



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Rubbermaid, Inc.

File: B-238631

Date: May 2, 1990

Roy F. Walter, for the protester.
Joseph T. Walsh, Esq., Dubail Judge, for the Schlueter Company, an interested party.
Christine S. Williams, Esq., Office of General Counsel, General Services Administration, for the agency.
Paul E. Jordan, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Bidder may be allowed to revive its bid and extend its bid acceptance period after the bid has expired where the bidder originally offered the minimum acceptance period requested by the agency and where revival of the bid would not compromise the integrity of the bidding system.

DECISION

Rubbermaid, Inc., Specialty Products Division, protests the award of a contract to The Schlueter Company, under invitation for bids (IFB) No. 7FXG-Z4-89-7314-S, issued by the General Products Commodity Center, General Services Administration (GSA). Rubbermaid contends that GSA improperly allowed Schlueter to revive its expired bid.

We deny the protest.

The solicitation was for indefinite quantity, fixed-price contracts for insulated jugs and vacuum bottles for a 1-year period. Ten bids were received by the October 31, 1989, bid opening date. Of the 45 line items involved, Rubbermaid's protest concerns 12 items on which three bids were received with Schlueter the low bidder and Rubbermaid the second low bidder.

Bidders were required to provide a minimum acceptance period of 60 calendar days. Schlueter accepted the 60-day period set by the IFB, while Rubbermaid provided a 120-day

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acceptance period. Due to administrative delays, the 60-day minimum acceptance period expired on December 30, 1989, without award being made. On January 4, 1990, GSA asked both Schlueter and Rubbermaid to extend their bids. Rubbermaid replied that its bid had not expired and was still available for acceptance until February 28. By letter of January 4, Schlueter extended its bid to January 19 and on January 19, again extended its bid to January 31.

On January 18, Rubbermaid protested to the agency that Schlueter's bid had expired on December 30 and could not be extended. The agency denied the protest, maintaining that extension of Schlueter's expired bid was proper because the integrity of the competitive bidding system was not compromised. By letter of February 7, Schlueter again extended its bid from January 31 until February 7. That same date GSA awarded the contract to Schlueter. Rubbermaid then filed a protest with our Office. Performance under the contract has been suspended pending our decision.

Rubbermaid contends that GSA improperly requested and allowed Schlueter to extend its expired bid since Rubbermaid's bid had not yet expired. Rubbermaid relies upon Federal Acquisition Regulation (FAR) § 14.404-1(d) (FAC 84-53) which provides:

"Should administrative difficulties be encountered after bid opening that may delay award beyond bidders' acceptance periods, the several lowest bidders whose bids have not expired . . . should be requested, before expiration of their bids, to extend in writing the bid acceptance period . . . in order to avoid the need for resoliciting."

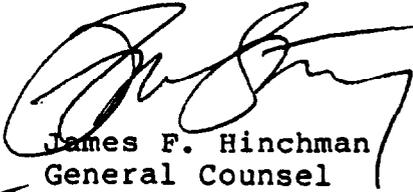
In Rubbermaid's view, where bids expire without a request for extension, the agency's requirement must be resolicited unless, as here, there is a bidder available whose bid has not expired. We disagree.

The provisions of FAR § 14.404-1(d) suggest a course of action that "should" be taken prior to the expiration of bids. Failure to follow that course does not mandate the result argued by Rubbermaid. We have held that 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. TLC Sys., B-231969, Sept. 13, 1988, 88-2 CPD ¶ 238. Where the low bidder states that its bid will be open for the minimum bid acceptance period required by the solicitation, and the bidder subsequently extends its bid acceptance period when requested to do so

after the period has lapsed, the integrity of the bidding system is not compromised. TLC Sys., B-231969, supra; W.A. Strom Contracting, Inc.; Seubert Excavators, Inc., B-216115; B-216115.2, Dec. 26, 1984, 84-2 CPD ¶ 705.

Here, Schlueter's bid bound it for the original 60-day minimum acceptance period. Its subsequent agreements with GSA to extend that period, maintaining all original prices and terms, fail to indicate any intent to seek an advantage or otherwise compromise the competitive bidding system. We recognize that Rubbermaid, in providing a 120-day acceptance period, assumed a greater risk of market fluctuations than did Schlueter. However, Rubbermaid's decision in providing that period is a matter of its business judgment; Schlueter did all that was required by the IFB and extended its bid when requested by GSA. Thus, in our view, revival of Schlueter's bid under these circumstances does not prejudice the competitive bidding system.

Accordingly, the protest is denied.


James F. Hinchman
General Counsel