



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: AAA Engineering & Drafting, Inc.

File: B-236034.2

Date: March 26, 1992

J. William Bennett, Esq., for the protester.
Stan Hinton, Esq., Doke & Riley, for Hebco, Inc., an
interested party.
Gregory H. Petkoff, Esq., and Milton D. Watkins, Esq.,
Department of the Air Force, for the agency.
Catherine M. Evans, Esq., and John M. Melody, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Protest alleging that agency improperly exercised option for a third year of performance of contract involving warehouse space is sustained where record shows that agency's requirements for warehouse space and market price of space have changed substantially since contract was first awarded, and agency did not conduct market survey or test the market with a new solicitation to determine whether exercise of option was the most advantageous method of meeting its needs.

DECISION

AAA Engineering & Drafting, Inc. protests the Department of the Air Force's decision to exercise an option under contract No. F34601-90-D-0311, awarded to Hebco, Inc. for the preparation, processing and storage of technical orders.¹ AAA claims that the option exercise was improper because the agency failed to conduct a market survey or issue a new solicitation to determine whether exercise of the option was in the government's best interest. AAA asserts that such a survey or solicitation would have established that option exercise was not the most advantageous method of fulfilling the agency's needs.

¹Technical orders are the specifications used by the agency to operate, maintain and store Air Force equipment. The contractor is responsible for incorporating data changes and revisions into existing technical orders, preparing copy suitable for printing, and storing and maintaining the technical order files.

We sustain the protest.

AAA first protested this procurement in 1989, when request for proposals (RFP) No. F34601-90-R-09800 was issued. AAA, the incumbent contractor at the time, alleged that the RFP's estimated quantities of technical orders were inaccurate and that certain requirements, including one for "digitizing" of technical order pages, were not sufficiently defined. We denied the protest in AAA Eng'g and Drafting, Inc., B-236034, Oct. 31, 1989, 89-2 CPD ¶ 404, finding that the RFP reflected the best information available to the agency regarding estimated quantities and performance specifications. Subsequently, Hebco was awarded the contract based on its technical merit and low price.

In May 1990, Hebco submitted a claim for price adjustment under contract line item number (CLIN) 0016, storage of country standard technical orders (CSTO), based on the arrival of an unexpectedly large shipment of CSTOs. The unexpected size of the shipment, which required Hebco to lease more than 10 times the amount of warehouse space originally anticipated, was due to the large number of pages in the CSTOs--over 5,000 pages in some books instead of the 125 pages estimated. The contracting officer negotiated a modification (P00002) to Hebco's contract, increasing the monthly price to be paid Hebco under CLIN 0016. The new price was based on Hebco's original cost of space per square foot multiplied by the increased number of square feet required. On November 26, the agency exercised an option for a second year of performance, including the new negotiated price for CSTO storage.

In October 1991, the contracting officer executed a determination to extend Hebco's contract for a third year. In determining that exercise of the option was the most advantageous method of fulfilling its needs, the contracting officer compared Hebco's price, inclusive of modification P00002, to AAA's price under the original solicitation, and found that Hebco's modified price for the second option year was 8.5 percent lower than AAA's proposed price for the same period. On this basis, the contracting officer concluded that a new solicitation would not result in a lower price. In addition, the contracting officer determined that it would cost the Air Force \$30,000 in administrative expenses to change contractors, and cited the need for continuity of service.

When no new solicitation had been issued by November 1991, 1 month before Hebco's contract was to expire, it became apparent to AAA that the Air Force planned to exercise its option for a third year of performance. AAA filed this protest on November 14, alleging that the option exercise was improper because the agency can obtain the required

services at a more advantageous price under a new solicitation.

TIMELINESS

As a preliminary matter, the Air Force argues that the protest is untimely because the quantity changes upon which it is based were incorporated into the first option exercise in 1990, and AAA never protested that option exercise. The Air Force appears to be arguing that AAA waived any objection it may have had to the terms of the second option exercise because it did not object to the first option exercise, which contained the same terms, within 10 days after learning of it. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1991).

We find the protest timely because it is based on the Air Force's most recent determination under Federal Acquisition Regulation (FAR) § 17.207(c)(3) that the option exercise is in the best interest of the government. The FAR requires that this determination be made each time an option is exercised, taking into account the particular circumstances existing at the time. Since the FAR requires a de novo review of the circumstances of the acquisition each time an agency considers exercising an option, an agency's conclusion that option exercise is in the government's best interest necessarily gives rise to a new basis of protest notwithstanding any earlier, unchallenged option exercise under the same contract. We conclude that AAA's objection to the second option exercise is timely since AAA filed its protest on this ground within 10 days after it became aware that the agency planned to exercise the option. 4 C.F.R. § 21.2(a)(2).

OPTION EXERCISE

AAA alleges that the contracting officer's decision to exercise the option was improper because it failed to take into account changes in the local marketplace and the contract itself which would have resulted in lower prices under a new solicitation. Specifically, AAA asserts that the current market rate for climate-controlled warehouse space in the Oklahoma City area is \$3 per square foot, while Hebcos is being paid \$8 per square foot, its original 1989 contract rate. AAA also notes that, due to the dramatic increase in the amount of space required, the percentage of the monthly contract cost attributable to CSTO work at the time the option was exercised was substantially higher--30 percent according to AAA and more than 50 percent according to figures submitted by the agency--than the amount anticipated

at the time of award, approximately 3.6 percent.² AAA believes the increase in the warehouse space portion of the requirement, together with the change in the local market price of warehouse space, created a situation where a more advantageous price could have been obtained through a new solicitation. AAA concludes that FAR § 17.207(d)(1)(2) required the contracting officer to conduct a market survey or issue a new solicitation to determine whether resolicitation would result in a more advantageous price.

Because the exercise of an option permits an agency to satisfy current needs for goods or services without going through formal competitive procedures, the FAR provides that before an option can be exercised, the agency must make a determination that exercise of the option is the most advantageous method of fulfilling its needs, price and other factors considered. FAR § 17.207(c)(3). A determination that the option price is the most advantageous must be based on one of the following findings: (1) a new solicitation fails to produce a better price; (2) an informal market survey or price analysis indicates that the option price is lower; or (3) the time between contract award and option exercise is short enough and the market stable enough that the option price is the most advantageous. FAR § 17.207(d). "Other factors" to be considered include the need for continuity of operations and the cost of disruption. FAR § 17.207(e). As the contracting officer is accorded broad discretion in making this determination, we generally will not question it unless it is shown to be unreasonable or contrary to applicable regulations. Kollsman Instrument Co., 68 Comp. Gen. 303 (1989), 89-1 CPD ¶ 243.

Based on the record, we find that the Air Force's determination to exercise the option did not meet the FAR requirements, and that it thus did not have an adequate basis for its conclusion that a new solicitation would not result in a lower price. The agency states that its conclusion was based on a price analysis pursuant to FAR § 17.207(d)(2). However, the analysis consisted solely of a comparison of offerors' August 1989 proposal prices, based on the solicitation's estimated quantities. It did not take into account the substantial increase in the CSTO requirement

²Hebco's monthly charge for CSTO work (including storage), as modified by P00002, is \$17,394. According to figures submitted by the agency, the average monthly payment to Hebco during the first option year for all services under the contract was \$23,065.71. It thus appears that, on the average, CSTO work accounts for well over 50 percent of the total contract work load. In contrast, Hebco's proposed price for CSTO work under the original RFP estimates amounted to about 3.6 percent of the total monthly price.

which, as noted above, now accounts for 30 percent or more of the total contract price as opposed to the 3.6 percent originally estimated, and the corresponding effect such a shift in workload might have on offered prices. Specifically, the analysis did not take into account the clear possibility that Hebco and other offerors would offer lower prices for an 8,820 square foot requirement than Hebco's \$8 per square foot price for only 736 square feet.' The analysis also failed to take into account possible significant changes in the market for warehouse space since the time of award. In this regard, AAA states that climate-controlled warehouse space is available in the Oklahoma City area for \$3 per square foot, less than half the rate Hebco is charging the Air Force. The agency does not dispute this assertion.

The Air Force argues that under FAR § 17.207(d) and prior decisions of our Office, it was not required to test the market for lower prices, i.e., that it was in fact proper to compare the proposed prices from the 1989 competition. In support of this argument, the agency cites our decision in Syncor Indus. Corp., supra, in which we held that an agency's determination to exercise an option properly was based on a comparison of prices received in the initial competition. The agency's reliance on Syncor is misplaced. In that case, and in other cases in which an agency has been found to have properly compared prior proposal prices in determining whether to exercise an option, the agency's determination that the option price was the most advantageous was based on the contracting officer's express findings regarding the length of time since the initial award (less than 1 year) and the relative stability of the market, findings that were not made--and apparently could not have

³The Air Force asserts that under a requirements-type contract, the estimated quantity of work rather than the actual quantity is the appropriate reference point for determining whether to exercise an option. While estimated quantities rather than performance history should be considered in determining, for example, whether a modification constitutes a cardinal change, see Caltech Serv. Corp., B-240726.6, Jan. 22, 1992, 92-1 CPD ¶ 94, the question here is whether the option price is the most advantageous. Since the agency's monthly cost under the CSTO storage CLIN is based on the amount of space Hebco is actually furnishing, we think consideration of this quantity is essential to a determination of whether a better price could be obtained through a new solicitation.

been made--here. See Syncor Indus. Corp., supra; ISC Defense Sys., Inc., B-224564, Feb. 17, 1987, 87-1 CPD ¶ 172; Action Mfg. Co., supra.⁴

The agency states that it would cost the government \$30,000 to change contractors and that it has a need for continuity in performance of the contract work. Without conducting a survey that would permit it to consider current market conditions, the agency cannot determine whether its claimed administrative costs actually offset any potential cost savings from a competition; the record indicates that the savings could exceed the cost of changing contractors.⁵ Also, the record does not indicate that continuity was of such central concern to the agency that it would have exercised the option at any cost; the price analysis the agency conducted contradicts any suggestion that this was the case.

Accordingly, we sustain the protest. As Hebco has performed nearly half of the one-year requirement, it would be impracticable to recommend that the Air Force now conduct a market survey to determine whether this option exercise was appropriate. By letter of today to the Secretary of the Air Force, we are recommending that the agency comply with FAR § 17.207(d) by conducting a market survey or issuing a new solicitation before exercising the next option under Hebco's

⁴AAA also argues that modification P00004 to Hebco's contract, which concerns government-furnished equipment and the RFP's digitizing requirement, has changed the scope of the requirement such that a new solicitation is necessary. As we are recommending resolicitation based on the increase in contract workload attributable to CSTO storage and the apparent reduction in the market price for storage space, we need not consider whether the modification P00004 changes provide a basis for a new solicitation.

⁵The agency states that it cost \$25,000 to change contractors previously, but documents neither this nor the currently claimed \$30,000 cost. Based on our calculations, at a price of \$3 per square foot for warehouse space, the Air Force could save \$44,100 annually over Hebco's current price.

contract. We also find that the protester is entitled to recover its costs of filing and pursuing the protest; AAA should submit its claim for such costs directly to the agency. 4 C.F.R. § 21.6(d) (1991).

The protest is sustained.

for James F. Hendon
Comptroller General
of the United States