

UNITED STATES DEPARTMENT OF TRANSPORTATION

FEDERAL AVIATION ADMINISTRATION

WASHINGTON, DC

ORDER AND DECISION

FAA Order

Number: ODR-96-4

Matter: Protest by CONTRACT SERVICES, INC. Pursuant to DTFA09-95-C-25004

Docket: 96-ODR-0007

Date Served: November 6, 1996

ORDER AND DECISION

Contract Services, Inc., (CSI), has protested the FAA's solicitation of maintenance services under contract DTFA09-95-C-25004. CSI argues that the contracting office should have negotiated with CSI on a sole source basis rather than soliciting for full and open competition. The contracting office responds that competition was required under the applicable facts and regulations, and that it has no authority to conduct sole source negotiations with CSI. For the following reasons, I hereby dismiss the protest:

In 1995, CSI was awarded a contract to provide custodial services at the Air Traffic Control Tower in Wichita, Kansas. The contract was awarded on a sole source basis and provided for one base year plus four option [1] years. The contract was not modified to incorporate the clauses or text of the FAA's new Acquisition Management System (AMS), which became effective on April 1, 1996. Accordingly, the text of all the Federal Acquisition Regulation (FAR) clauses that were incorporated at the time of award still apply to this contract.

At the end of the base year, the contracting officer considered exercising the option for year two. Under FAR 17.207 [2], the contracting officer conducted a market survey to determine if the prices for that option year were reasonable as compared with prevailing rates in the area.

Based on the market survey, the contracting officer determined that the CSI contract rates were approximately 30% higher than what could be attained on the open market. Accordingly, the contracting officer concluded that exercising the option was not in the best interest of the government, and that the requirement for the option year should be competed.

On July 17, 1996, a Screening Information Request (SIR) was issued for these custodial services on a full and open basis. Multiple firms responded, including the protester. An award under the SIR is still pending.

Under these facts, CSI has failed to state a legally sufficient basis for its protest. Even if everything that CSI has alleged is accepted as true, this protest would present no basis for the FAA to cancel the competitive

solicitation. The contracting officer's decision to conduct a market survey and to compete the requirement were reasonable, under the existing facts and FAR 17.207. There is no basis for the contracting office to negotiate solely with CSI.

CSI's protest also complains of the contracting officer's failure to notify the company of the market survey. There was, however, no requirement or rationale for the contracting officer to have given such notice. In any event, CSI was provided an opportunity to compete in the SIR and did so.

In summary, CSI has failed to state any basis for altering the competitive procurement being conducted by contracting office. Accordingly, pursuant to section 3.9 of the AMS [3], this protest is dismissed.

This is the final agency order in this matter. To the extent that this decision is subject to review, such review shall be in accordance with 49 U.S.C. §46110. A petition for review must be filed with the United States Court of Appeals for the District of Columbia Circuit, or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business. The petition must be filed not later than 60 days after the date that this order is issued.

_____/S/_____

DAVID R. HINSON, ADMINISTRATOR

Issued this *31st* day of October, 1996

[1] *Option* means a unilateral right in the contract by which, for a specified time, the Government may elect to purchase additional supplies or services called for by the contract, or may elect to extend the term of the contract [FAR 17.201].

[2] The text of FAR 17.207 provides, in pertinent part, as follows:

* * *

(c) The contracting officer may exercise options only after determining that

* * *

(3) The exercise of the option is the most advantageous method of fulfilling the government's need . . . and -

* * *

(d)(2) An informal analysis of prices or an examination of the market indicates that the option price is better than prices available in the market. . .

[3] The Federal Aviation Administration Acquisition Management System implements section 348 of Public Law 104-50.

