



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Navigation Services Corporation  
**File:** B-255241  
**Date:** February 10, 1994

Nicholas Van Wiser, Esq., Byrd & Wiser, for the protester.  
Gary R. Chadick, Esq., Litton Guidance & Control Systems, an interested party.  
Karen Gearreald, Esq., Department of the Navy, for the agency.  
Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest challenging the bundling of services in a single procurement is untimely where not raised until the agency's exercise of a contract option, nearly 18 months after the closing date for receipt of proposals for the original award.

### DECISION

Navigation Services Corporation protests the Department of the Navy's exercise of an option under contract No. N00189-93-C-0065 with Litton Guidance & Control Systems for field engineering services.

We dismiss the protest.

On February 28, 1992, the Navy published in the Commerce Business Daily (CBD) its intent to award a sole-source, cost-plus-fixed-fee contract to Litton under request for proposals No. N00189-92-R-0141 for field engineering services in support of the Navy's AN/WSN-2 (stabilized gyroscope set) and AN/WSN-5 (inertial navigation set) for a base and 4 option years. These systems support navigational and fire control functions on Navy ships and at shore facilities. The Navy's written justification for the intended sole-source award states that only Litton, as the original equipment manufacturer, has the expertise and technical data to perform the required services. Only Litton submitted a proposal by the April 26, 1992, closing date, and contract award was made to Litton on November 3, 1992.

On June 4, 1993, Navigation wrote the Navy "request(ing) reconsideration of the contract award for the purpose of evaluating (Navigation) as a possible source for the engineering services." Navigation acknowledged that it could only perform a portion of the services being performed under the contract. Nevertheless, Navigation requested that the Navy consider not exercising the option with Litton and allow Navigation to compete for a portion of the contract services. The Navy did not respond to this letter.

On August 26, 1993, the contracting officer determined, in accordance with Federal Acquisition Regulation (FAR) § 17.207, to exercise its first option with Litton.<sup>1</sup> The contracting officer determined, among other things, that exercise of the option was the most advantageous method of fulfilling the government's requirement, considering price and that the Navy could not afford a disruption in the services. The Navy exercised the option with Litton on August 27.

On September 10, 1993, Navigation again asked the Navy "for reconsideration of the contract award [for the field engineering services], specifically as it relates to renewals of the contract with options beginning October 1, 1992." On September 22, the Navy denied Navigation's request that it be considered for a portion of the contract services, and this protest followed on October 6, 1993.

Navigation protests that the Navy improperly exercised the option without determining whether Navigation could perform a portion of the contract services at a more advantageous price than that offered by Litton. As noted above, Navigation acknowledges that it cannot perform all the field engineering services required by the Navy, but complains that "the original contract specifications have been essentially 'gerrymandered' so as to effectively define any other competent party [other than Litton] out of the running as a potential source for performance of field engineering services."

We find Navigation's protest to be an untimely challenge to the Navy's decision to bundle all of the field engineering services into one contract. While Navigation asserts that it is only challenging the reasonableness of the Navy's exercise of the option where the agency did not consider

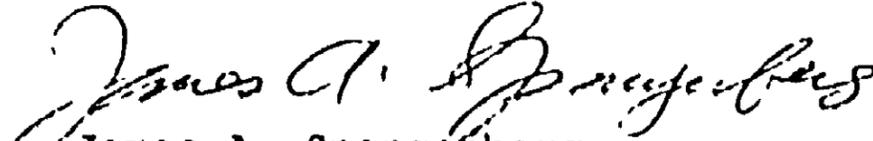
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<sup>1</sup>FAR § 17.207 provides that a contracting officer may exercise an option after determining that (1) funds are available; (2) the requirement covered by the option fulfills an existing government need; and (3) the exercise of the option is the most advantageous method of fulfilling the government's need, price and other factors considered.

whether some of the services (which Navigation can allegedly perform) should be broken out and separately competed, this is no more than a challenge to the Navy's original decision to procure all of the required services under one contract.<sup>2</sup> In fact, Navigation itself recognized this when on June 4, 1993, well after award of the contract but prior to the exercise of the option, Navigation requested that the Navy reconsider the award and complained that the agency bundled all the services into one contract.

Navigation's complaint that the Navy should not have bundled all of these services into one contract concerns an alleged apparent solicitation impropriety, which our Bid Protest Regulations require to be protested prior to the closing date for receipt of proposals under the solicitation, 4 C.F.R. § 21.2(a)(1) (1993). As noted above, the intended sole-source award to Litton for the field engineering services for a base and 4 option years was synopsized in the CBD on February 28, 1992. Proposals were required to be submitted by April 26. Publication in the CBD is constructive notice of the solicitation and its contents. Federal Servs. Group, B-224605, Dec. 23, 1986, 86-2 CPD ¶ 710. Accordingly, Navigation was on notice of the bundled services prior to the closing date and was required to protest prior to that date. Navigation's protest of the agency's bundling of these services nearly 18 months after the closing date for receipt of proposals for the original award is untimely and will not be considered. See National Customer Eng'g, B-251166, Feb. 9, 1993, 93-1 CPD ¶ 118; Federal Servs. Group, supra (protest challenging the bundling of services in an agency's exercise of a contract option is an untimely challenge to the terms of the original solicitation, where the protest was not filed prior to the closing date for receipt of proposals).

The protest is dismissed.

  
James A. Spangenberg  
Assistant General Counsel

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<sup>2</sup>Navigation cites no regulation that requires an agency to reconsider its original procurement decision to bundle needed services in one contract, whenever an option is exercised under that contract.