



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Erickson Helicopters, Inc.

File: B-415176.3; B-415176.5

Date: December 11, 2017

Susan Warshaw Ebner, Esq., Jacqueline R. Scott, Esq., and Sean D. Lee, Esq., Fortney & Scott, LLC, for the protester.

C. Peter Dungan, Esq., Raymond F. Monroe, Esq., Stephen P. Ramaley, Esq., and Christopher S. Denny, Esq., Miles & Stockbridge P.C., for the intervenor.

Young S. Lee, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's proposed corrective action is dismissed as premature where the protester merely anticipates improper, prejudicial agency action.
 2. Protest that task order for airlift support services exceeds the scope of the awardee's underlying indefinite-delivery, indefinite-quantity contract is denied where the record shows that services were reasonably encompassed within the contract's scope of work and the protester's allegations are based on facts not reflected in the record.
 3. GAO lacks jurisdiction to consider protest alleging that task order was improperly issued on a sole-source basis, where value of the task order is less than \$25 million.
-

DECISION

Erickson Helicopters, Inc., (Erickson) of Portland, Oregon, challenges the corrective action taken by the United States Transportation Command, (USTRANSCOM, hereinafter, the agency) in response to a protest filed by another company, AAR Airlift Group, Inc. (AAR), to a task order that was issued to Berry Aviation, Inc. (Berry), of San Marcos, Texas, under request for task order proposal (RFTOP)-01 for personnel recovery (PR), casualty evacuation (CASEVAC), and airdrop services in various regions of the African continent. Erickson also challenges the agency's issuance of an interim, sole-source task order No. HTC711-17-F-R015 (TO-R015) to Berry for similar services requested under RFTOP-01.

As will be discussed in more detail below, Erickson first challenges the corrective action taken by the agency in response to a prior protest of the RFTOP-01 task order filed by AAR. Erickson contends that the corrective action proposed by the agency will not remedy the issues that were raised in the prior protest, and will provide Berry with an unfair advantage in the subsequent competition.¹

In addition to challenging the agency's proposed corrective action, Erickson also challenges the interim sole-source task order TO-R015, which was issued to Berry after the RFTOP-01 task order was protested. The protester asserts that the interim task order exceeds the scope of Berry's underlying multiple-award indefinite-delivery, indefinite-quantity (IDIQ) contract, and that the agency's decision to issue the task order on a sole-source basis was unreasonable.

We deny the protest in part and dismiss the protest in part.

BACKGROUND

This protest is one of many challenges to a series of actions taken by the agency related to the issuance of task orders for PR, CASEVAC, and airdrop services in the United States African Command (USAFRICOM) area of responsibility (AOR). As described by the agency, missions for PR involve the recovery of individuals who have become separated from their military units, typically due to fighting with the enemy. Agency Report (AR), Tab 38, Justification for TO-R015, at 2.² Missions for CASEVAC involve the transportation of individuals with various medical conditions, including emergency patients, so they can be provided higher levels of medical care. Id. In Africa, the medical conditions requiring CASEVAC services are typically related to wounds from enemy fire or fighting. Id. Other than the services being procured, there are no ambulances or emergency medical services to support United States military personnel in the locations being supported by these task orders. Id.

As referenced above, two task orders are relevant here: (1) the task order that resulted from RFTOP-01; and (2) the interim task order TO-R015 which was issued to Berry on a sole-source basis after the RFTOP-01 protest was filed with our Office. Both task orders were issued under the agency's Trans-Africa Airlift Support (TAS) multiple-award

¹ Our Office dismissed the earlier protest challenging the issuance of the task order under RFTOP-01 as academic because the agency notified us of its intent to: (1) clarify its aircraft capability requirements; (2) enter into discussions with vendors; (3) allow vendors an opportunity to submit revised proposals; reevaluate proposals; and issue a new award decision. AAR Airlift Group, Inc., B-414949, Aug. 11, 2017 (unpublished decision) at 1-2.

² The agency report was prepared using a sequential numbering system. Citations to the record, where applicable, use the sequential numbers assigned by the agency.

IDIQ contract program.³ Contracting Officer Statement (COS) at 4, 9. The agency awarded the underlying TAS IDIQ contracts to Erickson, Berry,⁴ and AAR,⁵ on February 2, 2017, under request for proposals (RFP) No. HTC711-16-R-R023. COS at 3-4.

As relevant here, Berry's TAS IDIQ contract is for a 1-year base period with four 1-year option periods, and contemplates that Berry will provide light, medium, and large fixed-wing and rotary-wing aircraft to perform the various airlift services required under the resulting task orders.⁶ AR, Tab 6, Berry IDIQ, at 3-32, 56, 80.

Of note, Berry's TAS IDIQ contract contains minimum criteria for all aircraft to be used in the performance of any task order issued. AR, Tab 6, Berry IDIQ, at 73. Aircraft and aircraft equipment must meet or exceed applicable requirements identified in the Federal Acquisition Regulation (FAR), Code of Federal Regulation (CFR), and civil aviation regulations. Id. at 74-75. Furthermore, only aircraft identified in the aircraft identification table provided for in Berry's IDIQ contract may be used in the performance of any task order issued under the contract. Id. at 93. To the extent Berry intended to use aircraft not previously identified on the aircraft identification table to perform a task

³ The purpose of the agency's underlying TAS multiple-award IDIQ contract program is to provide fixed-wing and rotary-wing PR, CASEVAC, and airdrop services throughout the USAFRICOM AOR. COS at 2; AR, Tab 6, Berry IDIQ, at 56. The USAFRICOM AOR, for the purposes of the IDIQ contract, includes, but is not limited to, the African continent, African islands, and countries supporting operations in Africa such as Germany and Italy. AR, Tab 6, Berry IDIQ, at 56.

⁴ Berry is the awardee of contract No. HTC7111-13-D-C013 (contract-C013), awarded by the agency for short take-off and landing (STOL) airlift and CASEVAC support for the United States Special Operations Command, Africa. COS at 4; AR, Tab 5, Berry Trans-Sahara Contract, at 33. This contract was awarded on August 12, 2013, and defined the contract's base of operations as Burkina Faso. AR, Tab 5, Berry Trans-Sahara Contract, at 1, 36. Contract-C013 is not a part of the agency's TAS IDIQ contract program.

⁵ AAR was the awardee on a Navy contract No. N00189-14-C-0056 (contract-0056) for PR, CASEVAC, and search and rescue support that expired on September 30, 2017. COS at 4; AR, Tab 15, AAR E-mail to Navy, at 5. The geographic coverage provided by the Navy contract encompassed an area spanning 500 nautical miles from a fixed location in Niamey, Niger. COS at 4, 8; AR, Tab 15, AAR E-mail to Navy, at 5. The final 60 days under that contract were designated to allow AAR to transition its duties to a new contractor and did not contemplate the provision of any aviation support services during that period. COS at 8; AR, Tab 15, AAR E-mail to Navy, at 3. Contract-0056 is not a part of the agency's TAS IDIQ contract program, as it is a Navy contract.

⁶ Fixed-wing aircraft also include turbo-prop aircraft. COS at 2 n.2. Rotary-wing aircraft are essentially helicopters. Id.

order, the newly proposed aircraft had to first be approved by an Air Carrier Survey Team. Id.

On May 2, 2017, the agency issued RFTOP-01 to all three TAS IDIQ contract holders. COS at 4. The solicitation required one light fixed-wing and one medium rotary-wing aircraft at Niamey, Niger, along with two fixed-wing aircraft at Ouagadougou, Burkina Faso. Id. The services to be provided under the resulting task order included CASEVAC support, paramedic-level field support, inflight patient care for PR, airlift, and airdrop services in the North and West Africa regions.⁷ Id. On July 3, the RFTOP-01 task order was issued to Berry. Id. AAR filed a protest (B-414949) on July 12, challenging the issuance of that task order.⁸ Id. at 6. After receiving notification of the protest, the agency directed Berry to cease performance under the RFTOP-01 task order. Id. at 7. As a result of the stay of performance, the agency issued the interim, sole-source task order TO-R015 (the sole-source task order at issue in this protest) to Berry on July 31, 2017, in order to ensure that there would be no lapse in PR, CASEVAC and airlift services to military personnel serviced by the Niamey, Niger, base of operations.⁹ Id. at 9; AR, Tab 39, TO-R015 Justification, at 2; Tab 31, TO-R015 at 1. The justification in support of the decision to issue task order TO-R015 to Berry on a sole-source basis was publically posted on August 29. COS at 9; AR, Tab 39, FedBizOpps Justification Posting, at 1.

On August 11, AAR's protest challenging the issuance of the RFTOP-01 task order was dismissed as academic after the agency informed our Office of its intent to take corrective action. AAR Airlift Group, Inc., supra. In proposing to take corrective action, the agency stated that it would "clarify the aircraft capability requirements under the IDIQ contract and protested task order." AR, Tab 33, Corrective Action Notice (CAN), at 1. Furthermore, the agency committed to "enter[ing] into discussions with the offerors under the protested task order to allow [them] the opportunity to revise their proposals"

⁷ The requirements for RFTOP-01 were a combination of those requirements already being performed by Berry under contract-C013 and AAR under contract-0056. COS at 4.

⁸ After AAR filed the protest challenging the issuance of the RFTOP-01 task order, the agency exercised the option to extend services under Berry's contract-C013 to ensure that PR, CASEVAC, and airlift support could still be provided to military personnel being serviced from the base of operations at Burkina Faso. COS at 7.

⁹ Although the agency was able to provide PR, CASEVAC, and airlift services to regions supported from the Burkina Faso base of operations (as a result of exercising the option to extend services under contract-C013), there was no contract vehicle in place to provide these services to military personnel in the region supported by the Niamey, Niger base of operations. COS at 7-8. Similar services had been performed by AAR in the Niamey, Niger region under contract-0056, but the last 60 days of that contract were designated for transition only, with no ability to provide aviation support. COS at 8; AR, Tab 15, AAR E-mail to Navy, at 3.

and to also conduct a reevaluation and “make a new award determination on the task order in accordance with the terms of the RFTOP.” Id. at 1-2. Erickson filed this protest on September 1, three days after the agency publically posted the justification to issue task order TO-R015 on a sole-source basis, and 18 days before the agency began requesting aircraft information on September 19, to start implementing its proposed corrective action in response to the RFTOP-01 protest; COS at 9.¹⁰ Protest at 1.

DISCUSSION

As set forth below, we review in the following order: (1) Erickson’s challenge to the agency’s proposed corrective action taken in response to the RFTOP-01 protest; (2) the protester’s assertion that the sole-source task order TO-R015 exceeds the scope of Berry’s underlying IDIQ TAS contract; and (3) Erickson’s allegations that the agency’s decision to issue the sole-source task order TO-R015 to Berry was unreasonable. Although we do not address every allegation and argument raised by the protester, we have reviewed them all and find that none provide a basis to sustain the protest.

Challenge to Corrective Action

Erickson raises various challenges to the agency’s proposed corrective action. Protest at 12-15. For example, the protester asserts that it has been treated unfairly because the agency has engaged in discussions with Berry, while Erickson has not been afforded the same opportunity.¹¹ Id. at 14. In response, the agency explains that its

¹⁰ On August 28, 2017, AAR filed a separate protest (B-415176) with our Office to challenge the agency’s decision to issue sole-source task order TO-R015 to Berry. That protest was withdrawn shortly after AAR received a copy of the agency report.

¹¹ Erickson also contends that sole-source task order TO-R015 is actually a part of the agency’s corrective action. Our review of the record, however, confirms that task order TO-R015 was issued as an interim vehicle to ensure that there would be no lapse in PR, CASEVAC and airlift services to locations supported from the Niamey, Niger, base of operations--and not as a part of the agency’s corrective action relating to the RFTOP-01 protest. COS at 9; See AR, Tab 39, TO-R015 Justification, at 2. We note that task order TO-R015 was issued on July 31, which was before the agency announced its decision to take corrective action. Compare AR, Tab 31, TO-R015 at 1, with Tab 33, CAN, at 1. Furthermore, the agency’s corrective action notice does not identify or otherwise support the notion that task order TO-R015 was issued as a part of the agency’s intended corrective action. AR Tab 33, CAN at 1-2. Rather, the record reflects that the agency issued task order TO-R015 to ensure that there would be no break in support while the protest and subsequent corrective action were pending. As such, we separately address the protester’s challenges to the sole-source task order in the decision below.

implementation of the proposed multi-stage corrective action is still ongoing and is not yet complete.¹² Memorandum of Law (MOL) at 15-16.

As an initial matter, in reviewing the merits of allegations challenging the adequacy of an agency's proposed corrective action, we note that the agency has broad discretion to take corrective action where the agency determines that such action is necessary to ensure a fair and impartial competition. NCS Tech. Inc., B-413500.2, Feb. 14, 2017, 2017 CPD ¶ __ at 5. In instances where the agency's proposed corrective action does not alter the ground rules for the competition, we have considered a protester's pre-award challenge to be premature. Alliant Techsystems, Inc., B-405129.3, Jan. 23, 2012, 2012 CPD ¶ 50 at 2 n.1 (protest challenging the agency's evaluation as improper); Northrop Grumman Tech. Servs., Inc., B-404636.11, June 15, 2011, 2011 CPD ¶ 121 at 4 (protest challenging the agency's discussions as unequal).

In this instance, the protester argues that the agency's corrective action is unequal because the agency has engaged Berry in discussions, but has not provided Erickson with the same opportunity. Here, the agency asserts, and the record reflects, that the agency is still in the process of implementing its corrective action. COS at 9. In this regard, the agency has represented to our Office that its corrective action will consist of clarifying aircraft capability requirements, engaging in discussions with offerors, and giving them the opportunity to revise their proposals. AR, Tab 33, CAN, at 1-2. After the agency reevaluates proposals, it will issue a new task order in accordance with the terms of the RFTOP. Id. at 2. The agency notified all three TAS IDIQ contract holders of its intent to take corrective action on August 22, and the agency is currently in the process of evaluating aircraft information that was requested on September 19. COS at 9.

Accordingly, in light of the ongoing nature of the agency's corrective action, we need not resolve the dispute at this time. We dismiss the protester's challenges to the agency's corrective action because Erickson's assertions of unequal discussions are premature, given that the reevaluation contemplated in the corrective action is still ongoing. See Intermarkets Global, B-400660.10, B-400660.11, Feb. 2, 2011, 2011 CPD ¶ 30 at 4-5; American K-9 Detection Servs., Inc., B-400464.6, May 5, 2009, 2009 CPD ¶ 107 at 5; Computer Assocs. Int'l, Inc., B-292077.2, Sept. 4, 2003, 2003 CPD ¶ 157 at 4 (protests that merely anticipate prejudicial agency action are speculative and premature).

¹² AAR, not Erickson, filed the initial protest (B-414949) challenging the task order which resulted from the RFTOP-01 competition. COS at 6. Although Erickson also contends that the proposed corrective action is not appropriate to remedy the issues raised in AAR's protest, Erickson acknowledges that it does "not know the exact basis for [AAR's] protest." Protest at 12.

Task Order Scope Challenge

In addition to challenging the agency's corrective action, the protester argues that task order TO-R015, exceeds the scope of Berry's underlying TAS IDIQ contract. In this regard, the protester contends that rotary-wing services are not authorized under Berry's IDIQ contract, and that Berry is using both an unauthorized subcontractor and an unauthorized aircraft to perform the rotary-wing services contemplated by the task order. AR, Tab 4, Protester's Dismissal Request Response, Sept. 12, 2017, at 9; Protester's Comments at 2-5. In response, the agency points out that Berry's TAS IDIQ contract requires Berry to perform rotary-wing services and also provides for the possibility of adding or removing subcontractors and aircraft.

Under the Federal Acquisition and Streamlining Act of 1994, as modified by the National Defense Authorization Act of Fiscal Year 2017, our Office is authorized to hear protests of task orders that are issued under multiple-award contracts established within the Department of Defense (or protests of the solicitations for those task orders) where the task order is valued in excess of \$25 million, or where the protester asserts that the task order increases the scope, period, or maximum value of the contract under which the order is issued. 10 U.S.C. § 2304c(e); California Indus. Facilities Res., Inc., d/b/a/ CAMSS Shelters, B-406146, Feb. 22, 2012, 2012 CPD ¶ 75 at 2. Task orders that are outside the scope of the underlying multiple-award contract are subject to the statutory requirement for full and open competition set forth in the Competition in Contracting Act of 1984 (CICA), absent a valid determination that the work is appropriate for procurement on a sole-source basis or with limited competition. 10 U.S.C. § 2305(a)(1)(A)(i) (2006); DynCorp Int'l LLC, B-402349, Mar. 15, 2010, 2010 CPD ¶ 59 at 6.

When a protester alleges that the issuance of a task or delivery order under a multiple-award contract is beyond the scope of the contract, we analyze the protest in essentially the same manner as those in which the protester argues that a contract modification is outside the scope of the underlying contract. DynCorp Int'l LLC, *supra*. In determining whether a task or delivery order is outside the scope of the underlying contract, and thus falls within CICA's competition requirement, our Office examines whether the order is materially different from the original contract, as reasonably interpreted. Evidence of a material difference is found by reviewing the circumstances attending the original procurement; any changes in the type of work, performance period, and costs between the contract as awarded and the order as issued; and whether the original solicitation effectively advised offerors of the potential for the type of orders issued. Symetrics Indus., Inc., B-289606, Apr. 8, 2002, 2002 CPD ¶ 65 at 5. In other words, the inquiry is whether the order is one which potential offerors reasonably would have anticipated.

Here, Erickson's allegations that task order TO-R015 exceeds the scope of Berry's underlying IDIQ contract are without merit. First, despite the protester's contention that Berry is not permitted to provide rotary-wing services under its IDIQ contract, our review of the record confirms otherwise. In fact, Berry's IDIQ contract contains direct line-item

pricing for the provision of rotary-wing support. AR, Tab 6, Berry IDIQ, at 3-4, 7-10, 13-16, 19-22, 25-28, 31-32. Additionally, the contract expressly requires Berry to be capable of providing PR, CASVAC, and airdrop services “to include rotary-wing and fixed-wing operations.” Id. at 56. The terms of Berry’s contract also mandate that Berry provide certain rotary-wing aircraft that meet certain minimum specifications and the aircraft identification list that is included in Berry’s IDIQ contract contains various rotary-wing aircraft that are approved for use. Id. at 72-73, 94.

Next, the protester argues that task order TO-R015 exceeds the scope of Berry’s underlying IDIQ contract because Berry is using an unauthorized subcontractor and unauthorized aircraft to perform rotary-wing services.¹³ In support of this allegation, Erickson asserts that Berry’s rotary-wing subcontractor is ineligible to provide support to DoD and that the rotary-wing aircraft Berry proposes to use to perform task order TO-R015 is not on the list of approved aircraft included in Berry’s IDIQ contract.¹⁴ The protester also asserts that the subcontractor approval process is flawed. In response, the agency asserts that Berry’s rotary-wing subcontractor was approved to provide support to DoD on May 31, 2017, and the agency provided documentation to establish that Berry’s TAS IDIQ contract was modified to allow for use of the rotary-wing aircraft in question. COS at 11, AR, Tab 9, CARB Approval Air Center E-mail, at 1; Tab 10, Berry IDIQ Contract Modification 1, at 4.

¹³ Section 2640 of title 10 of the United States Code prohibits the Secretary of Defense from entering into a contract with an air carrier for the charter air transportation of members of the armed forces unless the air carrier: (1) meets, at a minimum, certain safety standards established by the Secretary of Transportation; (2) has at least 12 months of experience operating services in air transportation; and (3) undergoes a technical safety evaluation. 10 U.S.C § 2640(a). The agency’s Commander is charged with ensuring the establishment of safety requirements and criteria for evaluating civil air carriers and operators. 32 C.F.R. § 861.2. The agency’s Commander is also charged with establishing a Commercial Airlift Review Board (CARB) and providing policy guidance and direction for its operation. Id. The CARB has the authority to suspend air carriers from Department of Defense (DoD) use or take other actions when issues of air carrier quality and air safety arise. Id. As relevant here, the provision of air transportation services under a contract or agreement with or on behalf of DoD requires the successful completion of an initial on-site survey and approval by the CARB to be eligible for DoD business. 32 C.F.R. § 861.4(c)(1). Erickson contends that Berry’s task order TO-R015 rotary-wing subcontractor failed to meet the criteria established under these rules and is therefore ineligible for DoD business. Protester’s Comments at 8.

¹⁴ The protester alleges that the unauthorized rotary-wing aircraft being used by Berry is identified by tail number [DELETED]. AR, Tab 4, Protester’s Dismissal Request Response, Sept. 12, 2017, at 18.

Even though the agency has also provided documentation to establish that Berry's rotary-wing subcontractor and aircraft were approved for use before the task order was issued, COS at 11, AR, Tab 9, CARB Approval Air Center E-mail, at 1; Tab 10, Berry IDIQ Contract Modification 1, at 4, we dismiss these allegations because we generally do not review matters of contract administration. Bid Protest Regulations, 4 C.F.R. § 21.5(a). These allegations do not fall into any of the exceptions that would allow our Office to consider them. See Sprint Communications Co., L.P., B-271495, April 26, 1996, 96-1 CPD ¶ 211 at 4. As discussed above, the terms of Berry's IDIQ contract require Berry to provide rotary-wing services, and provide for the addition of subcontractors after initial award. AR, Tab 6, Berry IDIQ, at 3-4, 7-10, 13-16, 19-22, 25-28, 31-32, 56, 72-73, 81-82. Here, the question of whether Berry's subcontractor was properly added to Berry's IDIQ contract, and whether certain rotary-wing aircraft are approved for use, are matters of contract administration. We also note that "the determination of whether an air carrier meets or exceeds [evaluation requirements], is a matter within the sole discretion of the DOD Air Carrier Survey and Analysis Office and the CARB, subject to [certain] statutory minimums." 32 C.F.R. § 861.4(e).

Task Order Jurisdiction

Finally, the protester raises a host of other arguments challenging the agency's decision to issue the sole-source task order to Berry. For example, Erickson argues that the justification supporting the agency's decision to issue the sole-source task order is flawed because the underlying requirement stems from the result of a lack of advance planning, that a limited competitive procurement for the underlying requirement should have been conducted among TAS IDIQ contract holders, and that pricing offered by Berry is not fair and reasonable. Protester's Comments at 12-17, 21-23. The agency contends that our Office lacks jurisdiction to consider these protest grounds because the task order is not valued in excess of \$25 million. As will be discussed in more detail below, calculating the value of the task order becomes complicated due to clerical errors made by the agency when establishing the task order's period of performance, and because of errors in the way the protester attempted to calculate the task order's overall value. Despite these errors on the part of the agency and the protester, we conclude that our Office lacks jurisdiction to consider Erickson's substantive challenges to the interim, sole-source task order.

As discussed above, our Office is authorized to hear protests of task orders (or protests of the solicitations for those task orders) that are issued under multiple-award contracts, established within the Department of Defense, where the task order is valued in excess of \$25 million, or where the protester asserts that the task order increases the scope, period, or maximum value of the contract under which the order is issued. 10 U.S.C. § 2304c(e); California Indus. Facilities Res., Inc., d/b/a/ CAMSS Shelters, *supra*. The remainder of this decision addresses only the dispute about the total value of this order, which we conclude falls beneath the \$25 million threshold for our jurisdiction to hear Erickson's challenge.

Value of RFTOP-01 Task Order

For the purpose of jurisdiction to review task order TO-R015, Erickson first argues that our Office has jurisdiction here based on the dollar value of the previously protested RFTOP-01 task order, which was in excess of \$190 million. Protest at 11.

Notwithstanding the protester's arguments to the contrary, we have no basis to consider the value of the RFTOP-01 task order when determining the value of task order TO-R015, an interim task order, for jurisdictional purposes. Serco, Inc., B-410676.2, Dec. 12, 2014, 2014 CPD ¶ 371 at 3 (finding "no basis to consider the value of the original order when determining the value of the bridge task order" for our jurisdiction). Rather, for the purposes of determining our jurisdiction, the value of task order TO-R015 on its face is controlling, since the terms of the order define the scope and terms of the contractual commitment between the contractor and the government. Id.; see also Goldbelt Glacier Health Servs., LLC, B-410378, B-410378.2, Sept. 25, 2014, 2014 CPD ¶ 281 at 3 (noting that actual dollar amount of order issued was the appropriate measure of task order value). Additionally, the value of a task order may also include the value of the task order's option to extend services under the clause at FAR section 52.217-8 where the value of the option was included in the total price that the agency considered in its task order award determination. See Serco Inc., B-406061, B-406061.2, Feb. 1, 2012, 2012 CPD ¶ 61 at 9.

Here, task order TO-R015 was issued for a total amount of \$7,729,941 for 3 months of performance, and included the option to extend services under the clause at FAR section 52.217-8.¹⁵ AR, Tab 31, TO-R015, at 1. The task order's line items are broken out as follows:

Line Item	Type	Description	Maximum Amount
0001	Monthly	Basing Operations	[DELETED]
0002	Firm Fixed Price	Fixed Wing Operations	[DELETED]
0003	Firm Fixed Price	Rotary Wing Operations	[DELETED]
0004	Cost	Fuel Reimbursables	[DELETED]
0005	Cost	Other Than Fuel	[DELETED]
0007	Firm Fixed Price	Positioning	[DELETED]
0008	Firm Fixed Price	Depositioning	[DELETED]

AR, Tab 31, TO-R015, at 3-11.

¹⁵ The agency contends that, for the purpose of evaluating whether our Office has jurisdiction, the task order should be valued at \$18,929,823, and arrived at this value by using a three-month period of performance while also including a six-month option. MOL at 21.

Erickson's Erroneous Calculations

Erickson argues, that task order TO-R015 should be independently valued at over \$30 million. Protester's Comments at 2. We disagree. As an initial matter, we note that the calculation used by Erickson is flawed. The protester contends that task order TO-R015 has a 15-month period of performance because: (1) the task order, as originally issued, identified a base period of performance from July 31, 2017 through April 30, 2018, (for a total of nine months); and (2) the task order also contains the clause at FAR section 52.217-8, which provides for the possibility of a six month extension of services. AR, Tab 4, Protester's Dismissal Request Response, Sept. 12, 2017, at 2. Our review of the record and the pleadings here leads our Office to conclude that Erickson has incorrectly divided the maximum prices for line items 0001 through 0003 by three months, rather than nine months (which is Erickson's premise about the duration of this interim task order), to obtain a monthly price, and then multiplied that monthly price by 15 months to arrive at a total price. This calculation is inappropriate because even the line item pricing in the task order is expressed in terms of the maximum amount Berry can receive for the duration of the total base period. If, as alleged by Erickson, task order TO-R015 has a nine-month base period of performance, the protester should have divided the maximum price of the contract line item numbers (or CLINs)¹⁶ for basing operations, fixed-wing operations, and rotary-wing operations, by nine months to obtain a monthly price, and then multiplied that monthly amount by a total of 15 months to obtain the total value of the task order.¹⁷ Had the protester used a nine-month base period of performance to establish monthly pricing for relevant task orders, and

¹⁶ The parties refer to task order line items as "CLINs" (contract line item numbers). For consistency and ease of reference, we also refer to these line items as CLINs in our decision.

¹⁷ For example, the task order provides a maximum price of [DELETED] for the "fixed-wing operations" CLIN, which means that Berry cannot receive more than this amount for the entire base period of the task order (whether the base period is three months or nine months). If the duration of the base period is for nine months, as Erickson argues, the monthly price for the "fixed-wing operations" CLIN would be approximately [DELETED] (i.e., [DELETED] divided by nine months). Using this monthly rate, the maximum price for the "fixed-wing operations" CLIN during the 15-month period (i.e., nine month base period plus six month option period) would equal [DELETED] (i.e., [DELETED] multiplied by 15 months). Instead, Erickson represented that the maximum price for the "fixed-wing operations" CLIN for the entire 15-month period should total [DELETED]. Protester's Dismissal Request Response, Oct. 10, 2017, at 7. In order to arrive at this figure, the monthly price for the "fixed-wing operations" CLIN would have to be [DELETED] (i.e., [DELETED] divided by 15 months) and the maximum price for the nine month base period would be [DELETED] (i.e., [DELETED] multiplied by nine months). The task order, on its face, provides for a maximum price of [DELETED] for the "fixed-wing operations" CLIN during the base period, not [DELETED].

multiplied those monthly amounts by a 15-month period of performance, the overall value of task order TO-R015 would still be less than \$25 million.¹⁸

Agency's Clerical Error

Although Erickson correctly noted that the task order initially provided for a nine-month base period, from July 31, 2017 to April 30, 2018, the agency later clarified in its agency report that those dates were a clerical error.¹⁹ COS at 22. The agency asserts that the value of task order TO-R015 should be calculated using a total nine-month period of performance, comprised of a three-month base period plus the six-month option to extend services. MOL at 25. The record supports the agency's position.

For example, the written justification and approval (J&A) to issue task order TO-R015 on a sole-source basis identifies a three-month period of performance, explaining that "[t]he performance period for this task order will be approximately three months, including positioning" AR, Tab 38, Justification for TO-R015, at 1. Moreover, task order TO-R015 was modified on September 8, 2017, to reflect a three-month base period of performance (September 1, 2017 to November 30) for the "basing operations," "fixed-wing operations," and "rotary-wing operations" CLINs. AR, Tab 41, TO-R015 Modification 1, at 1, 2-4. Additionally, the task order's "basing operations" CLIN is

¹⁸ Specifically, Erickson represents that the 15-month maximum values of the "fuel reimbursables," "other than fuel reimbursables," "positioning," and "depositioning," CLINs should respectively be [DELETED], [DELETED], [DELETED] and [DELETED]. Protester's Dismissal Request Response, Oct. 10, 2017, at 7. Using a nine-month period of performance, the monthly rate for the "basing operations" CLIN would be approximately [DELETED] (i.e., [DELETED] divided by nine months) and would have a 15-month maximum value of [DELETED] (i.e., [DELETED] multiplied by 15 months). As previously discussed, the 15-month maximum value for the "fixed-wing operations" CLIN would be [DELETED]. A nine-month period of performance would also mean that the monthly rate for the "rotary-wing operations" CLIN would be [DELETED] (i.e., [DELETED] divided by nine months) and would have a 15-month maximum value of [DELETED] (i.e., [DELETED] multiplied by 15 months). Using these figures, had Erickson properly calculated the total value of the task order based on a nine-month base period of performance, the maximum value of the task order for the total 15-month period would be approximately [DELETED].

¹⁹ The protester expressed concerns that the performance period of TO-R015 was modified from July 31, 2017 through April 30, 2018, to instead reflect a performance period of September 1, 2017 to November 30, 2017--a period of three months. For the purpose of calculating the overall dollar value of the task order to determine jurisdiction, the discrepancy in the dates is irrelevant because as previously discussed, even if we assume a nine-month base period of performance and 15-month total period of performance, as argued by the protester, the overall dollar value of the task order would still fall below our \$25 million threshold for jurisdiction.

comprised of two sub-line items, one for “light fixed-wing basing,” and the other for “medium rotary-wing basing.” AR, Tab 31, TO-R015, at 3. Berry is to receive [DELETED] a month for basing “light fixed-wing aircraft” and [DELETED] a month for basing “rotary-wing aircraft.” Id. The maximum amount it can receive for the “basing operations” CLIN during the task order base period of performance is [DELETED]. Id. Although the original task order identified dates that reflected a nine-month period of performance, the values associated with the expense of the two sub-items, when added together (i.e., [DELETED]) and divided into the maximum amount Berry can receive during the base period of performance for “basing operations” (i.e., [DELETED]), reflect that the agency intended the task order’s base period of performance to be three months (i.e., [DELETED] divided by [DELETED] equals three).

In conclusion, our review of the record confirms that for the purpose of establishing whether our Office has jurisdiction, the overall dollar value for task order TO-R015 should be calculated by using a three-month base period with a six month option period, for a total overall nine month period of performance. Thus, the face value of task order TO-R015 is \$7,729,941.30. AR, Tab 31, TO-R015, at 1. Accordingly, the six-month option period would be valued at no more than \$15,459,882.60, resulting in a task order with a total value of no more than \$23,189,823.90.²⁰ This amount is less than the \$25 million threshold necessary to establish the jurisdiction of our Office.

In this case, we conclude that the challenged interim task order TO-R015, as issued by the government, is valued at less than \$25 million. Accordingly, our Office does not

²⁰ In order to calculate the value for the six month option to extend services in this instance, our Office simply doubled the value of the underlying three month base period. This methodology was used because the clause at FAR section 52.217-8 states that continued performance of any services performed under the option are to be at the limits and rates specified in the underlying order. AR, Tab 31, TO-R015, at 12; FAR § 52.217-8. If the base period is for three months, a six month extension would therefore be no more than twice the amount identified on the face of the order. For the sake of simplicity, and in viewing the facts in a manner most favorable to the protester, we used this methodology to calculate the overall value of the task order here, but note that it may have been more precise to account for the “other than fuel,” “positioning,” and “depositioning” CLINs as one time charges, rather than doubling them. This may have been a more precise way to account for these CLINs because both the agency and the protester appear to agree that the “other than fuel,” “positioning,” and “depositioning” CLINs would only result in one-time charges, rather than recurring monthly expenses. Compare MOL at 25, with Protester’s Dismissal Request Response, Oct. 10, 2017, at 7. We note that had we used this more precise methodology, the overall dollar value of the task order would have been even lower than the amount identified in the decision.

have jurisdiction to consider the remaining protest allegations raised by Erickson. See HP Enter. Servs., LLC--Recon., B-413382.3, Jan. 26, 2017, 2017 CPD ¶ 32 at 3 n. 2; Goldbelt Glacier, supra at 3.

The protest is denied in part and dismissed in part.

Thomas H. Armstrong
General Counsel