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Decision

Matter of: U.S. Information Technologies Corporation

File: B-419265

Date: November 17, 2020

David S. Black, Esq., Gregory R. Hallmark, Esq., and Hillary J. Freund, Esq., Holland & Knight, LLP, for the protester.

Pamela J. Mazza, Esq., Samuel S. Finnerty, Esq., Jacqueline K. Unger, Esq., and Jonathan I. Pomerance, Esq., Piliero Mazza PLLC, for Credence Management Solutions, LLC, the intervenor.

Elizabeth Amato, Esq., Gregory Matthews, Michael D. McPeak, Esq., Defense Logistics Agency, for the agency.

Jonathan L. Kang, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. GAO does not have jurisdiction to hear a protest challenging the issuance of a task order valued below the jurisdictional threshold, based on the additional value of the option to extend services under Federal Acquisition Regulation clause 52.217-8, where the solicitation did not request pricing for the option and the agency did not include the option in the award.
 2. Argument that the awardee should have quoted a higher price does not provide a basis to find that the value of the task order was higher than the awarded price.
 3. Argument that a task order might have been modified to an amount over the jurisdictional threshold is dismissed where the protester does not establish that the modification in fact took place.
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DECISION

U.S. Information Technologies Corporation (USIT), a small business, of Chantilly, Virginia, protests the issuance of a task order to Credence Management Solutions, LLC, of Vienna, Virginia, by the Defense Logistics Agency (DLA), under request for quotations (RFQ) No. SP4709-20-Q-1022, which was issued for development and sustainment services to support the agency's e-Commerce system. USIT argues that the award to Credence was improper because DLA unreasonably evaluated vendors'

quotations, the awardee's proposed personnel were not available to perform, and the award was tainted by organizational conflicts of interest (OCIs).

We dismiss the protest.

BACKGROUND

DLA issued the solicitation April 30, 2020, seeking quotations to provide development and sustainment services in support of the agency's e-Commerce system, which is known as FedMall. Agency's Resp. to GAO Req., Oct. 19, 2020, encl. 1, RFQ at 1, 5. The protester is the incumbent contractor for these services. Protest at 2. The competition was limited to firms that hold an indefinite-delivery, indefinite-quantity (IDIQ) J6 Enterprise Technology Services (JETS) contract awarded by DLA. RFQ at 6. The solicitation anticipated the award of a fixed-price task order with a base period of 1 year and two 1-year options. *Id.* at 3-4, 8. As relevant here, the RFQ required vendors to quote fixed monthly prices for three labor contract line items (project management, sustainment, development), and also provided plug numbers for travel costs. *Id.* at 3-4.

The agency awarded the task order to Credence on September 18, for \$24,993,820, "for the Base and All Option Periods." Agency's Resp. to GAO Req., Oct. 19, 2020, at 6; *id.*, encl. 7, Task Order, at 11. The agency provided a debriefing to USIT on September 21, and answered the protester's written questions on September 30. This protest followed.

DISCUSSION

USIT argues that DLA's award to Credence was improper based on three primary arguments: (1) the agency unreasonably evaluated quotations under the technical evaluation factors, (2) Credence misrepresented the availability of its proposed personnel, and (3) the award to Credence was tainted by impaired objectivity and biased ground rules OCIs. Protest at 16-39.

On October 13, our Office requested that the parties brief whether this protest challenging the issuance of a task order under an IDIQ contract was within our jurisdiction to consider. Req. for Briefing, Oct. 13, 2020. The protester, agency, and intervenor each filed responses to our request, and we also permitted the protester to file a response to the other parties' filings. For the reasons discussed below, we conclude that the protest is not within our jurisdiction to consider, and we therefore dismiss the protest.

Jurisdiction of Task Order Award

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. 10 U.S.C. § 2304c(e)(1); 4 C.F.R. § 21.5(l). DLA and Credence each argue that this protest is not within our jurisdiction to consider because the value of the task order as awarded was less than \$25 million, and because the protester does not argue that the order increases the scope, period, or maximum value of the underlying IDIQ contract. Agency's Resp. to GAO Req., Oct. 19, 2020, at 7-13; Intervenor's Resp. to GAO Req., Oct. 19, 2020, at 2-3.

USIT argues that even though the awarded value of the task order was less than \$25 million, our Office has jurisdiction to consider the protest because the value of the task order should be considered higher than the jurisdictional threshold for three reasons: (1) the value of the award should include the value of the option to extend services under Federal Acquisition Regulation (FAR) clause 52.217-8; (2) the awardee did not propose to perform the contract in accordance with the terms of the solicitation, and a proper evaluation would have found that its evaluated price should have been higher; and (3) the value of the task order should have been higher to account for what the protester believes may have been post-award modifications to the scope of the order. Protester's Resp. to GAO Req., Oct. 19, 2020, at 3-16; Protester's Supp. Resp., Oct. 20, 2020, at 3-9. The protester argues that because the awarded value was only \$6,180 below the \$25 million jurisdictional threshold, any one of these three arguments provides a basis for finding that the value of the task order in fact exceeded the jurisdictional threshold.

Option to Extend Services Clause

USIT argues that our Office has jurisdiction to hear the protest because the value of the task order should have included the price of the option to extend services under FAR clause 52.217-8. The protester contends that the added value of 6 months of performance under this clause would increase the value of the task order over the \$25 million threshold. We find no merit to this argument.

The RFQ included the following:

FAR 52.217-8 -- Option to Extend Services (Nov 1999)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within 1 day before the contract expires.

RFQ at 68. The RFQ, however, did not require vendors to submit prices for a 6-month option to extend services under FAR clause 52.217-8, nor did the RFQ state that the agency would evaluate the option. *Id.* at 60, 61; Agency's Resp. to GAO Req., Oct. 19, 2020, encl. 6, JETS Vendor Pricing Sheet. DLA states that it did not evaluate the option to extend services, and the task order does not include a priced option to extend services. Agency's Resp. to GAO Req., Oct. 19, 2020, at 12 n.12; *id.*, encl. 7, Task Order, at 9-11.

Our Office has explained that where a solicitation for a task order issued under an IDIQ contract includes FAR clause 52.217-8, but does not request pricing for the option to extend services or provide for the evaluation of such prices, the 6-month option to extend cannot be considered as part of the value of the task order for purposes of determining whether our Office has jurisdiction. *Edmond Scientific Co.*, B-410187.2, Dec. 1, 2014, 2014 CPD ¶ 358 at 2-3; *Adams & Assocs., Inc.*, B-417534, June 4, 2019, 2019 CPD ¶ 208 at 3. USIT notes that *Edmond Scientific Co.* and *Adams & Associates* both concerned pre-award protests, and the principles set forth in those cases are not applicable to the post-award challenge here. In this regard, the protester contends that DLA could have calculated the value of the 6-month option to extend services based on the fixed monthly rates in a vendor's price quotation for the option period preceding the 6-month option to extend. Protester's Supp. Resp., Oct. 20, 2020, at 6. The protester argues, therefore, that the agency "received and evaluated the firm-fixed monthly prices" that would provide the basis for the exercise of the option. *Id.*

The principle underlying both *Edmond Scientific Co.* and *Adams & Associates* concerns the requirement for agencies to satisfy the requirements for full and open competition. *Edmond Scientific Co.*, at 2-3; *Adams & Assocs., Inc.*, *supra*, at 3. Where an agency does not evaluate an option to extend services under FAR clause 52.217-8 as part of the award, the agency cannot later exercise such an option because it would represent, in effect, a new procurement that must satisfy the requirements for full and open competition under FAR part 6. *Major Contracting Servs., Inc.*, B-401472, Sept. 14, 2009, 2009 CPD ¶ 170 at 6. In this regard, FAR 17.207(f) states that to meet the requirements of FAR part 6, the option to extend services under FAR clause 52.217-8 must have been evaluated as part of the initial competition and be exercisable at an amount specified in or reasonably determinable from the terms of the basic contract.

Here, even if the protester were correct that the agency could rely on the unit prices in vendors' quotations to form the basis for determining the prices for the option to extend services, the agency did not evaluate the option to extend services in making the award. Agency's Resp. to GAO Req., Oct. 19, 2020, at 12 n.12; *id.*, encl. 7, Task Order, at 9-11. Because the agency did not include the value of the option to extend services in the price of the award, the agency cannot exercise the option without violating the provisions of FAR part 6. See *Major Contracting Servs., Inc.*, *supra*. Thus, having not included the option to extend services in the award, there is no basis to find that the hypothetical value of such an option should be added to the award value for purposes of determining jurisdiction.

Challenges to Credence's Quotation

Next, USIT argues that our Office has jurisdiction to hear the protest because Credence should have quoted a higher price to account for the technical requirements of the solicitation. Protester's Response to GAO Req., Oct. 19, 2020, at 12-16. Specifically, the protester contends that "[t]he fact that Credence's proposal fell below the \$25 million dollar threshold demonstrates [the awardee] did not understand the requirements of the [performance work statement] and consequently, failed to account for the higher costs to recruit and retain qualified and cleared personnel." *Id.* at 16. For these reasons, the protester argues that the value of the task order should be higher than the amount reflected in the award for purposes of determining jurisdiction. *Id.* We find no merit to this argument.

Where an agency awards an order under an IDIQ contract, we assess the value of the disputed order based on the terms of the order itself, since the order defines the scope and terms of the contractual commitment between the selected contractor and the government. *Goldbelt Glacier Health Servs., LLC--Recon.*, B-410378.3, Feb. 6, 2015, 2015 CPD ¶ 75 at 2; *Basic Eng'g Concepts & Techs., Inc.--Recon.*, B-409231.4, Feb. 6, 2015, 2015 CPD ¶ 74 at 3. In this regard, we have explained that deferring evaluating whether the jurisdictional "value" threshold is satisfied until after consideration of the merits of the protest would improperly make jurisdiction dependent on the outcome of the substantive merits of the protest. *Basic Eng'g Concepts & Techs., Inc.--Recon.*, *supra*, at 3.

For these reasons, USIT's arguments regarding Credence's quoted price and technical quotation cannot be considered prior to determining whether our Office has jurisdiction to consider the protest. These arguments therefore do not provide a basis to find that the value of the task order is above the jurisdictional threshold.

Modification of the Task Order

Finally, USIT argues that the value of the task order should be considered higher based on what the protester contends may have been a modification of the task order to include additional work. We find no merit to this argument.

USIT states that it had exchanges with DLA in May through July 2020 concerning its performance of the incumbent contract, and the possibility of adding additional work to that contract "by adding additional functionality on FedMall for the DLA Map Catalog."¹ Protester's Resp. to GAO Req., Oct. 19, 2020, at 7-8. In July 2020, the protester states that the agency requested that it submit a price estimate for the proposed work, using rates quoted by the protester in response to the RFQ. *Id.* at 8. The protester contends

¹ The protester states that "[t]he DLA Map Catalog, available on FedMall, allows customers to order Aeronautical, Digital, Hydrographical and Topographical products needed for mission planning and navigation." Protester's Resp. to GAO Req., Oct. 19, 2020, at 8 n.3.

that based on this information, it believes “the additional Map Catalog work was likely either added to the contract through improper discussions or through a modification shortly after award.” *Id.* at 10; Protester’s Supp. Resp., Oct. 20, 2020, at 7-8. The protester contends that the value of this modification would increase the overall value of the task order above the jurisdictional threshold. *Id.*

As discussed above, we view the value of a task order for purposes of determining jurisdiction to be the amount reflected in the order as awarded. *Goldbelt Glacier Health Servs., LLC--Recon., supra; Basic Eng’g Concepts & Techs., Inc.--Recon., supra.* Once a task order is awarded our Office will generally not review modifications to that order because such matters are related to contract administration and are beyond the scope of our bid protest function. 4 C.F.R. § 21.5(a); *Booz Allen Hamilton Eng’g Servs., LLC*, B-411065, May 1, 2015, 2015 CPD ¶ 138 at 6. Limited exceptions to this rule apply where the modification is beyond the scope of the original task order or awarded with the intent to modify it after award. *Alliant Solutions, LLC*, B-415994, B-415994.2, May 14, 2018, 2018 CPD ¶ 173 at 7.

USIT contends, in essence, that the solicitation and award did not reflect the actual value of the work to be performed because the agency likely made award with the intent to modify the order to include the Map Catalog work. The protester, however, does not cite specific evidence that the modification took place. See Protester’s Resp. to GAO Req., Oct. 19, 2020, at 8-11; Protester’s Supp. Resp., Oct. 20, 2020, at 7-8. In the absence of specific evidence that the agency in fact modified the contract, we find no basis to assess whether such a modification should be considered as part of the value of the task order for purposes of determining jurisdiction.²

In sum, we find that USIT’s protest challenges the issuance of a task order valued below the \$25 million threshold, and also find no basis to conclude that any of the protester’s arguments establish that the task order’s value is greater than \$25 million. We therefore conclude that this protest is not within our jurisdiction to consider. See 10 U.S.C. § 2304c(e)(1); 4 C.F.R. § 21.5(l).

The protest is dismissed.

Thomas H. Armstrong
General Counsel

² For this reason, we need not address at this time whether we have jurisdiction to consider a protest of a task order under an IDIQ contract where the agency awarded the order for an amount under the jurisdictional threshold with the intent to modify the order after award to an amount in excess of the jurisdictional threshold.