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# Decision

**Matter of:** Arch Systems, LLC

**File:** B-417567; B-417567.2

**Date:** July 2, 2019

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Andrew Mohr, Esq., C. Kelly Kroll, Esq., and Daniel Prywes, Esq., Morris, Manning & Martin, LLP, for the protester.

Douglas Kornreich, Esq., and Pamela Waldron, Esq., Department of Health and Human Services, for the agency.

Robert T. Wu, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Protest is dismissed where the protester challenges the agency's decision not to exercise an option on an existing contract which concerns a matter of contract administration that is outside the scope of our bid protest function.
  2. Protest is dismissed where the protester challenges the agency's prospective decision to award a sole-source, short-term task order that has not yet been awarded, because a challenge that merely anticipates prejudicial agency action is premature.
  3. Protest challenging the removal of the contract from the Small Business Administration's (SBA) Historically Underutilized Business Zone program to the SBA 8(a) program is dismissed where the proposed task order fails to meet the pecuniary threshold for task order jurisdiction.
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## DECISION

Arch Systems, LLC, of Baltimore, Maryland, protests the agency's decision to not exercise an option on contract No. 75FCMC18F0001, and the anticipated award of a sole-source task order by the Department of Health and Human Services, Centers for Medicare and Medicaid Services for continuous testing services.

We dismiss the protest.

## BACKGROUND

Arch is a holder of contract No. HHSM-500-2016-00361, an indefinite-delivery, indefinite-quantity (IDIQ) contract awarded by the agency under its Strategic Partners Acquisition Readiness Contract (SPARC) for information technology services and system support. Protest at 3; Agency Request for Dismissal at 1. The protester was issued a task order under the contract for continuous testing of agency major software applications with a base year period from July 2, 2018 through July 1, 2019, and four, 1-year option periods through July 1, 2023. Id. On April 2, 2019, the agency notified Arch that it did not intend to exercise the first option year under the issued task order. Protest at 6. On May 2, 2019, Arch was informed that the agency intended to award a short-term contract pending award of a new follow-on competitive procurement for continuous testing services. Id.

This protest followed.<sup>1</sup>

## DISCUSSION

Arch argues that the agency's decision to not exercise the firm's contract option, and to issue a sole-source, short-term task order for the requirement is unlawful, arbitrary, capricious, and unreasonable. Protest at 6-10. Arch also challenges the decision to award a task order to a Small Business Administration (SBA) 8(a) contractor<sup>2</sup> where its own contract was awarded as part of the SBA's Historically Underutilized Business Zone (HUBZone) program. Id. at 10-11.

### Exercise of the Option

As discussed above, Arch argues that the agency's decision to not exercise the firm's contract option, and to issue a sole-source task order for the requirement is unlawful, arbitrary, capricious, and unreasonable. Protest at 6-10. The agency requests that we dismiss the protest asserting that the decision to exercise an option on an existing contract is a matter of contract administration, and any challenge to the award of a sole-source task order is both premature, as the task order has not been issued, and outside

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<sup>1</sup> On June 21, Arch submitted a new protest against the issuance of a short-term task order to Captech Aurotech JV LLC for the requirements contested here. Our office docketed that protest as B-417696. Issues raised in the new protest will be addressed, as appropriate, in a separate decision.

<sup>2</sup> Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a), authorizes the SBA to enter into sole-source and competitive contracts with government agencies and to arrange for performance through subcontracts with socially and economically disadvantaged small business concerns. See also Federal Acquisition Regulation (FAR) § 19.800(b); 13 C.F.R. §124.501(b).

of our jurisdiction for failing to meet the monetary threshold applicable to GAO's jurisdiction to hear protests of task orders. Agency Request for Dismissal at 2-5.

Our Office considers bid protest challenges to the award or proposed award of contracts. 31 U.S.C. § 3552. Therefore, we generally do not review matters of contract administration, which are within the discretion of the contracting agency and for review by a cognizant board of contract appeals or court. Bid Protest Regulations, 4 C.F.R. §21.5(a); Colt Def., LLC, B-406696.2, Nov. 16, 2012, 2012 CPD ¶ 319 at 5. Protests challenging an agency's decision not to exercise an option on an existing contract concern matters of contract administration, which are generally outside the scope of our bid protest function. Adams and Assocs., Inc., B-417249, Feb. 26, 2019, 2019 CPD ¶ 96 at 4.

Arch squarely challenges the agency's decision to not exercise an option on its existing contract. Protest at 9-10. In doing so, the protester recognizes our decisions holding that we will generally not review such matters, but nevertheless urges that we take jurisdiction because, according to Arch, the agency's decision not to exercise the option on the existing contract was "coupled" with the agency's procurement of the same work from another contractor. Id. at 8. In this regard, the protester analogizes this situation with situations where the agency conducts limited competitions between contract holders, resulting in a decision to exercise (or not exercise) a contract option where we have exercised jurisdiction. See, e.g., Mine Safety Appliances Co., B-238597, B-238597.2, Jul. 5, 1990, 90-2 CPD ¶ 11; Data Based Decisions, Inc., B-232663, B-232663.2, Jan. 26, 1989, 89-1 CPD ¶ 87. We decline to extend the rationale of those decisions to the facts at issue here.

In Mine Safety Appliances the agency awarded development contracts to two offerors for the production of prototypes with the option to award option quantities after prototype testing and evaluation. Mine Safety Appliances, Co., supra, at 1-2. After evaluation of the prototypes, the agency decided to award the option quantities to one, and not the other contractor, which resulted in a protest to our Office. Id. The agency argued that we lacked jurisdiction to consider that protest because the exercise of a contract option involved a matter of contract administration. Id. at 2. However, our Office asserted jurisdiction finding our rule against reviewing an agency's refusal to exercise a contract option as inapplicable because, under the circumstances of that procurement, the agency was, in effect, conducting a limited competition. Id.

Here, the agency decided to not exercise the contract option on Arch's contract due to apparent performance issues by Arch. Agency Request for Dismissal at 1. The protested procurement is for a sole-source, short-term task order to meet the agency's immediate requirements, while it plans the follow-on acquisition of its long-term needs. Id. Such circumstances are not factually or legally similar to those addressed in Mine Safety Appliances, and related decisions. Here, the agency is not conducting a limited competition; instead the agency is acting within its broad discretion to administer its existing contract with Arch. That the agency has an ongoing requirement, and chooses to meet that requirement in the near-term through a short-term task order does not

create the situation of a limited competition, as discussed in Mine Safety Appliances. Therefore, because the protest would necessarily require our Office to resolve a question of contract administration, the protest fails to state a valid basis of protest for our consideration, and must be dismissed. See, e.g., DNC Parks & Resorts at Yosemite, Inc., B-410998, Apr. 14, 2015, 2015 CPD ¶ 127 at 10-12.

#### Short-Term Task Order

Arch also challenges the agency's decision to issue a sole-source, short-term task order to meet its immediate requirements, arguing that the agency does not meet the limited circumstances available for awarding a sole-source contract. Protest at 6-7. Arch also challenges the agency's decision to issue a task order arguing that the agency's decision "to remove the [c]ontract from the HUBZone program is unreasonable, as it is based on the mistaken premis[e] that Arch has not and cannot perform satisfactorily." Id. at 10.

The agency requests that we dismiss the protest since it has not evaluated or awarded any contract at this point in time, and, therefore asserts that Arch's protest is premature. Agency Request for Dismissal at 4. Alternatively, the agency argues that because the estimated value of the as-of-yet-not-awarded task order is below \$4,000,000, our office lacks jurisdiction to hear the protest because the estimated value is below our Office's \$10 million threshold for bid protest jurisdiction related to task orders issued under civilian agency IDIQ contracts. Id.

We conclude that Arch's protest is premature with respect to its challenge to the issuance of the short-term task order. In this regard, where, as here, an agency has not yet made an award decision, and the protest is merely anticipating prejudicial agency action, a protest challenging the agency's anticipated award of a task order is premature. See Parcel 47C LLC, B-286324, B-286324.2, Dec. 26, 2000, 2001 CPD ¶ 44 at 10 n.13 (finding protests that merely anticipate prejudicial agency action are speculative and premature when award has not yet been made).

With respect to Arch's challenge to the agency's decision to remove the requirement from the HUBZone program, we conclude that our Office lacks jurisdiction to entertain such a protest allegation because the estimated value of the short-term task order falls beneath the monetary threshold for GAO to hear protests related to task orders issued under civilian agency IDIQ contracts.<sup>3</sup> In this regard, as part of its request for dismissal,

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<sup>3</sup> Arch also argues that the agency unreasonably divided the requirements in deciding to award the short-term task order in contravention of 13 C.F.R. § 124.506(a)(5), which prohibits agencies from dividing a proposed 8(a) requirement into several separate procurement actions in order to meet the 8(a) sole-source threshold. However, we do not address this issue further because, as discussed herein, we lack jurisdiction to consider this protest because the estimated value of the task order places it beyond our jurisdiction. Supp. Protest at 6.

the agency included a statement from the contracting officer detailing that the agency “anticipates awarding a sole source bridge contract using the SPARC IDIQ vehicle and the SBA 8(a) program authority found at FAR 19.808-1. The estimated value of the bridge contract is \$3,902,000.” Agency Request for Dismissal, Enclosure 1, Statement of Contracting Officer, at 1. The contracting officer further states that the agency “has solicited and received a proposal from a SPARC contractor who is also an SBA 8(a) program participant.” Id.

While the protest of a decision to solicit a requirement from an SBA 8(a) contractor instead of a HUBZone program procurement could appropriately be challenged as an alleged defect in the solicitation, protests filed with our Office in connection with the issuance or proposed issuance of a task or delivery order under a civilian agency indefinite-delivery, indefinite-quantity contract are not authorized except where the order is valued over \$10 million, or where the protester can show that the order increases the scope, period, or maximum value of the contract under which the order is issued.<sup>4</sup> 41 U.S.C. § 4106(f)(1); AMAR Health IT, LLC, B-414384.3, Mar. 13, 2018, 2018 CPD ¶ 111 at 3. Consequently, because the estimated value is below the monetary

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<sup>4</sup> Arch also argues that the award amount estimated by the agency is not realistic or reasonable under the circumstances. Supp. Protest at 6. In this regard, Arch argues that, given the length of time it would take to litigate pre-award and post-award protests, the “bridge contract will in all probability far exceed the \$10,000,000 threshold for GAO jurisdiction.” Id. at 7. However, in situations where an order has not been awarded, we have relied on estimates provided in the record to determine whether our Office has task order jurisdiction. See e.g., Edmond Scientific Co., B-410187.2, Dec. 1, 2014, 2014 CPD ¶ 358. Here, as stated, the agency has provided an estimate based on a short-term task order to meet its immediate requirements. Agency Request for Dismissal, Enclosure 1, Statement of Contracting Officer, at 1. Arch has cited to no precedent, and we have found none, that would stand for the proposition that in conducting its acquisition planning for this short-term requirement, the agency should have provided for the inevitability of protest litigation in its estimate. Contrary to this notion, we have found, in similar circumstances, that immediate needs generated in response to protest litigation do not need to be considered as part of acquisition planning. See, e.g., Sys. Integration & Mgmt, Inc., B-402785.2, Aug. 10, 2010, 2010 CPD ¶ 207 at 3 (discussing cases involving challenge of lack of advance planning in context of agency corrective action). We conclude that the agency need not consider the prospect of protest litigation in planning for its short-term requirements here. As such, the protester has not shown that the agency’s estimated value for the short-term task order was unreasonable, and the resulting conclusion is that the task order does not meet the pecuniary threshold for our Office’s task order jurisdiction.

threshold for our Office to take jurisdiction over the prospective award of a task order by a civilian agency, the protest must be dismissed.

The protest is dismissed.

Thomas H. Armstrong  
General Counsel