

C 148412



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Multi Services Assistance, Inc.

File: B-248519.2

Date: April 6, 1993

George Nerhan for the protester.

Gerald P. Kohns, Esq., Department of the Army, for the agency.

Stephen J. Gary, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Fact that protester advised agency that it would provide services for less than option price did not require agency to issue new solicitation in lieu of exercising option where: (1) prices had been tested a year earlier by competition in which the protester offered the same price; (2) protester was found nonresponsible in the initial competition, based in part on concerns related to realism of its price; (3) there was no indication that prior concerns were resolved; and (4) agency's price analysis showed that the option price was still the best price obtainable.

DECISION

Multi Services Assistance, Inc. (MSA) protests the Department of the Army's decision to exercise an option to extend for an additional year a contract with A.J. Fowler Corporation, awarded under invitation for bids (IFB) No. DABT63-91-B-0030 for grounds maintenance services. MSA asserts that the decision to exercise the option was improper in light of MSA's offer to perform the services at a lower price than the option price.

We deny the protest.

The IFB, issued as a total small business set-aside in December 1991, provided for award of a contract for grounds maintenance services at Fort Huachuca, Arizona for a base year and 4 option years; both base and option prices were evaluated for award. Of the 10 bids submitted, MSA's was the lowest. Because MSA lacked any prior contracting experience, the Army conducted a preaward survey of the firm. The survey found that MSA had inadequate financial resources, or the ability to obtain such resources, to

perform the contract, and lacked the requisite organization, experience, operational controls, technical skills and equipment. In addition, in light of the fact that the primary cost of the contract would be for wages, the survey questioned the realism and accuracy of MSA's wage determinations and estimates of personnel, even after receiving assurances from MSA that it had made no mistakes in these aspects of its bid. The survey also determined that MSA's low estimate of start-up costs was unrealistic.

Based on these findings, the contracting officer made a formal nonresponsibility determination and referred the matter to the Small Business Administration (SBA) regional office in San Francisco for a certificate of competency (COC) review. In the course of that review, SBA determined that MSA was not a small business and on March 20, 1992, declared it ineligible for a COC on that basis, without reaching the factors on which the Army's determination was based. On March 23, the Army awarded the contract to the next low bidder, Fowler. MSA appealed the SBA determination to that agency's Office of Hearings and Appeals (OHA), which on April 14 reversed the regional office's size status determination and declared that MSA was a small business; however, OHA still did not address the merits of the Army's nonresponsibility determination. On November 10, MSA sent a letter to the Army "bidding" on the option period with the same price MSA had bid in the original competition--\$407,421, compared to Fowler's option price of \$557,309. On January 6, 1993, the Army executed a formal determination to exercise the first option. The determination was made pursuant to Federal Acquisition Regulation (FAR) § 17.207(c), (d), and (e), and stated that an informal price analysis had shown that the option price was the "lowest price obtainable."

MSA asserts that the Army had no basis for concluding that the option price was the lowest price obtainable, since the Army was aware of MSA's offer to perform the contract at a price lower than Fowler's option price. In view of this cost saving, MSA argues, the Army should have considered MSA's offer instead of exercising the option. MSA further asserts that its eligibility for award has been established by SBA's finding that it is a small business.

In effect, MSA is arguing that the agency's informal price analysis did not provide a proper basis for exercising the option. Because the exercise of an option permits an agency to satisfy current needs for goods or services without going through formal 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); AAA Eng'g & Drafting, Inc., B-236034; B-236034.2, Mar. 26, 1992, 92-1 CPD ¶ 307.


A determination that the option price is the most advantageous must be based on one of the following: (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; or (3) the time between contract award and option exercise is short enough and the market stable enough that the option price is the most advantageous. FAR § 17.207(d). "Other factors" to be considered include the need for continuity of operations and the cost of disruption. FAR § 17.207(e). Since the contracting officer is accorded broad discretion in making this determination, we generally will not question it unless it is shown to be unreasonable or contrary to applicable regulations. AAA Eng'g & Drafting, Inc., *supra*; Kollsman Instrument Co., 68 Comp. Gen. 303 (1989), 89-1 CPD ¶ 243.

The Army's analysis clearly was consistent with the second and third alternatives under FAR § 17.207(e), and we find no basis to question it. As discussed, the contract for the base and option years was awarded in a competitive environment: the Army synopsized the base and option year requirements in the Commerce Business Daily, and received bids from 10 firms. Against this background, the Army's determination was based primarily on the following considerations: (1) the contract was labor intensive and was driven by Department of Labor wage determinations; (2) the time between contract award and option exercise was short--1 year; and (3) the market was stable--that is, there had been no changes in the marketplace for the pertinent labor categories that would have driven down salaries and benefits. The Army also performed an informal price analysis, by comparing the option price to prices for similar contracts at several federal installations in Arizona comparable to Fort Huachuca. This survey indicated that a current price for comparable services was \$692,520 per year--well above Fowler's \$557,309 option price. Since the wages mandated for the contracts at those installations were the same as for the Fort Huachuca contract, the agency considered the comparison reflective of the current competitive environment, and concluded that Fowler's price was still the most advantageous obtainable.

We find nothing unreasonable in the agency's reliance on its current market analysis rather than on MSA's price. When MSA submitted its bid as an alternative to the exercise of Fowler's option, MSA presented no information showing that the financial and other inadequacies disclosed by the prior preaward survey had been corrected or eliminated such that its price likely reflected the realistic cost of the work.

In this vein, the agency reports that it had no reason to believe that MSA would now be found responsible, or that those factors which had led the agency to doubt the realism of MSA's price would not still be present. Although MSA asserts that SBA's size determination established its eligibility for award, there is nothing in the record to support this claim; as noted above, SBA never addressed those factors on which the Army based its nonresponsibility determination.

The protest is denied.


for James F. Hinchman
General Counsel