

Decision

Matter of: Monbo Group International

File: B-420217; B-420217.2

Date: December 22, 2021

Dee Monbo, CPA, Monbo Group International, for the protester.
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Emily R. O'Hara, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the agency improperly exercised an option under a vendor's contract, when the vendor had graduated from the Small Business Administration's 8(a) program, is denied where the agency reasonably determined that exercising the option was the most advantageous means of satisfying the agency's needs.

DECISION

Monbo Group International, a small business of Owings Mills, Maryland, protests the exercise of an option to extend services under contract no. DU100R-17-C-14, awarded to Hamilton Enterprises, LLC, of Washington, D.C., by the Department of Housing and Urban Development (HUD) for mortgage insurance claims processing services. The protester contends that the agency violated procurement regulations in exercising the option on a contract with a firm that had graduated from the Small Business Administration's 8(a) program.¹

We deny the protest.

¹ Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a), authorizes the Small Business Administration (SBA) to enter into contracts with government agencies and to arrange for performance through subcontracts with socially and economically disadvantaged small business concerns. Federal Acquisition Regulation (FAR) 19.800. This program is commonly referred to as the 8(a) Business Development program (or simply "8(a) program").

BACKGROUND

On September 30, 2017, Hamilton was awarded a sole-source contract under the 8(a) program for the provision of services to assist HUD's Multifamily Claims Branch (MFCB) with portfolio management and the processing of mortgage insurance claims.² Agency Report (AR), Tab 3, Contract at 4. The fixed-price contract was awarded for a base year and four pre-priced option years, with the potential for option years to begin on September 30, 2018, and extend through September 20, 2022. *Id.* at 1, 4; Contracting Officer's Statement (COS) at 1-3.

Hamilton graduated from the 8(a) program on December 7, 2017. COS at 1. HUD exercised the options on Hamilton's contract in September of 2018, 2019, 2020, and 2021, each time finding that it was in the government's best interest to exercise the option. See AR, Tabs 5-7, 10-14, Determination and Findings (D&F) for Option Years 1-4. In October of 2019, Monbo Group contacted HUD, expressing interest in obtaining an 8(a) sole-source award from the agency for the same requirement, "once the current incumbent contract expires." AR, Tab 15, Emails from Protester to Agency at 1. The protester also contacted HUD in March of 2020, stating that "[w]e notice that the 8a sole source contract . . . is expiring in September 2020 and Hamilton Enterprise has graduated from the 8a program." *Id.* at 11. In that email, the protester again expressed its interest in being considered for an 8(a) sole-source award of the requirement. *Id.*

On September 30, 2021, Monbo Group states it learned that HUD had exercised the final option year (year four) on Hamilton's contract. Protest at 2. Monbo Group filed its protest with our Office on October 1, 2021.

DISCUSSION

Monbo Group argues that the agency violated procurement regulations in exercising the fourth option year of Hamilton's 8(a) contract.³ Protest at 3. More specifically, the

² Based on the agency's market research in 2017, HUD determined that Hamilton (d/b/a Franklin and Turner International), an 8(a) firm, had the capabilities to "meet and/or exceed those necessary to fulfill the requirements" of the MFCB. AR, Tab 1a, 8(a) Sole-Source Market Research at 8. HUD submitted an offer of the requirement into the 8(a) program on July 13, 2017. AR, Tab 1, SBA Letter at 1. On July 20, 2017, SBA, on behalf of Hamilton, accepted HUD's offer. *Id.*

³ Monbo Group initially protests the agency's "8a sole source award" to Hamilton Enterprises. Because no new contract has been awarded, we interpret this protest to be challenging the agency's exercise of the contract's most recent option year--option year four. See Protest at 3. To the extent that the protester intended to challenge the exercise of earlier option years or the initial sole-source award, those challenges are clearly untimely. Our Bid Protest Regulations contain strict rules for the timely submission of protests. Under these rules, a protest based on other than alleged improprieties in a solicitation must be filed no later than 10 calendar days after the

protester alleges that the agency violated section 17.207 of the FAR because HUD had relied on outdated pricing in its market research when determining whether the option should be exercised. *Id.* at 3. Further, the protester contends that HUD violated SBA's regulations in exercising the option year because Hamilton had graduated from the 8(a) program and the option exercise was not in the best interest of the government. Comments at 1, 4.

The agency responds that its exercise of the option was compliant with the applicable FAR and SBA regulations. Memorandum of Law (MOL) at 3. HUD states that the exercise of the fourth option was reasonable because the agency considered all required factors in its determination and findings, including current pricing, and determined that exercising the contract's option was the most advantageous method of meeting HUD's requirement. MOL at 3; Supp. MOL at 1. Although we do not specifically address every argument raised by the protester, we have considered all of them and conclude that none furnish a basis on which to sustain the protest.

While our Office views an agency's decision not to exercise an option as a matter of contract administration, we will entertain protests arguing that an agency unreasonably decided to exercise an option in an existing contract, rather than conduct a new procurement. *M&C Venture Grp., LLC*, B-419270, Jan. 11, 2021, 2021 CPD ¶ 20 at 5. As a general rule, option provisions in a contract are exercisable at the discretion of the government. *InGenesis, Inc.*, B-412101.2, Mar. 28, 2016, 2016 CPD ¶ 102 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. *Antmarin Inc.*, B-296317, Jul. 26, 2005, 2005 CPD ¶ 149 at 4.

protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2).

Here, the protester knew or should have known the basis of its protest--the exercise of the prior option years or the initial award--earlier than October 2021. Emails sent from the protester to the agency in 2019 demonstrate that the protester was aware of this requirement and the 8(a) contract at issue. See *generally* AR, Tab 15, Emails from Protester to Agency. Additionally, the protester knew, at the latest, by March of 2020 that Hamilton had graduated from the 8(a) program. *Id.* at 15. The protester also believed that the contract was "expiring" in September of 2020. *Id.* If Monbo Group believed that the agency had improperly awarded a contract, or exercised the earlier option years to Hamilton, Monbo Group was required to file its protest within 10 days of when it knew or should have known the basis of its protest (*i.e.*, that the agency improperly awarded or exercised option year one, two, or three of Hamilton's contract). See *Vetterra, LLC*, B-417991 et al., Dec. 29, 2019, 2019 CPD ¶ 15 at 2; *AMA Security Serv., Inc.*, B-418647, June 24, 2020, 2020 CPD ¶ 223 at 3-4; see also *Valkyrie Enters., LLC*, B-414516, June 30, 2017, 2017 CPD ¶ 212 at 3-4 n.2 ("[A] protester need not await perfect knowledge before filing a protest.").

Additionally, when a protester's challenge involves an 8(a) procurement, GAO limits the scope of its review of agency actions, due to the broad discretion afforded to SBA and contracting agencies under the applicable statute and regulations. *B&D Consulting, Inc.*, B-413310, B-413310.2, Sept. 30, 2016, 2016 CPD ¶ 280 at 4. GAO may consider issues involving 8(a) procurements, however, when the protester alleges that government officials have violated regulations or engaged in bad faith. *GOV Servs., Inc.*, B-414374, May 11, 2017, 2017 CPD ¶ 143 at 5. Here, as noted above, Monbo Group contends that the agency's decision to exercise the contract option violates the FAR as well as SBA's regulations. Accordingly, because the protester alleges officials failed to follow applicable regulations in exercising the option of an 8(a) contract, we will review the protester's challenge.⁴ See e.g., *id.* (finding that the protester's allegation that the agency violated SBA's regulations by awarding an 8(a) contract on a sole-source basis gave GAO the authority to review the challenge); *M&C Venture Grp., supra* (finding that the protester's allegation that the agency violated the FAR in exercising an option gave GAO the ability to review the challenge).

Exercise of Option under the FAR

Generally, the exercise of an option permits an agency to satisfy current needs for goods or services without going through formal competitive procedures. Because of this, the FAR provides that before an option can be exercised, an agency must make a determination that "the exercise of the option is the most advantageous method of fulfilling the Government's need, price and other factors . . . considered." FAR 17.207(c)(3). One of the means available for determining whether an option exercise is the most advantageous method of fulfilling an agency's needs is an informal market survey or price analysis. FAR 17.207(d)(2). The form of such a survey is largely within the discretion of the contracting officer, as long as it is reasonable. *Nutriom, LLC*, B-402511, May 11, 2010, 2010 CPD ¶ 113 at 3-4 ("[T]he 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.").

Here, the record demonstrates that the agency reasonably based its decision to exercise the option on an informal examination of the market. See AR, Tab 30, Market Research Report. Market research was conducted using current General Services Administration (GSA) Federal Supply Schedules for Hamilton and two other firms that provided auditing and accounting services. *Id.* at 2; see generally AR, Tabs 20-22, GSA Schedules. HUD compared Hamilton's pricing for the relevant labor categories with the pricing of the two other firms and concluded that Hamilton's prices represented the best value to the agency because Hamilton's price continued to be lower than the other contractors for the same services. AR, Tab 30, Market Research at 3; AR, Tab 14, Option 4 D&F at 2. The agency also considered non-price factors in its decision. The

⁴ For these reasons, we declined to dismiss Monbo Group's protest. See Req. for Dismissal at 2.

agency noted that the need for continuity in multifamily claims branch operations was critical, and that “a failure to exercise the option [would] have a negative impact on the Multifamily Division and the Nation’s Housing Market as it [would] affect the program office’s ability to provide assistance with auditing the insurance claim and payment processes.” AR, Tab 14, Option 4 D&F at 1. As a result of Hamilton’s lower prices, the need for continuity, and Hamilton’s acceptable performance on the contract, HUD concluded that “exercising the option . . . is the most advantageous to the Government as re-procurement of this requirement will not offer faster, better output or a lower cost administratively.” AR, Tab 30, Market Research at 3.

Based on our review of the record, we find that the agency appropriately considered current pricing and other information, as required by the FAR, and reasonably determined that exercising the option under Hamilton’s contract was the most advantageous method of fulfilling the agency’s needs.⁵ See *Washington Consulting & Mgmt. Assocs., Inc.*, B-243116, B-243116.2, July 19, 1991, 91-2 CPD ¶ 76 at 3 (finding that the agency’s informal price analysis along with the consideration of other benefits provided a reasonable basis for exercising the contract option). Notwithstanding the protester’s bare assertion to the contrary, the agency’s exercise of the option on the existing contract was consistent with the requirements of the FAR. Accordingly, this allegation is denied.

Exercise of Option under the 8(a) Program

Monbo Group also generally argues that the agency violated SBA’s regulations because Hamilton had graduated from the 8(a) program and, therefore, was “ineligible for an 8a [sole]-[source] award.” Protest at 2. As noted above, the record indicates that the procurement action, of which the protester challenges, is the agency’s exercise of an

⁵ The protester also contends that it could offer a lower price than the contractor and that the agency “improperly excluded the protester’s price” in conducting its informal market research. Comments at 3. Monbo Group can cite to no procurement law or regulation, however, which requires an agency to seek out a specific vendor’s pricing in performing its market research or making its assessments. A protester’s bare assertion that it can provide a lower price than the incumbent contractor, without more, is insufficient to find an agency’s exercise of an option unreasonable. *Washington Consulting & Mgmt. Assocs., supra* (“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.”). Contrary to the protester’s assertion, HUD was not required to specifically consider Monbo Group’s pricing in performing the agency’s price analysis, and the protester is not “entitled to the 8a Contract . . . by law,” simply because Monbo Group stated that it could offer lower pricing than the current contractor. Comments at 4; see *National Customer Eng’g*, B-251034, Feb. 11, 1993, 93-1 CPD ¶ 129 at 5 (explaining that an agency’s failure to “contact a firm which claims it could offer a lower price . . . alone does not demonstrate that the market survey is inadequate”).

option on an existing 8(a) contract, not the issuance of a new sole-source contract under the 8(a) program. As such, the relevant SBA regulation provides the following guidance:

Except as set forth in § 124.521(e)(2), the procuring activity contracting officer may exercise a priced option to an 8(a) contract whether the concern that received the award has graduated or been terminated from the 8(a) BD program or is no longer eligible if to do so is in the best interests of the Government.⁶

13 C.F.R. § 124.514(b).

Here, the option years had been priced at the time the 8(a) contract was awarded. COS at 1; AR, Tab 3, Contract at 6-9. As such, Hamilton's graduation from the 8(a) program (after award) did not preclude the agency from exercising the option on the contract, as it did. 13 C.F.R. § 124.514(b). Moreover, as discussed above, the agency reasonably determined that exercising the option to Hamilton was in the best interest of the government. Thus, the record demonstrates that the exercise of the option was in accordance with the applicable SBA regulation.

The protest is denied.

Edda Emmanuelli Perez
General Counsel

⁶ Section 124.521(e)(2), referenced here, concerns 8(a) contracts with durations of more than five years (including options); it bears no relevance--and is inapplicable--to the 8(a) contract at issue.