannot bind the party who now has those assets; or (2) allow a new offeror, Serco, to negotiate in Alion's stead. *Id.* at 11-12. We disagree.

As a preliminary matter, contracting agencies have broad discretion to take corrective action where the agency has determined that such action is necessary to ensure fair and impartial competition; the details of such corrective action are within the sound discretion and judgment of the agency. *Unissant, Inc.*, B-418193.2, Jan. 31, 2020, 2020 CPD ¶ 67 at 2-3; *Alliant Enter. JV, LLC*, B-410352.4, Feb. 25, 2015, 2015 CPD ¶ 82 at 3. Additionally, the underlying purpose of conducting discussions with offerors is to maximize the agency's ability to obtain the best value, based on the requirements and the evaluation factors set forth in the solicitation. See FAR 15.306(d)(2); *Aderas, Inc.*, B-418151, Jan. 16, 2020, 2020 CPD ¶ 30 at 5-6. Here, ICI essentially argues that conducting discussions with Alion would be unfair because the discussions could result in the Navy learning more about the corporate status and the restructuring of the offeror. See Protest at 12-13.

In any event, we find no basis to review ICI's allegations at this time. The determination of whether a proposal is in the competitive range is principally a matter within the sound judgment of the contracting agency. *TransAtlantic Lines, LLC*, B-414148, Feb. 7, 2017, 2017 CPD ¶ 163 at 3; *Grove Res. Sols., Inc.*, B-296228, B-296228.2, July 1, 2005, 2005 CPD ¶ 133 at 3. Further, to the extent our Office has reviewed challenges to the inclusion of an awardee in the competitive range, these matters were addressed after the agency made an award decision.⁵ See *id.* Where, as here, the agency has yet to make an award decision, the protester's allegations with respect to Alion are premature. See *2M Research Servs., LLC*, B-413993.4, June 19, 2017, 2017 CPD ¶ 203 at 3 ("[W]hile our Office has found that an agency may include a technically unacceptable proposal in the competitive range, these matters were addressed after the agency made

under multiple-award IDIQ contracts awarded under the authority granted in Title 10, 10 U.S.C. § 2304c(e)(1)(B).

⁴ Discussions are exchanges with offerors after establishment of the competitive range. See Federal Acquisition Regulation (FAR) 15.306(d). ICI does not dispute that it is among the offerors with whom the agency plans to conduct discussions.

⁵ ICI's protest also puts the cart before the proverbial horse: having determined, of its own accord, that Alion lacks the requisite assets to perform the contract and that Serco is not an eligible successor-in-interest to Alion, ICI contends that it is therefore impermissible for the Navy to conduct discussions with Alion and obtain additional information that would permit the agency to make such a determination.

an award decision . . . where, as here, the agency has yet to make an award decision, the protester's allegations . . . are premature."); *Intermarkets Global*, B-400660.10, B-400660.11, Feb. 2, 2011, 2011 CPD ¶ 30 at 4-5 (challenge to agency's discussions prior to award is premature). Indeed, the agency may ultimately select ICI as the awardee. If ICI is not selected for award, it may raise whatever evaluation errors it deems appropriate at that time.

The protest is dismissed.

Thomas H. Armstrong
General Counsel