



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Action Manufacturing Company  
File: B-221607.3  
Date: May 15, 1987

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### DIGEST

1. When agency's exercise of an option is based on an informal price analysis that considered best prices offered under original solicitation, market stability, and other factors, protest that analysis is insufficient is without legal merit.
2. An agency is not required to issue a new solicitation to test the market before exercising an option simply because a protester states that it is likely that it would offer a lower price when prices have already been tested by a competition in which the protester participated.
3. Under the Federal Acquisition Regulation, 48 C.F.R. § 5.202(a)(11), requirements for publication in the Commerce Business Daily do not apply to the proposed exercise of an option under an existing contract that was itself synopsisized in the detail required by statute and regulation.
4. Competition in Contracting Act provision requiring suspension of performance if an agency receives notice of a protest within 10 calendar days of award does not apply to the exercise of an option; the law makes no mention of such a requirement, and there is nothing in the legislative history of the Act indicating that Congress intended the provision to apply.

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### DECISION

Action Manufacturing Company protests the U.S. Army Armament, Munitions & Chemical Command's decision to exercise an option to procure an additional quantity of fuzes from Bulova Systems & Instruments Corporation under contract No. DAAA09-86-C-0364. Action challenges the sufficiency of the informal

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price analysis upon which the agency based its determination to exercise the option and argues that the agency should have issued a new solicitation instead.

We deny the protest.

The Army issued the underlying solicitation, request for proposals (RFP) No. DAAA09-85-R-1716, on November 20, 1985 for 422,258 M567 fuzes and 505,312 M935 fuzes, restricting the procurement to current mobilization base producers. An option clause permitted the government to order up to 50 percent of the base quantity for each fuze, and prices for the option quantities were evaluated. On February 27, 1986, the Army awarded a single contract for the base quantity of each fuze to Bulova, whose unit price was \$9.14 for the M567 and \$7.68 for the M935.

In December 1986, after receiving a requirement for an additional 144,257 M567 fuzes and 215,000 M935 fuzes, the contracting officer determined that it was in the best interest of the government to acquire them from Bulova at its option price of \$8.20 and \$7.06 respectively. The Army exercised the option on January 2, 1987.

First, Action challenges the sufficiency of the informal analysis of prices upon which the agency based its determination to exercise the option. An informal analysis of prices or an examination of the market which indicates "that the option price is better than prices available in the market or that the option is the more advantageous offer" is one of three methods specifically set forth in the Federal Acquisition Regulation (FAR) as a basis for determining whether to exercise an option. 48 C.F.R. § 17.207(d)(2) (1986).

The record indicates that in this case, the contracting officer compared Bulova's prices for the option quantities with the best prices of the other offerors under the original solicitation. Action's best prices were those for the option quantities, \$9.37 for the M567 and \$7.90 for the M935; the only other offeror's best prices were those for the base quantities, \$10.96 for the M567 and \$10.42 for the M935. The contracting officer therefore determined, on the basis of this most recent competitive purchase, that Bulova's option prices were likely to be the lowest available.

The protester maintains that the FAR requirement for an informal analysis of prices contemplates more than an evaluation of prices offered in response to an original solicitation. According to the protester, agencies must take "significant steps" to determine the most advantageous

price. The protester maintains that at the least, the contracting officer should have telephoned the leading producers of the fuzes to determine whether there had been any changes in the market during the 10 months since the award to Bulova. According to the protester "an overall review of government procurements of the subject fuzes reveals that . . . such procurements had fostered keener competition among producers and a strong trend of falling prices." The protester concludes that because of the time lapse between award and exercise of the option, the agency should not have assumed that Bulova's price was still the lowest available.

The agency responds that the contracting officer not only considered the prices offered in the most recent competition, but also other factors, including the stability of the market, the quantity of fuzes being procured under the option, the administrative cost of resoliciting, and the ability of offerors other than Bulova to make timely deliveries. According to the agency, labor and materiel costs did not drop significantly during the 10-month period, and the contracting officer had no other indication that circumstances had changed to allow for more favorable prices. Further, the agency states, the option quantity was approximately one-fourth of the base quantity, so that unit prices would be expected to increase, rather than decrease. The agency also reports that Action had been delinquent in some deliveries under its current contract for the fuzes, while Bulova had been making its deliveries on time.

Our Office generally will not question the exercise of an option unless the protester shows that applicable regulations were not followed or that the agency's determination to exercise the option, rather than conduct a new procurement, was unreasonable. Automation Management Corp., B-224924, Jan. 15, 1987, 87-1 CPD ¶ 61. The intent of the regulations is not to afford a firm that offered high prices under an original solicitation an opportunity to remedy this business judgment by undercutting the option price of the successful offeror. See ISC Defense Systems, Inc., B-224564, Feb. 17, 1987, 87-1 CPD ¶ 172. While it may be appropriate in certain circumstances for a contracting officer to contact all available sources to determine whether an option price is most advantageous, such a procedure is not mandated by regulation. Id. The FAR grants contracting officers wide discretion in determining what constitutes a reasonable check on prices available in the market. See A. J. Fowler Corp., B-205062, June 15, 1982, 82-1 CPD ¶ 582, holding that a contracting officer's survey of other agencies and local sources that revealed a pattern of increasing prices was reasonable and satisfied a regulatory requirement.

for an informal investigation of prices. See also IMI of Philadelphia, Inc., B-195144, Oct. 1, 1979, 79-2 CPD ¶ 233.

In this case, we find no basis to question the propriety of the agency's informal price analysis or the exercise of the option. The protester has not shown, nor does the record indicate, that the contracting officer's comparison of the best prices offered under the original solicitation with Bulova's option prices, as well as her consideration of general market conditions and other factors, was not reasonable. The protester alludes to procurements of fuzes by other agencies, but has presented no specific evidence that the prices in such procurements were less than the option prices here. Also, the protester provides no evidence of the market changes it alleges occurred in the 10 months between award and option exercise, and does not rebut the agency's contention that neither labor nor material costs significantly dropped during this period.

As for the protester's argument that the agency should have resolicited instead of informally analyzing prices, the FAR specifically states that if it is anticipated that the best price available is the option price or that this is the more advantageous offer, the contracting officer shall not use a new solicitation to test the market. 48 C.F.R. § 17.207(d)(1). Action maintains that without resoliciting, the Army could not have actually determined that the exercise of the option was more advantageous. The protester maintains that since its prices for the base quantity, \$9.67 for the M567 fuzes and \$8.20 for the M935, were only slightly more than Bulova's, there was a "great likelihood" that on resolicitation Action would have offered prices that were less than Bulova's option prices.

We have previously considered whether an agency, in exercising an option, is required to test the market by resoliciting. In A. J. Fowler Corp., supra, we held that an agency is not required to do so simply because a competitor guarantees a lower price after the exercise of an option if option prices have already been tested by a competition in which that firm participated. Such a firm is not necessarily entitled to a second chance merely by guaranteeing to offer an unspecified lower price. See Jaxon, Inc., B-213998, July 10, 1984, 84-2 CPD ¶ 33. Here, the protester's arguments favoring resolicitation are weaker than those in Fowler, since Action did not guarantee a lower price, but merely stated that it was likely that its prices would be less than Bulova's option prices.

Action also contends that since the government failed to synopsise its intent to exercise the option in the Commerce Business Daily (CBD), it had no way of knowing that the contracting officer was in the process of deciding whether to exercise the option so that it could have provided her with information as to current market conditions. The FAR provides an exception from the requirements for publication in the CBD when the action is under an existing contract that was previously synopsized in the detail required by statute and regulations. 48 C.F.R. § 5.202(a)(11). Here, notices of the original solicitation and the award under it were published in the CBD, so the FAR exception applies. See Federal Services Group, B-224605, Dec. 23, 1986, 86-2 CPD ¶ 710.

In addition, Action challenges the agency's failure to issue a stop work order after receipt of the protest. The Army maintains that because it received notice of the protest more than 10 calendar days after exercise of the option, it was not required to suspend performance under the Competition in Contracting Act of 1984 (CICA). However, Action points out that notice of exercise of the option did not appear in the CBD until 11 days after the option exercise.

The CICA provision and implementing regulations requiring suspension of performance apply when a federal agency receives notice of a protest "after the contract has been awarded but within 10 [calendar] days of the date of contract award." 31 U.S.C. § 3553(d)(1) (Supp. III 1985); see also 48 C.F.R. § 33.104(c). Although we, as indicated above, review protests of the exercise of options, see, e.g., Aerojet TechSystems Co., B-224343, Sept. 5, 1986, 65 Comp. Gen. \_\_\_\_\_, 86-2 CPD ¶ 271; Federal Services Group, supra, we do not believe that the stay provision reasonably can be viewed as applying to such protests.

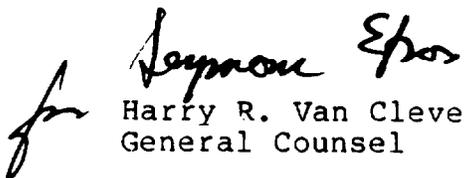
An option providing for an increase in quantity is purely for the interest and benefit of the government. 36 Comp. Gen. 62 (1956). The FAR defines an option as a "unilateral right in a contract by which for a specified time, the government may elect to purchase additional supplies or services called for by the contract, or may elect to extend the term of the contract." 48 C.F.R. § 17.201. Generally, options are intended for the procurement of items not readily available on the open market, where requirements for quantities beyond the minimum are foreseeable and where later orders may represent less than minimum economic production quantities, considering start-up costs and production lead times. Id., § 17.202; 47 Comp. Gen. 155 (1967). Thus, while for certain

purposes the exercise of an option is in effect considered a contract award, see, e.g., 29 C.F.R. § 4.4(a)(1) (1986) (involving the Service Contract Act), the exercise of an option is essentially no more than the government's taking advantage of a right it possesses under an existing contract, rather than the award of a new one.

Moreover, there is nothing in the statutory language or the legislative history that explicitly deals with the exercise of options. Staying performance when an option is exercised, after assembly line production has commenced for the base quantity, is potentially far more costly and disruptive than staying performance shortly after an initial award, when start-up activities and production lead time may well be required before the production line can begin; we are reluctant to ascribe to the Congress an intent to impose such a requirement in the absence of any indication in the law or its history of such an intent. See Waste Management of North America, B-225551 et al., Apr. 24, 1987, 66 Comp. Gen. \_\_\_\_\_, 87-1 CPD ¶ \_\_\_\_\_. Therefore, we find that the Army was not required to suspend performance here.

Finally, we find the protester's contention that the action was not synopsisized until 11 days after it occurred irrelevant. Although agencies are required to promptly notify losing offerors of the award of a contract, 10 U.S.C. § 2305(b)(4)(D) (Supp. III 1985); 48 C.F.R. §§ 14.408-1(a)(1), 15.1001(a), there is no requirement that an agency notify any particular party that it has exercised an option. When the exercise of an option is synopsisized, the purpose is primarily to increase competition for subcontracting purposes, see 48 C.F.R. § 5.301, and there is also no requirement that the synopsis be published "promptly" or within any specific period of time. Thus, unlike the initial contract award situation, where losing offerors may learn of the award in time to protest and obtain the benefit of the stay provision, the exercise of an option carries with it no notice requirement such that compliance with it generally would provide those who wish to protest an opportunity to do so in time for the stay provision to be invoked.

We deny the protest.

  
Harry R. Van Cleve  
General Counsel