

GAO LACKS JURISDICTION OVER CIVILIAN TASK ORDERS VALUED AT LESS THAN \$10 MILLION

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The Government Accountability Office (“GAO”) recently dismissed a bid protest on a civilian procurement where the task order’s value was less than \$10 million, and there was no provision for pricing or evaluation of an option to extend the task order. *Adams & Assoc., Inc.*, B-417534, June 4, 2019.

The Task Order solicitation was issued by the Department of Labor under a multiple award, indefinite delivery indefinite quantity contract for interim operation of a Job Corps Center in Indiana. The task order contemplated the placement of a single task order for a six month period of performance, and did not specify any options. However the contract against which the task order would be placed was subject to the contract extension clause at Federal Acquisition Regulation (FAR) 52.217-8. This clause is an “Option to Extend Services” for a maximum of six months. Six of the seven quotations received were below \$10 million.

The agency requested dismissal, urging that GAO had no jurisdiction pursuant to 41 USC § 4106(f). This section applies to civilian agencies, and states:

(f)PROTESTS.—

(1) PROTEST NOT AUTHORIZED.—A protest is not authorized in connection with the issuance or proposed issuance of a task or delivery order except for—

(A) a protest on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued; or

(B) a protest of an order valued in excess of \$10,000,000.

(2)JURISDICTION OVER PROTESTS.—

Notwithstanding [section 3556 of title 31](#), the Comptroller General shall have exclusive jurisdiction of a protest authorized under paragraph (1)(B).

The protester argued that the task order, for the purposes of GAO jurisdiction, should include the value of the six month option to extend services under FAR 52.2178. It noted that the six month option would effectively double the quotes, and make them above the \$10 million jurisdictional amount.

GAO disagreed with the protester, noting that because the solicitation did not provide for the pricing or evaluation of FAR 52.217-8, it should not be included in the value of the task order. GAO stated that where an agency does not evaluate a FAR 52.217-8 option price, the exercise of that option is, in effect, a new procurement that must independently satisfy the requirements for full and open competition. The agency would therefore need to find an exception or conduct a new procurement. For that reason, the value of the task order should not be considered as part of the value of this task order for jurisdictional purposes.

Takeaway. GAO will lack jurisdiction to hear a protest of a civilian task order solicitation where the task order’s value, exclusive of the value of an option to extend services, is below \$10

million and the solicitation does not provide for the pricing or evaluation of the FAR 52.217-8 option to extend services.

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