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The decision issued on the date below was subject to a GAO Protective Order. The complete decision has now been approved for public release.

# Decision

**Matter of:** APR Staffing

**File:** B-419667

**Date:** March 30, 2021

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S. Lane Tucker, Esq., and Connor R. Smith, Esq., Stoel Rives LLP, for the protester. Nicholas M. Bidwell, Esq., James J. Jurich, Esq., Kevin Bell, Esq., and Donna Oden-Orr, Esq., Department of Energy, for the agency. Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protest that alleges errors in the agency's evaluation of protester's prior performance under a blanket purchase agreement (BPA), on which the agency relied in deciding not to exercise options under the BPA, involves matters of contract administration which we will not consider.

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## DECISION

APR Staffing, LLC, of Portland, Oregon, protests the decision by the Department of Energy, Bonneville Power Administration, not to exercise further options under APR's blanket purchase agreement (BPA) (No. 75829) for staffing services.<sup>1</sup> Specifically, APR challenges the agency's evaluation of vendors' performance--on which the agency relied in deciding not to exercise APR's options--asserting that the agency's actions

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<sup>1</sup> The Bonneville Power Administration is a federal entity within the Department of Energy, and was created by the Bonneville Project Act of 1937 to market hydroelectric power generated by a series of dams along the Columbia River in Oregon and Washington. 16 U.S.C. §§ 832-832m. Unlike most executive branch agencies, the Bonneville Power Administration's contracting activities are not governed by the Federal Property and Administrative Services Act of 1949, as amended by the Competition in Contracting Act of 1984. 40 U.S.C. § 113(e)(18). Rather, the Bonneville Project Act provides the agency with contracting authority, and such authority is subject only to the provisions of that statute. 16 U.S.C. § 832a(f); *see also Centerra Integrated Facilities Services, LLC*, B-418628, Apr. 23, 2020, 2020 CPD ¶ 155 at 2; *Gonzales Consulting Servs., Inc.*, B-291642.2, July 16, 2003, 2003 CPD ¶ 128 at 2 n.1.

constituted a “procurement process” and rendered those actions subject to GAO’s bid protest jurisdiction. Protest at 9-11.

We dismiss the protest.

During or before 2017, the agency established BPAs for staffing services with various vendors, including APR; specifically, the agency established BPA-75829 with APR in May 2017. Agency Dismissal Request, exh. 1, Master Labor Agreement. The base performance period for BPA-75829 was one year with nine 1-year option periods; subsequently the agency exercised options for three of the 1-year option periods.<sup>2</sup>

In September 2019, the agency advised the vendors (including APR) that the agency would assess various aspects of the vendors’ ongoing performance,<sup>3</sup> and that such assessments would be considered in determining whether to exercise future BPA options. Protest at 6-7; Protest attaches. 3, 4, APR Scorecards.

On March 5, 2021, APR was notified that BPA-75829 would not be extended beyond April 2021 because APR was ranked 9<sup>th</sup> of the 12 vendors evaluated. Protest at 5-6. APR states that it “ended up [in] ninth position overall because of its score in the Cost category.” *Id.* at 6.

APR challenges various aspects of the agency’s performance evaluation, complaining that, due to the agency’s alleged evaluation errors, APR “is being deprived of its vendor status.” *Id.* at 3. In challenging the bases for the agency’s decision not to exercise further options under APR’s BPA, APR acknowledges that the agency “did not request offers . . . from vendors going forward.” *Id.* at 10.

The agency requests dismissal of APR’s protest, maintaining, among other things, that the protest is challenging a matter of contract administration. Agency Dismissal Request at 3-5. More specifically, the agency confirms that it did not request or receive proposals or quotations from any of the vendors, and further points out that no new contracts/agreements were awarded. *Id.* Rather, the agency maintains that it simply decided not to exercise some of the vendors’ BPA options based on the agency’s consideration of the vendors’ past performance; accordingly, the agency maintains that the protest involves contract administration issues and is not for GAO’s consideration under our bid protest authority. We agree.

As a general rule, option provisions in a contract are exercisable at the discretion of the government. See, e.g., *Nutriom, LLC*, B-402511, May 11, 2010, 2010 CPD ¶ 113 at 3. Our Office will not question an agency’s exercise of an option under an existing contract unless the protester shows that the agency failed to follow applicable regulations or that

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<sup>2</sup> The exercised options extended APR’s performance to April 2021.

<sup>3</sup> The agency identified four categories it would evaluate: (1) service delivery, (2) quality, (3) historical cost, and (4) stewardship. Protest at 5.

the determination to exercise the option, rather than conduct a new procurement, was unreasonable. *InGenesis, Inc.*, B-412101.2, Mar. 28, 2016, 2016 CPD ¶ 102 at 5; *Sippican, Inc.*, B-257047.2, Nov. 13, 1995, 95-2 CPD ¶ 220 at 2.

Here, we find no basis to consider APR's complaint challenging the agency's decision not to further exercise options under APR's BPA. While APR may disagree with the agency's assessment of APR's performance, that disagreement does not transform the agency's decision into a procurement action over which GAO will exercise bid protest authority. As the agency points out, there were no proposals or quotations submitted, and no new BPAs were established or contracts awarded. On this record, we conclude that the protest involves a matter of contract administration and will not be further considered.

The protest is dismissed.

Thomas H. Armstrong  
General Counsel