

Federal Circuit Confirms that Award Term Extension Constitutes New Contract for Purposes of Bid Protest Jurisdiction

Article By:

Terra White Fulham

Heather L. Finstuen

On July 12, 2016, in *Coast Professional, Inc. et. al v. United States*, No. 2015-5077 (Fed. Cir. July 12, 2016), the U.S. Court of Appeals for the Federal Circuit [overturned](#) a Court of Federal Claims (“CoFC”) decision, finding that the CoFC erred in ruling that it did not have bid protest jurisdiction over the award of task orders characterized as “award-term extensions.” The Federal Circuit’s decision provides clarity on the scope of Tucker Act’s bid protest jurisdiction, and provides a strong defense against Government arguments that attempt to limit that jurisdiction going forward.

The dispute in *Coast Professional* focused on “award term extensions” to task orders issued through the Federal Supply Schedule (“FSS”). In 2008, the Department of Education (“DOE”) issued a Request for Quotations (RFQ) for services related to the collection of defaulted student loans. The RFQ stated that the Task Order would include a base term ending March 31, 2011, with additional option periods up to 24 months. In 2009, DOE awarded Task Orders to twenty-two contractors for defaulted student loan collection services. The Task Orders included an “award-term extension” clause which stated that contractors could earn a term extension as an award for favorable performance and that such “award-term extensions” would be issued as new Task Orders.

During performance of the original Task Orders, DOE audited contractors, and based on the results of those audits, issued award-term extensions to some contractors but not others. In response, several contractors filed bid protests with the CoFC.

At the CoFC, the Government moved to dismiss the protests, alleging that they did not fall within the Court’s Tucker Act jurisdiction, which covers “actions[s] by an interested party objecting to a solicitation by a Federal agency for bids or proposals for a proposed contract or to a proposed award or the award of a contract or any alleged violation of statute or regulation in connection with a procurement or proposed procurement.” The Government argued that the award term extensions at issue did not constitute a “proposed award or the award of a contract.” Instead, because the new task orders would be subject to the same terms and conditions as the original task order, the Government argued that they should be considered “options” rather than new contracts, and were

thus matters of contract administration not appropriately before the Court.

The CoFC agreed and dismissed the case for lack of jurisdiction. The CoFC reasoned that the decisions to issue award-term extensions were reflections of the agency's discretion to extend the original orders, and that treating the award-term extensions as new contracts would "elevate form over substance."

The Federal Circuit vacated and remanded the CoFC's decision, finding that the award-term extensions were task order awards within the Court's Tucker Act jurisdiction. Citing the Supreme Court's recent decision in *Kingdomware Techs., Inc. v. United States* (which we recently discussed [here](#)) the Federal Circuit pointed to the established rule that the "issuance of a new Task Order against a GSA Federal Supply Schedule contract constitutes an award of a contract." (The decision appears to be the first from the Federal Circuit confirming that the CoFC's bid protest jurisdiction extends to FSS task orders.)

The court rejected the Government's attempt to characterize the award-term extensions as options or extensions of the original task orders rather than new contracting actions. It acknowledged that a contractor wishing to contest an agency's decision regarding exercising an option under a contract is a matter of contract administration that may only be challenged under the Contract Disputes Act ("CDA"). But it disagreed that the award-term extensions in this case could be properly considered options for a number of reasons.

First, the contract's plain language explicitly stated that the award-term extensions would be awarded as new task orders. Second, the court noted that unlike options, under which the Government may unilaterally elect to extend the term of a contract, the award-term extensions could issue only if the contractor accepted the Government's pricing and terms. Finally, the court noted that the 2009 Task Orders contained two other provisions that expressly referred to "options," which clearly indicated that "options" and "extensions" were not interchangeable. Thus, the court held that the award-term extensions constituted new contracts, and the CoFC had bid protest jurisdiction over them.

The decision should be seen favorably by contractors. The decision confirms that the Federal Circuit will be unwilling to entertain Government efforts to limit Tucker Act jurisdiction, particularly where the Government argues that the plain language of the contract should be disregarded in order to avoid procurement scrutiny. The Federal Circuit has made clear that for purposes of Tucker Act jurisdiction over GSA FSS contracts, the award of a task order – however named or characterized by the Government – constitutes the award of a contract.

© 2025 Covington & Burling LLP

National Law Review, Volume VI, Number 203

Source URL: <https://natlawreview.com/article/federal-circuit-confirms-award-term-extension-constitutes-new-contract-purposes-bid>