



Decision

Matter of: Nutriom, LLC

File: B-402511

Date: May 11, 2010

Hernan G. Etcheto for the protester.

Michael P. Wilson, Esq., Defense Logistics Agency, for the agency.

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DIGEST

Protest that contracting agency improperly exercised a contract option is denied where agency reasonably determined that exercising the option was the most advantageous means of satisfying the agency's needs.

DECISION

Nutriom, LLC, of Lacey, Washington, protests the exercise of an option by the Defense Logistics Agency (DLA) under contract No. SPM3S1-08-D-Z186, awarded to Oregon Freeze Dry (OFD), of Albany, Oregon, under request for proposals (RFP) No. SPM3S1-06-R-7003, for a dehydrated egg product.

We deny the protest.

BACKGROUND

The RFP, issued on August 30, 2006, provided for the award of a fixed-price with economic price adjustment, indefinite-quantity contract for a base year with four option years for a dehydrated egg mix for the Unitized Group Ration-Heat and Serve (UGR-H&S) Program.¹ During the initial competition for this contract, DLA received offers from three small business firms, including Nutriom. Following discussions, DLA made award to OFD on the basis of that firm's low price and technical rating. Concurrent with the award of the contract to OFD on January 10, 2008, DLA

¹ The UGR-H&S program supports military personnel in worldwide operations that allow organized food service facilities. www.dscp.dla.mil/subs/rations/programs.

exercised the contract's first option year.² The agency's initial award, and its simultaneous exercise of the first option, were not protested.

On September 28, 2009, Nutriom informed DLA that the firm had made "a capital investment in new production equipment" that Nutriom claimed would allow it to offer its product at a lower price than OFD's price for the next option period. See Protest, exhib. A, Nutriom Letter to Contracting Officer, at 2. Subsequently, DLA conducted a market survey, requesting pricing from Nutriom and the other unsuccessful offeror under the initial RFP. See AR, Tab G, DLA Email to Nutriom, Nov. 30, 2009. Only Nutriom responded, identifying a total unit price that was less than OFD's per-case option price (with economic price adjustment).

While noting Nutriom's lower unit price, the contracting officer concluded that exercising the option in OFD's contract was the most advantageous method of fulfilling the government's needs. AR, Tab H, Justification of Exercise Option Year 2. In this regard, the contracting officer states that unitized group rations, such as this dehydrated egg product, are critical mission support items for military personnel in the field and that he was aware that recent troop activity had increased the demand for these rations. See Contracting Officer's Statement at 4-5. The contracting officer also noted OFD's excellent past performance, quality history, and conformance to contractual terms, conditions, and price. AR, Tab H, Justification of Exercise Option Year 2, at 1-2.

In addition, the contracting officer considered whether Nutriom could provide the UGR-H&S dehydrated egg product at its market survey price in a reliable and continuous manner such that it was more beneficial to conduct a new procurement than exercise the option in OFD's contract. Id. at 2-3. Specifically, the contracting officer noted that Nutriom's survey price for the second option of the UGR-H&S contract could not be reconciled with Nutriom's much higher price for another egg product under the unitized group ration-A (UGR-A) program, given that the UGR-A dehydrated egg product requires a less expensive and less complicated manufacturing process than the UGR-H&S egg product. See Id.; see also Tab G, Contract Specialist's Market Survey Analysis. Finally, the contracting officer questioned whether Nutriom could provide a technically compliant product at this low price, noting that the new process for the egg product offered by Nutriom had not yet been tested. See Contracting Officer's Statement at 5 n.4.

² The first option year was exercised to support surge requirements during Operation Enduring Freedom.

In justifying the exercise of OFD's second option, the contracting officer concluded that:

Due to the urgency of the current requirement, resoliciting is not an option since there is no guarantee that Nutriom's product could meet the 2[-percent] moisture requirement and that their price will be lower than the current contract price Additionally, by exercising the option year 2, the Government's need for continuity of operations is met, and avoids additional cost associated with disruption of said operations.

AR, Tab H, Justification of Exercise Option Year 2, at 3.

Following notification that the agency would exercise the second option year in OFD's contract, Nutriom filed an agency-level protest, which DLA denied. This protest followed.

DISCUSSION

The crux of the protester's argument is that the contracting officer did not give appropriate consideration to Nutriom's new manufacturing process for this dehydrated egg product, or to Nutriom's claim that it could provide the egg product at a lower price than OFD's second option year price. In addition, the protester complains that the DLA should have conducted the market survey earlier to avoid a concern about continuity of operations.

As a general rule, option provisions in a contract are exercisable at the discretion of the government. AAA Eng'g & Drafting, Inc., B-236034.3, Apr. 6, 1993, 93-1 CPD ¶ 295 at 5. 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. Sippican, Inc., B-257047.2, Nov. 13, 1995, 95-2 CPD ¶ 220 at 2; Tycho Tech., Inc., B-222413.2, May 25, 1990, 90-1 CPD ¶ 500. 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 need, price and other factors considered. Federal Acquisition Regulation (FAR) § 17.207(c)(3). One of the means available under the FAR for determining whether option exercise is the most advantageous method is an informal market survey or price analysis. FAR § 17.207(d)(2). The FAR also directs that the contracting officer's consideration of "other factors" should take into account the need for continuity of operations, as well as the potential costs of disrupting operations. FAR § 17.207(e).

Where, as here, 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. National Customer Eng'g, B-251034, Feb. 11, 1993, 93-1 CPD ¶ 129 at 5. The intent of the regulations is not to afford a firm that offered high prices under an

original solicitation an opportunity to remedy this business judgment by undercutting the option price of the successful offeror. Person-System Integration, Ltd., B-246142, B-246142.2, Feb. 19, 1992, 92-1 CPD ¶ 204 at 2.

Here, we find no basis to question the agency's exercise of the option in OFD's contract. The record shows that, before deciding to exercise the option, the contract specialist conducted an informal market survey of the unsuccessful offerors under the original RFP and specifically considered Nutriom's statement that it could provide the dehydrated egg product at a lower unit price than OFD's second option year price, due to its new manufacturing process. The contracting officer weighed several factors, including: (1) the status of unitized group rations as a critical mission-support item for the military with a need for quality, continuity of performance and competitive price; (2) Nutriom's ability to continually provide a compliant product at its stated market price; and (3) OFD's excellent past performance record of providing a quality product in a timely manner, particularly under surge requirements. See Contracting Officer's Statement at 6-8.

Contrary to Nutriom's arguments, we do not agree that the agency's informal survey was unreasonable because the agency did not discuss with Nutriom the agency's concerns with Nutriom's survey price and new manufacturing process. As noted above, the record shows that DLA was concerned that Nutriom's new manufacturing process had not yet been tested. In addition, the agency was concerned about the discrepancy between Nutriom's claimed price for the UGR-H&S dehydrated egg product and the firm's higher price for the UGR-A egg product, which requires a less expensive and less complicated manufacturing process. Although Nutriom disagrees with the agency's judgment and argues that it could have addressed the agency's concerns, the FAR does not require a contracting agency to conduct a new procurement or to perform extensive or detailed research into the marketplace to determine whether the exercise of a contract option is most advantageous to the government. See Alice Roofing & Sheet Metal Works, Inc., B-283153, Oct. 13, 1999, 99-2 CPD ¶ 70 at 4. Rather, as noted above, the regulations permit a contracting agency to base its judgment upon an informal survey and price analysis. See FAR § 17.207(d)(2).

We also find no merit to Nutriom's complaint that DLA should have conducted the informal market survey earlier. Here, the record shows that the agency first received pricing information from Nutriom more than 2 months before--and conducted its informal market survey a month before--the exercise of the option. Again, there is no requirement that the agency conduct a full-blown procurement in order to determine whether the exercise of a contract option is the most advantageous method of fulfilling its needs.

In sum, the contracting officer concluded here that it was more advantageous to exercise the option in OFD's contract than to conduct a new procurement, given that exercising the option would ensure continuity of operations for the supply of a critical item and given the contracting officer's concerns with Nutriom's market

survey price. A contracting officer is accorded broad discretion in making the determination that the exercise of an option is in the best interest of the government, and we will not question the contracting officer's decision unless, unlike here, it is shown to be unreasonable or contrary to applicable regulations. Sippican, Inc., supra, at 2.

The protest is denied.

Lynn H. Gibson
Acting General Counsel