

DECISION



11696 *Request Page 2*
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-195716

DATE: October 17, 1979

MATTER OF: Peck Iron and Metal Company, Inc. *CNG 01406*

DIGEST:

[Protest of Bid Rejection as Nonresponsive]

Where solicitation contains standard provision permitting bidders to insert acceptance period of less than 60 days, bidder offering a 10-day acceptance period may not be permitted to extend acceptance period after expiration of 10 days since acceptance of bid under such circumstances would afford bidder unfair advantage and would be prejudicial to other bidders.

Peck Iron and Metal Company, Inc. (Peck), protests the rejection of its bid for several surplus items under sales invitation for bids (IFB) No. 27-9233, issued by the Defense Logistics Agency (DLA). *AGC00378*

Bids were opened on June 28, 1979. Peck limited its bid acceptance period to 10-calendar days from bid opening. Peck was the high bidder on items 314, 315, 316, 174, 177 and 179.

DLA reports that due to certain administrative difficulties in connection with the sale, awards could not be made within the 10-day period. On the 13th day following bid opening, the contracting officer telephoned Peck and requested the firm to extend its bid acceptance period. On July 12, 1979, Peck submitted a telex which extended its bid acceptance period to the close of business on July 18, 1979, for four of the items. The telex recognized that the acceptance period had expired by stating "For strictly internal reasons, you have failed to accept our high responsive bid within the indicated acceptance period."

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Peck protests the rejection of its bid as non-responsive stating that by letter of July 24, 1979, it was advised that:

"Inasmuch as you did not extend your acceptance period for your total bid in your TWX you qualified your bid. Therefore, your bid is nonresponsive."

Peck objects to this determination stating that neither its original bid nor its extension was conditioned by an award of any combination of items bid upon. Each line item bid provided for individual acceptance or rejection.

We agree with Peck that the designation of its bid as "non-responsive" because of not extending on all items was inaccurate. Peck's bid was responsive and for consideration for a period of 10 days. However, the issue for consideration is whether a bidder under the existing circumstances may extend the bid acceptance period after its expiration. //

The IFB contained the following language concerning bid acceptance periods:

"In compliance with the above, the undersigned offers and agrees, if this Bid is accepted within ___ calendar days (60 calendar days if no period is specified by the Government or the Bidder, but not less than 10 calendar days in any case.) after date of Bid opening, to pay for and remove the property."

Peck limited its acceptance period to 10 days.

Our Office has held that a reinstated bid should not be accepted when to do so would compromise the integrity of the competitive bidding system. 42 Comp. Gen. 604 (1963). We recognize that, as here, there is one drawback in a bidder offering a shorter time period for acceptance than the customary 60 days. That is, if the award is not made within the shorter period,

the bidder will not be permitted to extend its bid acceptance period. The reason for this rule is to prevent a bidder from obtaining an unfair advantage because its initial cost exposure was for a shorter time period than that applicable to the bidders who offered a longer period. In limiting its bid acceptance period to 10 days, Peck assumed the risk that the Government might be unable to accept the bid within 10 days. 48 Comp. Gen. 19 (1978). Since Peck's bid offered less than the maximum 60-day acceptance period, its bid may not properly be extended after its 10-day acceptance period expired since this would afford Peck an unfair advantage over other bidders who offered the longer acceptance period. The contracting officer's attempt to obtain an extension of Peck's bid after it expired was of no legal effect.

The case of Peck Iron and Metal Co., Inc. v. United States, 496 F.2d 543 (1974), referred to by Peck, involved a claim for breach of a surplus sale contract for an aircraft carrier. The issues raised in that case did not involve a question of extending a bid after its expiration and, therefore, we find that case not relevant to the present situation.

For the reasons stated, the refusal of DLA to consider Peck's bid was proper and its protest is denied.

Harry D. San Clave

For The Comptroller General
of the United States