

Cunningham



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Wilson & Sons General Contractors; J&J
Transportation Service

File: B-233885.3; B-233885.4

Date: April 13, 1989

DIGEST

Protests that contracting agency failed to give preaward notice of award to a lower bidder and that it made award to a firm whose bid had expired are dismissed under authority of 4 C.F.R. § 21.3(m) (1989) without obtaining a report from the contracting agency where: (1) agency fulfilled its responsibilities under applicable regulation by giving protesters prompt notification of award by letter dated the day of award; and (2) successful bidder was properly requested to extend its bid acceptance period, prior to expiration of its bid acceptance period, because of delay in processing award prompted by filing of an earlier protest by another firm.

DECISION

J&J Transportation Service and Wilson & Sons General Contractors have protested the Department of the Army's award of a contract on March 10, 1989, to Arctic Fox Line under invitation for bids (IFB) No. DAKF70-89-B-0002 for shuttle bus service between Fort Greely and Fairbanks, Alaska.

We dismiss these protests without obtaining a report from the Army under the authority of 4 C.F.R. § 21.3(m) (1989), which provides that when the propriety of a dismissal becomes clear only after information is provided by the contracting agency we will dismiss the protest at that time.

Both J&J, the third low bidder under the IFB, and Wilson, the fourth low bidder, allege that they were not notified in advance of the Army's intention to award the contract and

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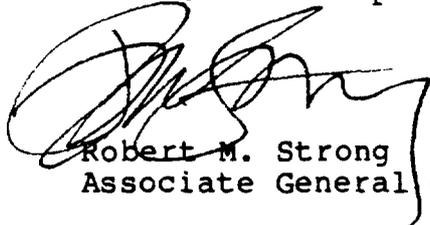
that the Army awarded the contract beyond the 90 day bid acceptance period set forth in Arctic Fox's bid.^{1/}

The Army has requested dismissal of these protests, pointing out that under Federal Acquisition Regulation (FAR) § 14.408-1(a)(1)(i) (FAC 84-38) the contracting officer is only required to "notify unsuccessful bidders promptly that their bids were not accepted" and that the Army did, in fact, notify all unsuccessful bidders promptly by letter dated the same day as the contract award.

Further, the Army notes that the protesters are factually incorrect as to their belief that the award was made after the expiration of Arctic Fox's bid acceptance period. In fact, pursuant to the contracting officer's request, Arctic Fox extended the time for acceptance of its bid by an additional 30 days, on March 6, 1989, or 4 days before the award and before the expiration of the company's original bid acceptance period. The Army says the contracting officer properly requested the extension under authority of FAR § 14.404-1(d) (FAC 84-39), which provides for the requesting of bid extensions from bidders when "administrative difficulties," delaying award, are encountered after bid opening. In this regard, the Army observes that the incumbent shuttle bus contractor, M&T Company, had filed with our Office a bid protest which served to delay award under the IFB, thus properly prompting the need to request an extension of Arctic Fox's bid acceptance time. See FAR § 33.104(b)(3) (FAC 84-40), which provides for the requesting of bid extensions when award is being withheld pending disposition of a bid protest.

Since under the circumstances of this procurement there was no obligation to provide a preaward notice of the intended award; the Army did comply with its obligation to provide prompt postaward notification; and the awardee's bid in fact had not expired.

We dismiss the protest.



Robert M. Strong
Associate General Counsel

^{1/} Arctic Fox, the second low bidder, was determined to be the apparently successful low bidder under the IFB, which was opened on December 8, 1988, after the low bidder was determined to be nonresponsible.