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J. Cohen
Proc I

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-188011

DATE: March 31, 1977

MATTER OF: Custom Janitorial Service

DIGEST:

Since contracting agency was under no obligation to exercise option in janitorial services contract to negotiate extension of contract, determination not to do so and to procure future janitorial services by competitive procedures is not subject to review by GAO.

Custom Janitorial Service (Custom), the incumbent contractor with the General Services Administration (GSA) for certain janitorial services in Fort Worth, Texas, protests GSA's issuance of a solicitation to procure such services by formal advertising procedures upon the expiration of its contract with Custom rather than exercising the contractual option provision to negotiate an extension of Custom's contract.

The following provision appeared on page 4 of the request for proposals (RFP) under which award of the contract to Custom was made:

"PERIOD OF PERFORMANCE: This requirement involves a 3 year period of time. This period is predicated upon the need for program continuity and is intended to provide program stability through uninterrupted service. The initial contract will be for a period of 1 year, effective with the date specified in the award letter. The Government plans to negotiate two successive extensions of one year with the winning contractor, assuming good performance on his part, and subject to the continued need for an incentive type contract, the continued requirement for the services, the availability of funds, the status of the competitive market, and the continuation of services on a reasonable cost basis. Negotiated extension of the contract without formal competition is a Government prerogative, not a contractual right." (Emphasis added.)

B-188011

It was further provided on page 19:

"PERIOD OF PERFORMANCE: The period of performance under this contract is for an initial period of 1 year, with a unilateral Government option for two successive one-year extensions, subject to renewal on a reasonable cost basis, the availability of funds, and the continued need for this type of contract. Continuation of the incumbent contractor beyond the initial period is a Government prerogative, not a contractual right."
(Emphasis added.)

Custom contends that the factors indicated on page 4 of the RFP as necessary for an extension of its contract are in fact present. In addition, Custom alleges that during the negotiations under that solicitation Custom was "repeatedly told" by GSA personnel that GSA intended "to have the contract requirements involve a three year period of time." On those bases, Custom argues that GSA is bound "to follow its previously indicated intent" and negotiate a 1-year extension of the contract rather than issue a new solicitation for the service.

The provisions set out above differ from the standard contract option clauses applicable to Government contracts in that the latter do not include similar conditions on the Government's exercise of its option, but rather provide that the option is exercisable solely at the Government's discretion. See, for example, Armed Services Procurement Regulation § 7-104.27(c) (1976 ed.). In regard to an agency's decision not to exercise an option under a standard unconditional option provision, we recently stated in C. G. Ashe Enterprises, B-188043, March 7, 1977, 56 Comp. Gen. ____ (1977):

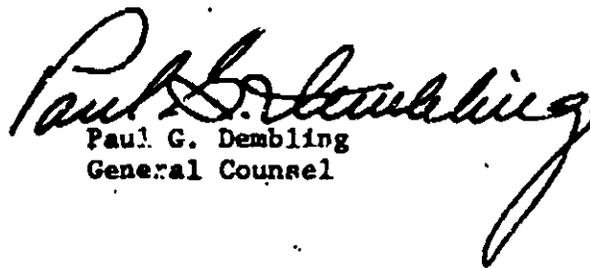
"* * * where the record shows that the option provisions of a contract are exercisable at the sole discretion of the Government, this Office will not consider under our Bid Protest Procedures the incumbent contractor's contention that the agency should have exercised contract option provisions."

We believe that the provisions on pages 4 and 19 of the subject RFP, read together, have the same effect as the unconditional option clause. Rather than, as Custom argues, requiring the Government to negotiate extensions of the incumbent's contract when the stated

B-188011

conditions are met, the provisions indicate that the contract will be extended only if that is the case. In this connection, we note that GSA disputes Custom's contention that all necessary factors are present.

Accordingly, the determination whether to exercise the option to negotiate extensions of Custom's contract was at the sole discretion of the Government and, in view of C. G. Ashe Enterprises, supra, the protest is dismissed.


Paul G. Dembling
General Counsel