



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Sippican, Inc.

File: B-257047.2

Date: November 13, 1995

Leon J. Glazerman, Esq., and Michael J. Lacek, Esq., Palmer & Dodge, for the protester.

Robert G. Fryling, Esq., and Anthony O. Boswell, Esq., Blank, Rome, Comisky & McCauley, for Sechan Electronics, Inc., an interested party.

Christine A. Blazina, Esq., Department of the Navy, for the agency.

Susan K. McAuliffe, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

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.

DECISION

Sippican, Inc. protests the exercise of the third option year under contract No. N00024-94-C-6153, which was awarded to Sechan Electronics, Inc., by the Department of the Navy. Sippican contends that the agency's determination to exercise the option was made without complying with applicable regulations.

We deny the protest.

On April 8, 1994, the Navy awarded a contract for a base year plus 3 option years to Sechan, under solicitation No. N00024-93-R-6126, to produce EMATTS (expendable anti-submarine warfare sonar training targets). The first year option was exercised concurrently with the award of the base year contract. The second year option was exercised in March 1995. The third year option, the subject of the current protest, was exercised on June 28, 1995.

Sippican contends that the Navy improperly exercised the most recent option without making a reasonable determination that the option was the most advantageous method of fulfilling the government's needs, as required by Federal Acquisition Regulation (FAR) § 17.207. Sippican, the incumbent contractor, bases its protest principally upon the fact that the firm sent several communications to the agency after Sippican lost the base contract competition to Sechan in 1994, stating that Sippican believed recompetition for the contract's option requirements

was in the agency's best interest. In those letters, Sippican stated that it would now be able to offer the agency lower prices for option quantity EMATTS than those prices offered by Sechan since Sippican had recently "downsized" its organization and found alternative and less expensive sources for some of the EMATT components. Sippican contends that the agency failed to follow regulatory requirements in not issuing a new solicitation and requesting proposals to confirm whether Sechan's third option year price (and the exercise of the option) was still the most advantageous method of fulfilling the agency's need.

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. Person-System Integration, Ltd., B-246142; B-246142.2, Feb. 19, 1992, 92-1 CPD ¶ 204. The form of such examination is largely within the discretion of the contracting officer, so long as it is reasonable. See Kollsman Instrument Co., 68 Comp. Gen. 303 (1989), 89-1 CPD ¶ 243; Action Mfg. Co., 66 Comp. Gen. 463 (1987), 87-1 CPD ¶ 518. The FAR also permits a determination that the option price is the most advantageous based upon a finding that the time between contract award and option exercise is short enough and the market stable enough that the option price remains most advantageous. FAR § 17.207(d).

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 Technology, 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. Person-System Integration, Ltd., supra.

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 and the fact that Sechan's high technical score and low price had made its proposal more advantageous than the protester's proposal; (2) that only a relatively short period of time had passed since the original competition and the agency's requirements for the third option year remained the same as stated in the original competition; (3) that agency information showed that Sippican had recently charged substantially more for EMATT units in a foreign procurement than Sechan's option price; (4) that there was no known change in the current EMATT market; (5) that since Sippican did not provide any financial data to support its allegations of more advantageous pricing, and since prior prices known to the

agency for required materials were substantial, it remained unlikely that Sippican could reduce its material costs to the extent stated to be below those of Sechan; and (6) the need for continuity of operations and the cost of disruption, as well as the costs of a new competition (which would involve additional costs of proposal evaluation, start-up costs and the possible requalification of a vendor or qualification of a new contractor).

Given the agency's consideration of these factors, the Navy was not required to issue a new solicitation for the third year option quantity to test prices. The FAR, in fact, expressly provides that if it is anticipated that the best price available is the option price, the contracting officer should not issue a new solicitation to test the market. FAR § 17.207(d)(1). The agency appropriately considered both pricing and other information available to it regarding the stability of the EMATT market and other factors, such as continuity of operations, as permitted under the FAR, and reasonably determined that the exercise of the option under Sechan's contract was the most advantageous method of fulfilling its needs. FAR §§ 17.207(d)(3) and 17.207(e). Sippican's general statements in its letters to the agency that it had reorganized to become a "leaner" operation and could offer a lower, but unspecified, price--without more credible financial information to support the allegation--do not, in our view, entitle Sippican to a second chance to compete for the stated option quantity where prices were tested by the original competition less than 1-1/2 years earlier. See A. J. Fowler Corp., B-205062, June 15, 1982, 82-1 CPD ¶ 582.¹ The agency's determination to exercise the option was not based solely on price but, rather, as shown above, was also reasonably based upon non-price factors permitted under the FAR. We conclude that the exercise of the option was proper.²

The protest is denied.

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¹Sippican's letters to the agency provided only general representations that it could offer a lower price for the option year quantities. For instance, Sippican stated that "it undertook a major effort internally to become more price competitive," that it "truly [believes] that significant cost savings would result to the Navy," that the protester's "second source" for an EMATT component reduced the price for that item, and that as its "customer base grow, our costs are reduced."

²Sippican suggests that the agency's early exercise of the third year option indicates that the agency was acting in bad faith in an effort to preclude Sippican from participation for an award of the option quantity. Sippican's supposition in this regard, without the submission of any persuasive evidence of wrongdoing, is insufficient to constitute a valid basis of protest.