

CLIENT ALERT

Court of Federal Claims Refuses to Hear Protest from IDIQ Awardee

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In *Aero Spray, Inc. d/b/a Dauntless Air v. U.S.*, the U.S. Court of Federal Claims dismissed a protest filed by Aero Spray, an awardee of an indefinite delivery indefinite quantity (“IDIQ”) contract for Department of the Interior plane-based firefighting services. Aero Spray’s protest challenged the agency’s award of IDIQ contracts to two other companies, alleging that their planes did not comply with the solicitation’s required firefighting configuration.

Aero Spray argued that despite being an awardee itself, it had standing to protest the additional awards because they increased competition for awards of future task orders competed amongst the IDIQ holders, to Aero Spray’s detriment. The Court disagreed, holding that Aero Spray’s protest related to the award of the IDIQ contracts—not future task orders—and that Aero Spray “already . . . won the only contract award to which it could possibly be entitled.” In so holding, the Court expressly agreed with the Government Accountability Office, which has held that that “an awardee, by definition, is not an actual or prospective offeror,” and that “[d]ue to the nature of IDIQ contracts, . . . an awardee has no legally cognizable expectation of receiving future task orders” but only a “guaranteed a minimum quantity of orders . . . and a fair opportunity to compete for future task orders.” *Aegis Def. Servs., LLC*, B-412755, Mar. 25, 2016, 2016 CPD ¶ 98. The Court also rejected the reasoning in *National Air Cargo Group, Inc. v. U.S.*, 126 Fed. Cl. 281 (2016), which allowed an awardee to protest additional IDIQ awards due to the potential impact on future task order competitions, and distinguished *PAE-Parsons Global Logistics Services, LLC v. U.S.*, 145 Fed. Cl. 194 (2019), and *Sirius Federal, LLC v. U.S.*, 153 Fed. Cl. 410 (2021), which noted that an awardee can have standing to challenge other awards under the same procurement where those other awards are distinct from (*e.g.*, more valuable than) the awardee’s own.

Because Aero Spray lacked standing, the Court dismissed its protest for lack of subject matter jurisdiction. Nevertheless, the Court also rejected Aero Spray’s remaining arguments. First, the Court held that Aero Spray’s arguments involved patent solicitation ambiguities, which Aero Spray was required to protest, if at all, prior to the deadline for proposal submission. Thus, the Court held that even if it had subject matter jurisdiction over Aero Spray’s protest, it would have dismissed the protest for failure to state a claim upon which relief could be granted. Second, the Court highlighted that the inclusion of additional IDIQ awardees did not reduce the guaranteed portions of Aero Spray’s contract, and that the contract always contemplated the potential addition of new awardees in the future. Thus, the Court held that Aero Spray would not suffer irreparable harm in the absence of an injunction, and the balance of harms favored the Government.

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