



United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Alice Roofing & Sheet Metal Works, Inc.

File: B-283153

Date: October 13, 1999

Johnathan M. Bailey, Esq., and Theodore M. Bailey, Esq., Theodore M. Bailey, for the protester.
Sharon A. Jenks, Esq., Department of the Air Force, for the agency.
Sylvia Schatz, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly exercised option is denied where agency reasonably determined that exercising the option was the most advantageous means of satisfying the agency's needs.

DECISION

Alice Roofing & Sheet Metal Works, Inc. protests the Department of the Air Force's decision to exercise the second option under American Roofing & Metal Co., Inc.'s contract No. F41691-97-D-0015, for roofing repair and replacement at Randolph Air Force Base (AFB), San Antonio, Texas. Alice Roofing claims the agency improperly determined that exercise of the option was the most advantageous method of satisfying its needs.

We deny the protest.

American Roofing's contract--fixed-price, indefinite-delivery, indefinite-quantity for a base year, with two 1-year options--was awarded under request for proposals (RFP) No. F41691-97-R-0007. Contracting Officer's Statement at 1; RFP at 1. The minimum amount of work to be ordered under the contract was \$500,000 and the estimated project amount was between \$10,000,000 and \$25,000,000. RFP at 1-2. On June 23, 1998, the agency exercised the first option under the contract, Agency Report at 2, and on June 21, 1999, the agency exercised the second option, the subject of the current protest. Agency Dismissal Request at 2.

The protester argues that the decision to exercise the second option was improper because (1) the quantities ordered under American Roofing's contract are substantially below the estimated quantities in the original RFP, such that different prices could be anticipated under a new solicitation stating accurate quantities;¹ and (2) the agency did not conduct an adequate market survey or otherwise test the market to determine whether exercising the option was the most advantageous means of meeting the requirement. Protest at 1.

These arguments are without merit. First, while the agency does not dispute that the quantities ordered under American Roofing's contract were well below the estimated quantities, we fail to see--and the protester does not explain--how that fact should have suggested to the agency that more advantageous prices could be expected from a new solicitation. Rather, it would be more reasonable for the agency to expect that prices for substantially reduced quantities in a new solicitation would be higher than American Roofing's option prices. See Valentec Wells, Inc., B-239498, Aug. 29, 1990, 90-2 CPD ¶ 176 at 2-4. The protester recognizes this relationship. See Additional Comments, Sept. 24, 1999, at 3. Thus, to the extent it is relevant here, this consideration actually would tend to support the agency's determination that a solicitation likely would not result in lower prices.²

Turning to the second allegation, before an option can be exercised, an agency must make a determination that exercise of the option is the most advantageous method of fulfilling its needs, price and other factors considered. Federal Acquisition Regulation (FAR) § 17.207(c)(3). This determination must be based on one of the following findings: (1) a new solicitation fails to produce a better price; (2) an informal market survey or price analysis indicates that the option price is lower; or (3) the time between contract award and option exercise is short enough and the market stable enough that the option price is the most advantageous. FAR § 17.207(d). "Other factors" to be considered include the need for continuity of operations and the cost of disruption of operations. FAR § 17.207(e). The

¹Specifically, Alice Roofing asserts that the agency ordered only \$870,212.49 of the work in the base year, compared to the \$3,874,478.50 estimated total, and only \$627,524.54 of the work in the first option year, compared to the \$3,893,727.70 estimated total. Protest at 2-3; RFP at 9, 16.

²In support of its argument that changes in quantities necessitated issuance of a new solicitation, the protester cites our decision AAA Eng'g and Drafting, Inc., B-236034.2, Mar. 26, 1992, 92-1 CPD ¶ 307, in which we sustained a protest against exercise of an option where there was a substantial change in the required quantities. Protest at 2. However, unlike here, that case involved substantial increases--rather than decreases--in the agencies' requirements, so that lower prices might be anticipated, and we also found that prices in the marketplace appeared to be substantially lower than the option prices (as discussed below, this is not the case here). Our decision in AAA thus is inapposite.

contracting officer is accorded broad discretion in making this determination, and we thus will not question such a determination unless it is shown to be unreasonable or contrary to applicable regulations. Person-Sys. Integration, Ltd., B-246142, B-246142.2, Feb. 19, 1992, 92-1 CPD ¶ 204 at 2.

The agency reports that the contracting officer based her decision to exercise the option on an “informal analysis of prices or an examination of the market.” Agency Report at 3; FAR § 17.207(d). Specifically, the contracting officer considered the following: (1) American Roofing’s second year option was the low price received during the original competition, Agency Report, encl. 2, Determination and Findings, at 1;³ Agency Reply, Sept. 9, 1999, at 2 n.3; (2) American Roofing’s 2-percent price increase from its first option price was lower than the 2.5-percent Consumer Price Index (CPI) increase from February 1998 to February 1999, Agency Report at 2; Agency Reply, Sept. 9, 1999, at 2-3; and (3) the need for continuity of operations and the cost of disruption of operations, as well as the cost of a new competition (which would involve additional costs of preparing a new solicitation, proposal evaluation, and contract award). Agency Report, encl. 2, Determination and Findings, at 2.

These considerations primarily focused on matters that relate directly to the question of whether the services could be procured at a lower cost than American Roofing’s option price. As such, they provided a valid basis for a price analysis that therefore, complies with the regulations.

The protester challenges the adequacy of the agency’s analysis on several grounds. First, it claims that another aspect of the agency’s comparison was flawed. In this regard, in addition to the three considerations enumerated above, the agency initially reported that it also compared several line item prices under American Roofing’s contract to similar line items under roofing contracts at other AFBs in the San Antonio area. Agency Report at 2; Agency Reply, Sept. 9, 1999, at 2. Although the agency subsequently reported that, in fact, this comparison was not used in its determination, Agency Reply, Sept. 23, 1999, at 3, the protester notes this inconsistency, and also asserts that the comparison—which the agency found showed American Roofing’s prices were comparable to others in the area—was flawed because, among other reasons, it failed to consider the quantities involved. Additional Comments, Sept. 24, 1999, at 3. This argument does not change our conclusion. Whether or not the agency used this comparison as part of its decision

³The protester asserts that its best and final offer (BAFO) price was lower than American Roofing’s price, and thus supports its claim that lower prices are available. Protest at 3; Additional Comments, Sept. 13, 1999, at 2-3. However, the protester’s BAFO was rejected as a late offer and was not considered for award, and we see nothing improper in the agency’s considering prices to be viable for comparison purposes only if they were actually available to the agency for award after being subjected to the test of competition.

to exercise the option, as indicated, the agency's other price and non-price considerations were sufficient on their own to support the agency's determination.

Second, the protester argues that it was unreasonable for the agency to rely on the CPI in analyzing the rate of increase of American Roofing's option price, since the CPI measures the price increases in a large number of consumer goods and services, not just roofing services. Comments, Aug. 5, 1999, at 3; Additional Comments, Sept. 13, 1999, at 3. The protester asserts that the agency instead should have used the R.S. Means® manual, which provides prices for specific areas of work, including roofing. Although the CPI price increase is not based solely on roofing services, the record shows the CPI used by the agency in its comparison included prices for construction and repair services in the region of the country in which San Antonio is located, and for cities of the same size. Agency Reply, Sept. 9, 1999, at 2-3. This being the case, and given the agency's wide discretion in this area, there was nothing unreasonable in the agency's use of the CPI in its comparison. While it might have been advisable for the agency to seek a more specific basis for comparison if there were some reason to suspect that roofing prices had declined, or increased at a substantially lower rate than prices generally, this was not the case here; the protester has furnished no evidence that prices for roofing services in the San Antonio area are substantially different from American Roofing's option prices.

Finally, the protester argues that using the prices under the original competition as a basis for comparison here is rendered unreasonable by the fact that the original RFP included a substantial amount of coal tar roofing work. The protester notes that coal tar roofing has been determined to be carcinogenic, and that the agency has not ordered any of this work under the first 2 years of American Roofing's contract. Comments, Aug. 5, 1999, at 4; Additional Comments, Sept. 13, 1999, at 2. However, the agency reports that, notwithstanding that it has not ordered coal tar work previously under American Roofing's contract, it will do so when the coal tar roofs at the installation are in need of repair. In this regard, the agency reports that only coal tar can be used to patch or repair coal tar roofs. Agency Reply, Sept. 21, 1999, encl., Affidavit of the Contract Specialist, at 3. This being the case, the original prices remain a valid basis for comparison.

We conclude that the agency's determination that exercising the option was most advantageous was reasonable. In reaching this conclusion, we emphasize that the regulations do not require the agency to perform extensive or detailed research into the marketplace; rather, the agency was required only to perform an informal market survey or price analysis. We also note that the intent of the regulations concerning the exercise of options is not to afford a firm that offered high prices under an original solicitation a second chance to beat the contractor's option price. Valentec Wells, supra, at 3. Thus, the mere fact that a protester claims that it can perform a

requirement for less than the option price does not establish that exercising the option is unreasonable.

The protest is denied.

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