

OPTION TO EXTEND SERVICES MAY BE EXERCISED BEFORE OPTION TO EXTEND TERM OF CONTRACT.

Copyright 2021 Richard D. Lieberman, Consultant & Retired Attorney

This blog has repeatedly explained that options in a contract must be exercised by the government in strict accordance with the terms of the option. However, a recent case as the Armed Services Board reminds us that there are normally two ways to continue a services contract, by extending the term of the contract, or by extending services (usually for a shorter period). Either clause may be used by the government, provided it is exercised in strict accordance with the terms. *Mission1st Group, Inc.*, ASBCA Nos. 62461, 62646 (August 17, 2021).

The contract in Mission1st included the following standard clauses from the Federal Acquisition Regulation

52.217-8, OPTION TO EXTEND SERVICES (NOV 1999)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within 90 days before the expiration of the contract.

52.217-9, OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)

(a) The Government may extend the term of this contract by written notice to the contractor within the term of the contract prior to contract expiration; provided that the Government gives the contractor a preliminary written notice of its intent to extend at least 90 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 33 months.

The contract included

- a base period (September 2013 to June 23, 2014) with a price of \$5.4 million
- two one year option periods (June 2014 to March 2015 at a price of \$5.4 million and March 2015 to December 2015 at a price of \$5.4 million);
- and an “option to extend services: six month maximum to be completed no later than June 2016” with a price not to exceed \$3.7 million for up to 6 months of services.

The Army, 91 days prior to the end of the base period, provided the contractor with its notice of intent to exercise the first option period pursuant to FAR 52.217-9. Mission 1stGroup sought a 25% price increase, and the Army responded with a draft partial option which required only three months of performance, but the contractor refused to accept the Army's proposal. On June 23, 2014, the Government executed a modification in writing to exercise a three month option period pursuant to FAR 52.217-8.

Mission1st asserted that the government improperly exercised the option to extend *out of order*, thereby entitling it to a contractual adjustment. Citing *Glasgow Inv. Sol'ns, Inc.*, ASBCA No. 48111, 13-1 ¶35,286, the Board explained that it previously held that an option to extend services pursuant to FAR 52.217-8 was not limited to use after exercise of the option periods in FAR 52.217-9. The Government could exercise the option to extend services independent of exercising the option to extend the term of the contract. Further, the Army had exercised the option for extension within 90 days of the end of the contract. Mission1st's claim was denied.

Takeaway. Be careful when pricing an extension of services period in your contract. The Government may decide to use that period, rather than exercising a complete option, especially if the price is lower, and the government does not require a longer period of service than in the extension.

**For other helpful suggestions on government contracting, visit:
Richard D. Lieberman's FAR Consulting & Training at <https://www.richarddlieberman.com/>, and
Mistakes in Government Contracting at <https://richarddlieberman.wixsite.com/mistakes>.**