

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-185597

DATE: April 14, 1976

MATTER OF: Radionics, Incorporated

DIGEST:

Where offer expired on December 15, 1975, was revived on December 16, 1975, and award made on February 27, 1976, GAO disagrees with protester's contention that award was invalid unless decision to award was made before offer expired on December 15, 1975. Since only right conferred by expiration of acceptance period is conferred upon offeror, offeror may waive such right and accept award at his discretion. Further, protester's assumption that awardee was afforded second opportunity to submit "best and final offer" upon revival of awardee's initial offer is unsubstantiated by record.

By letter dated December 19, 1975, Radionics, Incorporated (Radionics), protested the award of a contract to American Trans-Coil Corporation (American) for 349 amplifiers, radio frequency under request for proposals (RFP) No. DAABO7-76-R-0153, issued on August 15, 1975, by the United States Army Electronics Command (USAEC) as a 100-percent small business set-aside. Initial offers were due September 15, 1975, with best and final offers due November 5, 1975. Four offers were received. By message dated October 28, 1975, offerors were requested to extend their offers until December 15, 1975. American agreed to this extension. Thereafter, by telephone request on December 16, 1975, American was asked and again agreed to extend its offer to December 31, 1975. However, before American extended its offer on December 16, 1975, it briefly expired on December 15, 1975. Subsequently, American again extended its offer to February 27, 1976, at which time award was made to American, as the low offeror. Radionics alleges:

1. Valid offers did not exist at the time of award; and
2. USAEC did not properly request a "best and final offer" from all offerors.

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With regard to its first allegation, Radionics contends that unless the decision to award to American was made by USAEC before American's offer expired on December 15, 1975, the offer could not be revived by a subsequent extension, and award to American under these circumstances would consequently be invalid. If the decision to award was made after American's offer expired on December 15, 1975, Radionics argues that the procurement should be resolicited. In this regard, Radionics contends that it is doubtful that the decision to award to American was, in fact, made before December 15, 1975, because:

1. Although notification by USAEC to Radionics of award to American was dated December 15, 1975, it did not reach Radionics until December 20, 1975; and

2. The date on a USAEC internal memo to the file chronicling USAEC's telephonic request to American for an extension of its offer was allegedly changed from December 17, 1975, to December 16, 1975.

We have in the past upheld the contracting officer's decision to allow an offeror to waive the expiration of its proposal acceptance period so as to make award on the basis of the offer as submitted, in view of the fact that the only right conferred by expiration of the acceptance period is conferred upon the offeror. Thus, the offeror may waive such right and accept an award at his discretion. Donald N. Humphries & Associates, et al., 55 Comp. Gen. 432 (1975), 75-2 CPD 275; see Riggins & Williamson Machine Company, Incorporated, et al., 54 Comp. Gen. 783 (1975), 75-1 CPD 168.

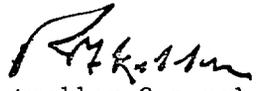
Radionics seeks to modify the above-stated principle, by requiring the decision to award be made by the agency before expiration of the offer in order for subsequent revival and award to be valid. Radionics, however, has neither cited authority nor explained why our above-stated holdings should be modified.

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As noted above, the only right conferred by the expiration of the acceptance period is conferred upon the offeror, who may waive such right and accept an award at his discretion. As such, we fail to see the significance of whether the decision to award is made before or after expiration of the offer. Consequently, we cannot agree with Radionics that the instant award is valid only if the decision to award was made, in this case, before the December 15, 1975, expiration of American's offer. Thus, it is unnecessary for us to decide whether the decision to award, in the instant case, was in fact made before the expiration of American's offer on December 15, 1975.

With regard to its second allegation, Radionics assumes that American was afforded a second opportunity to submit a "best and final offer" upon the revival of its initial offer. Radionics argues that if this is the case, it too should have been afforded that opportunity. However, we note that Radionics' assumption is unsubstantiated by the record which indicates that a second "best and final offer" was neither requested nor received from American. In view of this fact, it is unnecessary for us to further consider this allegation.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States