



Decision

Matter of: CDW Government, LLC; CounterTrade Products, Inc.; Telos Corporation; FedBiz IT Solutions, LLC; Transource Services Corporation; CredoGov; J.C. Technology, Inc. d/b/a Ace Computers; New Tech Solutions, Inc.; HPI Federal, LLC; Koi Computers, Inc.; FCN, Inc.; Integration Technologies Group, Inc.

File: B-414389.25, B-414389.26, B-414389.27, B-414389.28, B-414389.29, B-414389.30, B-414389.31, B-414389.32, B-414389.33, B-414389.34, B-414389.35, B-414389.36

Date: September 18, 2017

David M. Nadler, Esq., and David Y. Yang, Esq., Blank Rome LLP, for CDW Government, LLC; Katherine S. Nucci, Esq., and Scott F. Lane, Esq., Thompson Coburn LLP, for CounterTrade Products, Inc.; Katherine B. Burrows, Esq., Nathanael D. Hartland, Esq., and Jeremy S. Scholtes, Esq., Miles & Stockbridge P.C., for Telos Corporation; Richard J. Conway, Esq., and Merle M. DeLancey, Esq., Blank Rome LLP, for FedBiz IT Solutions, LLC; John M. Manfredonia, Esq., and James Petersen, Esq., Manfredonia Law Offices, LLC, for Transource Services Corporation; James Gunn for CredoGov; David J. Seidman, Esq., and Paul J. Seidman, Esq., Seidman & Associates, PC, for J.C. Technology, Inc. d/b/a Ace Computers; J. Patrick McMahon, Esq., William T. Welch, Esq., and Peter A. Fish, Esq., McMahon, Welch and Learned, PLLC, for New Tech Solutions, Inc., FCN, Inc., and Integration Technologies Group, Inc; Jonathan M. Baker, Esq., Daniel R. Forman, Esq., and Elizabeth A. Buehler, Esq., Crowell & Moring LLP, for HPI Federal, LLC; and Catherine Ho for Koi Computers, Inc., the protesters. Michael F. Mason, Esq., Christine Reynolds, Esq., and Thomas A. Pettit, Esq., Hogan Lovells US LLP, for Dell Federal Systems, LP; and Elizabeth N. Jochum, Esq., and Rodney M. Perry, Esq., Holland & Knight LLP, for Red River Computer Co., Inc., the intervenors.

Jonathan A. Hardage, Esq., and Wade L. Brown, Esq., Department of the Army, 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

Protests are dismissed where the matter involved is the subject of litigation before a court of competent jurisdiction.

DECISION

CDW Government, LLC; CounterTrade Products, Inc.; Telos Corporation; FedBiz IT Solutions, LLC; Transource Services Corporation; CredoGov; J.C. Technology, Inc. d/b/a Ace Computers; New Tech Solutions, Inc.; HPI Federal LLC; Koi Computers, Inc.; FCN, Inc.; and Integration Technologies Group, Inc. protest the Department of the Army's actions in rejecting their proposals submitted in response to request for proposals (RFP) No. W52P1J-15-R-0122 to provide various information technology devices. The protesters challenge the Army's actions leading to, or connected with, the rejection of their proposals.

We dismiss the protests.

BACKGROUND

In May 2016, the agency published the solicitation at issue, stating that it intended to award several indefinite-delivery indefinite-quantity (IDIQ) contracts. In August 2016, multiple offerors submitted their proposals. In February 2017, the agency notified various offerors that their proposals had not been selected for award. Later in February, several of the unsuccessful offerors filed protests with our Office.

By correspondence to our Office dated March 21, 2017, the agency stated that it intended to take corrective action in response to the February protests, explaining that it planned to open discussions with the offerors, request revised proposals, and issue new award determinations. Based on that planned corrective action, we dismissed the protests.

Thereafter, several of the awardees filed complaints with the U.S. Court of Federal Claims, challenging, among other things, the scope of the agency's planned corrective action. On July 3, the Court issued a decision concluding that the corrective action contemplated by the Army was overbroad. Dell Federal Systems, LP v. United States, No. 17-465C, slip op. at 14-17 (Fed. Cl. 2017). The Court enjoined the Army's then-pending corrective action, noting that "enjoining the Army's current corrective action plan does not mean the Army cannot pursue more reasonable corrective action within the boundaries described above." Id. at 19.

Following the Court's July 3 decision, the Army engaged in various activities and, thereafter, advised the protesters that their proposals had not been selected for award.

Between August 31 and September 5, these protests were filed with our Office. By email of September 11, 2017, the Army advised our Office that one of the unsuccessful offerors, Mercom, Inc., had filed a complaint with the Court of Federal Claims. Among

other things, that complaint challenges the bases for the Army's decision to reject Mercom's proposal. Redacted Complaint at 9-12.

DISCUSSION

As noted above, all of the protests currently filed with our Office challenge the Army's actions that led to, or are connected with, the rejection of the protesters' respective proposals.

Our Office will not consider a protest where the matter involved is the subject of litigation before a court of competent jurisdiction. 4 C.F.R. § 21.11(b). Even where the specific issues before the court are not the same as those raised in our Office, or the matter is brought by a party other than the protester, we will not consider a protest if there is a reasonable possibility that the court's disposition of the matter will render a decision by our Office academic. See, e.g., Schuerman Dev. Co., B-238464.3, Oct. 3, 1991, 91-2 CPD ¶ 286 at 2-3; Geronimo Serv. Co.--Recon., B-242331.3, Mar. 22, 1991, 91-1 CPD ¶ 321 at 2.

Here, we believe that the Court of Federal Claims's decision in response to Mercom's complaint will address the propriety of the Army's actions in the context of the Court's direction to conduct "reasonable corrective action within the boundaries described [by the Court]." Dell Federal Systems, LP v. United States, *supra*. Accordingly, we will not consider the protesters' various complaints challenging the Army actions.

The protests are dismissed.

Susan A. Poling
General Counsel