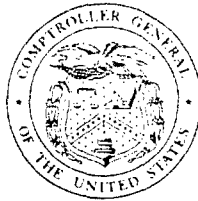


DECISION



13059 *Ziebarth*
Trans
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-197610

DATE: March 7, 1980

MATTER OF: Mil-Std Corporation

DIGEST:

Where solicitation contains provision permitting bidders to insert acceptance period of less than 60 days, bidder offering 20-day acceptance period may not be permitted to revive bid by extending acceptance period after expiration of 20-day period since acceptance of bid under such circumstances would afford bidder unfair advantage and be prejudicial to other bidders.

Mil-Std Corporation (Mil-Std) protests the refusal of the Department of the Army (Army) to award it a contract under invitation for bids (IFB) No. DAAA09-79-B-2333.

Bid opening was September 21, 1979. Mil-Std was the low bidder but as permitted by the IFB, it had limited its bid acceptance period to 20 calendar days instead of the standard 60-day bid acceptance period. On November 17, 1979, after Mil-Std's bid had expired, the contracting officer asked Mil-Std to extend its acceptance period until December 21, 1979, which Mil-Std consented to do. A preaward survey was conducted by the agency, and Mil-Std was approved for award. In response to a second request for extension of the acceptance period by the agency, Mil-Std again extended its bid until January 31, 1980. On January 25, 1980, the agency advised Mil-Std that under the circumstances it was impermissible to revive the expired bid acceptance period, and that award could not be made to Mil-Std.

We have recognized that in certain circumstances it may be appropriate to accept a bid which has been revived after its initial expiration, Mission Van & Storage Company, Inc. and MAPAC, Inc., 53 Comp. Gen. 775 (1974), 74-1 CPD 195. Since expiration of the

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acceptance period confers on the bidder a right to refuse to perform a contract subsequently awarded, we believe the bidder may waive such right if, following expiration of the acceptance period he is still willing to accept an award on the basis of the bid as submitted. 46 Comp. Gen. 371 (1966). However, a revived bid should not be accepted when to do so would compromise the integrity of the competitive bidding system. 42 Comp. Gen. 604 (1963).

When only the bidder otherwise eligible for award offers a shorter time period for acceptance than the maximum specified by the solicitation, we have held that award may not be made to it after the expiration of its bid notwithstanding that the bid may have subsequently been revived. See Peck Iron and Metal Company, Inc., B-195716, October 17, 1979, 79-2 CPD 265. The reason for this rule is to prevent a bidder from obtaining an unfair advantage because its initial cost exposure was for a shorter time period than that applicable to the bidders who offered the longer period. Thus, in limiting its bid acceptance period to 20 days, Mil-Std assumed the risk that the Government might be unable to accept the bid within 20 days. 48 Comp. Gen. 19 (1968). While Mil-Std has argued that the present case should be controlled by our decision, Veterans Administration Request for Advance Decision, 57 Comp. Gen. 228 (1978), 78-1 CPD 59, we point out that the proposed awardee in that case did not limit its bid acceptance period, i.e., the bid in that case could be properly considered for acceptance pursuant to the rationale of 46 Comp. Gen., supra. Finally, the contracting officer's attempt to obtain an extension of Mil-Std's bid after it expired was of no legal effect. Peck Iron and Metal Company, Inc., supra.

The protester has also alleged that the 20 day acceptance period was inserted by a company employee as the result of a clerical error in transcribing longhand notes. However, this is not the kind of apparent clerical error which the agency could correct under Defense Acquisition Regulation § 2-406.2 (1976 ed.), which provides:

"Any clerical mistake apparent on the face of a bid may be corrected by the contracting officer prior to award, if the contracting officer has first obtained from the bidder written or telegraphic verification of the bid actually intended. * * *" (Emphasis added.)

There is nothing on the face of the bid to indicate the 20-day acceptance period was included in error as asserted. While we do not question Mil-Std's good faith, to permit the result requested by the protester would essentially sanction the making of a material change after bid opening, which would compromise the integrity of the competitive bidding system since bidders could decide, after the results of the bidding were known, whether to accept or reject award. See Coast Canvas Products II Co., Inc., B-195096, August 29, 1979, 79-2 CPD 165; Dawson Construction Company, Inc., B-189036, February 9, 1978, 78-1 CPD 108.

Since it is clear from Mil-Std's submission that its contention is without legal merit, we have not requested an agency report and the protest is summarily denied. See Cornell University, B-196915, January 15, 1980, 80-1 CPD 46.



ACTING Comptroller General
of the United States