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Decision

Matter of: American Systems Group

File: B-415381; B-415381.2

Date: January 4, 2018

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DIGEST

Protest alleging that a task order for professional services is outside the 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 skills identified as examples.

DECISION

ASG Solutions Corporation, of San Diego California, doing business as American Systems Group (ASG), protests the issuance of task order No. SAQMMA17F3438 to Muscogee International LLC, an Indian tribe-owned 8(a) small business of Okmulgee, Oklahoma, by the Department of State (DOS) for professional services to support the Department's Office of Political Military-Affairs Bureau. ASG alleges that the task order is beyond the scope of the underlying indefinite-delivery/indefinite-quantity (IDIQ) contract and that the agency committed other violations of procurement regulations in issuing the task order.

We deny the protest.

BACKGROUND

In September 2016, DOS awarded a single-award IDIQ contract to Muscogee under the Small Business Administration's (SBA) Tribal Enterprises 8(a) Business Development program; the award was supported by a Justification for Sole-Source 8(a) Contract

Exceeding \$22 Million.¹ Memorandum of Law (MOL), at 3; Agency Report (AR), Tab 24, Muscogee IDIQ, at 24; Id., Tab 10, Justification. This contract anticipates that services will be ordered through fixed-price, cost-reimbursement, and/or time-and-materials task orders. AR, Tab 24, Muscogee IDIQ, at 4. The IDIQ contract has a 1-year base period, and includes four 1-year option periods. Id. at 7. DOS exercised an option extending the current period of performance for the IDIQ through September 25, 2018. AR, Tab 31, Muscogee IDIQ Modification 05, at 1. The maximum value of the IDIQ contract is \$200 million. AR, Tab 24, Muscogee IDIQ Contract, at 3.

The IDIQ contract's statement of work describes the "scope of services" as follows:

This section outlines the objectives to be fulfilled under the Indefinite Delivery Indefinite Quantity (IDIQ) contract and provides a listing of Professional Employee Support Services that are illustrative of future task order activities. Desired outcomes and constraints including deliverables, performance requirements, quality assurance standards etc., will be developed for each task order issued by the [DOS].

AR, Tab 24, Muscogee IDIQ Contract, at 4. In addition, the IDIQ contract states two objectives: to "[p]rovide professional services employees. . .to meet the performance objectives and business requirements of the [DOS]," Id., at 4-5; and to "[p]rovide professional service employees . . .with the personnel security clearances needed to meet the performance objectives and business requirements of the [DOS]." Id. The contract includes an attachment containing "illustrative services and job descriptions" and states that "positions not covered above will be identified in detail at the task order level." Id. at 4; AR, Tab 25, Muscogee IDIQ Labor Category Descriptions. Many of these position descriptions require general skills as well as specific knowledge of procurement-related laws and regulations, while others are more administrative or general in nature.² See id. Also provided in attachments were the applicable wage determination for use with any position covered by the Service Contract Act (SCA) and the directory of SCA occupations. AR, Tab 24-2, IDIQ Attachment A, Wage Determination; AR, Tab 24-3, IDIQ Attachment B, SCA Directory of Occupation. The attachments have been updated since the award of the contract, to reflect changes in labor categories and rates. See AR, Tab 28, Muscogee IDIQ Modification 02.

¹ 13 C.F.R. § 124.109(c) provides that businesses owned by eligible Indian tribes may participate in the SBA's 8(a) Business Development program designed to help small, disadvantaged businesses compete in the government marketplace.

² The labor category examples include a broad range, including such categories as administrative specialist, general clerk, information technology specialist, office manager, secretary, subject matter expert, paralegal, senior advisor, and systems analyst; most descriptions also include experience and education requirements for various levels. AR, Tab 25, Muscogee IDIQ Labor Category Descriptions.

On September 5, 2017, DOS provided to Muscogee the task order request for proposal (TORP) at issue here, TORP No. 17-30, for professional staffing “in support of administrative and technical export control functions for Political Military-Affairs Bureau, Office of the Directorate of Defense Trade Controls (DDTC).” Contracting Officer’s Statement of Facts (COSF) at 2; AR, Tab 32, TORP at 1. The TORP listed 19 labor categories and identified the number of positions in each category that would be required to support the DDTC’s role in the regulation of defense trade.³ AR, Tab 32, TORP, at 1-2. The TORP provided a detailed description of the requirements and anticipated responsibilities for each position. *Id.* at 3-49. Also with the TORP, DOS provided a list of 39 candidates, their suggested positions and pay grades, and a DOS email address for each person listed. COSF, at 2; AR, Tab 33, Candidate List.

On September 24, 2017, DOS issued task order No. SAQMMA17F3438 to Muscogee. This protest followed.⁴

DISCUSSION

ASG’s primary argument is that the task order is improper because it is for services that are beyond the scope of Muscogee’s IDIQ contract.⁵ Protest at 7-8; Supp. Protest at 7-8.

ASG argues that the task order’s statement of work is outside the scope of Muscogee’s IDIQ contract’s statement of work. Protest at 7-8; Supp. Protest at 7-8. In this regard, the protester contends that examples of tasks and job descriptions in Muscogee’s IDIQ contract pertain to support of procurement functions and required experience or expertise in that field and were to be in support of DOS’s Information Resources Management bureau, whereas the task order at issue includes functions and job

³ The categories included, for example, various levels of compliance specialists, contract support analysts, office support, policy analyst, records auditor, and service support desk personnel. AR, Tab 32, TORP, at 2.

⁴ ASG’s initial protest was filed on September 27, 2017, after ASG learned general information about the issuance of a task order for the services it had previously provided. Protest at 2; Exhibit E. On September 29, following the September 23 issuance of the task order to Muscogee, ASG filed a supplemental protest that is more specific, but largely repeats the earlier allegations. Supp. Protest at 1 n.2.

⁵ In its various protest submissions, ASG raises arguments that are in addition to, or variations of, those specifically discussed herein, including, for example, that the agency failed to meet various procedural requirements before issuing the task order to Muscogee; that the agency improperly declined to exercise an option under a task order that ASG was performing for similar services; challenges to the NAICS code assigned to the procurement; and to Muscogee’s size status. We have reviewed all of ASG’s submissions and find no basis to sustain its protest.

descriptions with a defense trade control focus, in support of the Directorate of Defense Trade Controls. Comments at 12-14. ASG also argues that the North American Industrial Classification System (NAICS) code assigned to Muscogee's IDIQ contract differs from the NAICS code assigned to a task order previously performed by ASG for similar services. Protest at 7-8; Supp. Protest at 7-8.

DOS responds that the task order is within the scope of Muscogee's IDIQ contract. MOL at 33-36. The agency contends that Muscogee's IDIQ contract included 180 labor categories for a broad array of professional services, and that the 19 labor categories that were included in the TORP reflected the exact type of services contemplated by the IDIQ contract. Id. at 36.

When a protester alleges that the 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 protests in which the protester argues that a contract modification is outside the scope of the underlying contract. Florida State College at Jacksonville, B-402656, June 24, 2010, 2010 CPD ¶146 at 4. In determining whether a task order or delivery order is outside the scope of the underlying contract, our Office examines whether the order is materially different from the original contract, as reasonably interpreted. Id. To determine whether such a material difference exists, GAO reviews the circumstances attending the procurement; examines any changes in the type of work, performance period, and costs between the contract as awarded and as modified by the task order; and considers whether the original contract solicitation adequately advised offerors of the potential for the type of task order issued. Threat Management Grp., LLC, B-413729, Dec. 21, 2016, 2017 CPD ¶ 9 at 5-6. The overall inquiry is whether the task order is of a nature that potential offerors would reasonably have anticipated. Id. at 6.

On this record, we find that the professional support services in the task order are within the scope of Muscogee's IDIQ contract. As stated above, the IDIQ contract provides for a wide range of professional services, and the position descriptions provided as examples are not intended to limit the agency in its use of the contract. The stated purpose of the IDIQ is to provide professional services employees to meet the performance objectives and business requirements of various DOS offices. The IDIQ contract expressly anticipates that future task orders will provide the details regarding staffing needs. The task order at issue here corresponds to the general levels of expertise, education, and/or experience as reflected in the IDIQ contract's labor categories.

While the protester clearly disagrees with the agency's assertion that the labor categories in the IDIQ contract are not materially different from those in the TORP, ASG has not demonstrated a material difference. For example, ASG insists that because the IDIQ contract's statement of work lists "professional service employees to meet the mission objectives of [the Information Resource Management] bureau" among the examples of anticipated services, the requirement in the TORP for "personnel to support the [Political Military-Affairs Bureau, Office of the Directorate of Defense Trade

Controls]" was materially different because these are "completely different" bureaus. Protester's Comments at 13. We do not agree with ASG's premise that this is a material difference, because both offices are seeking similar professional support services. As such, potential offerors could have anticipated that this task order could occur under Muscogee's IDIQ contract as the positions sought by the TORP are for the type of services identified in the IDIQ contract. The record similarly supports that the task order is issued within the period of performance and funding limitation of the IDIQ. Accordingly, we find no basis to sustain ASG's protest.

The protest is denied.

Thomas H. Armstrong
General Counsel