

*Ma Meader*



Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** California Shorthand Reporting

**File:** B-236680

**Date:** December 22, 1989

---

## DIGEST

Agency properly used a new solicitation to test the reasonableness of option prices where, because bids had been close and a new requirement under the prior solicitation had caused some bidders to overprice one item, the agency was unable to determine that exercise of the option was the most advantageous method of satisfying its needs.

---

## DECISION

California Shorthand Reporting (CSR) protests the issuance by the National Labor Relations Board (NLRB) of an amendment to invitation for bids (IFB) No. 90-SB-00095, for verbatim court reporting and transcription services. CSR asserts that the NLRB improperly used this solicitation amendment to determine whether to exercise an option under existing contracts with CSR.

We deny the protest.

On October 1, 1988, CSR was awarded 3 contracts to provide court reporting and transcription services for San Francisco and Oakland, California, and for Honolulu, Hawaii, for the year ending September 30, 1989. These contracts were small business set-asides which contained one year options to renew. By letter dated June 26, 1989, the NLRB gave CSR preliminary notice of its intent to exercise the option to renew all three contracts. On July 28, the NLRB issued the IFB in question for verbatim reporting and transcription services for October 1, 1989, through September 30, 1990, for coverage in Pittsburgh, Pennsylvania, and Detroit, Michigan. On August 10, the NLRB issued amendment No. 1 to the solicitation to add San Francisco and Oakland, California. This amendment advised bidders that current contracts for San Francisco and Oakland included an option clause that the government may exercise if bids under the solicitation were not the most advantageous to the government. CSR contends that this procedure improperly creates

047359/140267

an auction since CSR's option year prices are public knowledge. CSR also argues that its status as a woman-owned small business should be given consideration.

Under Federal Acquisition Regulation (FAR) § 17.207 (FAC 84-42), the applicable regulation, agencies are not required to exercise options under any circumstances. Rather, the regulation restricts the agency's discretion to exercise an option to where the agency considers the option the best means of satisfying its needs. The sole limitation on using a solicitation to test the market is that this approach should not be used "if it is anticipated that the best price available is the option price or that it is the more advantageous offer," FAR § 17.207(d); the regulation does not prohibit or discourage the use of a solicitation where the agency believes that the option may not reflect the most advantageous offer available in the marketplace. General Elec. Medical Sys., B-231342, Aug. 26, 1988, 88-2 CPD ¶ 185.

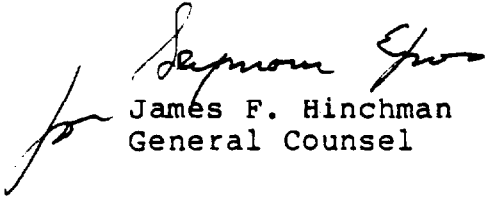
NLRB states that, here, bidding for the 1989 contracts had been close and that a new requirement for diskettes had caused some bidders to overprice that item. When the agency compared CSR's prices with the prices of the next low bidder under the initial solicitation, the agency was unable to determine that the exercise of the option was the most advantageous method of filling the government's needs. Given the wide discretion afforded the contracting agency in determining the reasonableness of exercising an option, Action Mfg. Co., 66 Comp. Gen. 463 (1987), 87-1 CPD ¶ 518, we find NLRB's explanation reasonable and its use of a solicitation consistent with the regulation.

As for CSR's assertion that the effect of issuing a new IFB after its prices were public knowledge was to create an improper auction, once NLRB properly decided to issue the amendment, it was proper to advise bidders that their bids would be compared to the option prices, since that comparison would be decisive in determining whether awards would be made under the IFB. General Elec. Medical Sys., B-231342, supra.

In addition, CSR alleges that its status as a woman-owned small business should be given special consideration. However, FAR §§ 19.202-4 (FAC 84-52) and 52.219-13 (FAC 84-31), the applicable regulations concerning women-owned small businesses, state a government policy, but do not

mandate that a woman-owned business receive special treatment in any particular procurement. KASDT Corp., B-235889, July 19, 1989, 89-2 CPD ¶ 63.

Accordingly, the protest is denied.

for  
James F. Hinchman  
General Counsel