



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: NECCO Inc.
File: B-258131
Date: November 30, 1994

Paul E. Sipple for the protester, Col. Riggs L. Wilks, Jr., and Maj. Michael G. Skennion, Department of the Army, for the agency. Jeanne W. Isrin, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's bid expired, and thus could not be accepted for award, where protester offered a shorter extension period than agency requested, and award was not made until after this extension period expired.

DECISION

NECCO Inc. protests the rejection of its bid, and the award of a contract to E. F. Wall & Associates, under invitation for bids (IFB) No. DAHA43-94-B-0001, issued by the U.S. Property and Fiscal Officer for Vermont, National Guard Bureau, for the construction of a fire station and gate house, plus four additive items, at Burlington International Airport, Vermont.

We deny the protest in part and dismiss it in part.

The IFB was issued on February 28, 1994. At the April 6 bid opening, six bids were opened, including that of NECCO, the apparent low bidder, at \$1,357,534. On April 7, contracting officials requested verification of NECCO's bid because they considered the \$97,837 difference between NECCO's bid and that of the second-low bidder, E. F. Wall, \$1,455,371, to be high. Satisfactory bid verification was not obtained until April 26, after two further requests by the agency. With bid verification complete, a pre-award survey was undertaken, which resulted in a finding of nonresponsibility. That determination and supporting documentation was forwarded to the Small Business Administration (SBA) on May 20 for a Certificate of Competency (COC) review. SBA acknowledged receipt of the referral package on May 31.

Because bids were due to expire on June 7, and the contracting officer anticipated that SBA might not act by that date, all six bidders were requested by letter of May 11 to extend their bid acceptance periods until July 20. Five of the six bidders extended their bids as requested, but NECCO extended its bid only until June 13. Award was not made by that date and on June 13 NECCO extended its bid again, until June 30.

On June 8, contracting officials met with the SBA industrial specialist handling the case to discuss the basis for the nonresponsibility determination. At that meeting, the SBA specialist requested an additional week to conclude his investigation before issuing or denying a COC. On June 23, SBA issued a letter of intent to issue a COC; the contracting officer was notified of this by telephone the same day and in writing on June 24. A COC was issued for NECCO on July 7 and received by contracting officials on July 15. However, because the agency's position was that NECCO had no valid bid after initially extending its acceptance period only to June 13, the agency made award to E. F. Wall on July 19 as the next low responsive, responsible bidder.

NECCO maintains that it had an unqualified bid until June 30, and that since the contracting officer was aware that SBA issued a letter of intent to issue a COC on June 23, he should have made award to NECCO prior to the June 30 expiration of its bid. NECCO maintains that termination of the contract and resolicitation is the proper remedy at this point.

NECCO's bid was properly rejected. Where a 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, the bid should be rejected. The Vemo Co., B-243390; B-243390.2, Nov. 12, 1991, 91-2 CPD ¶ 443. The rationale behind this rule is that 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. Id. Hence, in this case, while it was permissible for NECCO to offer an initial extension only until June 13, once that period had passed with no award being made, NECCO could not extend its bid any further. Therefore, NECCO's attempt to extend until June 30 was null. Since even the protester does not

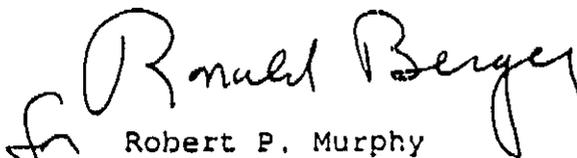
¹At one time, our Office held the position that a bidder had the option of extending its bid for short periods indefinitely, see ACCESS Corp., B-189661, Feb. 3, 1978, 78-1 CPD ¶ 100, but those cases were expressly overruled by Vemo.

maintain that it could have received award prior to June 23, the date SBA issued its letter of intent to grant a COC, clearly no award could have been made to NECCO under the circumstances of this case.

NECCO alleges that contracting officials unduly delayed processing the bids and performing the pre-award survey, resulting in an unnecessary request for bid extension and a delay in the issuance of a COC. This argument is untimely. Our Bid Protest Regulations require that protests, other than those alleging solicitation improprieties, be filed no later than 10 working days after the basis of protest is known or should have been known. 4 C.F.R. § 21.2(a)(2) (1994); John T. Jones Constr. Co., B-240643, Nov. 27, 1990, 90-2 CPD ¶ 430. The request for bid extension was made by letter of May 11, which NECCO responded to promptly. If NECCO believed the extension request was necessitated solely by the agency's failure to proceed diligently, it was required to protest on this basis within 10 days after learning of the extension request. As it did not protest until August 9, this allegation is untimely and will not be considered.²

NECCO maintains that contracting officials acted in bad faith to avoid making award to NECCO. However, NECCO offers no evidence of such bad faith and none appears on the record. Prejudicial motives will not be attributed to contracting officials on the basis of unsupported allegations, inference, or supposition. Stabro Labs., Inc., B-256921, Aug. 8, 1994, 94-2 CPD ¶ 66.

The protest is denied in part and dismissed in part.


Robert P. Murphy
Acting General Counsel

²In any case, we find no unreasonable delay by the agency. A satisfactory bid verification was not obtained from NECCO until April 26, and then only after three requests had been made by contracting officials. Upon obtaining the verification, contracting officials began the pre-award survey, which was completed on May 20 and forwarded to SBA. Given these facts, there is no basis for concluding that the agency failed to proceed diligently.