K4425

Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Washington Consulting and Management Associates, Inc.

File: B-243116.2

Date: July 19, 1991

Harold E. Knight, III, for the protester.
Jeffrey Robbins, Esq., Department of Health and Human Services, for the agency.
Paula A. Williams, Esq., and Paul Lieberman, Esq., Office of General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that contracting agency improperly exercised a contract option is denied where the protester has not shown that the agency failed to follow applicable regulations or that the determination to exercise the option was unreasonable.

DECISION

Washington Consulting and Management Associates, Inc. (WCMA) protests the exercise of the second option year under contract No. 105-89-6005, which was awarded to Falmouth Institute by the Department of Health and Human Services (HHS). WCMA contends that the agency's determination to exercise the option was made without complying with applicable regulations.

We deny the protest in part and dismiss it in part.

On March 13, 1989, WCMA awarded Falmouth a cost-plus-fixed-fee contract to provide training and technical assistance to Native American grantees. The solicitation under which the contract was awarded called for the submission of offers for an initial 1-year base period plus 2 option years. Falmouth and two other firms competed for the contract; WCMA did not participate in the competition. The option years were evaluated as part of the original evaluation and Falmouth received the award as the low cost, technically superior offeror.

On February 22, 1991, the contracting officer made a determination pursuant to Federal Acquisition Regulation (FAR) § 17.207(c) that exercise of the second option year under Falmouth's contract is the most advantageous method, price and other factors considered, of continuing the services to Native American grantees. In justifying his determination, the contracting officer found that because of the limited response obtained during the original competition it was unlikely that a better price or more advantageous offer than Falmouth's option would be available, and that the administrative costs of conducting a new competition, including the start-up costs for a new contractor and the disruption of existing programs, would outweigh any benefits of a recompetition. Accordingly, on that same day, he exercised the second option year under Falmouth's contract.

WCMA alleges that the contracting officer failed to perform any meaningful comparison as required by FAR § 17.207(d), between exercise of the option and recompetition. The protester argues that it could have performed the services at a lower cost than that offered under Falmouth's contract and that the contracting officer knew that the protester wanted to compete for the second option year requirements. WCMA also questions the contracting officer's determination, alleging that Falmouth's performance under the contract has been deficient.

As a general rule, option provisions in a contract are exercisable at the sole discretion of the government. FAR § 17.201. Our Office will not question an agency's exercise of an option under an existing contract unless the protester shows that the agency failed to follow applicable regulations or that the determination to exercise the option, rather than conduct a new procurement, was unreasonable. Syncor Indus. Corp., B-224023.3, Oct. 15, 1987, 87-2 CPD ¶ 360; Tycho Technology, Inc., B-222413.2, May 25, 1990, 90-1 CPD ¶ 500. The FAR grants contracting officers broad discretion in what constitutes reasonable informal price analysis or examination of the market for available prices, see Action Mfg. Co., 66 Comp. Gen. 463 (1987), 87-1 CPD ¶ 518, and also provides that if it is anticipated that the best price available is the option price, or that exercise of the option presents the more advantageous offer, the contracting officer should not issue a new solicitation to test the market. FAR § 17.207(d)(1); Tycho Technology, Inc., B-222413.2, supra.

Here, we find no basis to question the agency's determination to exercise the option. As noted above, the contracting officer took into consideration the prices offered in the original competition by the 2 technically acceptable offerors; the fact that of the 140 firms originally solicited only

3 responded; the desirability of maintaining program continuity; and the administrative costs of conducting a new competition. While the protester points out that the determination which supports the decision to exercise the second option under the contract is identical to the preceding determination to exercise the first option year, this does not mean that the contracting officer did not consider information provided by the protester concerning its ability and willingness to compete for the second option year requirements.1/ The exercise of an option does not permit a firm seeking to compete with an opportunity to compel a new competition or a "market test" merely by virtue of suggesting that it might provide a lower price. See Syncor Indus. Corp., B-224023.3, supra. The contracting officer's informal price analysis in conjunction with his consideration of the other benefits associated with exercising the option provided a reasonable basis for the conclusion that exercise of the option was advantageous to the government. Id.

WCMA's allegation that Falmouth's performance under the contract is deficient is not for consideration since matters of contract administration are outside the scope of our bid protest jurisdiction. 4 C.F.R. § 21.3(m)(1) (1991). We dismiss as untimely the protester's allegation, first raised in its post-conference comments, that HHS did not synopsize its intent to exercise the contract option in the Commerce Business Daily pursuant to FAR § 5.201(b)(3) since this new ground of protest was not filed within 10 working days after the basis of protest was known or should have been known. 4 C.F.R. § 21.2(a)(2); Joseph L. De Clerk & Assoc., Inc.--Recon., B-233166.3, Apr. 6, 1989, 89-1 CPD ¶ 357.

The protest is denied in part and dismissed in part.

for James F. Hinchman
General Counsel

1/ By letters dated August 23, and November 12, 1990, respectively, WCMA informed the contracting officer that because its president was the project director for Falmouth under the original contract, the firm had not submitted a proposal in response to the solicitation under which the contract was awarded. The protester also advised the contracting officer that since its president had been removed from his position as project director for Falmouth, the firm was now a potential offeror for the second option year requirements.