

**DECISION**



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

30051

B-216115; B-216115.2

**FILE:**

**DATE:** December 26, 1984

W.A. Strom Contracting, Inc.; Seubert  
Excavators, Inc.

**MATTER OF:**

**DIGEST:**

Bidders may be allowed to extend their bid acceptance periods after the bids have expired where the bidders offered the minimum acceptance period requested by agency and thus did not seek competitive advantage over other bidders which offered longer acceptance periods.

W.A. Strom Contracting, Inc., and Seubert Excavators, Inc., protest the refusal of the U.S. Forest Service, Nezperce National Forest, to consider their bids in connection with invitation for bids (IFB) No. R1-17-84-29. We sustain the protests.

The IFB is for road construction in connection with the Jersey Mountain Road Project. Bid opening was July 25, 1984. Of the four bids received, Strom's was low and Seubert's second low. The IFB included Standard Form 1442 as prescribed by the Federal Acquisition Regulation, § 53.236-1. That form included a provision stating "Offers providing less than \_\_\_\_\_ calendar days for government acceptance after the date offers are due will be considered nonresponsive and will be rejected." The agency inserted "10" in the blank provided. Both Strom and Seubert specified 10 days on the reverse side of the form where bidders are to insert the offered acceptance period. The other two bidders specified acceptance periods of 20 and 60 days, respectively.

On July 26, the day after bid opening, the Nezperce contracting officer forwarded the solicitation materials to a contracting officer in the Forest Service's Montana regional office who, because the amount of the award would exceed the Nezperce contracting officer's authority, was responsible for making the award. The materials were delivered to the contracting officer in Montana on August 1, although he did not actually review them until August 6.

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Meanwhile, on July 31, a representative of Strom called the contracting officer in Montana to inquire about the status of the award. The contracting officer told Strom's representative that award was being withheld pending the outcome of a court hearing on August 7 or 8 on a complaint asking for an injunction prohibiting further action on the project. On August 8, Strom's representative again called the contracting officer, who informed her that the court had issued a 60-day injunction preventing award of the contract. The contracting officer also pointed out that the acceptance period for Strom's offer had expired on August 4, and therefore its bid would not be considered for award. Seubert's bid also had expired on August 4, and, on August 21, the contracting officer called Seubert to advise it that its bid would not be considered.

On August 9, the other two bidders, whose acceptance periods had not yet expired, were asked to extend their acceptance periods. Both furnished extensions prior to expiration of their bids.

The protesters' principal contention is that they should have been allowed to extend their acceptance periods even after their bids had expired. The agency admits that it should have monitored the procurement more closely in view of the pending lawsuit and the short acceptance period specified in the solicitation and states that it would have asked the firms to extend their bid acceptance periods had it discovered before the bids lapsed that such an extension was needed. It, nevertheless, argues that to do so now would be unfair to the other two bidders who offered longer bid acceptance periods.

A bidder may extend its acceptance period, and thus revive its expired bid, if doing so would not compromise the integrity of the competitive bidding system. Timberline Foresters, 59 Comp. Gen. 726 (1980), 80-2 CPD ¶ 195; Veterans Administration--Request for Advance Decision, 57 Comp. Gen. 228 (1978), 78-1 CPD ¶ 59. Where a bidder offers a bid acceptance period shorter than that requested in the solicitation, that bidder cannot be permitted to revive its bid by extending its acceptance period, since such an extension would compromise the bidding system by prejudicing the other bidders who offered the requested acceptance period. These bidders are prejudiced because they offered what the solicitation requested and assumed a

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greater risk of price or market fluctuation than the bidder who offered a shorter period than that requested. Introl Corporation, B-206012, Feb. 24, 1982, 82-1 CPD ¶ 164.

Here, however, the protesters offered the acceptance period required by the IFB. Although the other two bidders offered longer acceptance periods and thus assumed a greater risk, they did so by choice; the protesters here did all that the solicitation required. Therefore, revival of their bids would not prejudice the competitive bidding system. See Mission Van & Storage Co., Inc., and MAPAC, Inc., a Joint Venture, 53 Comp. Gen. 775 (1974), 74-1 CPD ¶ 195. We are by letter of today recommending that the agency allow Strom and Seubert to extend their bid acceptance periods.

The protests are sustained.

*for*   
Comptroller General  
of the United States