



Comptroller General  
of the United States

109238

Washington, D.C. 20548

# Decision

**Matter of:** Supplemental Staffing Services, Inc.

**File:** B-257385

**Date:** September 21, 1994

Karen Pearce for the protester.  
David A. Descoteau for Managed Health Care, Ltd., an interested party.  
Ira L. Kemp, and Martin F. McAlwee, Esq., Department of the Air Force, for the agency.  
Paula A. Williams, Esq., and Susan K. McAuliffe, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Agency properly evaluated bids based on the total price for the base requirement and all options where invitation for bids incorporates by reference the standard "Evaluation of Options" clause, as set forth at Federal Acquisition Regulation § 52.217-5, which states that bids will be evaluated for award purposes by adding the total price for all options to the total price for the basic requirement.

## DECISION

Supplemental Staffing Services, Inc. protests the proposed award of a contract to Managed Health Care, Ltd. under invitation for bids (IFB) No. F08650-94-B-A034, issued by the Department of the Air Force for nursing services at its medical treatment facility at Patrick Air Force Base, Florida. The protester alleges that the agency improperly evaluated option year prices to determine the low bidder and improperly sought bids for emergency support services it has historically never used.

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

The amended IFB contemplated award of a firm, fixed-price contract to provide nursing services during a 1-year base period and three 1-year option periods. The bid schedule divided the requirements into 11 line items and bidders were required to submit per hour unit prices based upon estimated hours for services to be performed by both registered nurses (RN) and licensed practical nurses (LPN) during 8-hour

weekday shifts and 12-hour weekend shifts. Section M of the IFB, setting forth the evaluation factors for award, incorporated the clause at Federal Acquisition Regulation (FAR) § 52.217-5, Evaluation of Options, which provides that:

" . . . the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate the Government to exercise the option(s)."

The solicitation permitted the successful contractor to provide either 8-hour weekday shifts (as set out on the bid schedule) or 12-hour weekday shifts. Note 3 of amendment No. 2 to the IFB provided that:

"If the successful contractor opts to perform twelve (12) hour weekday shifts instead of eight [(8)] hour weekday shifts, then the rate of pay for RN and LPN classifications shall be set as follows. [The 12-hour weekday shift rate will be the mean of the rates offered on the bid schedule for the first and second 8-hour weekday shifts and the 12-hour night shift rate will be the mean of the rates offered for the second and third 8-hour weekday shifts.] Option years, if exercised, will be adjusted according to bid prices offered for those Option Items corresponding to the Base Period of Performance Item numbers. This Note shall not be used in the evaluation of bids."

Amendment No. 2 also incorporated a series of answers to contractor questions regarding the IFB. Question No. 14 asked how often the agency had used the emergency support line item (allowing for a surcharge of hourly rates for emergency services) in prior contracts. The agency's answer provided that: "[t]here has never been a need for the use of the [e]mergency [s]upport proviso."

Of the seven bids received at the May 13 bid opening, Managed Health Care's bid of \$1,874,640 was the lowest evaluated price (including base year and options) and Supplemental's evaluated price of \$1,892,936.80 was the

second lowest. The agency intends to award to Managed Health Care based on its low evaluated price.<sup>1</sup>

Supplemental essentially contends that since Note 3 provides for certain adjustments to option year rates and states that "[t]his Note shall not be used in the evaluation of bids," the agency was precluded from considering option prices for the purposes of determining evaluated prices for award. The protester states that therefore, under the terms of the amended IFB, the low bid was to be determined by evaluation of only base year prices and, based on that evaluation scheme, its base year price of \$452,615 is lower than Managed Health Care's base year price of \$468,660.

The agency responds that Note 3 is a post-award provision for use only to calculate 12-hour weekday shifts under the contract for the base period and option periods in the event the successful contractor decides to perform 12-hour shifts instead of the 8-hour shifts provided on the bid schedule. The agency states that Note 3, by its express terms, does not apply to the evaluation of bids and that pursuant to FAR § 52.217-5, incorporated by reference into the IFB, the agency properly evaluated total price on the basis of the base and option periods provided on the bid schedule.

Where a dispute exists as to the actual meaning of a solicitation provision, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all provisions of the solicitation. Ahern & Assocs., Inc., B-254907.4, Mar. 31, 1994, 94-1 CPD ¶ 236.

We find that Supplemental's interpretation of Note 3, i.e., that option year pricing was not to be evaluated for award, is unreasonable. Note 3 was added to the solicitation by amendment No. 2 to give the "successful contractor," not the bidders on their bid schedules, the option to schedule nurses for 12-hour weekday shifts, rather than the 8-hour weekday shifts listed on the bid schedule. The note simply sets out the formula that would be used to determine the per hour labor rates for the base contract period if the successful contractor elects to have its nurses work 12-hour

<sup>1</sup>The two bids were priced as follows:

	<u>Managed Health Care</u>	<u>Supplemental</u>
Base Year	\$468,660.00	\$452,615.00
1st Option Year	468,660.00	466,101.60
2nd Option Year	468,660.00	479,955.60
3rd Option Year	468,660.00	494,264.60
TOTAL	<u>1,874,640.00</u>	<u>1,892,936.80</u>

weekday shifts. It also addresses how the per hour labor rates for the option periods would be determined if the options were exercised. The statement in the Note that it "shall not be used in the evaluation of bids" merely reflects the fact that the entire Note is applicable only to the successful contractor and only if the contractor opts to utilize a 12-hour weekday shift.

Whether or not option prices would be evaluated was not dealt with in the Note. Rather, as indicated, that was the function of the FAR § 52.217-5 clause, which specifically informed bidders that base period and option prices would be evaluated in determining the low bid for award. Nothing in Note 3 can be reasonably read as overriding or even being inconsistent with the clear language of this clause. Accordingly, the evaluation method used by the agency was proper and consistent with the solicitation, and therefore we have no reason to object to the proposed award to Managed Health Care on this basis. Environmental Specialists, Inc., B-245782, Jan. 22, 1992, 92-1 CPD ¶ 99; N.V. Heathorn, Inc., B-245847, Jan. 2, 1992, 92-1 CPD ¶ 11.

The protester also contends that the IFB improperly included a line item for an emergency support surcharge (this line item provides for a surcharge above the stated hourly rate for any personnel required for emergency support services) which the agency admittedly has never used under prior contracts for nursing services and, allegedly, will not use during the contract term.<sup>2</sup>

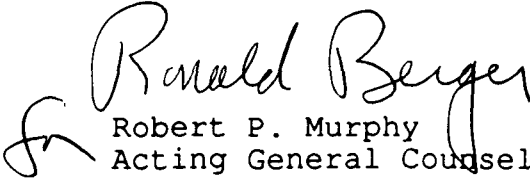
This aspect of the protest is untimely. Our Bid Protest Regulations provide that protests based on alleged improprieties in a solicitation which are apparent prior to the time set for bid opening must be filed prior to that time. 4 C.F.R. § 21.2(a)(1) (1994). The requirement for an emergency support services surcharge was apparent from the solicitation and, by amendment No. 2's incorporation of the agency's answer to contractor question No. 14, all bidders

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<sup>2</sup>We note that the protester alleges that Managed Health Care was the only bidder that did not "submit charges" for the emergency support surcharge line item and that award to the firm is therefore improper. The protester is incorrect. Managed Health Care's low bid included an entry of "no charge" for the line items concerning the emergency support surcharge. This "no charge" entry clearly equates with zero dollars and represents Managed Health Care's affirmative intent to obligate itself to provide the services at no cost to the agency. See Keahey's Moving Co., B-224273, Nov. 24, 1986, 86-2 CPD ¶ 602. Since the solicitation did not prohibit submission of a no charge bid, we find nothing improper with the firm's pricing strategy.

were advised prior to bid opening that the agency, historically, has never used these services. Accordingly, the alleged impropriety had to be protested prior to May 13, the extended bid opening date. Since Supplemental did not raise this protest contention until after bid opening, this aspect of its protest is dismissed as untimely and will not be considered.<sup>3</sup>

The protest is denied in part and dismissed in part.

  
Robert P. Murphy  
Acting General Counsel

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<sup>3</sup>Although Supplemental contends that the agency is giving Managed Health Care "preferred treatment," the protester's general allegation is unsubstantiated. Agency officials are presumed to act in good faith and we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. See Loman & Assocs., B-253936, Oct. 25, 1993, 93-2 CPD ¶ 245.