



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Discount Machinery & Equipment, Inc.
File: B-244392
Date: October 15, 1991

Mike Ray, Discount Machinery & Equipment, Inc., for the protester.
Millard F. Pippin, Department of the Air Force, for the agency.
James Cunningham, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Bidder which desires to extend its bid acceptance period is responsible for assuring that the agency receives its express extension, unless the bidder takes some other affirmative step which provides clear evidence of an intent to extend; communication from bidder's supplier to agency pre-award survey team regarding supplier's intention to provide item to bidder does not constitute action which conveys bidder's intent to extend.
2. Protest that contracting agency improperly awarded contract to a higher bidder instead of allowing protester to revive expired bid more than a month after bid expiration is denied since revival would prejudice other bidders who timely extended their bids.

DECISION

Discount Machinery & Equipment, Inc. (DME) protests the rejection of its low bid and the award of a contract to American Kleener Manufacturing Company on June 3, 1991, under invitation for bids (IFB) No. F65501-91-B-0002, issued by Elmendorf, Air Force Base, Arkansas, on November 16, 1990, for high pressure washers and cleaners.

We deny the protest.

Eighteen bids were received under the IFB on the January 25, 1991, bid opening day. DME was initially determined to have submitted the apparent low bid of the eight bids which were found responsive. On March 1, the contracting office began its review of DME's responsibility. Incident to this review, on March 19, the contracting officer requested the Defense Contract Administrative Services Management Area (DCASMA) to

perform a pre-award survey on DME. On March 20, the agency contract specialist attempted to contact all eight bidders to request extensions in their bids, which were to expire on March 26. On March 25, the contract specialist was able to contact a DME representative and requested a bid extension. The contract specialist was advised by DME that it was unsure if it could extend its bid, and would have to first contact its supplier. By March 26, the agency received bid extensions from all bidders except DME. On March 26, DME received a letter from a DCASMA representative stating that the pre-award survey on DME was being initiated and requesting a letter from DME's manufacturer, who was to affirm the compliance of the items with the solicitation requirements, affirm the required delivery schedule, and state that DME was its authorized dealer.

On March 28, DCASMA received a letter from DME's manufacturer stating that the items would be shipped in accordance with the delivery schedule (60 calendar days after receipt of contract) and that DME was its authorized dealer.^{1/} On April 5, the contract specialist determined that DME's bid could not be considered for award because of the lack of any bid extension from DME. On April 15, the contract specialist sent DME a letter rejecting the company's bid, and on April 16 the contract specialist requested DCASMA to cancel the request for a pre-award survey of DME.

After receiving the Air Force's April 15 letter, a DME representative phoned the contract specialist on April 24 and stated that he had timely mailed a bid extension to her and that DME's bid should not have been rejected. Thereafter, DME faxed an extension of its bid to DCASMA on April 29, and DME filed an agency-level protest with the Air Force on May 3, which the Air Force denied. DME then protested to our Office.

In its protest to our Office, in addition to asserting that it did extend its bid acceptance period, DME questions whether it was proper for the Air Force to make only an oral request for the bid extension. In addition, DME argues that, even if it did not expressly extend its bid, the Air Force should have inferred an extension of its bid under the circumstances. Finally, DME argues that even if its bid had expired, it should have been allowed to revive the bid.

Federal Acquisition Regulation (FAR) § 14-404-1(d) states that before expiration of bids, if necessary, agencies should request the lowest bidders to extend, in writing, their bid

^{1/} The contract specialist was unaware that DCASMA had received this letter until May 7, well after she had rejected DME's bid on April 15.

acceptance periods. We have recognized a corresponding duty on the part of bidders to check with the contracting officer before bids expire if they have a continuing interest in being considered for award. Pegasus Alarm Assocs., Inc., B-225597, Apr. 16, 1987, 87-1 CPD ¶ 417. When an agency requests 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. J.A.K. Constr. Co., Inc., B-230056, Apr. 28, 1988, 88-1 CPD ¶ 413.

Although DME asserts that it mailed an express extension of its bid to the Air Force, the Air Force states that it never received this extension. Since the burden of insuring agency receipt of a bid extension is on the bidder, and the Air Force did not receive DME's extension, DME did not expressly extend its bid acceptance period. See J.A.K. Constr. Co., Inc., supra.

Regarding DME's objection to the agency's use of a telephone request for bid extensions, an agency is not required to request bid extensions in writing but may use the telephone where, as here, there is a short time before the expiration of bids. J.A.K. Constr. Co., Inc., supra. Further, the FAR does not require the contracting agency to take additional steps to verify whether a bidder has extended its bid.

The remaining question is whether the Air Force should have inferred DME's intention to extend from the communication which DME's supplier transmitted to DCASMA on March 28. In rare instances agencies may infer an extension of a bid acceptance period where the bidder has taken some affirmative step that provides clear evidence of its intent to extend, and the contracting agency has been fully aware of this action. See J.A.K. Constr. Co., Inc., supra. Here, the Air Force's contract specialist was unaware of the letter which DME's supplier transmitted to DCASMA until May 7. More significant, the supplier's communication concerned the determination of DME's responsibility and the supplier provided nothing which affirmed that DME intended to extend its bid. There was no clear action taken by either the supplier or DME which evidenced any implicit extension of DME's bid.

DME's final argument is that even if its bid had expired, the Air Force should have permitted the company to revive its bid because in late April DME conveyed its willingness to extend at its original bid price weeks before the award was made to another concern. Where a bid has expired, we have permitted a bidder to revive its expired bid only where the bidder would

not, thereby, obtain an advantage over other bidders, John T. Jones Constr. Co., B-240643, Nov. 27, 1990, 90-2 CPD ¶ 430. Here, it would have been prejudicial to have allowed DME to revive its bid on April 29, since all other bidders extended their bids much earlier on March 26, thus, those other bidders had assumed the risk of market fluctuations from that date and DME had not done so. See John T. Jones Constr. Co., supra.

We deny the protest.


for James F. Hinchman
General Counsel