



United States Government Accountability Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Systems Research and Applications Corporation

File: B-400227

Date: July 21, 2008

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James J. McCullough, Esq., Deneen J. Melander, Esq., and Steven A. Alerding, Esq., Fried, Frank, Harris, Shriver & Jacobson, LLP, for Science Applications International Corporation, an intervenor.
Liana D. Henry, Esq., General Services Administration, for the agency.
Glenn G. Wolcott, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where protest challenges the issuance of a task order that occurred prior to the effective date of the provision of the National Defense Authorization Act of Fiscal Year 2008 that provides statutory authority for this Office to review protests challenging task orders, the applicable provisions of the Federal Acquisition Streamlining Act of 1994 preclude this Office's consideration of the protest.

DECISION

Systems Research and Applications Corporation (SRA) protests the General Services Administration's (GSA) issuance of a task order to Science Applications International Corporation (SAIC) to provide various information technology (IT) services. SRA protests that SAIC has various conflicts of interest, that SRA and SAIC were not treated equally, that the agency misled SRA regarding its proposed cost/price, and that the agency misevaluated various aspects of SRA's proposal.

GSA seeks dismissal of SRA's protest on the ground that protests challenging task orders that are issued pursuant to indefinite-delivery/indefinite-quantity (ID/IQ) contracts are precluded by the Federal Acquisition Streamlining Act of 1994 (FASA), 41 U.S.C. § 253(j) (2008). In response, SRA argues that the protest is authorized by the recent enactment of section 843 of the National Defense Authorization Act of Fiscal Year 2008 (NDAA), Pub. L. 110-181, 122 Stat. 3, 236-39 (2008).

As discussed below, the record establishes that the task order at issue was awarded prior to the effective date of the NDAA; accordingly, the provisions of FASA control this matter, and we dismiss the protest for lack of jurisdiction.

BACKGROUND

Pursuant to FASA, a task order award may only be protested in certain limited situations. Specifically, FASA states:

A protest is not authorized in connection with the issuance or proposed issuance of a task or delivery order except for a protest on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued.^[1]

41 U.S.C. § 253j(d) (2008).

On January 28, 2008, the President signed the NDAA into law. Pub. L. No. 110-181, 122 Stat. 3 (2008). Among other things, the NDAA amends FASA and authorizes this Office to consider protests in connection with the issuance of task orders in excess of \$10 million, further providing that this Office's jurisdiction with regard to such protests "shall take effect on the date that is 120 days after the date of the enactment of this Act, and shall apply with respect to any task or delivery order awarded on or after such date."² Pub. L. 110-181, § 843(b)(2),(3), 122 Stat. 239. There is no dispute that May 27, 2008 was the 120th day after enactment of the NDAA.

The record shows that, in December 2007, GSA issued task order request (TOR) No. GSC-TFMG-08-31980 under GSA's Millennia Government Wide Acquisition Contract (GWAC),³ seeking proposals to provide support for various U.S. Army information technology systems. As amended, the TOR required offerors to submit final proposals by April 21, 2008. SRA and SAIC each submitted timely final proposals.

The record further shows that GSA's contracting officer made the requisite best value determination on Friday, May 23, 2008, selecting SAIC as the task order awardee. Declaration of GSA Contracting Officer, June 16, 2008, ¶ 5. In this regard,

¹ There is no dispute that SRA's protest does not raise any of the issues that would authorize consideration under FASA.

² We note that FASA refers to the "issuance" of a task order, and the provision of the NDAA identifying the effective date of that Act refers to a task order "awarded" after a particular date. For purposes of this decision, we view the two terms as synonymous.

³ The Millennia GWAC consists of several ID/IQ contracts held by various contractors, including SRA and SAIC.

the contracting officer elaborates that, in the afternoon of May 23, he and the contract specialist began to enter the necessary award documentation into GSA's automated task order tracking and ordering system (TOS), that this process took approximately 8 hours to complete, and that he executed the GSA Form 300 "Order for Supplies and Services," shortly before 11 pm on May 23. *Id.* ¶¶ 7, 8, exh. C. The record further establishes that, a few minutes thereafter, the contracting officer sent an email to SAIC personnel, notifying SAIC of the award, and that the task order was uploaded to the web-based TOS system in a manner permitting SAIC to log on to the TOS, access the task order documents, and download those documents to SAIC's computer equipment. *Id.* ¶¶ 9,10; Declaration of GSA Senior Project Manager, June 25, 2008, ¶¶ 7, 7.1-7.5, 9. SAIC has submitted a declaration from its contracts manager verifying that the task order was downloaded and circulated via email to other SAIC employees late at night on May 23 and in the early morning hours of May 24. Declaration of SAIC Contracts Manager, June 25, 2008, ¶ 2, 3. Finally, the record shows that the documents GSA's contracting officer transmitted to SAIC via the TOS system on May 23, and which were thereafter downloaded by SAIC no later than May 24, included the GSA Form 300, "Order for Supplies and Services," and the complete task order itself, which consists of over 200 pages, including the detailed statement of work, the cost/price schedule, the delivery/performance schedule, and contract administration data. Agency Response to Request for Production of Documents, Task Order No. GST008AJM087 (May 23, 2008).⁴

On May 27, the agency notified SRA of the task order award. This protest followed. Based on the fact that the agency did not notify SRA of the task order award until May 27, the effective date of the NDAA, SRA maintains that its protest challenging the agency's task order award is authorized by the NDAA's amendment of FASA regarding protest jurisdiction. We disagree.

DISCUSSION

As noted above, FASA generally precludes this Office's consideration of protests challenging an agency's issuance of task orders under ID/IQ contracts when the task orders are issued prior to May 27, 2008. Further, here, the terms of the underlying Millennia GWAC specifically addresses the matter of when a task order is issued, stating: "A task order is issued when the Government transmits the task order to the contractor." Protester's Expedited Document Request, June 19, 2008, exh. 2.

⁴ Although GSA Form 300 lists a total funded task order amount of only \$5,710,866, section B of the task order itself lists a "GRAND TOTAL ALL CLINS" of \$454,436,158, and provides for incremental funding of the task order, stating that additional funding will be made incrementally "up to the maximum of \$454,436,158 over the performance period of this TO [task order]." Task Order No. GST0008AJM087 at B-13, B-14.

Based on the record discussed above, we conclude that the task order protested by SRA was awarded and transmitted to SAIC no later than May 24, 2008--that is, prior to May 27, 2008, the effective date of NDAA. Accordingly, pursuant to the provisions of FASA, in effect prior to May 27, this Office does not have jurisdiction to consider the protest.

The protest is dismissed.

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General Counsel