

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

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FILE: B-211036.2**DATE:** April 9, 1984**MATTER OF:** BDM Management Services Co.**DIGEST:**

1. Contracting agency's failure to notify awardee of protest does not confer substantive rights on awardee whose contract option was not exercised. The only remedy would have been rehearing of the protest with participation of the awardee, which is inappropriate with respect to nonexercise of an option.
2. Where record shows that option is exercisable at sole discretion of government, GAO, under Bid Protest Procedures, will not consider incumbent contractor's contention that agency should have exercised its contract option.

BDM Management Services Co. (BDM) protests the decision by the Navy not to exercise the option under BDM's contract No. NOO189-83-D-0244, for analytical support services for the Atlantic Fleet Reconstruction Center, Norfolk, Virginia, and the Navy's issuance of a new solicitation, No. NOO189-84-R-0041, for these services. BDM asserts that the decision was made by the Navy as the result of a bid protest, B-211036, filed by a disappointed offeror, Atlantic Analysis Corporation (AAC), which was subsequently withdrawn without BDM's ever having been advised by the Navy of the pendency of the protest.

We find BDM's protest without merit.

In March 1983, BDM was awarded a contract for the support services in question for 10 months, with an option for an additional year of performance. AAC protested after award alleging, among other things, that award was based primarily on low price, while the solicitation appeared to stress technical competence more than cost considerations. The Navy concedes that it inadvertently neglected to notify BDM of this protest, as it was required to do. However, the Navy asserts that this failure to notify constitutes a procedural deficiency which confers no substantive rights on BDM as to the merits of its protest. We agree.

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AAC's protest was withdrawn by letter of August 25, 1983, after the Navy signed a memorandum of understanding (MOU) with AAC in which it was agreed that in consideration for AAC's withdrawing its protest, the Navy agreed to issue a resolicitation for services substantially similar to those in question, as soon as practicable after the expiration of the initial year contract award period. Because of conceded administrative oversight, BDM was not notified of the protest prior to the signing of this MOU.

The Navy states that it agreed to issue the MOU because, on review of the procurement, it determined that the solicitation may have been ambiguous with respect to the evaluation criteria in a manner which may have caused AAC to overemphasize technical aspects to its detriment. However, this review also disclosed another reason which caused the Navy to determine not to exercise its option rights under BDM's contract. The lowest priced offeror under the initial solicitation, which had been found ineligible for award only because of failure to have the requisite security clearance, had subsequently obtained clearance. Accordingly, the Navy determined that the BDM option would not be exercised regardless of the outcome of the AAC protest and, for this reason, the Navy went forward with the MOU with AAC.

Paragraph H4 of the BDM contract provides that the option is exercisable at the sole discretion of the government. Where this is the case, our Office will not consider, under our Bid Protest Procedures, the incumbent contractor's contention that the agency should have exercised, or is obligated to exercise, such contract option provisions. C.G. Ashe Enterprises, 56 Comp. Gen. 397 (1977), 77-1 CPD 166; Lanson Industries, Inc., B-202942, August 25, 1981, 81-2 CPD 176. Accordingly, this aspect of BDM's protest is not for consideration.

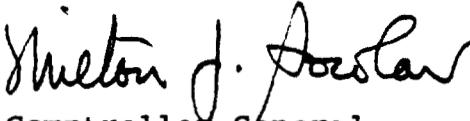
While BDM asserts that its pricing or staffing information may have been disclosed by the Navy, the Navy has stated that it made no such disclosures. BDM asserts that it was given a shortened period to prepare its new

proposal for the second year since AAC knew in August 1983 that a recompetition would be held. However, the option was always exercisable solely in the discretion of the government, and BDM never had any right to rely on the exercise of the option. Moreover, BDM, as did other firms, had 32 days to prepare a proposal for the new solicitation after issuance of the RFP.

In any event, as the Navy points out, we have expressly held that the failure to apprise an interested party of the pendency of a protest gives rise to no substantive remedy and, at best, provides the basis for the right to a procedural remedy, namely, the rehearing of the protest. Commonwealth Communications, Inc., B-209322, June 6, 1983, 83-1 CPD 606. However, even to the extent that the Commonwealth decision might entitle BDM to a rehearing here, there is nothing to reconsider. The Navy had a valid reason unrelated to the grounds of AAC's protest on which it determined not to exercise its option under the BDM contract and, in any event, such nonexercise of an option is not a decision which is subject to GAO review.

BDM argues that another right it should have is that award not be made until this protest is resolved because the exceptions listed in Defense Acquisition Regulation § 2-407.8(b)(3) (1976 ed.) as bases to permit award notwithstanding the pendency of a protest are not present. However, the Navy advises that award was made on February 10, 1984, despite the pendency of BDM's protest, because the Navy determined that prompt award would be advantageous to the government in view of \$90,000 in cost savings. This is a permissible justification for award under DAR § 2-407.8(b)(3)(iii).

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

for 
Comptroller General
of the United States