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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Banknote Corporation of America, Inc.

File: B-250151

Date: December 14, 1992

Hopewell H. Darneille III, Esq., and John Ordway, Esq., Verner, Lipfert, Bernhard, McPherson and Hand, for the protester.
Dag Wilkinson, Esq., and Paul F. Khoury, Esq., Wiley, Rein & Fielding for American Bank Note Corporation, an interested party.
Elaine S. Lynn and Patricia L. Johnson, Food and Nutrition Service, Department of Agriculture, for the agency.
Mary G. Curcio, Esq., and John G. Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly exercised option in contract for the production of food stamps is sustained where the record shows that the agency's food stamp requirements have increased, the market for intaglio printing may not be stable, and the agency did not conduct a market survey or issue a new solicitation to test the market to determine if exercise of the option was the most advantageous method of meeting its needs.

DECISION

Banknote Corporation of America, Inc. (BCA) protests the decision by the Food and Nutrition Service, Department of Agriculture, to exercise an option under contract No. 54-3198-1-011, awarded to American Bank Note Company (ABN) for the production of food stamp coupon books. BCA asserts that the exercise of the option was improper because the agency's determination, pursuant to Federal Acquisition Regulation (FAR) § 17.207, that the use of the option was the most advantageous method of meeting the agency's requirements was unsupported and lacked a rational basis. BCA asserts that a market survey or new solicitation would have demonstrated that exercise of the option was not the most advantageous method of fulfilling the agency's needs.

We sustain the protest.

Food stamps are printed using a highly specialized process known as intaglio printing, which requires special printing equipment. Request for Proposals (RFP) No. FNS-91-11BFM, was issued on April 1, 1991, for offers to print the government's food stamp coupon books for a 1-year period, followed by three 1-year option periods. The total estimate of coupon books required for the first year, 551,500,000, was comprised of estimates for each of six denominations of the books--$2, $7, $10, $40, $50, $65; each denomination was listed in the solicitation as a separate line item. Due to the magnitude of the government's requirements, offerors were permitted to submit proposals covering one or any combination of the six denominations of coupon books.

The Food and Nutrition Service received three offers in response to the RFP, evaluated them and considered two acceptable, those submitted by BCA and ABN; the third offeror was considered unacceptable because it lacked the capacity to produce any coupon books until 9 months after the effective date of the contract. Subsequently, the Service requested BCA and ABN to submit best and final offers (BAFOs). In doing so, FNS informed both offerors that it required "stand alone" prices for each line item to preserve the possibility of multiple awards since BCA indicated that it lacked sufficient capacity to meet the agency's needs for the $50 and $65 coupon books. BCA and ABN both responded to the request for BAFO's with multiple alternate prices. The Service reviewed the price proposals submitted and found that ABN's "all or none" price provided the lowest aggregate price for all denominations of the coupon books. On this basis, on August 24, the agency awarded the contract to ABN.[1]

On June 24, 1992, the agency executed a determination pursuant to FAR § 17.207 to exercise the first year option in ABN's contract. In determining that exercise of the option was the most advantageous method of meeting the agency's continuing need for coupon books, the agency compared the prices that were submitted by BCA and ABN during the original procurement. These comparisons demonstrated that the lowest overall prices for the option year were offered by ABN in its "all or none" offer. The agency determined that a recompetition would not likely result in lower overall prices based on one of two assumptions, either that ABN would again be the only offeror able to provide an "all or none offer" and would not offer lower prices than it did during the original procurement or

[1]BCA protested to our Office the agency's decision to accept ABN's all or none proposal. We denied the protest in Banknote Corp. of Am., Inc., B-245528; B-245528.2, Jan. 13, 1992, 92-1 CPD ¶ 53.

that prices for the coupons would increase if "all or none" offers were precluded. In addition, the agency found that the optional periods of performance were integral to maintain continuity of services in providing food assistance benefits. Finally, the agency found that there was no other supplier that could satisfy its requirements for the production of the entire food stamp coupon book series.

BCA argues that the contracting officer's decision to exercise the option without issuing a new solicitation or conducting a market survey was improper. Specifically, BCA maintains that the price analysis the Food and Nutrition Service performed was no more than a comparison of the prices it received for option year one under the original solicitation. BCA asserts that in view of the significant increase in the quantity of food stamp books the Service requires it cannot rely on this price analysis to justify exercising the option. Specifically, BCA points out that the agency's needs exceeded the contract base year estimates by more than 50 percent and already have exceeded the first year option estimates by more than 16 percent, 2 months into the option period.

BCA further argues that for a procuring agency to rely on prices received under an original solicitation to justify the exercise of an option, the agency must consider the time between the award of the contract and the exercise of the option, the comparability of this time with the usual duration of contracts for such supplies or services, and the stability of the marketplace for such supplies or services. BCA asserts that the market is not stable for intaglio printing, and points out that intaglio printing prices have been declining as a result of growing competition in the market. For example, BCA reports that in a series of four procurements conducted by the Government Printing Office over a 16-month period from late September 1990 through January 1992, for the printing of visas, unit prices declined by a total of 51.2 percent.

BCA further argues that the agency's two key assertions in its determination, (1) that a recompetition of the contract is not likely to result in lower overall prices, and (2) that at this time, there is no other supplier that will satisfy the agency requirements for production of the entire food stamp coupon book series, are unsupported and erroneous, if not irrelevant. Concerning price, BCA notes that during the original competition, its "stand alone" prices on two line items were lower than those proposed by ABN in its "all or none" offer and its other prices were close to those offered by ABN, even without the economies of scale that might result from "all or none" pricing. BCA further asserts that the Food and Nutrition Service knew that ABN's "all or none" prices contained in the existing contract were based on an essentially noncompetitive award because at the time of the original solicitation ABN was the only company with the capacity to perform the entire requirement and thus was able to manipulate the award by offering excessively high "stand alone" prices. BCA argues that based on these two facts, the Service should have been aware that the prices proposed by ABN in the original solicitation were not the best prices available. BCA points out that the evaluation panel recognized ABN's excessively high individual line item pricing. In addition, BCA reports that it won several major awards from other agencies in direct competition with ABN at prices considerably below those which ABN previously had been charging.

BCA also asserts that the agency's finding that no other supplier can satisfy the agency's needs for production of the entire food stamp coupon book series is erroneous. In this regard, BCA asserts that over the past year it specifically discussed with the agency the substantial addition it has made to its capacity which gives BCA the capability to meet the government's requirements. In any case, BCA questions the relevance of this finding since the Food and Nutrition Service has repeatedly stated its desire to contract with multiple producers for the food stamp booklets.

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, 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). A determination that an option price is the most advantageous must be based on one of the following findings under FAR § 17.207(d): (1) a new solicitation fails to produce a better price; (2) an informal market survey or price analysis indicates that the option price is lower than prices available in the market or that the option is the most advantageous offer; or (3) the time between contract award and option exercise is short enough and the market stable enough to indicate that the option price is the most advantageous. Other factors to be considered include the need for continuity of operations and the potential costs of disrupting operations. FAR § 17.207(e). We will not question the contracting officer's determination unless it is unreasonable or contrary to applicable regulations. AAA Eng'g & Drafting, Inc., B-236034.2, Mar. 26, 1992, 92-1 CPD ¶ 307.

Based on our review of the record, we find that the agency's determination to exercise the option did not meet the FAR requirements, and that the agency thus did not have an adequate basis for its conclusion that a new solicitation would not result in a more advantageous price. The agency states that its determination was based on an informal analysis of prices as permitted by FAR § 17.207(d)(2), and on consideration of "the short duration of only 10 months since award of the contract and the stability of the market place" apparently under FAR § 17.207(d)(3).

The agency's price analysis consisted solely of a comparison of the prices received from BCA and ABN under the original solicitation. It did not take into account significant changes in the government's needs for food stamp coupons. While the agency states that its needs have not changed, the protester points out, and the record demonstrates, that during the base year the agency purchased 797,020,000 coupon books which is 270,270,000 or 50 percent more coupon books than the 551,500,000 books estimated in the solicitation, and during the first 2 months of option year 1 it has ordered 696,550,000 books which is 96,550,000 or 16 percent more than the 600,000,000 books stated in the contract for all of option year 1. In addition, the Food and Nutrition Service knew that under the initial procurement BCA's prices on some line items which corresponded with ABN's "all or none" offer were lower than ABN's, or close to them. Under such circumstances, it was not reasonable for the agency to have relied solely on a comparison of the prices received during the initial solicitation in determining to exercise the option. See AAA Eng'g & Drafting, Inc., supra.

A FAR § 17.207(d)(3) determination concerning the option prices the agency received under the original solicitation must include consideration of the period of time that has elapsed since the original procurement, and of the stability of the marketplace. Here, the agency states in its protest report that it considered the stability of the market. The determination that the agency executed prior to exercising the option does not mention market stability, and the agency has not explained during the protest what it considered in assessing market stability. On the other hand, the protester has pointed to significant changes in the intaglio printing market which have taken place in the 10 months preceding the exercise of the option, including BCA's increasing capacity and reduced prices for such printing. The Food and Nutrition Service has neither disputed that BCA advised it of these facts nor explained why they were not considered.

The Service also asserts that no other contractor could meet its needs for the entire quantity of coupon books. The agency has not, however, established any reason why it requires only one contractor to provide all coupon books. In fact, during the original procurement because BCA indicated that it lacked the capacity to meet all of the agency's needs, the Service requested offerors to submit "stand alone" prices for each line item so it could preserve the possibility of multiple awards. Also, in a letter to the protester, the contracting officer stated that the agency does not deny that it prefers to have at least two suppliers for the food stamp booklets. Moreover, the agency had not addressed in either its determination or its protest report BCA's claim that it now has greatly increased capacity. Finally, while the agency makes reference to some need for continuity of service, it has in no way explained why a well planned procurement would disrupt its receipt of food stamp coupons.

Accordingly, we sustain the protest. As ABN has performed a significant portion of the option year requirement and considering the additional time that would be required for implementation, we do not now recommend that the Food and Nutrition Service determine whether exercise of the current option was appropriate. Instead, by letter of today to the Secretary of Agriculture, we are recommending that prior to exercising the next option under ABN's contract, the agency either (1) issue a new solicitation and assess whether that solicitation produces a better price than that provided by the option; (2) perform a proper informal price analysis which includes consideration of changes in the government's requirements and an assessment of prices other than those received under the original solicitation; or (3) consider the market for intaglio printing as it exists at the time the option will be exercised as well as the time that elapsed since the original procurement before relying on the option prices received under the original procurement.

We also find that BCA is entitled to recover its reasonable costs of filing and pursuing the protest, including attorneys' fees. BCA should submit its claim for such costs directly to the agency.

The protest is sustained.

for Milton J. Socolar
Comptroller General
of the United States