



G A O

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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Ryan Consulting Group, Inc.

File: B-414014

Date: November 7, 2016

Denise Redding for the protester.

Blythe I. Rodgers, Esq., and Julie K. Cannatti, Esq., Department of Housing and Urban Development, for the agency.

Paula A. Williams, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

The Government Accountability Office (GAO) lacks jurisdiction to consider protests in connection with task and delivery orders valued above \$10 million issued under civilian agency multiple-award indefinite-delivery/indefinite-quantity contracts because GAO's specific authority to hear such protests has expired.

DECISION

Ryan Consulting Group, Inc., of Indianapolis, Indiana, protests the issuance of a task order to 22nd Century Team, LLC, of McLean, Virginia, by the Department of Housing and Urban Development (HUD) to provide enterprise architecture and information technology management support services. The order, valued above \$10 million, was issued under a multiple-award, indefinite-delivery/indefinite-quantity (IDIQ) contract awarded by the Department of Health and Human Services, National Institutes of Health (NIH), pursuant to the civilian agency task and delivery ordering authorities established under Title 41 of the U.S. Code. See 41 U.S.C. § 4103, 4106. Ryan, one of the multiple award contract holders, challenges the order essentially arguing that the agency miscalculated the proposals submitted in response to the task order request.

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

In 1994, the Federal Acquisition Streamlining Act (FASA) established a bar against protests concerning military and civilian agency task and delivery orders issued under multiple-award IDIQ contracts, with the exception of those protests alleging that an order increases the scope, period, or maximum value of an underlying IDIQ

contract. See Pub. L. No. 103-355, 108 Stat. 3243, 3264 (1994) (codified in Titles 10 and 41 of the U.S. Code); Technatomy Corp., B-405130, June 14, 2011, 2011 CPD ¶ 107 at 2-3. The National Defense Authorization Act (NDAA) for Fiscal Year 2008, amended FASA to grant GAO limited jurisdiction to hear protests in connection with the issuance or proposed issuance of non-civilian agency orders (governed by Title 10) and civilian agency orders (governed by Title 41), where the value of the order exceeded \$10 million, in addition to protests concerning the scope, period, or maximum value of the underlying contract. Pub. L. No. 110-181, 122 Stat. 3, 237 (2008). The NDAA for Fiscal Year 2008 also included a sunset provision under which the general bar on our task and delivery order jurisdiction would expire on May 27, 2011. Id.; Kevcon, Inc., B-406418, Mar. 7, 2012, 2012 CPD ¶ 108 at 2-3; Technatomy Corp., supra.

The Fiscal Year 2012 NDAA amended our jurisdiction to reinstate the FASA task or delivery order bar, and the \$10 million exception to the bar established under the FY 2008 NDAA (in addition to the exception concerning scope, as discussed above). It also established a new sunset date, whereby the grant of jurisdiction to hear protests of orders issued pursuant to Title 41, valued in excess of \$10 million, expired after September 30, 2016.¹ Specifically, as it is relevant to the protest at issue, section 4106(f) of Title 41 was amended to provide as follows:

(f) Protests--

(1) Protest not authorized. A protest is not authorized in connection with the issuance or proposed issuance of a task or delivery order except for

(A) a protest on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued; or

(B) a protest of an order valued in excess of \$10,000,000.

(2) Jurisdiction over protests. Notwithstanding section 3556 of title 31, the Comptroller General shall have exclusive jurisdiction of a protest authorized under paragraph (1)(B).

¹ Although our jurisdiction with respect to protests of task and delivery orders issued pursuant to Title 41 expired on September 30, 2016, section 830 of the NDAA for Fiscal Year 2013 amended Title 10 to delete the sunset language with respect to non-civilian agency task and delivery orders. See Pub. L. No. 112-239, 126 Stat. 1632, 1842 (2013) (codified at 10 U.S.C. § 2304c(e)). This change had the effect of permanently establishing GAO's jurisdiction to hear protests in connection with Title 10 task and delivery orders valued in excess of \$10 million.

(3) Effective period. Paragraph (1)(B) and paragraph (2) of this subsection shall not be in effect after September 30, 2016.

41 U.S.C. § 4106(f).

Here, there is no dispute that Ryan filed its protest on October 14, 2016 challenging a task order issued by HUD under a multiple-award IDIQ contract vehicle awarded by NIH. Thus, it is clear that Ryan filed its protest after our specific authority to resolve protests in connection with civilian agency task and delivery orders in excess of \$10 million had expired. While Ryan asks that we “consider grandfathering” its protest, Ryan’s Response to Agency Dismissal Request at 1 (Oct. 25, 2016), we have no authority to do so. As set forth above, our jurisdiction to resolve a protest in connection with a civilian agency task order, such as the one at issue, expired on September 30, 2016, pursuant to the express terms of 41 U.S.C. § 4106(f)(3). Moreover, the protester does not otherwise argue that the order at issue increases the scope, period, or maximum value of the underlying IDIQ contract. Accordingly, our Office does not have jurisdiction to consider the protest.

The protest is dismissed.

Susan A. Poling
General Counsel