

Decision

Matter of: VanderHouwen & Associates, Inc.

File: B-419706

Date: April 15, 2021

Howard W. Roth III, Esq., Meghan. A. Douris, Esq., and William G. Cason, Esq., Oles Morrison Rinker & Baker 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.

DIGEST

Protest challenging agency's decision not to exercise options under protester's blanket purchase agreement, based on alleged errors in agency's evaluation of vendors' past performance, involves a matter of contract administration which we will not consider.

DECISION

VanderHouwen & Associates, Inc., of Portland, Oregon, protests the decision by the Department of Energy, Bonneville Power Administration, not to exercise further options under VanderHouwen's blanket purchase agreement (BPA) (No. 75836) for staffing services.¹ Specifically, VanderHouwen challenges the agency's evaluation of vendors' performance--on which the agency relied in deciding not to exercise VanderHouwen's

¹ 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.

options--asserting that the agency's actions constituted a "procurement process" and rendered those actions subject to GAO's bid protest jurisdiction. Protest at 13-17.

We dismiss the protest.

During or before 2017, the agency established BPAs for staffing services with various vendors, including VanderHouwen; specifically, the agency established BPA-75836 with VanderHouwen in May 2017. The base performance period for BPA-75836 was one year with nine 1-year option periods; after the base year, the agency exercised options for three of the 1-year option periods.²

In 2019, the agency advised the BPA holders (including VanderHouwen) that the agency would assess various aspects of the vendors' ongoing performance, and that such assessments would be considered in determining whether to exercise future BPA options. Protest, exh. 7, VanderHouwen Appeal of Decision Not to Exercise Options. On March 5, 2021, VanderHouwen was notified that BPA-75836 would not be extended beyond May 2021 because VanderHouwen was ranked 11th of the 12 vendors evaluated. *Id.*

VanderHouwen's protest is based on various alleged errors in the agency's evaluation of the vendors' past performance, complaining that, due to these alleged errors, the agency improperly determined not to exercise additional options under VanderHouwen's BPA.

The agency requests dismissal of VanderHouwen's protest, maintaining, among other things, that the protest is challenging a matter of contract administration. Agency Dismissal Request at 3-4. More specifically, the agency states 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. 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 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 VanderHouwen's protest challenging the agency's decision not to exercise additional options under VanderHouwen's BPA. While

² The exercised options extended VanderHouwen's performance through May 2021.

VanderHouwen may disagree with, and/or be dissatisfied regarding, various aspects of the agency's assessment of the vendors' prior performance, that disagreement and/or dissatisfaction 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