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Decision

Matter of: A. Prentice Ray & Associates, LLC

File: B-421470; B-421470.2; B-421470.3

Date: May 24, 2023

Devon E. Hewitt, Esq., Potomac Law Group, PLLC, for the protester. John W. Cox, Esq., and Kathleen D. Martin, Esq., Department of State, for the agency. Paula A. Williams, Esq., and Evan D. Wesser, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest alleging that task order for staffing support services is out of scope of an indefinite-delivery, indefinite-quantity contract is denied where the underlying contract provides for a wide range of services and the scope of work is not limited to the particular labor categories identified as examples in the underlying contract.

DECISION

A. Prentice Ray & Associates, LLC (APRA), an 8(a) certified, woman-owned small business located in Washington, DC, protests the decision by the Department of State (DOS) to issue task order No. 19AQMM23F0657 to Cherokee Nation System Solutions, LLC (CNSS), a tribal 8(a) certified small business, located in Tulsa, Oklahoma.¹ The task order was issued under CNSS's indefinite-delivery, indefinite-quantity (IDIQ) contract No. 19AQMM20D0126 to provide continuing staffing support services. APRA alleges that the task order is outside the scope of the underlying IDIQ contract and that the task order was issued as an attempt to circumvent the automatic stay of performance that was triggered by a prior APRA protest, B-421248.3.²

¹ CNSS is part of Cherokee Federal, a team of tribally-owned companies that serve federal agencies globally and support the Cherokee Nation, the largest Native American tribe in the United States. Agency Report (AR) Exh. 8, CNSS Proposal at 4.

² Under the Competition in Contracting Act (CICA) of 1984, 31 U.S.C. §§ 3551-3557, if the procuring agency receives notice of a protest filed at this Office within 10 calendar days of the contract award, or 5 calendar days after the debriefing date, the agency generally is required to suspend contract performance while the protest is pending

We deny the protest.³

BACKGROUND

Procurement History

The relevant background to the protest here begins with DOS's issuance, on July 26, 2022, of request for proposals (RFP) No. 19AQMM22R0221 as a competitive 8(a) set-aside, pursuant to the procedures of FAR subpart 16.5. The RFP was assigned North American Industrial Classification System (NAICS) code 541990, All Other Professional, Scientific and Technical Services (primary); NAICS code 541611, Administrative Management and General Management Consulting Services; and NAICS code 541330, Engineering Services. See B-421248.3, AR Exh. 2, RFP at 49.

The RFP encompasses the wide variety of services required by the agency's Bureau of Administration, Office of Operations (OPR). Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 6; see B-421248.3, AR Exh. 7, RFP amend. 0001, Question and Answers No. 1. The RFP consolidates services under three IDIQ contracts being performed by three different contractors under separate contracts into a single comprehensive contract vehicle. *Id.* As is relevant to this protest, APRA is an incumbent contractor currently providing staffing support services under its IDIQ contract No. 19AQMM20D0117 for the agency's Office of Real Property Management (RPM). Web Traits, Inc. (Web Traits), is another incumbent contractor providing RPM services under its IDIQ contract No. 19AQMM21D0161, which also includes interior design services and senior project management services related to the renovation of various DOS facilities. Cherokee Nation 3S, LLC (Cherokee Nation) is the third incumbent contractor providing services under its IDIQ contract No. SAQMMA17D0105 for the agency's Office of Facilities Management Services (FMS), including service call desk support, loading dock operations, administrative services, and maintenance inspections. See B-421248.3, Electronic Protest Docketing System (Dkt). No. 9, Partial CICA Stay Override Determination and Findings (D&F) at 2-3.

(commonly referred to as a "CICA stay"). 31 U.S.C. § 3553(d)(3)(A), (d)(4); see also Federal Acquisition Regulation (FAR) § 33.104(c)(1).

³ APRA filed an initial protest challenging DOS's intent to modify a task order issued to Cherokee Nation under its IDIQ contract as an improper out-of-scope modification, which we docketed as B-421470. Upon learning that the services were actually being ordered by DOS under a different IDIQ contract held by CNSS, APRA filed a supplemental protest which we docketed as B-421470.2.

The agency issued the RFP to obtain technical, administrative, and professional staffing services to support several DOS offices under the purview of OPR.⁴ The RFP anticipated that the contractors will perform various services such as real property management, facilities management, industrial design, construction, commissioning, space management, administration, logistics, budget and finance, information technology, and project management. COS/MOL at 2-3; see *also*, B-421248.3, AR Exh. 3, RFP Statement of Work (SOW) at 1-2.

In response to the solicitation, DOS received proposals from 12 offerors, including: HTGS-Culmen JV, LLC (HTGS); DGI-ATI JV, LLC (DGI); Maven-OFS JV, Inc. (Maven); and APRA, by the August 24 proposal closing date. See B-421248.3, COS/MOL at 2. After evaluating initial proposals, on September 30, the agency initially selected HTGS and Maven for award, as well as simultaneously issuing two task orders to Maven. See *id.* at 5.

GAO Protests

On October 27, APRA filed its first protest with our Office challenging the agency's evaluation and award determinations. DOS indicated its intent to take voluntary corrective action by amending the solicitation, establishing a competitive range, conducting discussions, evaluating final proposal revisions, and making new award decisions. Our Office dismissed the protest as academic based on the agency's proposed corrective action. *A. Prentice Ray & Associates, LLC*, B-421248, Nov. 15, 2022 (unpublished decision).

APRA filed a second protest challenging the terms of RFP amendment 0002, which was issued by the agency to implement the corrective action. The agency again proposed to take voluntary corrective action; accordingly, we dismissed the protest. *A. Prentice Ray & Associates, LLC*, B-421248.2, Dec. 9, 2022 (unpublished decision).

Upon completion of the second corrective action, the agency awarded contracts to HTGS (IDIQ No. 19AQMM23D0045); DGI (IDIQ No. 19AQMM23D0046); and Maven (IDIQ No. 19AQMM22D0048) on January 13, 2023. COS/MOL at 6.

⁴ OPR is responsible for providing staffing services for the agency's domestic operations to include the following offices: (1) Office of Allowances; (2) Office of Commissary and Recreation Staff; (3) Office of Overseas Schools; (4) Office of Language Services; (5) Office of Facilities Management; (6) Office of General Services Management; and (7) Office of Real Property Management. See B-421248.3, AR Exh. 3, RFP SOW at 1-2.

After receiving notice of the awards and a debriefing, APRA filed a third protest on January 18, which our Office docketed as B-421248.3.⁵ This protest led to the automatic statutory stay in performance of the three contracts competitively awarded to HTGS, DGI, and Maven. On February 3, DOS notified our Office that urgent and compelling circumstances required continued performance of the services previously performed by Web Traits and Cherokee Nation in accordance with 31 U.S.C. § 3553(d)(3)(C)(i)(II), FAR § 33.104(c)(2)(ii), and DOS Acquisition Regulation (DOSAR) § 601.601-70(a)(2).⁶ See B-421248.3, Dkt. No. 9, Partial CICA Stay Override D&F at 2-3.

The agency provided an executed D&F in which the agency explained that Web Traits's IDIQ contract ordering period had expired on September 27, 2022, and the accompanying task order under which it was performing services expired on January 27, 2023. Cherokee Nation's IDIQ contract ordering period had expired on November 29, 2022, and the accompanying task order under which it was performing services expired on January 29, 2023. The agency also stated that Cherokee Nation had graduated from its small business status under the applicable NAICS code 541611, and therefore was ineligible to continue supporting the staffing contract beyond the expiration date. *Id.*

Because these two incumbent contracts and associated task orders had expired and the agency had an urgent and compelling need to avoid any lapse in services, the agency exercised its discretion to override the CICA stay of performance required by the filing of APRA's protest (B-421248.3). The contracting officer authorized Maven to begin providing the RPM and FMS support services under task orders issued in September 2022. See B-421248.3, COS/MOL at 10. Maven began work immediately.

On February 8, 2023, APRA filed a request at the U.S. Court of Federal Claims for a temporary restraining order, declaratory judgment, and injunctive relief to enjoin DOS from overriding the CICA stay and continuing performance under Maven's IDIQ contract. COS/MOL at 8.

The Department of Justice (DOJ) subsequently notified the Court on February 17 that DOS had rescinded the initial partial CICA stay override and had issued a stop-work

⁵ The agency subsequently took corrective action following an outcome prediction alternate dispute resolution conference. *A. Prentice Ray & Associates, LLC*, B-421248.3, Apr. 18, 2023 (unpublished decision).

⁶ If an agency determines that notwithstanding the pending protest at our Office, performance of the contract is "in the best interests of the United States" or that "urgent and compelling circumstances that significantly affect interests of the United States will not permit waiting for the decision" of our Office on the protest, the agency may execute a written finding authorizing the awardee to proceed with contract performance and thereby override the CICA stay. 31 U.S.C. § 3553(d)(3)(C)(i); *see also* FAR 33.104(c)(2).

order to Maven. DOJ further advised the Court that DOS would obtain the urgently needed services by modifying an existing task order issued under Cherokee Nation's incumbent IDIQ contract. *Id.*

On February 21, APRA filed a protest with our Office alleging that the services DOS intended to obtain under Cherokee Nation's task order were outside the scope of the underlying IDIQ contract. We docketed that protest as B-421470.1.

However, as explained by DOS, instead of modifying Cherokee Nation's task order the agency's contracting personnel decided to use a different contract vehicle to obtain the urgently needed RPM and FMS staffing support services. According to the agency, the contracting officer decided to make a direct award to CNSS under that entity's existing department-wide IDIQ staffing contract No. 19AQMM20D0126 (which is further discussed below), and issue a new task order under that contract to allow the agency to obtain the needed services until the pending GAO protest was resolved. COS/MOL at 8-9; see *also* AR Exh. 4, Contracting Officer Email (Feb. 17, 2023).

Upon learning of the change in DOS's procurement approach, DOJ filed a status report with the Court on February 22 to correct its February 17 filing concerning its initial intent to modify Cherokee Nation's contract. COS/MOL at 9.

On February 23, APRA filed a supplemental protest with our Office, which we docketed as B-421470.2. In its supplemental protest, APRA alleged that DOS improperly modified CNSS's IDIQ contract No. 19AQMM20D0126 under which the agency issued a new task order to obtain the OPR services that are the subject of its earlier protest, B-421248.3. According to the protester, the task order services are outside the scope of CNSS's underlying IDIQ contract No. 19AQMM20D0126.⁷

DOS issued a stop-work order to CNSS on February 24. COS/MOL at 9. On March 1, the agency notified our Office of its decision to continue with contract performance of certain services, based on its finding that urgent and compelling circumstances would not permit waiting for a decision from our Office. The head of the contracting activity authorized CNSS's performance under task order No. 19AQMM23F0657 but only for the FMS staffing services requirements. *Id.*; see *also* Dkt. No. 5, Partial CICA Stay Override D&F at 7.

APRA again sought injunctive relief at the Court in response to the agency's authorization for continued performance by CNSS. On March 17, the Court denied APRA's motion. Accordingly, CNSS's performance of the FMS staffing services requirements under task order No. 19AQMM23F0657 continues. COS/MOL at 9-10.

⁷ This protest is within our Office's jurisdiction to hear protests of task orders placed under civilian agency IDIQ contracts where the protester asserts that the task order increases the scope, period, or maximum value of the contract under which the order is issued. 41 U.S.C. § 4106(f)(1)(A).

CNSS IDIQ Contract

As addressed above, DOS previously issued IDIQ contract No. 19AQMM20D0126 to CNSS to provide a broad array of staffing services in support of the agency. AR Exh. 7, CNSS IDIQ Contract Mod. No. 7 at 1. The maximum value of the IDIQ contract is \$200 million. *Id.* at 9.

In pertinent part, CNSS's IDIQ contract describes the "scope of work" as follows:

The contractor shall furnish all personnel, management, supervision, equipment (*if required, will be listed in each task Order Request for Proposal (TORP)*), and subcontract services as necessary to perform various support services as stated in specific SOWs for each individual task order(s).

Each task order will be issued against the contract to the contractor based on requirements that are requested by various organizations located at or supported by the Acquisition Management Office (AQM).⁸ Specific requirements will include the types of services and/or skills listed in the Contract Labor Categories and Pricing found in Section J. It is possible that a number of services may require a combination and or variations of specified skills. Work ordered under this contract is to be performed using facilities and materials provided by the Government as indicated below to the extent available.

Id. at 10 (emphasis in original).

In addition, the IDIQ contract identified a non-exclusive list of representative tasks that CNSS could be called up to provide, explaining that: "[t]hese professional staffing services include[,] but not limited to, IT-related requirements; design and engineering, cost management, and project management related services; operations and programs for consulting; budget and financial management; policy formulation; human resources support; administrative services; and management analyst services to assist with meeting the overarching mission of the DOS." *Id.* at 11.

Also as relevant here, with respect to the Labor Categories provision, the IDIQ contract provides the following: "The Contractor and/or the Government may request adding to or deleting from the labor categories listed in Schedule B, Attachment C. If categories are added, the parties will negotiate the labor rate of said categories prior to incorporation into the contract." *Id.* at 7.

⁸ DOS reports that the Office of Acquisition Management is the agency's centralized acquisition management office which provides acquisition support for OPR and other DOS offices/posts worldwide. Supp. COS/MOL at 2.

On February 17, the agency issued an informal notice to proceed under CNSS's task order No. 19AQMM23F0657 for continuation of the RPM and FMS staffing support services. That same day, CNSS began performing the required services with Maven as its subcontractor. COS/MOL at 9.

The contracting officer subsequently issued TORP No. 23-020 directly to CNSS to finalize the terms of the task order. AR Exh. 5, TORP. The solicitation sought RPM and FMS staffing support services at DOS facilities in Washington DC metropolitan area, Williamsburg, Kentucky, Portsmouth, New Hampshire, and Charleston, South Carolina for a 3-month performance period. *Id.* at 4. Among other things, the solicitation listed 27 positions and task order labor categories such as, various levels of administrative specialists, various levels of construction managers, and loading dock assistants. *Id.* at 1-2. Position descriptions and qualifications were also provided in the TORP. *Id.*, Exh. 6, TORP attach. A, Position Descriptions and Qualifications at 1-8. For pricing purposes, the TORP required CNSS to "[c]rosswalk" (also referred to as "mapping") the task order labor categories to the IDIQ labor categories. AR Exh. 5, TORP at 15.

CNSS submitted its proposal on February 24. AR Exh. 8, CNSS Tech. Proposal; Exh. 9, CNSS Price Proposal. On March 15, the terms of CNSS's task order No. 19AQMM23F0657 were finalized. As is relevant, the task order only includes contract line items for FMS staffing support services. AR Exh. 10, CNSS Task Order at 2.

DISCUSSION

The gravamen of APRA's protest is that the type of the services the agency seeks under the task order are outside the scope of CNSS's underlying IDIQ contract.⁹ As a related argument, the protester also argues that the task order requirements are outside of the geographic scope of the IDIQ contract because the task order requires support services for DOS's domestic operations. According to the protester, the IDIQ contract contemplates only providing staffing support for DOS's overseas operations. Supp. Protest at 3-5; Comments & 2nd. Supp. Protest at 3-4. Because the task order services are outside the scope of CNSS's IDIQ contract, APRA argues that the requirements must be competed in accordance with the statutory requirement for full and open competition as set forth in CICA absent a valid determination that the services are appropriate for procurement on a sole source basis. Comments & 2nd. Supp. Protest at 2.

⁹ APRA raises other collateral arguments. Although we do not address every argument, we have reviewed them all and find that none provide a basis on which to sustain the protest. Additionally, APRA filed a second supplemental protest alleging that the agency improperly waived certain organizational conflict of interest requirements for CNSS, but the protester subsequently withdrew those allegations. See Comments on Supp. COS/MOL at 1.

DOS responds that the types of services required by the task order are within the broadly defined scope of CNSS's IDIQ contract. The agency contends that the IDIQ contract includes a broad array of staffing services for any office, including OPR, which is supported by the agency's Office of Acquisition Management. COS/MOL at 11. The agency further contends that while the IDIQ's SOW listed a variety of staffing services anticipated under the contract such as design and engineering, cost management, project management related services, administrative services, and management analyst services, the scope of work was not limited to the listed staffing services. Rather, according to agency, the services were identified as examples. *Id.* Additionally, the agency argues that nothing in the CNSS IDIQ contract limits performance only to overseas locations, noting that the IDIQ-level SOW includes provisions addressing travel reimbursement and potentially differing work hours and holiday schedules for personnel based within and outside the continental United States. *Id.*

When a protester alleges that issuance of a task or delivery order under an IDIQ contract is beyond the scope of the contract, we analyze the protest in essentially the same manner as those in which the protester argues that a contract modification is outside the scope of the underlying contract. *Oracle America, Inc.*, B-420181, Nov. 30, 2021, 2021 CPD ¶ 378 at 4; *DynCorp Int'l LLC*, B-402349, Mar. 15, 2010, 2010 CPD ¶ 59 at 6. In determining whether a task or delivery order is outside the scope of the underlying contract, and thereby triggers applicable competition requirements, our Office and the courts examine whether the order is materially different from that contract, as reasonably interpreted. *People, Tech. and Processes, LLC*, B-417273, May 7, 2019, 2019 CPD ¶ 173 at 4; see also *AT&T Commc'ns, Inc. v. Wiltel, Inc.*, 1 F.3d 1201, 1204 (1993); *CCL, Inc.*, 39 Fed. Cl. 180, 191-92 (1997).

Evidence of such a material difference is found by reviewing the circumstances attending the original procurement; examining any changes in the type of work, performance period, and costs between the contract as awarded and the order as issued; and considering whether the original contract solicitation effectively advised offerors of the potential for the type of orders issued. *People, Tech. and Processes, LLC, supra*; *Threat Mgmt. Grp., LLC*, B-413729, Dec. 21, 2016, 2017 CPD ¶ 9 at 5-6. In other words, the overall inquiry is whether the order is of a nature that potential offerors reasonably would have anticipated. *People, Tech. and Processes, LLC, supra*.

On the record here, we find that the task order staffing services are within the scope of CNSS's IDIQ contract. While APRA asserts that the IDIQ contract only supports the agency's overseas operations, such as the Office of Diplomatic and Consular Programs, there is nothing in the record to suggest that OPR was prohibited from issuing a task order under the contract for the agency's domestic operations. The record evidences that the stated purpose of the IDIQ contract is to provide qualified support personnel to meet the performance objectives and overarching mission of the DOS offices supported by the Office of Acquisition Management. See AR Exh. 7, CNSS IDIQ Contract Mod. No. 7 at 10. Since it is undisputed that OPR is an office supported by the Office of Acquisition Management see Dkt. No. 5, Partial CICA Stay Override D&F at 4, we find

that the scope of CNSS's IDIQ contract encompasses OPR's domestic operations, such as the FMS services, as well as DOS's overseas operations.

Furthermore, CNSS's IDIQ contract is a department-wide staffing support contract, which provides for a wide range of potential staffing services. As stated above, the list of staffing services provided as examples in the IDIQ contract are not intended to limit the agency's use of the contract and the protester has not shown otherwise. See AR Exh. 7, CNSS IDIQ Contract Mod. No. 7 at 11. In addition, the record establishes that the IDIQ contract expressly anticipates that future task orders will provide details regarding the agency's staffing needs to include, the types of services and/or skills required and that the contract allows the agency to add labor categories to the contract, if necessary. See *id.* at 7. Overall, we find that the task order services to support the office of facilities management services do not differ materially from the underlying IDIQ's scope of work. For example, the requirements for loading dock operations, including receiving packages and deliveries and maintaining records in the receipt deliverables systems, are consistent with the IDIQ-level examples of office management, courier and messenger support, and mailing and distribution. Compare AR Exh. 6, TORP Labor Category Positions and Qualifications at 8 with Exh. 2, CNSS IDIQ Contract Mod. 6, SOW at 11.

APRA additionally argues that the task order services are outside the scope of the IDIQ contract because the TORP's crosswalk requirement *i.e.*, mapping the task order labor categories to the existing IDIQ contract labor categories "defies logic." Comments & 2nd. Supp. Protest at 4. The protester explains that in CNSS's price proposal, a loading dock assistant position was mapped to a secretary II position, and a construction manager position was mapped to a management analyst position. *Id.* In requiring such an approach, the protester asserts that the agency "intended to shoehorn" the task order services into the existing IDIQ contract without any reasonable justification. *Id.*

However, the record before us indicates that the manner in which mapping the task order labor categories to the IDIQ labor categories was based on the position descriptions included in the TORP. See AR Exh. 5, TORP at 1-2; Exh. 6, TORP attach. A, Position Descriptions and Qualifications at 1-8. In other words, using the TORP's position descriptions, CNSS mapped, for example, the task order labor category for a loading dock assistant position to the IDIQ labor category for a secretary II position. See *id.*, Exh. 8, CNSS Proposal at 31-32; Exh. 9, CNSS Pricing Proposal at 1. While the protester disagrees with the crosswalk/mapping approach utilized by the agency, APRA has not shown that the task order labor categories listed in the TORP are materially different from those in the IDIQ contract. More importantly, however, setting aside the mapping of the task order labor categories, as explained above, the type of services sought under the order fall within the scope of the underlying IDIQ contract.¹⁰

¹⁰ Even if the labor mapping was in error, the CNSS IDIQ contract explicitly contemplates that either party to the contract "may request adding to or deleting from

In sum, we conclude that the services sought under the task order are not materially different from those encompassed under the IDIQ contract and potential offerors could reasonably have anticipated that the task order, the result of the partial override of the CICA stay, would have been issued under CNSS's IDIQ contract. Further, the record establishes that the task order is issued within the period of performance and funding limitations of the IDIQ contract. For these reasons, we find no basis to sustain APRA's protest.

The protest is denied.

Edda Emmanuelli Perez
General Counsel

the labor categories" established in the IDIQ contract, with the result being a bilateral modification to the IDIQ contract's labor categories. AR Exh. 2, TORP at 7. Here, the record shows that the awardee accepted and incorporated into its proposal in full the labor category positions and qualifications established by the agency. AR Exh. 8, CNSS Proposal at 7-15. To the extent that the parties to the contract expressly agreed to the labor categories and qualifications, any error in mapping would present a question of contract administration, not for our consideration as part of our bid protest function. 4 C.F.R. § 21.5(a).