



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Digital Systems Group, Inc.--Reconsideration
file: B-252080.2
Date: March 12, 1993

Robert G. Fryling, Esq., Saul, Ewing, Remick & Saul, for the protester.

Catherine M. Evans, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Dismissal of protest challenging agency's failure to exercise contract option is affirmed; even if, as protester alleges, agency official who made the decision not to exercise the option was not the contracting officer, the decision is a matter of contract administration outside the scope of General Accounting Office's bid protest function.

DECISION

Digital Systems Group, Inc. (DSG) requests reconsideration of our January 26, 1993 decision dismissing its protest of the Department of the Navy's failure to exercise an option under its contract, No. N62269-91-D-0331, for supplies and services related to computer hardware and software analysis.

We affirm the decision.

DSG's protest challenged the Navy's decision not to exercise its contract option on the basis that an agency official other than the contracting officer--specifically, the Assistant Deputy Commander for Contract Management Directorate/Naval Supply Systems Command Competition Advocate General--had made the decision. DSG alleged that this individual had arbitrarily and capriciously determined that the requirement should be broken out into several smaller procurements instead of being acquired under DSG's contract option. We summarily dismissed the protest, holding that DSG has no legal right to compel the exercise of a contract option; the decision not to exercise an option is a matter of contract administration outside our bid protest jurisdiction. Arlington Public Schools, B-228518, Jan. 11, 1988, 88-1 CPD ¶ 16.

In its reconsideration request, DSG asserts that our decision was erroneously based on the assumption that DSG sought to compel the agency to exercise the option. In fact, DSG argues, its protest challenged the agency's failure to comply with Federal Acquisition Regulation (FAR) § 17.207 in deciding whether to exercise the option; DSG argues that the provision gives the contracting officer the exclusive authority to make this decision. DSG maintains that the contracting officer would have decided to exercise the option had he been given the opportunity to do so, because he disagrees with the Competition Advocate's view that several smaller procurements are appropriate. DSG argues that we should entertain its protest because we have previously considered similar challenges to agency option exercise decisions, such as in Banknote Corp. of Am., Inc., B-250151, Dec. 14, 1992, 92-2 CPD ¶ 413, and asks that we require the Navy to allow the contracting officer to make the decision in accordance with the FAR.

DSG's reliance on the cited decision is misplaced; DSG fails to recognize the distinction in our case law between protests challenging exercise of options and those challenging non-exercise of options. Because FAR § 17.207 permits option exercise only when exercise of an option is determined to be the most advantageous method of fulfilling the government's needs, we review challenges to the exercise of an option to ensure that the agency properly made that determination and did not exercise an option under circumstances where a new competition should have been conducted. See AAA Eng'g & Drafting, Inc., B-236034.2, Mar. 26, 1992, 92-1 CPD ¶ 307; Magnavox Elec. Sys. Co., B-231795, Nov. 2, 1988, 88-2 CPD ¶ 431; Fraser-Volpe Corp., B-193192, Jan. 29, 1979, 79-1 CPD ¶ 60. That is what we did in the case cited by DSG.

We generally will not review an agency's decision not to exercise an option, however, since the matter is purely one of contract administration; it does not involve the failure to conduct a required competition and under the usual government contract option clause the option is exercisable at the sole discretion of the government--that is, a contractor has no legal right whatsoever to compel the government to exercise an option. See C. G. Ashe Enters., 56 Comp. Gen. 397 (1977), 77-1 CPD ¶ 166; Interstate Equip. Sales, B-222213, Mar. 19, 1986, 86-1 CPD ¶ 274. The only circumstance in which we review the failure to exercise an option is where there has been a competition among incumbent

contractors to determine which contractor's option will be exercised.¹ Fjellestad, Barrett and Short, B-248391, Aug. 21, 1992, 92-2 CPD ¶ 118; Walmac, Inc., B-244741, Oct. 22, 1991, 91-2 CPD ¶ 358.

Here, the Navy decided not to exercise the option in DSG's contract. The possibility that the decision was made by an official other than the contracting officer does not change the fact that the option non-exercise decision process is a matter of contract administration that is outside the scope of our bid protest role. Moreover, since under the FAR it is only the contracting officer who can exercise a contract option, it follows that where an option is not exercised it is necessarily the contracting officer who did not exercise it.

The decision is affirmed.



Ronald Berger
Associate General Counsel

¹In two cases where we reviewed the agency's non-exercise of a contractor's option, Mine Safety Appliances Co., 69 Comp. Gen. 562 (1990), 90-2 CPD ¶ 11, and Westinghouse Elec. Corp., 59 Comp. Gen. 328 (1978), 78-1 CPD ¶ 181, the agency had parallel development contracts with two firms whose contracts provided that one of the firms would be selected to furnish the option quantities. In Honeywell, Inc., B-244555, Oct. 29, 1991, 91-2 CPD ¶ 390, the agency asked for what it termed "best and final offers" from two of its contractors to determine which firm would furnish items to a foreign government under a contract option. Since the selection of the contractor for the option quantities in each case resulted from a competition, review of the selection decision was within the scope of our bid protest function.