



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Person-System Integration, Ltd.

File: B-246142; B-246142.2

Date: February 19, 1992

Bernard R. Corbett, Esq., for the protester.
William T. Mohn, Esq., Department of the Navy, for the agency.
Barbara C. Coles, Esq., and Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that contracting agency improperly exercised a contract option is denied where the protester has not shown that the agency failed to follow applicable regulations or that the determination to exercise the option was unreasonable.
2. Protest alleging that agency in bad faith improperly failed to exercise an option is denied where the protester has provided no evidence to support its assertion, and where agency's decision to exercise option under another contract was reasonable because it was lower in cost than protester's option.

DECISION

Person-System Integration, Ltd. (PSI) protests the exercise of the third option year under contract No. N00600-89-D-0262, which was awarded to Information Spectrum, Inc. (ISI) by the Department of the Navy. PSI contends that the agency's determination to exercise the option was made without complying with applicable regulations and was an attempt to circumvent competitive procedures. PSI also protests the issuance of Delivery Order 0074 under that contract,¹ as well as the failure of the Navy to exercise the option under its contract.

¹We dismiss this basis of protest since the Delivery Order properly was used under and within the scope of contract No. N00600-89-D-0262 and, therefore, involves a matter of contract administration which our Office does not consider.
4 C.F.R. § 21.3(m) (1991).

We deny the protests in part and dismiss them in part.

On April 28, 1989, the Navy awarded ISI an indefinite quantity time and material contract for instruction services. The solicitation under which the contract was awarded called for the submission of offers for an initial 1-year base period plus 4 option years. ISI and Training Systems Management (TSM) competed for the contract; PSI was one of TSM's proposed subcontractors. The option years were evaluated as part of the original evaluation, and ISI received the award as the low-priced, technically superior offeror.

On August 14, 1991, the contracting officer made a determination pursuant to Federal Acquisition Regulation (FAR) § 17.207(c) that the exercise of the third option year under ISI's contract was the most advantageous method, price and other factors considered, of continuing the services. In justifying his determination, the contracting officer found that because of the limited response obtained during the original competition it was unlikely that a better price or a more advantageous offer than ISI's option would be available. Accordingly, he exercised the third option year under ISI's contract. This protest followed.

PSI alleges that the contracting officer failed to perform a reasonable comparison as required by FAR § 17.207(d) between exercise of the option and recompetition. Specifically, PSI claims that the Navy's determination was based on information that was outdated and incomplete. To support this claim, the protester contends that the Navy made "practically no effort . . . to obtain current information on the market for services of the type covered by this contract."

As a general rule, option provisions in a contract are exercisable at the discretion of the government. See FAR § 17.201. 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 FAR § 17.207(d) as a basis for determining whether to exercise an option. Our Office will not question an agency's exercise of an option under an existing contract unless the protester shows that the agency failed to follow applicable regulations or that the determination to exercise the option, rather than conduct a new procurement, was unreasonable. Tycho Tech., Inc., B-222413.2, May 25, 1990, 90-1 CPD ¶ 500. 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 Def. Sys., Inc., B-224564, Feb. 17, 1987, 87-1 CPD ¶ 172.

Here, we find no basis to question the agency's determination to exercise the option. The record shows that the contracting officer considered: (1) the prices offered in the original competition by the two technically acceptable offerors; (2) the fact that of the 11 firms originally solicited, only 2 responded and ISI's proposal was low-priced and technically superior; (3) the desirability of maintaining program continuity; and (4) the fact that there have been no changes in the marketplace for the labor categories that would drive salaries and benefits down. In addition, the Navy compared ISI's labor rates for the option period with the rates in another recent (1991) competitively awarded contract for similar services and found that ISI's rates were lower than those of the other contractor.

The protester nevertheless argues that the contracting officer's decision to exercise the option was improper--based on its belief that the Navy's price analysis was incomplete and faulty--because the Navy failed to review two other contracts under which allegedly similar services are being performed at lower rates than those contained in ISI's contract.

We find this argument without merit. First, we do not find that the agency's informal price analysis was inadequate or was based on outdated information. As discussed above, the contracting officer compared ISI's rates with those in another recently awarded contract. While the agency could have contacted all of its requiring offices to determine the rates under all similar training contracts, we do not think that FAR § 17.207 requires such action. Second, the contracting officer's determination here was not dependent on price alone. Rather, the determination was based on price as well as other factors, such as the desirability of maintaining program continuity and the superiority of ISI's original proposal. Contrary to the protester's suggestion, the decision to consider factors other than price was consistent with the FAR which states that the agency should consider price "and other factors" in determining whether to exercise an option, including the government's need for continuity and the potential costs of disrupting operations. See FAR § 17.207(e). Based on our review of the record, we think that the agency properly considered other factors in determining to exercise the option pursuant to FAR § 17.207.

The protester also argues that the Navy's decision to exercise ISI's option rather than exercising PSI's option under a similar contract was an attempt to circumvent competitive procurement procedures and constituted a retaliation for an earlier bid protest filed by PSI. The earlier protest that PSI refers to challenged the proposed award of a contract to Tiger Joint Venture under RFP No. N61 339-90-R-0023, issued by the Navy for aviation instructional systems development

services; PSI alleged that the proposed awardee had a conflict of interest and requested that the firm's offer be rejected. The Navy has rescinded its pre-award notice in that case, and is currently investigating the matters raised by PSI.

To the extent that the protester claims that the Navy's decision to exercise ISI's option rather than exercising PSI's option was made in bad faith, there is no evidence in the record to support this contention. To the contrary, even though the Navy did not consider PSI's option price at the time it conducted its market survey and we are not certain what circumstance led the agency not to do so, this by itself does not establish bad faith, since there is no evidence in the record to show that the Navy deliberately excluded the protester's price from consideration. Further, to support its argument that its decision was made properly rather than in bad faith, the Navy has submitted a comparison of PSI's and ISI's prices which clearly shows that ISI's labor costs are lower than PSI's. Given the disparity in their labor rates, we have no basis to object to the agency's decision to exercise ISI's option.

The protests are denied in part and dismissed in part.

for Robert P. Hirschman
James F. Hirschman
General Counsel