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Decision

Matter of: ServeFed, Inc.

File: B-417708

Date: September 18, 2019

Edward J. Tolchin, Esq., Offit Kurman Attorneys At Law, for the protester.
Alexis J. Bernstein, Esq., Phillip E. Reiman, Esq., and Heather M. Mandelkehr, Esq., Department of the Air Force, for the agency.
Heather Self, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the issuance of a task order because it removes a requirement from the Small Business Administration's (SBA) 8(a) business development program without the requisite SBA approval is dismissed where the issued task order fails to meet the dollar threshold for our Office's task order jurisdiction.

DECISION

ServeFed, Inc., a small disadvantaged business of Frederick, Maryland, protests the issuance of a task order to Distinctive Health Spectrum Care JV, LLC, a small business of Bowie, Maryland, under task order request for proposals (RFP) No. FA2823-19-R-6016, issued by the Department of the Air Force, for the provision of one emergency services mid-level provider at the Eglin Air Force Base (AFB) Military Treatment Facility. ServeFed argues that the agency was required to award the contract through the Small Business Administration's (SBA) 8(a) business development program.

We dismiss the protest.

BACKGROUND

On June 29, 2017, the Air Force awarded contract No. FA2823-17-C-6018 to ServeFed through the SBA's 8(a) program¹ for the provision of two full-time equivalent (FTE)

¹ The SBA's 8(a) business development program is designed to enhance the development of small disadvantaged businesses, and is commonly referred to as the (continued...)

emergency services mid-level providers² at the Eglin AFB Military Treatment Facility. Agency Report (AR), Tab 4, Contract No. FA2823-17-C-6018, at 1, 4. ServeFed's contract had a 1-year base period and four 1-year option periods. Id. at 4-7. Following the award to ServeFed, the Defense Health Agency (DHA) solicited and awarded 35 indefinite-delivery indefinite-quantity (IDIQ) contracts to small businesses for the provision of a variety of medical services, including the provision of medical professional personnel, and issued a memorandum directing defense agency medical treatment facilities to utilize these IDIQ contracts for all new healthcare staffing procurements. COS at 2; AR, Tab 8, DHA Memorandum, at 1, Sept. 19, 2018.

ServeFed completed the 1-year base period of its awarded contract, and the Air Force exercised the first option period for an additional year of performance. See AR, Tab 5, Contract No. FA2823-17-C-6018 Modification No. 0001, at 1. During ServeFed's performance of the contract's first option period, the Eglin AFB Medical Treatment Facility received funding approval to continue only one of the two FTE emergency services mid-level providers, and submitted a procurement requisition for one FTE for the following performance period--July 1, 2019 to June 30, 2020. AR, Tab 6, Request for Purchase No. F1T4AS9031A101, at 1; AR, Tab 7, Internal Agency E-mails, Jan. 29, 2019 and Feb. 6, 2019.

The contracting officer (CO) concluded that the reduction in the agency's requirement from two FTEs to one FTE represented a significant departure from the scope of ServeFed's awarded contract. COS at 2-3. Given the direction from DHA to utilize the 35 awarded IDIQ contracts for all new healthcare staffing procurements, the CO decided to issue a task order RFP to the IDIQ contract holders for the provision of the single FTE, and notified ServeFed that the agency was not exercising the second option period of its contract.³ Id. Consequently, on April 17, 2019, the Air Force issued task order RFP No. FA2823-19-R-6016 for the provision of one FTE emergency services mid-level provider at the Eglin AFB Military Treatment Facility. Id. at 3; AR, Tab 10,

(...continued)

"8(a) program." See 15 U.S.C. § 637(a). Federal agencies offer requirements to SBA for award through the 8(a) program and the SBA accepts those requirements that eligible 8(a) participants can perform. See 13 C.F.R. §§ 124.502-124.503.

² Emergency services mid-level providers are medical professionals who are not physicians but who are capable of performing medical activities typically performed by physicians. Contracting Officer's Statement (COS), at 2.

³ The first option period of ServeFed's incumbent contract ended on June 30, 2019. AR, Tab 5, Contract No. FA2823-17-C-6018 Modification No. 0001, at 2. To the extent ServeFed's protest challenges the agency's decision not to exercise the next option period of its existing 8(a) contract, we dismiss the protest as concerning a matter of contract administration outside the scope of our bid protest function. See Bid Protest Regulations, 4 C.F.R. § 21.5(a); Adams and Assocs., Inc., B-417249, Feb. 26, 2019, 2019 CPD ¶ 96 at 4.

RFP, at 3. On June 14, the Air Force issued a task order in the amount of \$807,629 to Distinctive Health. COS at 4; AR, Tab 14, Order No. FA-2823-19-FA215, at 1, 3-4. ServeFed protested the issuance of the task order to our Office on June 24.

DISCUSSION

Protests filed with our Office “in connection with the issuance or proposed issuance of a task or delivery order” under a defense agency IDIQ contract are not authorized except where the order is valued over \$25 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. 10 U.S.C. § 2304c(e)(1)(B). Here, ServeFed does not allege that the task order issued to Distinctive Health increases the scope, period, or maximum value of the underlying IDIQ contract. Rather, ServeFed argues that issuance of the task order was improper because the agency was obligated to utilize the SBA’s 8(a) program to fulfill its requirement for an emergency services mid-level provider at the Eglin AFB Military Treatment Center. Protest at 1, 3-4. In this regard, ServeFed contends that the agency failed to obtain the required release from SBA⁴ before issuing a task order to Distinctive Health for the provision of an emergency services mid-level provider at the Eglin AFB Medical Treatment Center. Id. at 3-4. Consequently, ServeFed requests that we recommend the agency terminate the issued task order and retain the requirement in the 8(a) program. Id. at 5.

Because ServeFed has not alleged that the \$807,629 task order issued to Distinctive Health is beyond the scope of the IDIQ contract under which it was issued, we are compelled to dismiss the protest because it involves a challenge to the issuance of a task order valued at less than \$25 million. See e.g., Arch Systems, LLC, B-417567, B-417567.2, July 2, 2019, 2019 CPD ¶ 227 at 5-6 (dismissing protest challenging agency’s decision to remove requirement from the HUBZone program and instead solicit from an SBA 8(a) contractor because the estimated value of the task order was below the dollar threshold for our Office to hear protests related to task orders issued under civilian agency IDIQ contracts); Adams and Assocs., Inc., supra, at 5 (dismissing

⁴ Under SBA regulations, where a procurement is awarded as an 8(a) contract, its follow-on or renewable acquisition must remain in the 8(a) program unless SBA agrees to release it for non-8(a) competition. See 13 C.F.R. § 124.504(d)(1). The mandate for a requirement to remain in the program does not apply where a follow-on contract is a “new requirement.” See 13 C.F.R. § 124.504(c)(1)(ii)(C); see e.g., eAlliant, LLC, B-407332.4, B-407332.7, Dec. 23, 2014, 2015 CPD ¶ 58 at 8-9. In this regard, the SBA’s regulations provide that “[t]he expansion or modification of an existing requirement will be considered a new requirement where the magnitude of change is significant enough to cause a price adjustment of at least 25 percent (adjusted for inflation) or to require significant additional or different types of capabilities or work.” 13 C.F.R. § 124.504(c)(1)(ii)(C).

protest of a proposed civilian agency task order below the dollar threshold for our Office to hear such protests).

ServeFed argues that the jurisdictional bar of 10 U.S.C. § 2304c(e)(1)(B) does not apply here, because while its protest is “related” to the issuance of a task order it is not “in connection with” the issuance of a task order. Protester’s Response to Request for Additional Briefing at 1. ServeFed maintains that the agency’s issuance of the task order provided it with reason to know the basis of its protest, but its protest does not concern the issuance of the task order per se. Rather, the protest is about the agency’s violation of the regulatory requirement to award through the 8(a) program, which, according to ServeFed is separate and distinct from the agency’s issuance of the task order. Id. at 2.

Our Office does not review agency compliance with applicable procurement statutes and regulations in a vacuum. To this end, our Bid Protest Regulations set forth that our Office only considers protests involving a “solicitation or other request by a Federal agency for offers for a contract for the procurement of property or services; the cancellation of such a solicitation or other request; an award or proposed award of such a contract; and a termination of such a contract, if the protest alleges the termination was based on improprieties in the award of the contract.” 4 C.F.R. § 21.1(a). In this regard, we require protesters to identify the challenged solicitation and/or contract number in protests filed with our Office. 4 C.F.R. § 21.1(c)(3).

Where, as here, the specific procurement involved in a protest is the issuance of a task order, and the requested remedy would involve termination of the task order, the protest is necessarily “in connection” with that task order. See e.g., Arch Systems, LLC, supra; Adams and Assocs., Inc., supra (where the remedy would have involved cancellation of a task order solicitation); Mission Essential Personnel, LLC v. United States, 104 Fed. Cl. 170, 179 (Fed. Cl. 2012) (in ordering dismissal due to the Court of Federal Claim’s lack of jurisdiction to hear bid protests “in connection with” the issuance of a task order, the Court found it “[p]articularly telling” that the relief sought by the protester would bear directly on the task orders issued by the agency); SRA Int’l, Inc. v. United States, 766 F.3d 1409, 1414 (Fed. Cir. 2014) (citing Mission Essential in noting that the relief sought—rescission of the issued task order—further demonstrated the connection between the agency action challenged by the protester and the issuance of the task order). Accordingly, where the issued task order does not exceed \$25 million nor does ServeFed allege that the order exceeds the scope of the underlying IDIQ contract, our Office lacks jurisdiction to consider the protester’s allegations that the agency has violated applicable regulations related to procurements conducted through the SBA’s 8(a) program in connection with the issuance of the order.

The protest is dismissed.

Thomas H. Armstrong
General Counsel