



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: J.A.K. Construction Company, Inc.

File: B-230056

Date: April 28, 1988

DIGEST

It is the responsibility of the firm that desires to extend its bid acceptance period to communicate this, either by ensuring that the agency receives an express extension or by conduct from which the agency can infer an intent to extend based on some other affirmative step taken by the bidder that provides clear evidence of an intent to extend; because the protester did not do so here, the protest is denied.

DECISION

J.A.K. Construction Company, Inc., protests the award of a contract to Continental Aluminum under invitation for bids (IFB) No. GS-003-87-00B-0303, issued by the General Services Administration (GSA), for replacement windows. GSA rejected J.A.K.'s low bid because it did not timely extend its bid acceptance period. J.A.K. contends that it should have received the award because it attempted to timely extend the bid and because GSA had reason to conclude that it intended to extend the bid.

We deny the protest.

GSA received three bids in response to the IFB on the August 11, 1987, bid opening date. However, the low bidder was permitted to withdraw due to a mistake in bid on October 1, 1987. As bids were to expire on October 10, 1987, GSA orally requested J.A.K., the second low bidder, and Continental, the third low bidder to extend their bids in writing on October 1, 1987. Only Continental submitted a timely written extension to its bid and award to Continental was made on November 20, 1987. J.A.K. learned about the award after contacting GSA to determine the status of the procurement on December 11, 1987.

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J.A.K. argues that GSA improperly made award to Continental because GSA should have reasonably concluded that it would extend the bid. Further, J.A.K. advises that a letter extending its bid was sent by first class mail on October 9, 1987, but was not received by GSA. However, GSA reports that absent an express extension, there was no basis to infer an extension of the bid acceptance period. GSA argues that such a conclusion was reinforced because J.A.K. did not respond in September when the agency requested it to provide a sample window for technical review. J.A.K. disputes this, arguing that GSA merely contacted it in September to confirm that its window met the specifications, which it states it did, and further that the standard procedure is to provide sample windows after the award.

The Federal Acquisition Regulation (FAR), § 14.404-1(d) (FAC 84-5), states that before the expiration of bids, if necessary, agencies should request the lowest bidders to extend, in writing, their bid acceptance periods. We have held that when an agency does request an extension, it is the responsibility of the firm that desires to extend its bid to communicate assent, either by ensuring that the agency receives an express extension or by conduct from which the agency can infer the bidder's intent to extend. Dunrite Tool & Die, Inc., B-211735, June 6, 1983, 83-1 CPD ¶ 610.

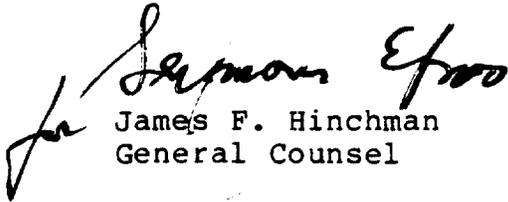
In those rare instances where we have permitted agencies to infer an extension to a bid acceptance period, the bidder has taken some other affirmative step that provides clear evidence of its intent to extend, and the agency has been fully aware of this action. See, e.g., Surplus Tire Sales, 53 Comp. Gen. 737 (1974), 74-1 CPD ¶ 161 (bidder signs waiver of description of specifications and submits it to the contracting agency); American Photograph Industries, Inc., B-206857, Sept. 29, 1982, 82-2 CPD ¶ 295 (bidder orally agrees to extend and agency telephone records reflect this agreement, as well as the fact that the bidder is obtaining an extension of a letter of credit supplied as a bid bond); cf. Trojan Industries, Inc., B-220620, Feb. 10, 1986, 86-1 CPD ¶ 143 (bidder responds on Monday to a request for an extension made less than 1 day before Saturday expiration of bids and gains no unfair competitive advantage by this slight delay).

We do not find that GSA had any basis to conclude that J.A.K. intended to extend the bid. Although J.A.K. argues that it orally advised GSA that it would extend the bid on October 5, 1987, the GSA telephone records do not reflect such an agreement, nor does the affidavit submitted by J.A.K.'s employee who engaged in discussions with the agency about the need for an extension show that an oral extension

was granted to GSA. While it is unfortunate that the letter sent to GSA extending the bid was never received by GSA, in such a situation J.A.K. must bear the burden of its non-receipt. See Dunrite Tool & Die, Inc., B-211735, supra. Even if we could definitively resolve the September communications between J.A.K. and G.S.A., we do not find that such actions by J.A.K. were sufficient evidence to show its intent to extend the bid in October after a specific request from GSA. Therefore, we find that GSA properly made award to Continental.

Finally, we note that J.A.K. suggests that it was extremely unusual for GSA to use the telephone to request its bid extension. However, FAR § 14.404-1(d) does not specify any particular means that agencies must use to request bid extensions and we do not think that it was unreasonable that GSA elected to request bid extensions by telephone here given the short time before the expiration of bids.

The protest is denied.


James F. Hinchman
General Counsel