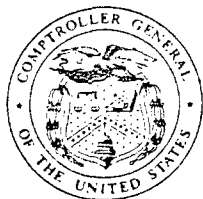


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DECISION



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

FILE: B-199924
B-199925

DATE: May 6, 1981

MATTER OF: Cerberonics, Inc.

[Protest of Navy Contract Award]

DIGEST:

1. Contracting officer may consider Government's need for continuity of operations, satisfactory performance of incumbent contractor, and administrative costs and time required for new procurement in deciding to exercise option.
2. Where options were initially evaluated in cost reimbursement and time and materials type contracts, it is within contracting officer's discretion in deciding whether to exercise option to determine that potential savings offered in unsolicited proposal are either insignificant or not ascertainable.

Cerberonics, Inc. ^a [protests a decision] by the Naval Supply Center, Norfolk, Virginia, [to exercise options in two cost-type contracts] held by DALFI, Inc. for engineering and logistical support services for the Naval Electronics Systems Engineering Center and for the Naval Sea Support Center, Atlantic. [The protester guarantees that if a new competition is held, it will offer the same services at a lower price than DALFI.]

Contract No. N00189-80-D-0080 (hereafter -0080) was an indefinite quantity time-and-materials contract for one year ending November 18, 1980, with a one-year option; contract No. N00189-80-C-0030 (hereafter -0030) was a cost-plus-fixed-fee type contract for one year ending September 30, 1980, with two one-year options. [Before award, the Navy evaluated both the base and option-year prices offered by DALFI and Cerberonics, the only competitors.]

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[The Navy notified DALFI of its intent to exercise the options) on June 9, 1980 (contract -0030) and July 3, 1980 (contract -0080). On July 24, 1980, [Cerberonics offered to the Navy a pair of alternate proposals in which it guaranteed that if given the opportunity, it would offer at least \$35,000 below DALFI's option price) of \$1,015,417 in contract -0003 and at least \$25,000 below DALFI's option price of \$746,005 in contract -0008. [The Navy, however, exercised the options by modification of DALFI's contracts) on August 7 and 8, 1980.

[Cerberonics now contends that this action violated applicable regulations and was not in the best interest of the Government, in that the Navy ignored potential savings) of more than \$60,000.

[The circumstances under which an agency may exercise an option, rather than conduct a new competition,) are set forth in Defense Acquisition Regulation (DAR) § 1-1505 (1976 ed.), [which requires, among other things, a determination that exercise of the option is the most advantageous method of fulfilling the Government's needs, price and other factors considered. Our Office will not object to such a determination unless applicable regulations were not followed or the determination itself is unreasonable.) Fraser-Volpe Corporation, B-193192, January 29, 1979, 79-1 CPD 60; Storage Technology Corporation, B-194549, May 9, 1980, 80-1 CPD 333.

[In this case, the contracting officer reports that his decision to exercise DALFI's options had four bases:

- (1) a disruption of services would be inimical to the interests of the Government;
- (2) fairly recent competition and audit had established the reasonableness of the option year prices, and DALFI's performance had been satisfactory;
- (3) there was inadequate time for a new procurement; and
- (4) the lower costs proposed by Cerberonics were insignificant or impossible to ascertain in cost-type contracts.)

The Navy indicates that in making this determination, [the contracting officer also considered, but did not quantify, the manhours and other administrative costs required to prepare and evaluate a new procurement.] These costs would have included preparation of a new requisition, issuance of a solicitation, evaluation of proposals, audits, pre-award surveys, and negotiation. The Navy indicates that the contracting officer applied his business judgment, taking note of the general magnitude of such costs.

[In reviewing the contracting officer's determination to exercise the options, we find first that continuity of services was clearly a legitimate basis for decision,] since DAR § 1-1505(e) explicitly directs that the Government's need for continuity and the potential costs of disrupting operations should be taken into account when determining whether the exercise of the option is the most advantageous method of fulfilling the Government's need. [We also have recognized the legitimacy of considering an incumbent contractor's satisfactory performance.] Oscar Holmes & Sons, Inc., et al., B-183897, November 21, 1975, 75-2 CPD 339.

[As for time for resolicitation, although Cerberonics argues this was adequate, we do not believe it has shown the contracting officer's contrary conclusion was erroneous,] in view of the Navy's estimate that six months would be required for a new procurement.

With regard to potential savings, the Navy argues that the contracting officer performed an adequate informal investigation, as required by DAR § 1-1505(d)(2), by looking at the competitively determined prices/costs for the option year in question under both contracts and considering the percentage reductions which Cerberonics offered to bid as minimum reductions from the contract price/costs. This, the Navy states, permitted the contracting officer to determine that the effect of such reductions could not be ascertained because they could easily be offset by additional labor hours under the time-and-materials contract and by costs under the cost-plus-fixed-fee contract. In other words, [the contracting officer] concluded that the reductions could not be assured in a cost-type contract, and [it was not clear that Cerberonics' proposal would necessarily result in a better price.]

[We agree. We do not believe an agency is required to lose the benefit of an option with the attendant disruption in services which would occur merely because a

competing firm "guarantees" a minimal saving in two cost-type contracts. Such a guarantee may well be illusory where cost reimbursement contracts are concerned, since the Government is obligated to reimburse the contractor for all allowable costs actually incurred in a cost reimbursement type contract. DAR § 3-405.1. Similarly, the Government would be obligated to reimburse the contractor for all direct labor hours expended in the performance of a time and materials contract. DAR § 3-406.1. As the DAR § 3-406.1(c) points out, time and materials type contracts do not encourage effective cost control and they require constant Government surveillance. DAR § 3-406. Thus a "guaranteed" \$35,000 saving on a time and materials contract estimated to cost in excess of \$1 million may be virtually meaningless.

Finally, in contending that the administrative costs of a new procurement should not have been weighed by the contracting officer, Cerberonics cites Olivetti Corporation of America, B-187369, February 28, 1977, 77-1 CPD 146, in which we stated:

"* * * [t]he administrative costs of preparing and issuing a solicitation are outweighed by the potential costs of losing bidders' confidence in the competitive system."

We think that Olivetti is clearly distinguishable, since the issue there was whether a contracting officer who perceives little or no willingness in the market to supply competitive bids or offers could make a sole-source award of a contract. Here, in contrast, the issue is whether a contractor who has already had an opportunity to compete for a contract should necessarily be entitled to a second chance a year later merely by proposing to save the Government a minimal sum.

We further note the decision whether to exercise an option or to conduct a new procurement may depend upon the circumstances under which the option arose. In KET, Incorporated, 58 Comp. Gen. 38 (1978), 78-2 CPD 305, which Cerberonics also cites, we observed that:

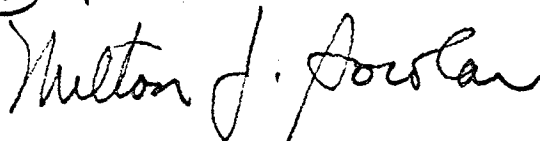
"* * * In those instances where the option price was not evaluated in making the initial award, but was only added by a subsequent modification of the contract, the

procedures followed in exercising the option should comport, as much as possible, with the competitive norm of federal procurement * * *."

The option in this case did not arise by a subsequent modification of the contract; as previously noted, option prices were evaluated under the original solicitation. In such a case, our concern with the competitive norm has been largely satisfied.

We conclude that the contracting officer acted within his discretion and relied upon legitimate considerations in reaching his decision to exercise the options.

The protest is denied.



Acting Comptroller General
of the United States