

25707

**DECISION**



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

**FILE:** B-208670.2, B-208809.2 **DATE:** July 12, 1983

**MATTER OF:** Charta, Incorporated--Reconsideration

**DIGEST:**

Although awardee allegedly relied on understanding that "good performance" would result in exercise of contract options, awardee's request for reconsideration of recommended corrective action (nonexercise of option) is denied where there is no showing of an error of fact or law and where award, albeit legal, was made in the face of unresolved questions concerning adequacy of competition and reasonableness of price.

Charta, Incorporated (Charta), requests reconsideration of the corrective action recommended in our decision, Harris Systems of Texas, Inc.; Anti-Pest Co., Inc., B-208670, B-208809, April 13, 1983, 83-1 CPD 392, wherein we recommended that the Army not exercise the contract's option provisions. Charta, the awardee and incumbent contractor, contends: (1) that it relied to its detriment on an understanding that "good performance" would result in exercise of the options, (2) our concerns regarding adequacy of competition and reasonableness of price were unreasonable; and (3) that exercise of the options is in the best interests of the Government.

We deny the request for reconsideration.

The standard applied to requests for reconsideration is whether the requester has convincingly shown errors of fact or law in our earlier decision. See Corbetta Construction Company of Illinois, Inc., 55 Comp. Gen. 972, 975 (1976), 76-1 CPD 240. While we generally do not consider the contentions of incumbent contractors that an agency should exercise a contract option, C.G. Ashe Enterprises, 56 Comp. Gen. 397 (1977) 77-1 CPD 166, we are considering Charta's request for reconsideration since it is aimed at the propriety of our recommending nonexercise of the

026123

option rather than at the contracting agency's independent decision not to exercise the option.

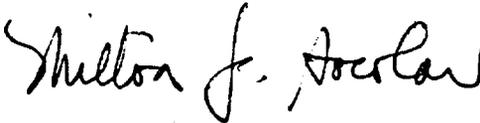
The facts underlying our recommendation were that four out of five bids submitted in response to the solicitation were rejected for the same reason, namely, failure to furnish a bid guarantee. Charta's bid was more than \$1 million greater than the lowest of the four rejected bids. Two bidders (one of them the lowest bidder) claimed that the Army had failed to include the page requiring submission of bid guarantees in their respective bid packages. In our view, the evidence proffered by the protesters was insufficient to establish either (1) that the pages were missing from the protester's bid packages, or (2) that the Army was responsible, if indeed the pages were missing. However, the evidence was sufficient to raise the question of whether all of the bid packages contained the allegedly missing page. On this basis, we denied the protests for failure to meet the required burden of proof. However, we found that it was questionable if adequate competition and reasonable prices had been obtained in view of the fact that four bids had been rejected. Therefore, we recommended the options not be exercised, but that a recompetition be held after the basic contract period.

Charta argues that when it accepted the award of the 1-year contract, it was with the understanding that "good performance" would result in the Army's exercise of the 2 option years. On the basis of this understanding, Charta amortized its costs over a 3-year period in order to submit a competitive bid. Charta claims that implementation of our recommendation will send it into bankruptcy because it would be unable to recoup its first-year capital investment. Charta is really objecting to being subjected to the effects of our recommendation through no fault of its own. We have specifically rejected the contention that a contractor, who acted in good faith and did not itself induce the error for which the corrective action is intended, cannot be subject to the corrective action. Centro Corporation; Systems Research Laboratories, Inc., B-186842, June 1, 1977, 77-1 CPD 375. Moreover, the test to be applied prior to the exercise of an option is contained in Defense Acquisition Regulation § 1-1505(c)(iii) (1976 ed.) which directs the contracting officer to only exercise an option if it can be

found that "the exercise of the option is the most advantageous method of fulfilling the Government's need, price, and \* \* \* [other factors] \* \* \* considered." Further, even if Charta was erroneously advised that good performance was the criteria for exercise of the option, the United States is not liable for the erroneous acts or advice of its officers, agents or employees, even if committed in the performance of their official duties. See Matter of A.D. Roe Company, Inc., 54 Comp. Gen. 271 (1974), 74-2 CPD 194; Flippo Construction Co., Inc., B-182730, May 20, 1975, 75-1 CPD 303.

Charta questions the reasonableness of our concerns regarding the adequacy of competition and the reasonableness of the price at which the contract was awarded. Charta points out that the contract is a requirements contract and that its actual cost to the Government is based upon what is ordered and not upon the estimated quantities against which the bids were evaluated. Charta contends that, on the basis of actual orders, the low bidder to date is not \$1 million lower, but merely \$62,000 lower than Charta. Even if the difference in price between Charta and the lowest bidder is \$62,000, a contracting officer is precluded from exercising an option once he knows that better prices than those quoted in the option are available. See Oscar Holmes & Sons, Inc.; Ambassador Disposal Corporation; Scottie's Refuse Removal, Inc., B-183897, November 21, 1975, 75-2 CPD 339. Moreover, we have noted that "there is no assurance the prices obtained by competitive advertisement will remain the lowest obtainable for a year thereafter." 41 Comp. Gen 682, 687 (1962). In this case, the rejection of four out of five bidders for the same reason and award at a bid price more than \$1 million greater than the lowest rejected bid raised the question of adequacy of competition. In our view, errors must be remedied if the integrity of the competitive process is to be maintained. Centro Corporation; Systems Research Laboratories, Inc., B-186842, June 1, 1977, 77-1 CPD 357, supra.

In view of the foregoing, we do not believe that Charta has demonstrated any errors of fact or law in our earlier decision and, accordingly, that decision is affirmed.

*for*   
Comptroller General  
of the United States