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Decision

Matter of: ManTech Advanced Systems International, Inc.

File: B-422733.4

Date: October 9, 2024

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Debra J. Talley, Esq., Nicole C. Ladana, Esq., and Jacqueline McCain, Esq., Department of the Army, for the agency.

Heather Weiner, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

GAO lacks jurisdiction to hear a protest challenging the issuance of a sole-source task order valued below its jurisdictional threshold, based on the additional value of the option to extend services under Federal Acquisition Regulation clause 52.217-8, where the value of the option was not included in the total price that the agency considered in its task order award determination.

DECISION

ManTech Advanced Systems International, Inc., of Herndon, Virginia, protests the issuance of sole-source, interim task order No. W56KGY-19-D-0008-0003, to Booz Allen Hamilton Inc. (BAH), of McLean, Virginia, by the Department of the Army, Army Contracting Command, Aberdeen Proving Ground. The agency issued the task order under the Army's R4 multiple award indefinite-delivery, indefinite-quantity (IDIQ) contract vehicle on behalf of the Product Manager Information Warfare Cyber Information section for services associated with the joint common access platform (JCAP) capability. ManTech argues that the Army's sole-source award violates statute and regulation.

We dismiss the protest.

BACKGROUND

Task Order Request

Using the procedures of Federal Acquisition Regulation (FAR) part 16, the Army issued task order request (TOR) No. W56KGY-24-R-0005 on January 2, 2024, under the R4 multiple award IDIQ contract vehicle to procure engineering services, design, software development, integration support, training support, logistical support, configuration management, procurement of required materials, and other services associated with JCAP capability. Dismissal Request, exh. 2, TOR at 1. In response to the TOR, the Army received quotations from both BAH and ManTech.

On June 13, the Army issued the task order to BAH for approximately \$208 million. Dismissal Req. at 2. On July 8, 2024, ManTech--which is the incumbent contractor for the JCAP requirement, performing under a contract that expired on September 3, 2024--protested the issuance of the task order to BAH, arguing that the Army failed to reasonably evaluate oral technical proposals and cost realism. *Id.* On July 22, 2024, the Army notified GAO of its intent to take corrective action, and our Office dismissed the protest as academic. *ManTech Advanced Sys. Int'l, Inc.*, B-422733, B-422733.3, July 31, 2024 (unpublished decision). As relevant here, the agency's notice of corrective action stated that the Army will keep the stay of performance in place during the implementation of the corrective action. Dismissal Req., exh. 3, Notice of Corrective Action at 1.¹

Sole-Source Task Order

As noted above, the current JCAP contract with ManTech expired on September 3, 2024. Dismissal Req. at 2. The Army explains that, due to its critical need for JCAP capabilities without a break in service, the Army awarded a FAR part 16 sole-source interim or "bridge" task order to BAH on August 9, 2024, under the R4 IDIQ contract in the amount of \$13,664,672 with a 6-month period of performance.² *Id.*, exh. 1, Task

¹ In addition, the Army stated that it will: (1) re-evaluate the technical proposals and oral technical presentations consistent with the terms of the solicitation, (2) re-examine the cost evaluation(s), (3) following the re-evaluations and re-examination(s), make a new award decision, and (4) if the Army's new award decision selects a new offeror for award, then the Army will terminate the existing task order and make award consistent with the new award decision. Dismissal Req., exh. 3, Notice of Corrective Action at 1.

² The exact value of the task order is \$13,664,671.54. Dismissal Req., exh. 1, Task Order at 1. In referencing this amount, the contracting officer rounds the amount to \$13,664,672. See Supp. Dismissal Req., exh. 2, Contracting Officer's Statement (COS) at 1. To be consistent, we do the same when referring to the value of the task order in this decision.

Order at 1-3.³ The task order initially also included FAR clause 52.217-8, Option to Extend Services. *Id.* at 25.

In response to inquiries by ManTech regarding the status of the JCAP procurement, the agency notified ManTech via e-mail on August 19, that the Army had awarded BAH a “bridge” task order. Protest at 2. Thereafter, ManTech filed the instant protest with our Office.

DISCUSSION

ManTech challenges the Army’s issuance of the sole-source, interim task order to BAH, arguing that it violates the mandate in the Competition in Contracting Act (CICA) that agencies “obtain full and open competition” through the use of competitive procedures, 10 U.S.C. § 3201(a)(1), and the FAR’s mandate for a fair opportunity to compete. 10 U.S.C. § 3406(c); FAR 16.505(b)(1); Protest at 2, 4. In response, the agency and intervenor seek dismissal of the protest, arguing that our Office lacks jurisdiction to consider these protest grounds because the task order is not valued in excess of \$25 million. Dismissal Req. at 1; BAH Response to Dismissal Req. at 1-3. For the reasons discussed below, we conclude that our Office lacks jurisdiction to consider ManTech’s challenge to the agency’s issuance of the interim, sole-source task order and dismiss the protest on this basis.

Under the Federal Acquisition and Streamlining Act of 1994, as modified by the National Defense Authorization Act of Fiscal Year 2017, our Office is authorized to hear protests of task orders that are issued under multiple-award contracts established within the Department of Defense (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); *California Indus. Facilities Res., Inc., d/b/a CAMSS Shelters*, B-406146, Feb. 22, 2012, 2012 CPD ¶ 75 at 2.

The Army and BAH each contend that our Office does not have jurisdiction to consider this protest because the value of the task order as awarded was less than \$25 million, and because the protester does not assert that the order increases the scope, period, or maximum value of the underlying IDIQ contract. In addition, in response to the protest, the agency modified BAH’s task order to remove FAR clause 52.217-8 (option to extend services) and FAR clause 52.217-9 (option to extend the term of the contract). Dismissal Req., exh. 1, Task Order at 1; Supp. Dismissal Req., exh. 1, Task Order Modification at 2; exh. 2, COS at 1.

In response to the agency’s modification of the task order to remove FAR clause 52.217-8, the protester asserts that our Office should consider the value of the task

³ The Army’s exception to fair opportunity justification (EFOJ) for the bridge task order to BAH is classified, and therefore, was not provided to our Office in connection with this protest. Dismissal Req. at 3; Supp. Dismissal Req. at 2.

order based on the task order at the time ManTech filed its protest (initial task order), rather than the current, modified task order that removed FAR clause 52.217-8 and FAR clause 52.217-9 (revised task order). In this regard, ManTech argues that the value of the initial task order would exceed \$25 million if the value of the option to extend services under FAR clause 52.217-8 is considered.⁴ As discussed below, we find no merit to the protester's argument.

For purposes of determining our jurisdiction, the value of the task order on its face is controlling, since the terms of the order define the scope and terms of the contractual commitment between the contractor and the government. *Serco, Inc.*, B-410676.2, Dec. 12, 2014, 2014 CPD ¶ 371 at 3; see also *Goldbelt Glacier Health Servs., LLC*, B-410378, B-410378.2, Sept. 25, 2014, 2014 CPD ¶ 281 at 3 (noting that actual dollar amount of order issued was the appropriate measure of task order value). The value of a task order may also include the value of the task order's option to extend services under the clause at FAR 52.217-8 where the value of the option was included in the total price that the agency considered in its task order award determination. See *Serco Inc.*, B-406061, B-406061.2, Feb. 1, 2012, 2012 CPD ¶ 61 at 9.

Here, the initial task order was issued for a total amount of \$13,664,672, for 6 months of performance. Dismissal Req., exh. 1, TOR at 1 (reflecting a total of \$13,664,672 in supplies/services that are separately broken out into items 1 through 4). Although the initial task order included the option to extend services under FAR clause 52.217-8, there is no indication in the record that the value of the initial task order included the value of the option or that the contracting officer considered the value of the option in making the award. Dismissal Req., exh. 2, TOR at 1; Supp. Dismissal Req., exh. 2, COS at 1 (stating that the contracting officer issued a "6-month task order, with no options" and "with a ceiling of \$13,664,672."). Similarly, after the contracting officer modified the task order to remove FAR clause 52.217-8 (option to extend services), the revised task order is limited to a 6-month period of performance in the amount of \$13,664,672. Dismissal Req., exh. 1, Task Order at 1; Supp. Dismissal Req., exh. 1, Task Order Modification at 1; exh. 2, COS at 1.

Although the protester asserts that we should consider the value of the initial task order as opposed to the value of the revised task order, the value of the initial task order does not include the value of the option to extend services since, as noted above, there is no indication in the record that the agency included the value of the option in the total price that the agency considered in making the award. As such, the value of the task order--either initial or revised--is less than the \$25 million threshold necessary to establish the

⁴ The protester asserts the value of the 6-month option to extend services is \$13,664,671.54, which together with the value of the underlying task order results in a total task order value of more than \$27.2 million. Response to Dismissal Req. at 2. The protester bases the value of the 6-month option to extend services on the fact that the underlying task order has a period of performance of six months and the option to extend services has a period of performance of six months priced at the same rate as specified in the underlying contract. *Id.*

jurisdiction of our Office. That is, in both instances the value of the task order on its face is \$13,664,672. Accordingly, our Office does not have jurisdiction to consider the remaining protest allegations raised by ManTech. See *HP Enter. Servs., LLC--Recon.*, B-413382.3, Jan. 26, 2017, 2017 CPD ¶ 32 at 3 n.2; *Goldbelt Glacier*, *supra* at 3.

The protest is dismissed.

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General Counsel