



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## Decision

**Matter of:** Independent Metal Strap Co., Inc.

**File:** B-231756.2

**Date:** August 17, 1989

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### DIGEST

A contractor may waive an agency's failure to provide timely written notice of its intent to exercise an option and once the condition of notice is waived, the exercise of the option results in a binding contract between the parties.

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### DECISION

Independent Metal Strap Co., Inc. (IMSC), protests the exercise of the options extending the term of the contracts awarded to it and other firms under invitation for bids (IFB) No. 2FYS-AX-88-0004-S, issued by the General Services Administration (GSA).<sup>1/</sup> IMSC contends that since GSA did not effectively exercise the options, the agency is required to issue a new IFB for the extended requirements or promptly evaluate an ongoing solicitation. The protester also contends that the contract extensions were issued without contractual authority and have resulted in sole-source contracts.

We dismiss the protest.

The IFB issued on February 24, 1988, was for Federal Supply Schedule contracts for steel strapping, seals, and plastic strapping. The base terms of the contracts were from July 1, 1988, to June 30, 1989, and each contract contained an option to extend the contract by mutual consent for no more than 60 days, provided a written notice of intent to extend was given to the contractor 60 days before expiration of the current contract.

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<sup>1/</sup> IMSC unsuccessfully protested the award of the original contracts under the IFB. Independent Metal Strap Co., Inc., B-231756, Sept. 21, 1988, 88-2 CPD ¶ 275.

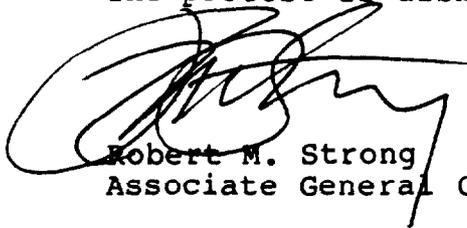
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On April 3, 1989, the GSA issued request for proposals (RFP) No. 2FYS-AX-89-0009-N to purchase identical strapping items upon expiration of the prior contracts. The RFP contemplated the award of contracts with terms running from July 1989 to June 1990. On June 27, 1989, the agency advised the protester of its decision to exercise the option to extend the earlier contracts for 60 days, due to delays in evaluating the offers. The agency acknowledged that it was unable to give the contractors 60 days written notice of its intention to extend the contract. The agency further stated at the time that the 60-day notice provision of the option clause was for the benefit of the contractor and could be waived by the contractor.

The protester argues that the agency's failure to give the required 60 days written notice of its intention to extend the earlier contracts to it and all of the awardees under the IFB renders the option exercises ineffective. According to the protester, the extended requirements must be met by awards under a new IFB or under the ongoing RFP.

As the agency states, the notice requirement included in the contracts protects the contractor and may be waived either expressly or through conduct by the contractor. When the condition of notice is waived, a valid contract results. Ceredo Mortuary Chapel, Inc., B-232373.5, Jan. 9, 1989, 89-1 CPD ¶ 12. Therefore, if a contractor accepts the agency's exercise of its option, notwithstanding a failure by the agency to provide the required notice, a valid contract for the extended term exists. Consequently, while IMSC may decline to accept the exercise of the option in its contract, it cannot assert on behalf of the other contractors the possible defenses to an alleged improper exercise of an option.

The protest is dismissed.



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Associate General Counsel