

**DECISION**

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

NORJELL  
PLI  
118670

FILE: B-205937

DATE: June 14, 1982

MATTER OF: Milwaukee Valve Co., Inc.

**DIGEST:**

1. A bidder may not revise its bid price downward when granting an extension of the bid acceptance period where revision has effect of displacing low bidder. To allow this would be tantamount to permitting a bidder to submit a second bid after bid opening.
2. An award within the initially requested acceptance period, absent evidence to the contrary, shows that there was no unreasonable delay in making the award.

Invitation for bids (IFB) No. DLA700-81-B-2442, issued by the Defense Logistics Agency (DLA), solicited gate valves and included a 100-percent option quantity which was evaluated because it was determined to exercise the option at the time of award. The IFB was divided into a non-set-aside and a set-aside portion. Pima Valve, Inc. (Pima), was awarded a contract under the non-set-aside portion. Milwaukee Valve Co., Inc. (Milwaukee), protests the award of the non-set-aside contract to Pima. We deny the protest.

Milwaukee bid a \$379 unit price for the base and option quantities (683 valves each) for the non-set-aside and was the low bidder. However, with respect to the option quantity, Milwaukee stated: "Unit price to be increased 1% per month on each 31st day after date of Bid Opening [October 14, 1981]." On October 22, 1981, the contracting officer asked Milwaukee to furnish the set-aside quantities at its non-set-aside price. However, because award would not be made within 30 days of opening, Milwaukee was requested to extend the option price to November 30, 1981. On November 5, 1981, Milwaukee confirmed the set-aside offer and extended the non-set-aside and set-aside option price until November 30, 1981. Notwithstanding, DLA's evaluation of Milwaukee's bid did not consider the November 5

extension and DLA increased the price of the option quantity by the 1 percent set forth in the bid. As a result, Milwaukee was no longer the low bidder under the non-set-aside. Subsequently, Milwaukee did receive an award under the set-aside portion of the IFB based on its negotiation priority.

Milwaukee contends that DLA's failure to consider its price extension for the non-set-aside was improper. Milwaukee argues that DLA should have accepted the extension of the option price since, after the initial evaluation, its bid was the lowest and, therefore, Milwaukee was the otherwise successful bidder. In support, Milwaukee cites Defense Acquisition Regulation § 7-2002.2(d) (DAC No. 76-18, March 12, 1979), which provides that a late modification of an otherwise successful bid offering more favorable terms will be considered at the time received and may be accepted. Moreover, Milwaukee contends that once it was apparent that it would receive the award under the set-aside portion and it affirmatively responded to DLA's extension request, Milwaukee's status changed from bidder to contractor and, pursuant to clause H16(b), the firm was authorized to extend the option price. The clause provides, among other things, that a contractor could voluntarily reduce its option price by written notice to the contracting officer before the option is exercised. Alternatively, Milwaukee submits that award could have been made prior to November 14, 1981, which was within 30 days from opening and the period when the option price was firm. In this circumstance, because the delay of the award, until December 10, 1981, was solely the fault of DLA, Milwaukee should not be the one to suffer.

The IFB requested that each bid be kept open for the standard 60-calendar-day acceptance period. Milwaukee's bid complied with this request only for the base quantity. In regard to the option quantity, Milwaukee clearly limited the acceptance period to 30 calendar days, after which the unit price would increase. Although DLA requested an extension of the option price, the Agency determined that the inability to award within 30 days called for an increased option price by the terms of the bid.

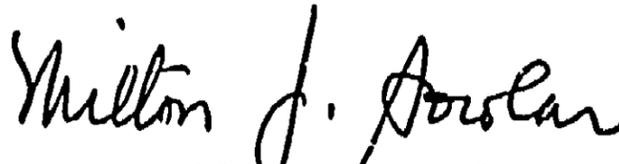
We agree with DLA that acceptance of the Milwaukee extension would be improper as a prohibited post-bid-opening bid modification. The fact that the request was made and the extension received is of no consequence. Milwaukee's extension beyond the 30 days which revised its option price downward had the effect of displacing Pima as the low non-set-aside bidder. To allow Milwaukee to modify its bid in this instance would be tantamount to permitting it to submit a second bid after bid opening contrary to competitive bidding principles. 50 Comp. Gen. 383 (1970).

With respect to Milwaukee's argument that it was the otherwise successful bidder, we disagree. Milwaukee's bid would have been low if award had been made by November 14. However, due to the fact that award could not be made by that date, Milwaukee's bid was no longer low.

We also reject Milwaukee's argument that the option clause, which permits the downward revision of an option price by a contractor, allowed its downward revision prior to award. Milwaukee was not a contractor at the time of the revision. The firm was merely a bidder which had offered to furnish the set-aside portion, an offer which was not yet accepted at the time of the revision.

In regard to Milwaukee's argument concerning Agency delay in making an award, there is nothing in the record to suggest that the delay was a deliberate attempt to avoid awarding a contract to Milwaukee. Moreover, award was made on December 10, 1981, within the initial requested 60-calendar-day acceptance period which, in the absence of any evidence to the contrary, demonstrates substantially that there was no unreasonable delay in making the award.

Protest is denied.



Acting Comptroller General  
of the United States