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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: National Customer Engineering

File: B-251034

Date: February 11, 1993

Thomas N. Jones for the protester.
Alex D. Tomaszczuk, Esq., Shaw, Pittman, Potts & Trowbridge,
for Computervision Corporation, an interested party.
James L. Weiner, Esq., Department of the Interior, for the
agency.
Daniel I. Gordon, Esq., and Paul Lieberman, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Where agency's exercise of an option is based on an informal market survey that expressly considered the price and terms offered by the protester, protest that informal market survey was inadequate is without merit.

DECISION

National Customer Engineering (NCE) protests the decision by the United States Geological Survey (USGS), Department of the Interior, to exercise an option under contract No. 14-08-0001-23432, awarded to Prime Computer, Inc. (now Computervision Corporation) for preventative and remedial maintenance of certain automated data processing equipment. NCE contends that exercise of the option is improper because the agency failed to conduct an adequate market survey, and that an adequate survey would have demonstrated that exercise of the option was not the most advantageous method of satisfying the agency's needs.

We deny the protest.

On December 5, 1988, the agency published a notice in Commerce Business Daily (CBD) announcing a requirement for preventative and remedial maintenance of 58 government-owned Prime Computer minicomputers and associated peripherals and software in more than 50 locations nationwide. On June 12, 1989, the agency issued request for proposals (RFP) No. 7537 covering that requirement. Because only Prime Computer responded to the RFP, the agency published a second CBD notice which, while continuing to invite proposals from

other sources, stated that the agency intended to negotiate a contract with Prime Computer. The CBD notice provided that it was anticipated that the contract would cover a base year with 3 option years.

When no other vendor submitted a proposal, the agency took the requisite steps to award the contract without competition, based on Prime Computer's unique qualifications to meet the agency's requirements (due to the proprietary nature of the hardware and software) and the lack of response by any other firm to the agency's effort to obtain competing proposals. The agency awarded a contract to Prime Computer on September 29, 1989, for a base year with 3 option years.

The first and second options were exercised without protest. During the course of the second option year, Prime Computer reduced certain maintenance charges; those reductions were incorporated in a modification to the contract dated April 10, 1992. The third option, if exercised, was scheduled to run from October 1, 1992, through September 30, 1993.

NCE states that Federal Support Group, Inc. (FSG), which serves as a dealer for NCE, contacted the contracting officer in May 1992 "to discuss opportunities in fulfilling the Government's needs." In late August 1992, FSG informed the contracting officer that NCE and another company represented by FSG could provide lower prices for some contract line items than the prices under the third option of Prime Computer's contract. At that time, FSG submitted a 2-page proposal with attached price lists showing lower prices than Prime Computer's on a substantial number of items.

FSG's August 1992 proposal covered only 32 of the approximately 50 agency sites included in Prime Computer's contract. For those sites within its scope, the proposal encompassed only hardware maintenance; no software maintenance was offered except through a subcontractor answering "how to" questions and providing "bug fixes" in the form of work-arounds."

In early September 1992, FSG notified the agency that NCE had been awarded a General Services Administration (GSA) schedule contract for hardware maintenance, which covered maintenance of some Prime Computer equipment. The GSA schedule contract differed in its scope and terms from Prime Computer's contract with USGS. In particular, Prime Computer's contract set a 4-hour maximum response time, while NCE's GSA schedule contract did not provide for that prompt a response in all circumstances. In addition, NCE's GSA schedule contract did not encompass all of the hardware

included in Prime Computer's contract; it did not cover any software maintenance; and it was valid only up to a \$50,000 maximum order limitation. The GSA contract also provided that the agency would have to pay a surcharge of up to 25 percent for locations outside a 100-mile radius from NCE ten service centers.¹

In late September, the contracting officer conducted a review to determine whether Prime Computer's contract prices for the third option year were fair and reasonable. The contracting officer compared the contract option prices with the prices in Prime Computer's current commercial price list as well as the prices in a GSA schedule contract held by Prime Computer. She concluded that Prime Computer's USGS contract option year prices were significantly lower than Prime Computer's commercial prices and its GSA schedule contract prices. On the basis of that comparison, the contracting officer determined that the third option year prices were fair and reasonable.

In addition, the contracting officer compared exercise of the option in Prime Computer's contract with FSG's August 1992 proposal. She noted that some of the prices listed in the proposal appeared to be lower than the Prime Computer contract prices, although FSG's proposal did not indicate that volume discounts would be available, whereas the Prime Computer contract does provide for such discounts. The contracting officer identified a number of deficiencies in the proposal, including the lack of adequate software coverage and the failure to encompass all the USGS sites covered by Prime Computer's contract. She determined that FSG's proposal would entail dividing up the agency's requirements among as many as four vendors, which she viewed as disadvantageous to the government.

The contracting officer also reviewed NCE's GSA schedule contract and concluded that the schedule contract's scope and terms meant that the agency could not consider reliance on the schedule contract as a viable alternative to exercise of the option in Prime Computer's contract. In particular, the contracting officer noted that NCE's schedule contract

¹NCE's schedule contract was later modified to raise the maximum order limitation and to expand the number of NCE service centers (thus reducing the likelihood that government users will have to pay surcharges due to distance from the nearest service center). These changes, however, were made after October 1, 1992, and thus have no bearing on the reasonableness of the agency's September 30, 1992 determination that the restrictions in NCE's schedule contract made it an undesirable alternative to Prime Computer's contract.

excluded some of the hardware and all of the software maintenance covered by Prime Computer's contract, and the NCE schedule contract did not guarantee a 4-hour response time.

On the basis of this analysis, the contracting officer determined that it was in the government's best interest to exercise the final option year of Prime Computer's contract rather than to pursue alternatives such as reliance on NCE's schedule contract to satisfy the agency's requirements.

NCE contends that USGS failed to conduct an adequate market survey and lacked a reasonable basis for determining that exercise of the option in Prime Computer's contract was the most advantageous method of fulfilling the agency's needs. NCE argues that, in light of the indications from FSG and NCE about lower-cost alternatives to exercising the option, USGS "should have been . . . camping out on our doorsteps" to explore those alternatives. NCE also faults the contracting officer for basing her determination that Prime Computer's option prices were fair and reasonable solely on a comparison with Prime Computer's GSA schedule contract and that company's commercial price list.² In addition, NCE disagrees with USGS concerning the acceptability of FSG's August 1992 proposal and NCE's schedule contract as alternative means to satisfy the agency's needs.

As a general rule, option provisions in a contract are exercisable at the discretion of the government. Because the exercise of an option permits an agency to satisfy current needs for goods and services without going through competitive procedures, however, the Federal Acquisition Regulation (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). We will not question the agency's determination unless it is unreasonable or contrary to applicable regulations. AAA Eng'g & Drafting, Inc., B-236034.2, Mar. 26, 1992, 92-1 CPD ¶ 307. A determination that an option price is the most advantageous possibility must be based on one of the following findings under FAR

²NCE also contends that the April 1992 price reductions constituted a sole-source negotiation of the third-year option prices. We do not discuss this contention in detail because it is factually without basis. The price reduction occurred during the course of the second-year option and applied to that option (as well as to the third-year option). The allegation is also untimely, because it was raised with our Office more than 10 days after NCE learned of the price reductions. See 4 C.F.R. § 21.2(a)(2) (1992).

§ 17.207(d): (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 than prices available in the market or that the option is the most advantageous offer; or (3) the time between contract award and option exercise is short enough and the market stable enough to indicate that the option price is the most advantageous price available.

Where an agency elects to conduct an informal market survey, the form the survey takes is largely within the discretion of the contracting officer, as long as it is reasonable. Kollsman Instrument Co., 68 Comp. Gen. 303 (1989), 89-1 CPD ¶ 243. While it may be appropriate in certain circumstances for a contracting officer to contact all available sources to determine whether an option price is most advantageous, such a procedure is not mandated by regulation. Id. Moreover, even if the agency does not contact a firm which claims it could offer a lower price, that fact alone does not demonstrate that the market survey is inadequate. Id. While issuing an entirely new solicitation may be the only way to be certain that prices better than the option prices are not available, the language of the FAR makes clear that an informal market survey is an acceptable alternative.

Here, the basis for the agency determination was an informal market survey which we find was reasonable and satisfied the FAR requirements, at least insofar as NCE is concerned. NCE concedes that only Prime Computing is capable of providing the software maintenance services covered by the contract, so that the agency's comparison of the option prices with Prime Computer's commercial and GSA schedule contract prices plainly constituted an adequate market survey as to the software maintenance portion of the contract.


With respect to the hardware maintenance services covered by the contract, the agency expressly considered both FSG's August 1992 proposal and NCE's GSA schedule contract. The agency's determination that neither offered a satisfactory alternative to Prime Computer's provision of those services was based, among other factors, on the fact that neither covered all of the agency's sites even as to hardware maintenance and that, in addition, the schedule contract did not satisfy the agency's undisputed requirement for a 4-hour response time. NCE does not deny that it is unable to provide hardware maintenance at all of the agency sites covered by Prime Computer's contract. Accordingly, USGS was faced with a choice between, on the one hand, exercising the option in the Prime Computer contract and, on the other hand, splitting the requirements among multiple vendors, which might include NCE for some hardware maintenance; another source for hardware maintenance in locations that NCE could not cover; another source for maintenance of

hardware that NCE does not maintain at any location; another source for answering "how to" questions and providing "work-around" solutions to software problems; and Prime Computer for software maintenance requiring access to that company's proprietary data.

While dividing up the requirements appeared to offer lower prices on some individual contract line items, the contracting officer reasonably determined that it was doubtful that alternatives to the Prime Computer contract would result in actual savings to the agency. NCE did not offer the volume discounts provided by Prime Computer, and diverting purchases to other sources would presumably eliminate the extent of volume discounts obtained from that company. Moreover, the agency had no way of knowing, without issuing new, separate solicitations, whether Prime Computer's prices for specific line items would rise if the scope of its contract were significantly limited. In addition, since NCE's schedule contract prices reflected a response time longer than that called for in Prime Computer's contract, there was uncertainty about the prices NCE would charge to satisfy the agency's requirement for a 4-hour response time (if NCE was capable of satisfying that requirement at all). Finally, NCE's schedule contract indicated that USGS would be required to pay a surcharge of up to 25 percent for maintenance performed at sites more than 100 miles from NCE's service centers.

In sum, the contracting officer had a reasonable basis to determine that the option in the Prime Computer contract constituted the most advantageous offer available. As explained above, the agency was not required to issue new solicitations in order to make that determination. Although NCE may disagree with the agency's judgment about whether exercising the option in Prime Computer's contract was more advantageous than satisfying the agency's requirements through several separate contracts, it cannot reasonably contend that the agency failed to consider contracting with NCE as an alternative to exercising the option in Prime Computer's contract. Accordingly, we find that the agency's informal market survey satisfied the requirement of FAR § 17.207(d).

The protest is denied.


for James F. Hinchman
General Counsel