



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Pegasus Alarm Associates, Inc.

File:

B-225597.2

Date:

May 12, 1987

DIGEST

There is no right to a government contract, and Federal Acquisition Regulation provision stating that before expiration of bids, agencies should, if necessary, request written extensions of the lowest bidders' bid acceptance periods is for the benefit of the government. The provision is of the type that creates no rights in bidders.

DECISION

Pegasus Alarm Associates, Inc. seeks reconsideration of our denial of its protest against rejection of a bid for failure to extend its acceptance period, as requested by the Naval Facilities Engineering Command. See Pegasus Alarm Associates, Inc., B-225597, Apr. 16, 1987, 87-1 CPD ¶ ____. In its protest, the firm contended that despite a failure to submit an express extension before its bid for maintenance of fire protection and warning systems at two Navy facilities in Virginia had expired, the Navy should have known that Pegasus intended to extend the bid acceptance period.

We affirm our prior decision.

As detailed in that decision, all bids under invitation for bids No. N62470-86-B-5238 were due to expire on December 16, 1986. By letter dated December 9, the Navy had requested a 30-day extension from Pegasus; however, it had received no response by December 17, a Wednesday. Nor, by that date, had the Navy received information relating to the firm's responsibility that the contracting officer had requested, and Pegasus had agreed to submit, during a telephone conversation on December 10. Therefore, according to the agency, on December 17 the contracting officer left a message on Pegasus' telephone answering machine, asking to be called back by noon the next day.

On December 19, when the Navy still had not received a written extension of the firm's bid acceptance period, the

038922

responsibility-related information, or a return telephone call, the contracting officer made award to the second-low bidder. The following Monday, December 22, the Navy finally received the responsibility-related information and a telephone call from Pegasus during which the firm attempted to revive its bid. The Navy, however, concluded that the bid had expired and rejected it.

In its initial protest, Pegasus alleged that it had never received the Navy's letter of December 9 requesting an extension. The firm attempted to shift responsibility for this to the Navy, arguing that the agency had failed to notice a change of address (from a post office box in one Pennsylvania location to a post office box in another Pennsylvania location) on correspondence concerning a mistake in bid. Pegasus also disputed the contracting officer's statement that, during the December 10 telephone conversation, she had reconfirmed the firm's address as the post office box shown on Pegasus' bid; the request for an extension had been sent to this address. In addition, Pegasus argued that it had not received the contracting officer's message on its answering machine until December 18. The firm did not explain, however, why it had not returned the call until December 22 or why it had not sent the responsibility-related information by a method that would have ensured that it reached the Navy before expiration of its bid.

Given these facts, some of which were in dispute, we concluded that the Navy could not have inferred from Pegasus' conduct that the firm intended to extend its bid acceptance period. Since we believed it would have been equally possible for Pegasus to argue that its bid had expired, we held that the integrity of the competitive system was best served by the Navy's acceptance of the second-low bid.

Pegasus' reconsideration request is based on an allegedly erroneous statement in our decision. We cited a Federal Acquisition Regulation (FAR) provision, 48 C.F.R. § 14.404-1(d) (1986), which states that before expiration of bids, agencies should, if necessary, request written extensions of their bids from the lowest bidders. We also referred to two decisions, 42 Comp. Gen. 604 (1963) and Alchemy, Inc., B-207954, Jan. 10, 1983, 83-1 CPD ¶ 18, in which our Office had recognized that bidders have a corresponding duty to check with the contracting officer before expiration of their bids if they have a continuing interest in being considered for award.

Pegasus now argues that the FAR provision places a "clear, unambiguous, and unequivocal duty" on the contracting

officer to seek an extension, but imposes no corresponding duty on bidders. If anything, Pegasus concludes, the FAR creates a correlative right in a bidder whose bid acceptance period is about to run out.

We find this argument without merit. It is well settled that there is no right to a government contract. Perkins v. Lukens Steel Co., 310 U.S. 113 (1940); cf. Krygoski Constr. Co., 63 Comp. Gen. 367 (1984), 84-1 CPD ¶ 523. The FAR provision, in our opinion, is only for the benefit of the government, establishing a procedure for contracting officers to follow in cases where administrative difficulties delay award, so that it becomes necessary to seek extensions from the lowest bidders. The provision is of the type that creates no rights in bidders. See generally Bank Street College of Education--Request for Reconsideration, B-213209.2, Oct. 23, 1984, 84-2 CPD ¶ 445, citing Centex Constr. Co., Inc., 162 Ct. Cl. 211 (1963).

Here, the contracting officer complied with the FAR by requesting an extension in writing a full week before Pegasus' bid was due to expire. By reconfirming the firm's address (we have only Pegasus' unsupported statement that this did not occur), by requesting additional information on the firm's responsibility, and by attempting to reach Pegasus by telephone after expiration of its bid, we believe the contracting officer actually went further than she was required to under the FAR.

Moreover, even if we assume, for the sake of argument, that a bidder has no corresponding obligation to check with the contracting officer before its bid acceptance period runs out, we find that the Navy in this case properly considered Pegasus's bid to have expired. In its request for reconsideration, Pegasus still does not explain why, as a sound business practice, if not as a matter of law, it did not specifically advise the contracting officer of the change in the address shown on its bid; arrange for forwarding of its mail; return the contracting officer's telephone call for at least 4 days; or use express mail for its responsibility-related information, so that it would have reached the Navy before expiration of the bid. The firm has not shown that our prior holding, i.e., that, in these circumstances the Navy could not have inferred an extension, was erroneous.

We affirm our prior decision.

Harry R. Van Cleve
Harry R. Van Cleve
General Counsel