

*Leberman*

3000

**DECISION**



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

B-216268

**FILE:**

**DATE:** December 17, 1984

AGP/GENTech Inc.

**MATTER OF:**

**DIGEST:**

Bidder who offered a bid acceptance period shorter than that contemplated in solicitation may not extend that period or revive its expired bid for items where other bidders offered the requested acceptance period. However, on those items where bidder submitted the only bid, bidder may revive bid since there are no competitors who offered the full acceptance period, and the bidder's behavior was not such that it adversely affected the integrity of the competitive bidding system.

AGP/GENTech Inc. (AGP) protests the rejection of its bids for all line items under invitation for bids (IFB) No. 5FCG-33-84-054, issued by the General Services Administration (GSA), for gummed tape to be awarded separately on a requirements basis.

We sustain the protest in part and deny it in part.

As permitted by paragraph 12 of the IFB, AGP limited its bid acceptance period to 45 days rather than giving the standard 60-day period specified in the IFB absent any entry by the bidder. AGP bid on all 54 line items. Two other bidders, Wm. R. McClayton & Co. (McClayton) and Glas-Kraft, Inc. (Glas-Kraft), submitted bids on certain of the 54 items, and both offered a 60-day acceptance period. AGP's bid was low on a majority of the line items on which there was more than one bidder, and AGP was the only bidder on 21 line items. A preaward survey was conducted at AGP's facilities; however, the contracting officer determined that she could not make an affirmative determination of responsibility with respect to AGP within the 45-day bid acceptance period. The contracting officer believed that in these circumstances, under prior GAO decisions, she could not allow AGP to extend its bid acceptance period. Therefore, the contracting officer permitted AGP's bid to expire in its entirety, without requesting any extension.

030805

Subsequently, the contracting officer did not make an affirmative determination of responsibility with respect to McClayton within the 60-day bid acceptance period. When McClayton declined to extend its bid acceptance period, its bid expired. Glas-Kraft was determined to be responsible, but the contracting officer determined that Glas-Kraft's prices were unreasonable for all items except item 33. GSA awarded a contract for item 33 to Glas-Kraft and canceled the remainder of the solicitation and issued a new solicitation for the remaining items. Bids have been received under the resolicitation, but GSA is not making any award pending our resolution of the protest.

GSA based its decision not to permit AGP to extend its bid acceptance period on GAO decisions which hold that a bidder who offers a bid acceptance period shorter than that requested in an IFB may not extend that period in order to qualify for award. Such an extension would be prejudicial to other bidders who offered the requested acceptance period because those bidders assumed a greater risk of price or market fluctuations than the bidder who did not. Ramal Industries Inc., 60 Comp. Gen. 666 (1981), 81-2 C.P.D. ¶ 177. We have reasoned that while a bidder is permitted to offer an acceptance period which is shorter than the one requested and still be responsive to a solicitation which does not mandate a minimum acceptance period, in doing so, the bidder runs the risk that award will not be made before the shorter period expires. The subsequent decision to extend the bid or not is solely within the bidder's control and is subject to the dictates of his own particular interests. Thus, the integrity of the competitive system is best served if the bidder is not permitted to extend the bid. Introl Corporation, B-206012, Feb. 24, 1982, 82-1 C.P.D. ¶ 164.

However, we have also held that there is an exception to this prohibition--even with respect to a mandatory bid acceptance period--where there is only one bidder, since no bidding advantage accrues to the sole bidder in view of the fact that there are no competitors who subjected themselves to the risks of maintaining their bid prices for the longer period. Professional Materials Handling Co., Inc.-Reconsideration, 61 Comp. Gen. 423 (1982), 82-1 C.P.D. ¶ 501; Esko & Young, Inc., B-204053, Jan. 4, 1982, 82-1 C.P.D. ¶ 5. Thus, a sole bidder offering a reduced bid acceptance period should be permitted to extend the period.

AGP argues that its bid should be considered to fall within this exception with respect to all items, except item 33 which has been awarded to Glas-Kraft. AGP reasons that since GSA's preaward survey report on McClayton recommended a finding of nonresponsibility, McClayton should not be considered a bidder. AGP also states that since Glas-Kraft's prices were found unreasonable by GSA for all items except item 33, Glas-Kraft's bid should not have been considered. Thus, AGP asserts that it should have been permitted to extend as the sole bidder on the other 53 items. We disagree.

Glas-Kraft bid on 17 items, in addition to item 33 for which it received an award. While Glas-Kraft's prices were found unreasonable for these 17 items, for most of the items its price exceeded AGP's price by less than 12 percent, and in no instance did it exceed AGP's price by more than 20 percent. In view of the relative closeness of these prices, it is possible that Glas-Kraft's decision to offer the full bid acceptance period with the attendant risks could have had an impact on the competitiveness of its bid. Thus, it would be prejudicial to Glas-Kraft to permit AGP to extend for these 17 items. Accordingly, bid extension for these items is impermissible under our rationale in Esko & Young, Inc., B-204053, supra.

With respect to McClayton, while the preaward survey resulted in a negative recommendation, McClayton was never found nonresponsible by the contracting officer, who is entitled to make this determination. Xtek, Inc., B-213166, Mar. 5, 1984, 84-1 C.P.D. ¶ 264. Rather, McClayton's bid expired before the contracting officer was able to make a responsibility determination, and McClayton declined to extend. However, because AGP had foreshortened its acceptance period, its bid already automatically had expired more than 2 weeks before McClayton became ineligible for award. For AGP's bid to have been considered, it would have to have been revived.

We have held that revival is permissible only when a bidder did not limit its acceptance period to one of shorter duration than the other bidders, and where the bidder did not exhibit behavior which would adversely affect the integrity of the competitive bidding system. Veterans Administration--Request for Advance Decision, 57 Comp. Gen. 228 (1978), 78-2 C.P.D. ¶ 59. The latter

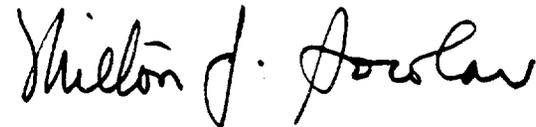
involves a situation where a bidder initially refuses to extend and later grants an extension as its own interests dictate, and in either instance for the agency to accept the bid would be prejudicial to the other bidders. Arsco International, B-202607, July 17, 1981, 81-2 C.P.D. ¶ 46. Thus, here, AGP could not be permitted to revive its bid for items on which either McClayton or Glas-Kraft had bid.

AGP has also argued that it should not have been penalized for inserting a 45-day acceptance period when this was permitted under the IFB. In addition, AGP alleges the IFB language essentially misled AGP into believing it could extend the acceptance period without prejudice.

AGP maintains that GSA's action as a rejection of AGP's bid as nonresponsive. No such determination was made, and AGP was not penalized merely for shortening the acceptance period. See Werres Corporation, B-211870, Aug. 23, 1983, 83-2 C.P.D. ¶ 243. Rather, GSA simply prohibited AGP from extending its bid. This is a risk which AGP assumed by its own action, and it is in accord with our reasoning in Ramal Industries, 60 Comp. Gen. 666, supra, with respect to those items on which there were other bids. Accordingly, we deny AGP's protest with respect to those items on which other bids were received.

However, it is clear from the bid abstract that AGP was the only bidder for items Nos. 1, 3, 5, 6, 8, 11, 13, 15, 17, 19, 22, 23, 24, 26, 27, 30, 31, 51, 52, 53, and 54. With respect to these bid items, AGP should be permitted to revive its bid, since AGP has consistently made clear its willingness to extend, and there could be no prejudice to other bidders since no other bidders offered the items.

Accordingly, we sustain the protest with respect to the above-listed items. We recommend award to AGP under this solicitation for these items if AGP is found responsible, and partial cancellation of the reissued solicitation with respect to these items.

for   
 Comptroller General  
 of the United States