



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: United Information Systems, Inc.

File: B-282895; B-282896

Date: June 22, 1999

Michael A. Hordell, Esq., Laura L. Hoffman, Esq., and Erin K. Zack, Esq., Gadsby & Hannah, for the protester.

Mike Colvin, Department of Health and Human Services, for the agency.

Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protests alleging that contracting agency improperly evaluated protester's proposals submitted in response to solicitations issued pursuant to indefinite-quantity, indefinite-delivery contract are dismissed pursuant to 41 U.S.C. § 253j(d) (1994), which provides that "[a] protest is not authorized in connection with the issuance or proposed issuance of a task or delivery order except for a protest on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued," where the enumerated exceptions do not apply.

DECISION

United Information Systems, Inc. (UIS) protests the exclusion of its proposals from the competitive range under request for proposals (RFP) Nos. N02-CO-94024 and N02-CO-94025, issued by the National Cancer Institute (NCI), Department of Health and Human Services, for systems administration and production of databases for the International Cancer Information Center and for programming support for database maintenance and distribution processes. UIS primarily argues that NCI unreasonably evaluated its proposals.

We dismiss the protests.

According to the protester, the agency awarded UIS a multiple award task order contract (N02-CO-84000) in December 1997, Protest at 3, and issued the RFPs which are the subject of its protest on May 7, 1999. *Id.* at 2. The agency states that the two RFPs here were issued to the multiple firms holding umbrella contracts such as N02-CO-84000 as competitive task order solicitations. Summary Dismissal Request, June 7, 1999, at 1. As such, the agency argues that we are precluded from considering the protest by 41 U.S.C. § 253j(d) (1994), which provides that a "[a] protest is not

authorized in connection with the issuance or proposed issuance of a task or delivery order except for a protest on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued.” See also Federal Acquisition Regulation § 16.505(a)(7).

The protester cites several decisions of our Office to argue that we should consider the protest because NCI’s actions suggest that the agency intentionally chose a task order contract to circumvent the requirement to conduct a fair and reasonable evaluation of proposals and to avoid review by our Office. The decisions UIS cites discuss those limited situations where we will consider protests of agency actions not usually subject to our jurisdiction where the protester alleges that the agency was attempting to circumvent applicable procurement statutes and regulations. Premier Vending, B-256560, July 5, 1994, 94-2 CPD ¶ 8 (allegation that the agency was improperly channeling its requirement through a nonappropriated fund instrumentality); Sprint Communications Co., L.P., B-256586; B-256586.2, May 9, 1994, 94-1 CPD ¶ 300 (use of cooperative agreement instead of contract); Oklahomans for Indian Opportunities, B-224097, Aug. 29, 1986, 86-2 CPD ¶ 252 (award of grant where contract allegedly required). The cases UIS relies on are inapplicable here, however, since 41 U.S.C. § 253h(a) specifically authorizes the head of an executive agency to enter into a task or delivery order contract for the procurement of services or property. Thus, contrary to UIS’s position, there is no legal basis to object to the agency’s decision to enter into a task order contract to procure the required services.

Further, we think that the restriction on protests of orders placed under a task order contract as contained in 41 U.S.C. § 253j(d) applies here. The restriction on protests regarding task orders was included in the Federal Acquisition Streamlining Act of 1994 (FASA), Pub. L. No. 103-355, § 1004, 108 Stat. 3243, 3252-53 (1994), as part of FASA’s treatment of task and delivery order contracts. The legislative history concerning the provisions of FASA treating task and delivery order contracts indicates that they were intended to encourage the use of multiple-award task or delivery order contracts, rather than single-award task or delivery order contracts, in order to promote an ongoing competitive environment in which each awardee was fairly considered for each order issued. H.R. Conf. Rep. No. 103-712, at 178 (1994), reprinted in 1994 U.S.C.C.A.N. 2607, 2608; S. Rep. No. 103-258, at 15-16 (1994), reprinted in 1994 U.S.C.C.A.N. 2561, 2575-76. Thus, contrary to the protester’s position, the fact that the statute contains a restriction on protests of the issuance of task orders does not mean that the agency has improperly chosen a task order as a contract vehicle in order to avoid our Office’s review.¹ Rather, the restriction on protests is part and parcel of the statutory scheme.

¹ We have held that the statutory restriction on protests of orders placed under task or delivery order contracts does not apply to protests of “downselections” implemented by the placement of a task or delivery order under a multiple-award task or delivery order contract where the task order results in the elimination of one of the

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The protester argues that we should consider its protest because, notwithstanding the “Task Order Request For Proposals” designation on the solicitations, the RFPs are “stand-alone competitive procurements.” Protest at 3; Protester’s Comments, June 10, 1999, at 4. In this connection, UIS cites our decision in Teledyne-Commodore, LLC--Recon., B-278408.4, Nov. 23, 1998, 98-2 CPD ¶ 121, where we considered a protest concerning task orders issued under multiple award contracts.

The protester’s reliance on Teledyne-Commodore, LLC--Recon. is misplaced. In that case, we exercised jurisdiction over the protest based on our conclusion that, although the challenged task orders were issued under the aegis of what purported to be indefinite-quantity, indefinite-delivery contracts, those umbrella contracts involved neither recurring work nor an indefinite quantity of work for an individual contractor, and the agency was essentially conducting one competitive source selection to perform the required work. By contrast here, there is no indication (and no allegation) that the nature of the umbrella contract is such that the agency does not have recurring needs or that it is conducting only a single competitive source selection.

UIS finally argues that the statutory exception contained in 41 U.S.C. § 253j(d) applies because the work required by the RFPs is “slightly different than and beyond the scope” of the umbrella contract. Protest at 5. Beyond that statement, however, and a subsequent assertion that “the work involved differed from that permitted under existing task order contracts,” Protester’s Comments at 6, UIS provides no explanation or support for its position. Without more, the protester’s conclusory assertion is not sufficient to state a valid basis for protest on this ground. See Bid Protest Regulations, 4 C.F.R. § 21.1(c)(4) (1999). Further, we think that this allegation is untimely. To be timely under our Regulations, protests based upon alleged improprieties in a solicitation which are apparent prior to the time set for receipt of initial proposals must be filed prior to that time. 4 C.F.R. § 21.2(a)(1). Here, the agency states, and the protester does not dispute, that both solicitations contained detailed statements of work (SOW). Summary Dismissal Request, June 7, 1999, at 1. Accordingly, if UIS believed that the SOWs were beyond the scope of the umbrella contract, it was required to raise its objections either with the agency or with our

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contractors from consideration for future orders without further competition under the remaining terms of the contract. Electro-Voice, Inc., B-278319, B-278319.2, Jan. 15, 1998, 98-1 CPD ¶ 23 at 5. UIS does not allege, however, that the procurements at issue here were structured so as to result in a “downselection” as described in Electro-Voice, or that the firm will otherwise be eliminated as a source for future work under its contract. See The Intrados Group, B-280130, June 22, 1998, 98-1 CPD ¶ 168.

Office before the time set on May 17, 1999, for receipt of proposals. Since UIS did not file its protest until June 4, this allegation is untimely, and will not be considered.

In any event, even assuming that the work required by the RFPs was “slightly different than” or beyond the scope of the basic contract, as UIS maintains, since the RFPs were issued only to holders of that contract, and UIS was permitted to compete, we fail to see, and the protester does not explain, how it could have been prejudiced thereby. Since competitive prejudice is an essential element of every viable protest, Diverco, Inc., B-259734, Apr. 21, 1995, 95-1 CPD ¶ 209 at 3, there would be no basis to disturb the awards at issue on this ground. Merrick Eng'g, Inc., B-238706.3, Aug. 16, 1990, 90-2 CPD ¶ 130 at 4, recon. denied, B-238706.4, Dec. 3, 1990, 90-2 CPD ¶ 444.

The protests are dismissed.

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