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Decision

Matter of: Edmond Scientific Company

File: B-410187.2

Date: December 1, 2014

Ron R. Hutchinson, Esq., Doyle & Bachman LLP, for the protester.
Scott N. Flesch, Esq., Frank A. March, Esq., Department of the Army, for the agency.
Lois Hanshaw, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

GAO lacks jurisdiction to hear protest of task order solicitation where independent government estimate of task order's value, exclusive of the value of option to extend services, is below \$10 million and solicitation does not provide for evaluation of option to extend services.

DECISION

Edmond Scientific Company (Edmond), of Chantilly, Virginia protests the decision by the Department of the Army, Medical Research Acquisition Activity, not to set aside for small businesses a task order proposal request (TOPR) No. TOPR 14MC22318, issued under a multiple-award, indefinite-delivery/indefinite-quantity (ID/IQ) contract for a variety of business-process and other support services. The protester argues that the Army's decision not to reserve this task order for small business participation lacked a reasonable basis, was an abuse of discretion, and violated Federal Acquisition Regulation (FAR) § 19.502-2(b), the so-called "Rule of Two."¹

We dismiss the protest because it is not within our jurisdiction.

¹ The facts alleged and arguments raised by this protest are virtually identical to those denied by our Office in Edmond Scientific Co., B-410179, B-410179.2, Nov. 12, 2014, 2014 CPD ¶ 336.

Protests filed with our Office in connection with the issuance or proposed issuance of a task or delivery order under a multiple-award contract are not authorized except where the order is valued over \$10 million, or where the protester can show that the order increases the scope, period, or maximum value of the contract under which the order is issued. 10 U.S.C. § 2304c(e) (2012); see e.g., e-Management Consultants, Inc.; Centech Group, Inc., B-400585.2, B-400585.3, Feb. 3, 2009, 2009 CPD ¶ 39 at 6.

At issue here is whether the value of the task order will be above or below the \$10 million threshold for our jurisdiction. The TOPR, as amended, provides for evaluation of price and non-price factors, and states that the evaluated total price of a proposal will be “the total of all the priced line items for the base year and all options.” Agency Report (AR), Tab 14, TOPR amend. 3, at 21, 22. The independent government estimate (IGE), which the Army calculated by including estimates for the base year, three one-year options, and one ten-day transition option, values the order at approximately \$[deleted] million. AR, Tab 3, IGE, at 3.

Edmond argues that the IGE does not accurately represent the value of the order, because the TOPR also included FAR clause 52.217-8, which reserves for the government a six-month option to extend services. Comments at 8. In this regard, the protester relies on the statement in the TOPR that the total evaluated price would include “all option periods,” and maintains that “all option periods” must include the option to extend. Comments at 9; AR, Tab 14, TOPR amend. 3, at 21, 22. Edmond contends that including the value of the option to extend in the IGE-- which in the protester’s view, should be valued at half the value of the third option year--would increase the task order’s value above the \$10 million threshold. Comments at 9, 10.

Edmond is mistaken. Our Office has determined that the value of a task order may include the value of options, including an option to extend services under FAR clause 52.217-8, when the value of the option (if exercised) is evident from the face of the solicitation. Serco Inc., B-406061, B-406061.2, Feb. 1, 2012, 2012 CPD ¶ 61 at 6-7. While the TOPR here required contractors to submit prices for the base period and option periods 1-4, it did not require submission of prices that would be used if the Army exercised its option to extend services under FAR clause 52.217-8, nor did it provide any formula for calculating these prices.² In this regard,

² The facts here are distinguishable from our decision in Serco Inc., *supra*, where the solicitation expressly provided for the evaluation of the value of the option to extend services. See also Major Contracting Servs., Inc., B-401472, Sept. 14, 2009, 2009 CPD ¶ 170 at 4 (where option to extend is not evaluated as part of the initial competition, contract extension is effectively a new procurement); *Id.* at 6

(continued...)

Edmond's reliance on the TOPR's statement that "the total evaluated price for orders would include all priced line items for the base year and all option periods" is misplaced, since the option-to-extend period here is not to be priced in proposals nor included in the evaluation of proposals.

In sum, the protester has not shown the agency's IGE to be inconsistent with the terms of the TOPR or an inaccurate measure of the total value of the task order. Since that value is below \$10 million, our Office does not have jurisdiction to consider the protest.³

The protest is dismissed.

Susan A. Poling
General Counsel

(...continued)

(rejecting argument that evaluating base year and option year prices is equivalent to evaluating price for option to extend).

³ The protester also asserts that it expects its price will exceed the \$10 million threshold and that this fact should be considered in addition to the Army's IGE. Comments at 7, 8. We note that the agency has suspended the TOPR pending our resolution of this pre-closing protest, and therefore, has not yet received proposals. AR, Tab 15, TOPR amend. 4. Accordingly, we cannot rely on the value of submitted proposals to determine the value of the task order. See ICI Servs., Inc., B-409231.2, Apr. 23, 2014, 2014 CPD ¶ 132 at 3 n.3 (considering value of offerors' submitted proposals for purposes of determining GAO jurisdiction).