



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: The Vemo Company

File: B-243390; B-243390.2

Date: November 12, 1991

Larry L. Barokas, Esq., Barokas & Martin, for the protester.
David C. Groff, Esq., Davis, Wright, Tremaine, for
Eberharter Construction, Inc., an interested party.
Paul M. Fisher, Esq., Department of the Navy, for the
agency.

Steven W. DeGeorge, Esq., and John Brosnan, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Rejection of bid on basis that bidder offered an extension period of shorter duration than requested and thereafter offered additional short extensions was proper because it is unfair to permit a bidder to limit its risk of increased performance costs and thereafter extend at its option while others face that risk by complying in full with the agency's request. Prior case which permitted multiple bid extensions of shorter duration than requested is overruled.

DECISION

The Vemo Company protests the rejection of its low bid under invitation for bids (IFB) No. N62474-88-B-3293 issued by the Navy for construction of an aircraft intermediate maintenance facility at the Naval Air Station, Whidbey Island, Washington.

The Navy believes that it was required to reject Vemo's bid because the company failed to grant the 60-day bid extension period which was requested of bidders. Contrary to the Navy's request for a 60-day extension, Vemo extended its bid in increments of 2 weeks at a time. Other bidders granted 60 days as the Navy requested. Finding Vemo's response in this respect unacceptable, the contracting officer notified the firm that its bid was rejected. Vemo subsequently filed a protest with the contracting officer. On October 1, 1991, the Navy issued a decision denying Vemo's agency-level protest and made award to the second low bidder. Vemo then filed this protest against the rejection of its bid with our Office.

We conclude that Vemo's bid was properly rejected and deny the protest.

The solicitation was issued on May 8, 1990, with a bid opening date of September 25. Prior to bid opening, the Navy issued amendment 4 to the solicitation which added two clauses entitled "Bid Acceptance Period" and "Price Adjustment Factor." These clauses provided for increases in bid amounts of 0.25 percent for each 30-day extension requested by the agency.

At the bid opening on September 25, Vemo was determined by the contracting officer to be the lowest of seven bidders. However, due to a moratorium on military construction funds, a contract could not be awarded at that time. While each of the seven bidders, including Vemo, had offered bid acceptance periods of 60 days, the moratorium remained in effect such that the Navy was required to request bid extensions prior to the expiration of the 60-day period. By letter dated November 21, the Navy requested the three lowest bidders to extend their bids by 60 days.¹ Similar requests for 60-day extensions were subsequently made on January 11, 1991, and March 18, as the moratorium continued.

Each of the three low bidders, with the exception of Vemo, granted the requested 60-day bid extensions. Vemo, while having originally granted a 60-day extension in response to the Navy's request, thereafter revised its extension to 2 weeks. Finding Vemo's response nonconforming, the contracting officer rejected the bid. Vemo subsequently protested to the agency and has continued to extend its bid for 2-week intervals pending resolution of the matter. The extensions provided by Vemo have been overlapping and thus there has been no expiration of its bid.

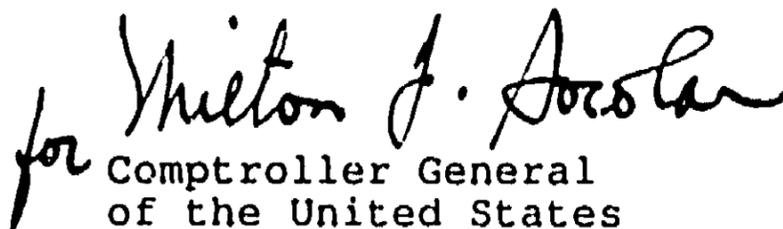
Vemo argues that the rejection of its bid was contrary to the decision of our Office in ACCESS Corp., B-189661, Feb. 3, 1978, 78-1 CPD ¶ 100, where we denied a protest against an agency that had permitted a firm to extend its bid several times for shorter periods than requested by the agency and agreed to by the protester. In ACCESS, we stated that the government had no enforceable right to extend a bidder's acceptance period and that the regulations imposed no requirement that equal time extensions be obtained from all bidders. Therefore, we concluded that each firm had the right to offer whatever extension it wished.

¹The Navy requested bid extensions from only the three lowest bidders pursuant to Federal Acquisition Regulation (FAR) § 14.404-1(d).

The Navy maintains that while ACCESS appears to be directly on point, we should find that decision inconsistent with subsequent decisions of our Office and expressly overrule it. The Navy refers in particular to a line of decisions where we have held that bidders which submit initial acceptance periods of shorter duration than requested in the solicitation, or who have failed to comply with an extension request and their bids have thus expired, have no right to subsequently extend or revive their bids. See, e.g., Ramal Indus., Inc., 60 Comp. Gen. 666 (1981), 81-2 CPD ¶ 177; John T. Jones Constr. Co., B-240643, Nov. 27, 1990, 90-2 CPD ¶ 430. Our rationale in such cases is that to allow a bidder to extend its bid acceptance period or revive its bid, after having granted an acceptance period of shorter duration than requested in the solicitation and accepted by other bidders, would compromise the integrity of the procurement process since such a bidder has not assumed as great a risk of price or market fluctuations. Id.

In our view, the holding in ACCESS that a bidder may grant an extension shorter than that requested and granted by other bidders and thereafter decide to grant additional extensions is not consistent with our current decisions in the area. It is simply unfair to permit a bidder to limit its risk of increased performance costs and thereafter extend at its option while others face that risk by complying in full with the request of the contracting officer. Therefore, we believe that the contracting officer should reject a bid where the bidder responds to a request for a bid extension with a duration shorter than that requested, and award is not made within the extension period granted by the bidder. Thus, ACCESS should not be relied upon to permit multiple bid extensions of shorter duration and to the extent it does so the case is overruled.

We therefore conclude that the Navy acted properly when it rejected Vemo's bid and we deny the protest.

for 
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of the United States