



## Decision

**Matter of:** Expression Networks, LLC

**File:** B-422373

**Date:** March 13, 2024

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Gregory R. Hallmark, Esq., Jeremy D. Burkhart, Esq., and Danielle R. Rich, Esq., Holland & Knight LLP, for Information Gateways, Inc., the intervenor.  
Jose Otero, Esq., and Virginia Ackerman, Esq., Department of Labor, for the agency.  
Nathaniel S. Canfield, Esq., and Evan D. Wesser, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest challenging the agency's evaluation of the protester's quotation and best-value tradeoff determination in a task order procurement is dismissed where the protester does not allege that the agency's issuance of the task order increases the scope, period, or maximum value of the underlying contract, and where the value of the issued task order does not exceed the applicable jurisdictional threshold.

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### DECISION

Expression Networks, LLC, a small business of Washington, D.C., protests the issuance of task order No. 1605TA-24-F-00016 to Information Gateways, Inc., a small business of Novi, Michigan, under request for quotations (RFQ) No. 1605TA-24-Q-00011, issued by the Department of Labor for development, modernization, enhancement, operations and maintenance, and helpdesk support services for the Occupational Safety and Health Administration. The protester contends that the agency unreasonably evaluated its quotation and made an unreasonable best-value tradeoff determination.

We dismiss the protest.

### BACKGROUND

As alleged by the protester, the agency issued the RFQ as a small business set-aside on December 29, 2023, to firms holding the Department of the Army's Computer Hardware, Enterprise Software and Solutions (CHESS) Information Technology

Enterprise Solutions-3 Services (ITES 3-S) indefinite-delivery, indefinite-quantity (IDIQ) contracts. Protest, exh. 2, RFQ at 1-2. In this regard, the RFQ (i) stated that it was open to “interested parties holding a[n] Army CHES [governmentwide acquisition contract;]” (ii) required submission of quotations through the Army’s CHES portal; (iii) directed vendors to propose labor rates and categories identified in their Army CHES contracts; and (iv) provided that a quotation would be rejected if the vendor failed to provide a copy of its Army CHES ITES 3-S contract or proposed pricing not in accordance with the contract. *Id.* at 2, 85, 93, 100. Despite being issued to holders of CHES ITES 3-S IDIQ contracts, the RFQ made reference to the ordering procedures applicable to Federal Supply Schedule (FSS) contracts, stating that “[t]his requirement is being competed in accordance with [Federal Acquisition Regulation (FAR) subsection] 8.405-3” and that the agency would determine price reasonableness “in accordance with FAR [subsection] 8.405-2(d)[.]” *Id.* at 2, 99.

On February 8, 2024, the agency notified the protester that its quotation had not been selected for award, and that the agency had issued a task order to Information Gateways in the amount of \$17,394,367.75. Protest, exh. 1. This protest followed.

## DISCUSSION

The agency requests dismissal of the protest because it does not allege that the task order increases the scope, period, or maximum value of the CHES ITES 3-S contract, and because it challenges the issuance of a task order valued not in excess of \$25 million. Req. for Dismissal at 2-5. Consequently, the agency contends, our Office lacks jurisdiction to consider the protest pursuant to 10 U.S.C. § 3406(f) and our Bid Protest Regulations, 4 C.F.R. § 21.5(l). *Id.* We agree with the agency.

Under the Federal Acquisition Streamlining Act (FASA) of 1994, as amended, our Office is not authorized to hear a protest “in connection with the issuance or proposed issuance of a task or delivery order except” in certain circumstances. 10 U.S.C. § 3406(f); 41 U.S.C. § 4106(f). That authority allows GAO to hear protests in connection with the issuance or proposed issuance of task orders in two limited scenarios: (1) where the protester asserts that the task order increases the scope, period, or maximum value of the contract under which the order is, or will be, issued; or (2) where the task order is valued in excess of \$25 million if the IDIQ contract under which the order is to be issued was awarded pursuant to the authority of title 10 of the United States Code, or in excess of \$10 million if the IDIQ contract was awarded pursuant to the authority of title 41. *Id.*

Here, the protester challenges the evaluation of its quotation and the agency’s resultant best-value determination; it does not allege that the agency’s issuance of the task order increases the scope, period, or maximum value of the CHES ITES 3-S contract. Accordingly, for our Office to have jurisdiction over the protest, the task order in question must exceed the applicable jurisdictional threshold. As we previously have noted, for purposes of determining the applicable dollar value threshold for our Office’s jurisdiction to hear protests in connection with the issuance or proposed issuance of a

task or delivery order, we look to what authority (*i.e.*, title 10 or title 41 of the United States Code) under which the IDIQ contract was issued, rather than to the agency that issues the order. *Analytic Strategies LLC; Gemini Indus., Inc.*, B-413758.2, B-413758.3, Nov. 28, 2016, 2016 CPD ¶ 340 at 5, *recon. denied*, B-413758.4, B-413758.5, Mar. 9, 2017, 2017 CPD ¶ 87. Thus, as the issuing agency of the CHESSES ITES 3-S contract--the Department of the Army--is a defense agency and therefore subject to the procurement provisions found in title 10 of the United States Code, the applicable jurisdictional threshold is \$25 million. As noted above, the value of the task order at issue is \$17,394,367.75, below that threshold. Accordingly, our Office does not have jurisdiction to review this protest.

Citing our decision in *AudioCARE Systems*, B-283985, Jan. 31, 2000, 2000 CPD ¶ 24, the protester contends that because the RFQ invoked FAR subpart 8.4 procedures, the agency “fundamentally changed the nature of the competition . . . and, therefore, availed itself to protests.” Protest at 12. The protester argues that the “nature of the competition” in *AudioCARE* similarly rendered the procurement at issue there subject to our bid protest jurisdiction. *Id.* at 11. The circumstances in *AudioCARE*, however, were substantively different than those present here.

As we noted in *AudioCARE*, “the agency was not simply selecting an [IDIQ] contractor or [blanket purchase agreement (BPA)] holder for issuance of a delivery order; instead, it conducted a competition between a vendor that was on the [underlying BPA] and one that was not.” *AudioCARE, supra* at 3 n.2. As a result, we concluded that “[w]here a competition is held between an [IDIQ] contractor (or BPA holder) and another vendor, we do not believe the statutory bar on protests applies.” *Id.*

Here, unlike in *AudioCARE*, the agency did not conduct a competition between firms that hold a CHESSES ITES S-3 IDIQ contract and those that do not. The task order to be issued pursuant to the RFQ was to be issued solely to a firm holding a CHESSES ITES S-3 IDIQ contract, and it was to be issued under that contract. In that regard, the RFQ’s references to FAR subpart 8.4 procedures<sup>1</sup> did not transform this into an FSS procurement, or indicate that the agency would place the resultant order under an FSS contract.<sup>2</sup> In short, notwithstanding the references to FAR subpart 8.4, the facts alleged in the protest demonstrate that this was a task order competition between firms holding CHESSES ITES S-3 IDIQ contracts, which could only result in--and did result in--the issuance of a task order under that contract. Plainly, then, the protester’s challenge to the agency’s evaluation and source selection decision is a protest in connection with the

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<sup>1</sup> The agency avers that the references to FSS procedures were “an inadvertent error.” Req. for Dismissal, Contracting Officer’s Decl. at 2.

<sup>2</sup> To that end, the agency further avers that “[a]t no point in this procurement did [the agency] solicit or consider quotations under any [General Services Administration (GSA)] Schedule contract. [The agency] did not post the [RFQ] to any GSA Schedule ordering platform. [The agency] did not issue any order under a GSA Schedule contract under this [RFQ].” *Id.* The protester does not allege otherwise.

issuance of a task order, and the jurisdictional requirements of 10 U.S.C. § 3406(f) apply.<sup>3</sup>

The protest is dismissed.

Edda Emmanuelli Perez  
General Counsel

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<sup>3</sup> The protester further likens the circumstances here to protests in which we have applied FAR part 15 principles to our review of procurements conducted pursuant to FAR subpart 8.4 where agencies have used FAR part 15 negotiated procurement techniques, such as discussions. Resp. to Req. for Dismissal at 2 (citing *Alliant Tech. Group, Inc.*, B-402135, Jan. 21, 2010, 2010 CPD ¶ 152; *Labat-Anderson, Inc.*, B-287081 *et al.*, Apr. 16, 2001, 2001 CPD ¶ 79; *OMNIPLEX World Servs. Corp.*, B-291105, Nov. 6, 2002, 2002 CPD ¶ 199). Because the RFQ referenced FAR subpart 8.4, the protester argues that “the [a]gency wanted and conducted a FAR [section] 8.405 procurement, so GAO should apply FAR [section] 8.405 principles to this protest.” *Id.* The principles and decisions cited by the protester also are inapposite here. They speak to the standard we apply in reviewing an agency’s conduct of a procurement, not to whether our Office has jurisdiction as an initial matter to review that procurement.