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**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Federal Services Group
File: B-224605
Date: December 23, 1986

DIGEST

1. Protest that agency improperly solicited both computer equipment and maintenance for that equipment in the same solicitation is untimely since the procurement and its contents were synopsized in the Commerce Business Daily and the protest was filed after the closing date for receipt of proposals.
2. Protest that option for maintenance services for numerous computer equipment locations was improperly exercised is denied where contracting agency conducted informal market surveys for available maintenance services and found that the incumbent contractor's prices were low and further determined that the administrative time and cost to conduct a new procurement would be onerous.

DECISION

Federal Services Group (FSG) protests the Marine Corps decision to exercise an option under contract No. N66032-84-D-0003 held by Telex Computer Productions, Inc.

The Telex contract calls for a 3-year ordering period for computer equipment for approximately 87 locations and eight 1-year option periods for maintenance of that equipment. The solicitation was issued on an unrestricted basis in May 1983 and contemplated an award under which the successful contractor through the exercise of maintenance options could service the equipment through its useful life. Award was made to Telex, the low technically acceptable offeror, in March 1984. FSG protests the Marine Corps decision to exercise the Telex option for maintenance for fiscal year 1987.

FSG contends that the Marine Corps improperly contracted for both computer equipment and maintenance for that equipment in the same procurement. The firm argues that "each and every

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item (including equipment and maintenance) should be competed individually." In this regard, FSG also believes that maintenance for the equipment should be competitively solicited by individual user activities so that small businesses such as FSG, which cannot provide maintenance for more than 80 equipment locations, at least can provide maintenance services for local sites. The firm thus maintains that the exercise of the Telex option for maintenance services was improper. Further, FSG contends that the Marine Corps, as required by applicable procurement regulations, has failed to show that the exercise of the maintenance option under the Telex contract is the most advantageous method of fulfilling the agency's needs.

We dismiss a portion of the protest as untimely; we deny the remainder.

FSG's complaint that the Marine Corps improperly contracted for both equipment and maintenance for numerous sites is untimely. Notice of this procurement was published in the Commerce Business Daily (CBD) on May 4, 1983. The CBD announcement provided that "a fixed price indefinite delivery, indefinite quantity type contract (for a large quantity of printers, terminals and controllers for approximately 87 sites) is contemplated with a 3 year ordering period and an additional 8 year period for maintenance with a total contract life of 11 years." Thus, the CBD announcement advised that the agency intended to procure for approximately 87 locations both computer equipment and maintenance for that equipment. The CBD announcement also established an anticipated solicitation release date of May 6, 1983, and a closing date for receipt of initial proposals of 30 days from that date. We have held that publication of a procurement in the CBD is constructive notice of a solicitation and its contents. Aurora Spectrum International, B-214162, Feb. 13, 1984, 84-1 C.P.D. ¶ 185; Detroit Broach and Machine, B-213643, Jan. 5, 1984, 84-1 C.P.D. ¶ 55. Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1986), require that a protest based on alleged solicitation improprieties which are apparent before the closing date for receipt of proposals must be filed before that date. Therefore, FSG's protest against the contents of this procurement filed with this Office on September 3, 1986, 3 years after the closing date, is untimely and will not be considered on the merits. See Aurora Spectrum International, B-214162, supra.

The Corps, in response to FSG's contention that it has not shown that the exercise of the Telex option is the most advantageous method of fulfilling its maintenance needs,

explains that because more than 80 equipment sites essentially require the same maintenance coverage, for administrative convenience the decision was made to centralize the procurement of maintenance through Marine Corps Headquarters. The Marine Corps further explains that Headquarters decided to exercise the Telex maintenance option after "each field activity conducted local market surveys for available maintenance services" and found that the Telex prices were below locally available rates for maintenance. Further, although the services under this contract were not purchased under a General Services Administration (GSA) schedule contract, the Marine Corps points out that the Telex prices are below GSA schedule rates for comparable services and that the Telex prices are lower than the prices submitted by FSG in an unsolicited proposal for maintenance services for one site.

FSG responds that the Marine Corps has provided no evidence that it actually surveyed local market areas for maintenance service rates. Additionally, FSG argues that the agency improperly compared FSG's prices with Telex's prices since FSG did not know the specific equipment requiring maintenance. In this regard, FSG states that the Marine Corps refused to provide it with a Telex equipment list.

The circumstances under which an option may be exercised for an automatic data processing equipment (ADPE) procurement, as here, are set forth in the Federal Information Resources Management Regulation (FIRMR), Contracting for ADPE Resources, 41 C.F.R. ch. 201-32 (1985). The FIRMR, in pertinent part provides:

"The exercise of an option by the government shall be made only if it is determined that . . . the option is the most advantageous method of fulfilling the Government's need, price and other factors considered." 41 C.F.R. § 201-32.205-3(f)(1).

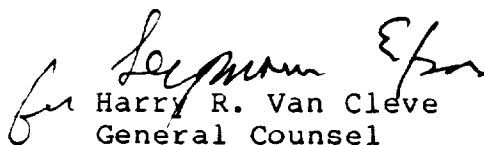
The record supports the Marine Corps' position that the exercise of the option was most advantageous to the government, price and other factors considered. Although FSG asserts that the Marine Corps failed to conduct a proper price survey, the agency advises that prior to exercising the option, its local activities conducted telephonic surveys of the cost of maintenance services and found that the Telex option prices remained low. FSG has provided no evidence to rebut the Marine Corps position that the Telex rates are the lowest available. In fact, the record indicates that FSG submitted an unsolicited offer to provide these services for one site at higher maintenance rates than Telex's rates.

While FSG claims its offer may not be a valid basis of comparison because the Marine Corps would not provide it with a precise list of equipment to be serviced, the record indicates that FSG did submit rates for the essential equipment and that the Marine Corps compared FSG's and Telex's rates for the same equipment. The record further indicates that the administrative cost of conducting competitive procurements for maintenance services for each site would be onerous.

Based on this record, we cannot disagree with the Marine Corps' determination that the exercise of the option is the most advantageous method of fulfilling the agency's needs. See, e.g., Gulton Industries, Inc., Engineered Magnetics Division, B-203265, July 20, 1982, 82-2 C.P.D. ¶ 59; Cerberonics, Inc., B-199924, B-199925, May 6, 1981, 81-1 C.P.D. ¶ 351. We also note that while FSG states it could provide maintenance services for some equipment locations, the firm admits that it cannot fulfill the agency's need to service the numerous sites covered under the Telex contract.

FSG also alleges that the Marine Corps improperly failed to synopsize its intent to exercise the Telex option. We are unaware of any requirement to synopsize under the circumstances here. The agency properly published a synopsis prior to the issuance of the original solicitation which effectively advised prospective offerors of the maintenance option. While the protester points out that certain Army bases have in the past synopsized their intent to place orders against GSA schedule contracts for maintenance of Telex equipment, as noted above a schedule contract is not involved here.

The protest is dismissed in part and denied in part.


Harry R. Van Cleve
General Counsel