

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

40921

FILE: B-177758

DATE: July 10, 1974

95269

MATTER OF: Consolidated Airborne Systems,
Incorporated

DIGEST: ASPR 1-1505, which states that before an option in a contract is exercised, agency must determine that exercise of option is most advantageous to Government, price and other factors considered, does not require agency to solicit prices from other sources where it is determined that no other firm could meet delivery schedule because of engineering approval requirement and contractor's option price is lowest that could be obtained in time available for procurement cycle.

On December 29, 1972, contract No. F33657-73-C-0456 for 115 temperature indicators was awarded to the General Electric Company (GE) by Wright-Patterson Air Force Base, Ohio. The contract contains an option clause which provides: "The Procuring Contracting Officer may exercise this option from time to time * * * by giving written notice to the contractor within 150 days following receipt by the Contractor of a written notice of award." The option was exercised on July 26, 1973, for 57 indicators at a total price of \$27,930.

Consolidated Airborne Systems, Incorporated, argues that the Air Force could not have properly exercised the option on July 26 because by that date the 150-day option period had lapsed.

The Air Force reports that commencing with the date the contractor's representative received the contract (December 29, 1972), the initial option period was due to expire on May 29, 1973. However, on May 25, 1973, as the result of a meeting between the contracting officer and a GE representative, the agency reports that GE agreed to extend the period for exercising the option for an additional 60 days. The record contains a letter dated May 31, 1973, from GE confirming the 60-day extension. By letter dated July 18, 1973, the Air Force informed GE of its intent to exercise the option. The option was actually exercised by modification P 00003 dated July 26, 1973. This amendment also formally incorporated the previously agreed upon 60-day extension of the option term.


B-177758

Consolidated argues that the Air Force failed to test the market for availability and price prior to the exercise of the option in accordance with the provisions of Armed Services Procurement Regulation (ASPR) 1-1505(c)(iii). Consolidated bases its position on the fact that it was not solicited despite the fact that it allegedly offered the second lowest option price under the RFP which resulted in the subject contract.

ASPR 1-1505(c) provides that before an option is exercised a determination must be made that exercise of an option, as opposed to a new procurement, is "most advantageous to the Government, price and other factors considered." The regulation does not require the agency in every instance to solicit prices from all possible sources prior to the exercise of an option. For example, ASPR 1-1505(d)(3) provides that the necessary determination may be based on a finding that the time between the award of the contract containing the option and the exercise of the option is so short that it indicates that the option price is the lowest price obtainable. Furthermore, ASPR 1-1505(e) provides, with regard to "other factors" mentioned above, that the Government's need for "continuity of operations" should be taken into account. The contracting officer reports that an engineering approval was required for this item, and any source other than GE would have required approximately 14 months to design, build, test, qualify and produce the item. Therefore, the agency concluded that no other firm could meet the required delivery schedule starting in January 1974. In addition, the report indicates that GE offered the lowest option price of any of the offerors under the original RFP. In view of what the agency considered a relatively short time between contract award and option exercise it determined the final negotiated option price (reported to be \$77.93 per unit lower than the initial contract price), to be the lowest price obtainable in the time available for the procurement cycle.

Based on the Air Force's explanation, which is undisputed by the protester, it is our view that the Air Force did not violate ASPR 1-1505 by failing to solicit a price from Consolidated and, therefore, we believe that the contracting officer's determination to exercise the option with GE was not improper.

Therefore, the protest is denied.


Deputy Comptroller General
of the United States