



Decision

Matter of: American Systems Group

File: B-418667

Date: July 23, 2020

Ritobrata Banerjee, for the protester.
Geoffrey D. Chun, Esq., Department of the Navy, for the agency.
Katherine I. Riback, Esq., and Evan C. Williams, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest that services requested under a task order solicitation are outside the scope of the underlying multiple-award contract is dismissed where the protester fails to demonstrate competitive prejudice.

DECISION

ASG Solutions Corporation, doing business as American Systems Group (ASG), a small business of San Diego, California, protests the terms of task order request for proposals (TORP) No. N33191-20-R-3005, issued by the Department of the Navy for engineering technician assistant services. The protester asserts that the services sought under the TORP are beyond the scope of the indefinite-delivery, indefinite-quantity (IDIQ) contract under which the TORP was issued.

We dismiss the protest.

On June 1, 2018, the agency issued solicitation No. N00178-18-R-7000 for the Seaport-Next Generation (Seaport-NxG) IDIQ multiple-award contract (MAC) for engineering, technical, and programmatic support services. Req. for Dismissal, Attachment 7, IDIQ Solicitation at 1, 7. The solicitation provided that task orders would be issued under the IDIQ contract for two areas of support--engineering services and program management services. *Id.* at 7. The solicitation further divided these areas of support into 23 functional area subcategories. *Id.* at 7-8. Offerors were required to submit a technical proposal which demonstrated experience performing some effort related to at least one of the areas identified by the scopes of work. *Id.* at 63. Technical proposals were to be evaluated as acceptable or unacceptable. *Id.* The solicitation also provided that the agency would make an award to all qualifying offerors. *Id.* A

qualifying offeror was defined as a responsible source that submitted a technical proposal that was rated acceptable, and was likely to offer fair and reasonable pricing. *Id.* The Navy awarded ASG a Seaport-Next Generation IDIQ contract on January 2, 2019. Protest, App. B, Seaport-NxG Contract Awarded to ASG.¹

On March 17, 2020, the agency issued TORP No. N33191-20-R-3005, to holders of the Seaport-Next Generation IDIQ contract. Protest, App. A, TORP at 24. The TORP requires the contractor to provide “One (1) Engineering Technician to provide support services for the Public Works Department Naples located in Naples, Italy and surrounding areas.” *Id.* at 3. The solicitation provided that award would be made to the offeror whose proposal offered the best value to the government based on the lowest-price, technically acceptable source selection method. *Id.* at 24.

On April 15, ASG filed a protest with our Office, contending that the TORP seeks services that are outside the scope of the IDIQ contract under which the TORP was issued. The protester specifically argues that the IDIQ contract does not encompass the award of a contract for construction professional services. Protest at 6-10. In response, the agency asserts that the services requested are within the scope of the IDIQ contract. Req. for Dismissal at 6-7. In the alternative, the agency argues that even if the services are outside of the scope of the IDIQ contract, ASG has not been competitively prejudiced by the agency’s actions because it can submit a proposal in response to the TORP. *Id.* at 14.

Under the Federal Acquisition and Streamlining Act of 1994, as modified by the National Defense Authorization Act for Fiscal Year 2017, our Office is authorized to hear protests of task orders that are issued under multiple-award contracts established within defense agencies (or protests of the solicitations for those task orders) where the task order is valued in excess of \$25 million, or where the protester asserts that the task order increases the scope, period, or maximum value of the contract under which the order is issued.² 10 U.S.C. § 2304c(e)(1); see also *Threat Mgmt. Grp., LLC*, B-413729, Dec. 21, 2016, 2017 CPD ¶ 9 at 1-2 n.1.

The Competition in Contracting Act (CICA) requires agencies to obtain “full and open competition” in procurements through the use of competitive procedures. 41 U.S.C. § 3301(a); see also 10 U.S.C. § 2304(a). Task orders that are outside the scope of the underlying multiple-award contract are subject to the statutory requirement for full and open competition set forth in CICA, absent a valid determination that the work is appropriate for procurement on a sole-source basis or with limited competition. 10 U.S.C. § 2305(a)(1)(A)(i); 41 U.S.C. § 3301; see *DynCorp Int’l LLC*, B-402349, Mar. 15, 2010, 2010 CPD ¶ 59 at 6.

¹ ASG was one of more than 2,400 contractors to receive a SeaPort-NxG MAC contract. Supplemental Memorandum of Law (Supp. MOL) at 4.

² The estimated value of this task order is less than \$25 million. See Req. for Dismissal at 1.

Protests alleging that services requested under a task order solicitation are outside the scope of the underlying multiple-award contract are usually filed by protesters that have not been awarded one of the underlying contracts, and therefore cannot participate in the task order competition. See e.g., *People, Technology, and Processes, LLC*, B-417273, May 7, 2019, 2019 CPD ¶ 173; *Dyncorp International LLC*, B-402349, Mar. 15, 2010, 2010 CPD ¶ 59. Contractors, like ASG here, that have been awarded a contract under the multiple-award solicitation are not barred from competing for the alleged out-of-scope task order and therefore are not generally prejudiced.

In the unique circumstance where a protest alleging an out-of-scope task order is submitted by a company that has been awarded one of the underlying MAC contracts, our Office will sustain the protest only where the protester demonstrates that it has been competitively prejudiced in competing for the alleged out-of-scope task order. *Western Pilot Service; Aerial Timber Applicators, Inc.; Evergreen Flying Services, Inc.; G.B. Aerial Applications, Inc.*, B-415732 et al., Mar. 6, 2018, 2018 CPD ¶ 104 at 10 (sustaining protest arguing that a TORP is outside the scope of the IDIQ contract under which it was issued where the protester demonstrated that it had been prejudiced because out-of-scope work resulted in offerors not competing on a level playing field). That is, the protester must establish a reasonable possibility that had it known of the changed requirements (i.e., the alleged out-of-scope work on the TORP), it would have altered its proposal on the IDIQ contract to its competitive advantage or done something to enhance its chances for award of the task order. See *id.*; see also *Datastream Systems, Inc.*, B-291653, Jan. 24, 2003, 2003 CPD ¶ 30 at 6.

We do not address whether the task order is outside of the scope of the IDIQ contract under which it was issued because the protester has not demonstrated competitive prejudice. As an initial matter, the agency asserts, and the protester does not deny, that as the holder of an IDIQ contract the protester is not precluded from competing for the allegedly out-of-scope order. Req. for Dismissal at 13. While this is not the only issue we consider in assessing prejudice, based upon our review of the record, we find that ASG has not demonstrated that it has been competitively prejudiced by the agency's actions with respect to this solicitation.

ASG contends that the agency's decision to procure this requirement under the IDIQ contract--rather than as a competitive procurement--deprived it of teaming with another contractor and therefore submitting a more competitive proposal. Resp. to Req. for Dismissal at 4. The protester's argument fails to establish competitive prejudice. First, as pointed out by the agency, neither the IDIQ solicitation, the Seaport-NxG contract awarded to ASG, nor the TORP places any meaningful restriction on ASG teaming with any subcontractor or vendor. IDIQ Solicitation at 14; Protest, App. B, Seaport-NxG Contract Award to ASG at 14; TORP at 7; Supp. MOL at 21-22. Second, even assuming the IDIQ contract or the TORP limited ASG's ability to team with another contractor, ASG does not explain with specificity how this supposed limitation affected its ability to gain a competitive advantage with respect to the IDIQ or TORP. In other words, the protester does not establish that had it known of the agency's changed requirements, it would have altered its proposal on the IDIQ contract or otherwise took

action to be in a better position to be awarded the task order. Therefore, the protester's generalized arguments related to teaming with another contractor do not sufficiently demonstrate that the allegedly out-of-scope work sought by the TORP resulted in competitive harm.

Furthermore, ASG has not demonstrated that it would have submitted a different technical or price proposal in response to the IDIQ solicitation that would have made it more advantageous to respond to the TORP, if it knew the agency planned to procure these services under the IDIQ contract. Indeed, the record suggests that there is nothing that ASG could have changed in responding to the IDIQ solicitation which would have made it more competitive in responding to the TORP. As noted above, under the IDIQ contract, the technical proposals were evaluated on an acceptable/unacceptable basis to ensure that the contractor had experience performing in one of the functional areas. IDIQ Solicitation at 63. Further, at the IDIQ level, price was not evaluated at all. *Id.* Thus, the record shows that the protester was not constrained under the TORP by the pricing and overall proposal strategy utilized for the IDIQ contract. *American Systems Group*, B-418469, Apr. 7, 2020, 2020 CPD ¶ 140 at 3-4. Since ASG can respond to the TORP, ASG has not demonstrated that it has been competitively prejudiced.³

The protest is dismissed.

Thomas H. Armstrong
General Counsel

³ ASG also argues that its proposed price would have been less if the requirement was procured outside of the Seaport-NxG IDIQ contract because as a Historically Underutilized Business Zone (HUBZone) firm it is entitled to a price preference per Federal Acquisition Regulation (FAR) 19.1307. Protest at 10-11. The agency responds that this requirement is for services at a Naval installation in Naples, Italy, and that the HUBZone preference in FAR 19.307 applies only in the United States, or its outlying areas. Req. for Dismissal at 14; FAR 19.000(b) ("This part [*i.e.*, FAR part 19], except for subpart 19.6, applies only in the United States or its outlying areas."). Since the HUBZone preference would not apply to the agency's requirement even if the agency used a different procurement vehicle, we do not find that this contention establishes competitive prejudice. Moreover, the protester's assertion related to a price preference it would have received had the agency used a different procurement vehicle is misplaced here. Rather, as stated above, the relevant inquiry is whether the protester would have altered its proposal on the IDIQ contract to its competitive advantage or done something to enhance its chances for award of the task order, had it known of the allegedly out-of-scope work. Therefore, we reject the protester's argument.