



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

Decision

Matter of: AAA Engineering & Drafting, Inc.
File: 'A-236034.3
Date: April 6, 1993

J. William Bennett, Esq., Bennett, Yazbeck, & O'Halloran, for the protester.
Stan Hinton, Esq., Baker & Botts, L.L.P., 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

1. Protest alleging that contract option exercise was improper because agency's requirements have changed to include services being performed under a procurement contract awarded on a sole-source basis to the same contractor is an improper piecemeal allegation that General Accounting Office will not consider; protester should have known of this protest basis at the time it filed an earlier protest, and therefore was required to raise the issue at that time.
2. Protest alleging that agency's informal market survey was inadequate to support decision in favor of option exercise is denied where protester has not established that any changes have occurred in the market for the required services, and the survey results reasonably support agency determination to exercise option.

DECISION

AAA Engineering & Drafting, Inc. protests the Department of the Air Force's decision to exercise its option for a fourth year of performance under contract No. F34601-90-D-0311, awarded to HEBCO, Inc. for the preparation, processing and storage of technical orders (TO) and country standard technical orders (CSTO) at the Oklahoma City Air Logistics

Center, Tinker Air Force Base (AFB), Oklahoma,¹ AAA claims that the option exercise was improper in view of changes in the agency's requirements that have occurred since the contract was first awarded.

We dismiss the protest in part and deny it in part.

BACKGROUND

AAA had been performing TO services at Tinker AFB for about 12 years before 1989, when HEBCO was awarded the contract for the requirement. In November 1991, AAA protested the agency's determination to extend HEBCO's contract for a third year, alleging that changes in the government's requirements and the market for the required services warranted the issuance of a new solicitation. We sustained the protest, essentially concluding that the contracting officer's analysis to determine whether exercise of the option was the most advantageous method of obtaining the government's needs, required by Federal Acquisition Regulation (FAR) § 17.207, was inadequate to support her conclusion in favor of the option exercise. AAA Eng'g & Drafting, Inc., B-236034.2, Mar. 26, 1992, 92-1 CPD ¶ 307. Our conclusion was based on AAA's allegation, unrebutted by the Air Force, that market conditions had reduced the cost of warehouse storage space--a substantial amount of HEBCO's contract price--to less than half the amount the Air Force was paying HEBCO; we found that the Air Force improperly had failed to take this change in the market into account in determining whether to exercise HEBCO's option. Since HEBCO was already well into the third year of performance by the time we issued our decision, we recommended that the contracting officer either perform a proper FAR § 17.207 analysis or issue a new solicitation before exercising any more options under HEBCO's contract. Id.

In March 1992, shortly before we issued our decision sustaining AAA's protest, the Air Force made a sole-source award to HEBCO for development of a computerized inventory/locator data file and status and schedule report for TOs and CSTOs. This contract, No. F34601-92-C-0255, was a reprocurement of a requirement previously performed by AAA as part of its predecessor TO contract. Under its contract, AAA was required to deliver the completed software package to the government; the package was then to be furnished to

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.

the successor TO contractor as government furnished property. However, at some point after HEBCO began performance on the TO contract in 1989, the Air Force determined that AAA's software product did not perform as required. The Air Force concluded that a sole-source award to HEBCO was necessary so that HEBCO could complete the software it needed to do the work under the TO contract. The contracting officer publicized the proposed sole-source award in the Commerce Business Daily (CBD) in October 1991; the notice stated that the contract may include options. On March 18, 1992, the contracting officer awarded HEBCO a contract with two 1-year options, to coincide with its remaining options under the TO contract.

In October 1992, the contracting officer received a request from the requiring activity to exercise the option to extend HEBCO's TO contract for another year. In accordance with the recommendation in our March 26 decision, the contracting officer undertook an informal market survey, requesting pricing information from firms (other than AAA and HEBCO) that furnish TO services and warehouse space, and from another Air Force activity that contracts out for TO services; reviewed the contract history, comparing HEBCO's line item prices to AAA's prices under the previous contract; and compared HEBCO's labor charges to those charged by AAA under a similar contract that AAA currently is performing at Tinker AFB. The contracting officer concluded that HEBCO's option price was the most favorable price available, and also noted that continuity of services to the government is of paramount importance. Based on these considerations, the contracting officer determined that exercise of the option was the most advantageous method of fulfilling the government's needs. At the same time, the contracting officer exercised the option under HEBCO's software contract, finding that HEBCO is the only firm that can provide the required software services because it is also the TO contractor.

On November 23, AAA filed a protest with our Office challenging the agency's apparent decision to extend HEBCO's contract for another year instead of issuing a new solicitation for TO services. Although the contracting officer had not yet executed a determination to exercise the third option when AAA filed its protest, the fact that a new RFP had not been issued when HEBCO's contract was about to expire alerted AAA to the likelihood that the Air Force would exercise the option. On December 3, the contracting officer executed a determination to extend HEBCO's TO contract for a fourth year. At the same time, she exercised the first option under HEBCO's software contract.

CHANGED CONTRACT REQUIREMENTS

AAA essentially alleges that the 1992 sole-source award of the software contract to HEBCO in connection with its TO contract amounted to a change in the scope of the TO contract, thereby rendering any option exercise under the TO contract improper. We will not consider this allegation, as it constitutes an improper piecemeal protest filing.

As noted above, the Air Force publicized the proposed sole-source contract to HEBCO in the CBD in October of 1991. This publication put AAA on constructive notice of the award, see Federal Servs. Group, B-224605, Dec. 23, 1986, 86-2 CPD ¶ 710, and the contents of the synopsis also put AAA on notice of the alleged change in the scope of work under HEBCO's TO contract. This notice notwithstanding, AAA did not include this scope of work argument in its protest of the 1991 contract option exercise; that protest raised only the argument that increased work and lower real estate prices had changed the scope of HEBCO's contract such that recompetition was required.

The protest system established by the Competition in Contracting Act of 1984 (CICA) and implemented by our Regulations is designed to provide for expeditious resolution of protests with only minimal disruption to the procurement process. See 31 U.S.C. § 3554 (1988). That system cannot tolerate piecemeal protest filings that further disrupt the process. See Source AV, Inc., B-244755, Sept. 10, 1991, 91-2 CPD ¶ 237; Marine Indus., Ltd., B-225722.3, July 10, 1987, 87-2 CPD ¶ 30. Accordingly, a protester must raise all available protest arguments in its initial protest filing. Id.

AAA did not meet this requirement. Simply, since AAA was or should have been aware of both of its scope of work arguments at the time it challenged the 1991 option exercise, it was required to raise both at that time; it may not raise only one at that time and reserve the other to be raised in connection with the exercise of the 1992 option. The fact that each option exercise generally is a separate action subject to protest (as we held in our prior decision in finding AAA's protest there timely), does not eliminate the prohibition against piecemeal protesting. Thus, while a protester generally need not protest an earlier option exercise in order to timely protest a later exercise, once the protester challenges an option exercise it cannot opt to pursue only certain arguments and leave others to raise when

future options are exercised. See generally Source AV, Inc., supra; Marine Indus., Ltd., supra. We therefore will not consider this argument.²

ADEQUACY OF MARKET SURVEY

AAA alleges that the Air Force's informal market survey did not provide a reasonable basis for the contracting officer's determination that exercise of the option in HEBCO's contract was the most advantageous method of fulfilling the agency's needs. AAA essentially argues that the market survey was inadequate to support the contracting officer's conclusion because it failed to solicit prices for every contract line item from every available source, and because some of the firms surveyed in fact indicated that they could offer lower prices for some items.

As a general rule, option provisions in a contract are exercisable at the discretion of the government. Because the exercise of an option permits an agency to satisfy current needs for goods and services without going through competitive procedures, however, 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). One of the means available under the FAR for determining whether option exercise is the most advantageous method is an informal market survey or price analysis. FAR § 17.207(d)(2).

Where, as here, an agency elects to conduct an informal market survey, the form the survey takes is largely within the discretion of the contracting officer, as long as it is reasonable. Kollsman Instrument Co., 68 Comp. Gen. 303 (1989), 89-1 CPD ¶ 243. The purpose of the survey is not to afford firms that offered higher prices under the original solicitation an opportunity to assert that they can undercut the option price of the successful offeror; instead, the informal survey allows the contracting officer to determine whether there have been any changes in the market that would indicate that the option should not be exercised. See Action Mfg. Co., 66 Comp. Gen. 463 (1987), 87-1 CPD ¶ 518.

²AAA asserts that the Air Force should have disclosed information about the sole-source award in responding to AAA's prior protest, so that we could have considered this information in fashioning the recommendation in our prior decision. As discussed, however, this information already was available to AAA through the CBD notice.

As discussed above, we sustained AAA's 1991 protest of the prior option exercise because AAA showed that the price of area warehouse space had fallen significantly below the price HEBCO appeared to be charging, and the agency had not considered this price decline in determining whether to exercise the option. AAA has made no similar showing here. The Air Force now explains that HEBCO's contract price for warehouse space only appeared excessive because it includes security, building maintenance, janitorial services, and insurance costs. AAA does not dispute this explanation. As part of its survey, the agency contacted two commercial real estate brokers, who reportedly confirmed that HEBCO's warehouse space was priced consistent with the current market. AAA has presented no evidence refuting this information, and we find nothing unreasonable in this aspect of the survey.

AAA asserts that the Air Force's survey of prices for the services under the contract was inadequate for several reasons. We find that the survey was reasonable. For example, AAA asserts that the survey improperly failed to include AAA or another firm, JANA, Inc., which also provides TO services for the Air Force. However, while it may be appropriate in some 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 the FAR. Kollsman Instrument Co., supra. Here, the agency contacted four firms that provide TO services. Two of these firms participated in the competition for the current contract (AAA and HEBCO were the only other competitors; JANA did not participate). One of the remaining two firms currently is competing for a TO contract at Hill AFB, Utah. In light of AAA's protests of the option exercise, the Air Force already was aware of the likelihood that AAA would offer lower prices than HEBCO's. Moreover, the Air Force was aware of AAA's actual prices for some of the work because AAA is performing a similar TO contract at the same installation. We therefore think the contracting officer's survey of the four other providers of TO services was sufficient to determine whether lower prices were available.

We also reject an argument by AAA that the survey actually established that lower prices could be obtained under a new solicitation because one of the surveyed firms furnished some item prices lower than HEBCO's. The FAR requires that option exercise be the most advantageous method; the FAR authorizes the contracting officer to consider factors other than price, such as the need for continuity of services and the potential costs of disrupting operations, in determining whether option exercise is the most advantageous alternative. FAR § 17.207(e). Here, the contracting officer found that both the need for continuity of services

and the cost of disruption outweighed the possibility of a slightly lower price. In this regard, the contracting officer explains in detail the amount of work that a transition from one contractor to another would entail, and the corruption of TO data that could result; AAA has not disputed these facts.³

We conclude that the Air Force's survey method was unobjectionable. Since AAA has presented no evidence that the results of the survey are invalid for failure to reflect changes in the market for storage space or services under HEBCO's contract, there is no basis for questioning the agency's conclusion that there have been no significant changes in the marketplace, or its decision to exercise the option. See Person-System Integration, Ltd., B-246142; B-246142.2, Feb. 19, 1992, 92-1 CPD ¶ 204.

The protest is dismissed in part and denied in part.


for James F. Hinchman
General Counsel

³AAA challenges other details of the market survey; we find these allegations similarly without merit. For example, AAA questions the value of the survey results because two of the four firms did not furnish prices, but instead indicated whether they could be competitive with HEBCO on certain line items. The two firms did not wish to furnish prices because they were competing against both HEBCO and AAA for a similar contract at Hill AFB; therefore, the contracting officer asked the firms whether their prices for certain requirements would be competitive with HEBCO's prices. We find this approach reasonable under the circumstances. We also reject AAA's argument that the survey was inadequate because it did not include the CSTO requirement, since AAA and HEBCO are the only firms in the industry that have experience with this requirement, and the requirement accounts for less than 25 percent of the work under the contract.