



Decision

Matter of: System Architecture Information Technology

File: B-418721

Date: June 2, 2020

Eron Heard, System Architecture Information Technology, for the protester.
Andrew J. Smith, Esq., and Sean Connolly, Esq., Department of the Army, for the agency.
Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of submissions in connection with its proper exercise of other transaction agreement authority pursuant to 10 U.S.C. § 2371b is dismissed because our Office does not review protests challenging an agency's proper exercise of its other transaction agreements authority.

DECISION

System Architecture Information Technology (SAIT), of Santa Clara, California, protests the elimination of its submission from further consideration under request for project proposals (RPP) No. MTEC-20-10-COVID-19_NETCCN_TATRC, issued by Advanced Technology International (ATI), the consortium manager of a non-profit corporation known as the Medical Technology Enterprise Consortium (MTEC). The RPP seeks support for the Department of the Army's telemedicine and advance technology research center. Specifically, the RPP seeks solutions to provide the rapid development, deployment and testing of a national emergency "telecritical" care network to respond to the COVID-19 pandemic. SAIT argues that its submission was unreasonably eliminated from further consideration.

We dismiss the protest.

In August 2015, the U.S. Army Medical Research and Development Command (USAMRDC) entered into prototype other transaction agreement (OTA) No. W81XWH-15-9-0001 with the non-profit corporation MTEC. MTEC is a collaborative partnership among industry and academic participants working with USAMRDC (and other Department of Defense components engaged in biomedical sciences investigations)

that was created under the terms of the OTA. Agency Request for Dismissal, exh.1, MTEC OTA.

As part of its activities, MTEC, through its consortium manager, ATI, issued the subject RPP seeking the submission of “enhanced white papers” that offered possible solutions to the agency’s requirement. Agency Request for Dismissal, exh. 2, ATI RPP. SAIT responded to the RPP, and its enhanced white paper was eliminated from consideration. SAIT filed this protest after being advised of the elimination of its enhanced white paper from consideration.

In response to the protest, the agency filed a request for dismissal, arguing that the transaction in question is being conducted under the authority of 10 U.S.C. § 2371b, which authorizes OTA activities, including the prototype OTA at issue here. The agency argues that, because the solicitation does not contemplate the award of a contract or the proposed award of a contract, SAIT’s protest should be dismissed because our Office lacks jurisdiction to consider the matter. SAIT was invited by our Office to provide a response to the agency’s dismissal request, but it did not submit one.

We dismiss the protest. Under the Competition in Contracting Act of 1984, and our Bid Protest Regulations, our jurisdiction is confined to protests concerning alleged violations of procurement statutes or regulations by federal agencies in the award or proposed award of procurement contracts, and solicitations leading to such awards. 31 U.S.C. §§ 3551(1), 3552; 4 C.F.R. § 21.1(a). Where an agency has statutory “other transaction” authority, agreements entered into by an agency under such authority are not procurement contracts subject to our bid protest jurisdiction. 4 C.F.R. § 21.5(m); *MD Helicopters, Inc.*, B-417379, Apr. 4, 2019, 2019 CPD ¶ 120 at 2. The only exception to this general rule are situations where an agency is exercising its OTA authority, and the protester files a timely, pre-award protest alleging that the agency is improperly exercising that authority to avoid using a procurement contract. *Id.*

SAIT has not alleged that the agency is using its OTA authority improperly to acquire goods or services that should be acquired using a procurement contract. Rather, SAIT’s challenge is confined to the evaluation and elimination of its enhanced white paper from consideration during the agency’s proper exercise of its OTA authority. As such, our Office does not have jurisdiction to consider the matter. *MD Helicopters, Inc.*, *supra*.

The protest is dismissed.

Thomas H. Armstrong
General Counsel