



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: PR Newswire Association, LLC

File: B-401692

Date: November 5, 2009

Brian Taylor for the protester.

Cheryl S. Mpande, Esq., Department of Health and Human Services, for the agency.
Susan K. McAuliffe, Esq., and Christine S. Melody, Esq., Office of the General
Counsel, GAO, participated in the preparation of the decision.

DIGEST

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

DECISION

PR Newswire Association, LLC, of Washington, D.C., protests the exercise of the first option under contract No. HHSP233200800187A, awarded to Business Wire, Inc., of Arlington, Virginia, under request for proposals No. HHS-ASPA-NEWSDIVISION, issued by the Department of Health and Human Services (HHS) for distribution of news releases and media advisories. The protester contends that the agency's determination to exercise the option was improper.

We deny the protest.

As a matter of background, PR Newswire, which had previously provided the required services to the agency, was awarded a sole-source contract for the current requirement on December 20, 2007; that award was protested by Business Wire. In response to the protest, the agency canceled the award and issued a new solicitation for a competitive procurement for the services. That solicitation was published on the FedBizOpps website on May 28, 2008, with proposals due by June 24. PR Newswire did not submit a proposal. The agency evaluated the proposals received and made an award, for a base year and four option-year periods, to Business Wire on August 1, having determined that the firm's proposal (which offered the lowest price and received high technical ratings) offered the best value to the agency. PR Newswire protested that award, contending that the agency failed to give the

protester notice of the procurement. Our Office denied the protest since the publication of the solicitation on the FedBizOpps website gave all potential offerors, including the protester, constructive notice of the procurement. PR Newswire Ass'n, LLC, B-400430, Sept. 26, 2008, 2008 CPD ¶ 178 at 2.

Toward the end of the base year period of performance under Business Wire's contract, PR Newswire contacted the agency to announce that the firm had recently received a General Services Administration (GSA) Federal Supply Schedule (FSS) contract under which it could provide the services required under the solicitation. The protester advised that it would discount its FSS contract prices to offer a more advantageous price to the agency than the price available under Business Wire's contract for performance in the first option year. The protester initially stated that it would perform the year's work for \$10,000, but subsequently increased its price to \$10,750 to include a fee associated with its GSA FSS contract.¹ Business Wire's contract provided a price of \$12,240 for the first option year. The agency conducted an informal analysis of market prices which failed to suggest that lower prices would be submitted if a new competition was held; while the agency did consider the protester's informal price of \$10,750, it questioned whether, in light of the firm's substantially higher FSS contract prices,² and the fact that the firm already had increased its initial price (from \$10,000 to \$10,750), the protester might increase its price again during a new competition. In any event, the agency found that the costs associated with conducting a new competition would outweigh the savings associated with the protester's lower price, even if that price were offered under a new solicitation. The agency then chose to exercise the option available under Business Wire's contract. This protest followed.

Before an option can be exercised, an agency must make a determination that exercise of the option is the most advantageous method of fulfilling its needs, price and other factors considered. Federal Acquisition Regulation (FAR) § 17.207(c)(3). This determination may be based upon an informal market survey or price analysis that indicates that the option price is lower or more advantageous, and the contracting officer may consider other advantages from the exercise of the option. FAR § 17.207(c)(3), (d), (e). The contracting officer is accorded broad discretion in making this determination, and our Office therefore will not question the decision to exercise an option, rather than conduct a new procurement, unless it is shown to be

¹ The protester states that the \$750 increase reflects the addition of the Industrial Funding Fee, a fee associated with FSS contracts.

² Using the prices on the protester's FSS contract, the agency calculated that the protester's price for the required services would be almost four times higher than the protester's informal price. Agency Report (AR), Tab 1, Contracting Officer's Statement at 3.

unreasonable or contrary to applicable regulations. Sippican, Inc., B-257047.2, Nov. 13, 1995, 95-2 CPD ¶ 220 at 2.

We find no basis to question the agency's exercise of the option here. As noted above, the record shows that, before deciding to exercise the option, the agency conducted an informal price analysis and considered the costs of reprocurring its requirement instead of exercising the option. The agency also took into account the fact that the awardee's performance was satisfactory and that the option price was reasonable. In challenging the agency's decision to exercise the option, the protester primarily questions the agency's informal price analysis, arguing that it was based on prices for services that are not comparable to the services required here. We need not address the protester's contentions in this regard given that the record shows that the agency also concluded that the administrative costs associated with conducting a new competitive procurement for the services would be at least \$1,930 (reflecting the costs associated with, for instance, preparing and issuing the solicitation, and reviewing proposals prior to making an award). AR, Tab 1, Contracting Officer's Statement at 5. This amount is higher than the greatest potential savings associated with the protester's informal offer of \$10,750.³

Given that the agency considered the awardee's performance acceptable, found the option price reasonable, and concluded that any savings resulting from the protester's informal offer would be more than offset by the costs of reprourement, and in light of the agency's broad discretion in this area, we have no basis to question the propriety of the agency's exercise of the option. Person-System Integration, Ltd., B-246142, B-246142.2, Feb. 19, 1992, 92-1 CPD ¶ 204 at 3; Washington Consulting and Mgmt. Assocs., Inc., B-243116.2, July 19, 1991, 91-2 CPD ¶ 76 at 2-3.

The protest is denied.

Lynn H. Gibson
Acting General Counsel

³ That is, compared to Business Wire's option price of \$12,240, there is a potential savings of only \$1,490 associated with the protester's informal offer of \$10,750.