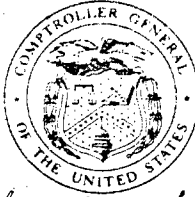


14870-14881 *Petit*

DECISION



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

[Protest of Agency Failure to Extend Bid Acceptance Period]

FILE: B-199005

DATE: September 12, 1980

MATTER OF: Timberline Foresters

DIGEST:

Bidder which limited bid acceptance period to 30 days, as permitted by solicitation, may not be permitted to revive bid by extending acceptance period after expiration of 30-day period because acceptance of bid would give protester unfair advantage and be prejudicial to other bidders that offered standard 60-day acceptance period.

Timberline Foresters (Timberline) protests the Department of Agriculture Forest Service's failure to request an extension of the acceptance period of its bid and award of a contract at a higher price to Kimball Forestry Consultants (Kimball) for item 2 under invitation for bids (IFB) No. R2-80-43. We find the protest timely filed but without merit.

The IFB, a total small business set-aside, is for Stage II timber inventory in three districts (items 1-3) of the Shoshone National Forest. Bid opening was held on February 28, 1980. Timberline, the third low bidder on item 2, limited its bid acceptance period to 30 calendar days, as permitted by the solicitation, instead of the standard 60-day acceptance period. However, Kimball, the fourth low bidder on that item, agreed to the 60-day bid acceptance period.

Following bid opening, the Forest Service unsuccessfully sought information upon which to make a responsibility determination about the apparent low bidder for all three bid items and later referred the matter to the Small Business Administration (SBA). See Federal Procurement Regulations (FPR) § 1-1.708-2 (1964 ed. amend. 192); Tennessee Apparel Corporation, B-194461, April 9, 1979, 79-1 CPD 247. Timberline's

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bid expired on March 29, 1980. Upon SBA's advice that the bidder in question had failed to timely apply for a certificate of competency, the Forest Service awarded item 2 to Kimball on April 24, 1980, since the second low bidder was ineligible for award and Timberline's bid had expired.

Timberline complains that it was neither notified that the Forest Service anticipated delay in making the award nor was given an opportunity to extend the acceptance period prior to the expiration of its bid. The protester states that upon request an extension would have been granted and concludes that as the lower bidder on item 2 it should have been awarded the contract.

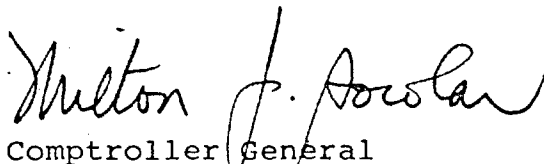
The Forest Service takes the position that Timberline's protest to our Office more than 7 weeks after the firm's bid expired and 4 weeks after the award to Kimball is not timely filed in accordance with our Bid Protest Procedures, 4 C.F.R. § 20.2 (1980). Although the protester could have checked with the procuring activity before its bid expired if it had a continuing interest in being considered for the award, we think that the mere expiration of its bid did not put Timberline on notice of a basis of protest because no award had been made and Timberline believed that it could revive its bid upon request. Similarly, we cannot agree with the Forest Service that the April 24 award to Kimball required the filing of a protest within 10 working days. The agency provided notice of the award to the unsuccessful bidders by letter dated May 6, 1980. The record, however, does not disclose the date upon which Timberline either received the notice or learned that the award was made to Kimball. Where, as here, doubt exists as to when a protester knew or should have known the basis for its protest, we resolve that doubt in favor of the protester. Memorex Corporation, 57 Comp. Gen. 865, 867 (1978), 78-2 CPD 236; Dictaphone Corporation, B-193614, June 13, 1979, 79-1 CPD 416. We therefore consider the protest timely filed.

The protest is, nevertheless, without merit. Contrary to the protester's assertion, we do not believe that the contracting officer was required

to advise Timberline of any delay in the award or to request extension of the acceptance period prior to the expiration of its bid. We have held that the regulatory provision, FPR § 1-2.404-1(c) (1964 ed. amend. 121), to which the protester apparently refers, was not intended to apply to situations in which only one of several acceptable bids was inadvertently allowed to expire, but to situations where failure to request extensions would require readvertisement. 42 Comp. Gen. 604, 607 (1963).

By limiting its bid acceptance period to 30 days, Timberline not only took the risk that the Government might not be able to make award within that time, but also avoided the risk of increased performance costs during the following 30-day period which Kimball assumed by granting a 60-day bid acceptance period. 48 Comp. Gen. 19 (1968). The contract was in fact awarded to Kimball during that period. Timberline's bid could not properly have been extended after the expiration of its 30-day acceptance period because that would have afforded the protester an unfair advantage over Kimball and other bidders that offered a longer acceptance period. Peck Iron and Metal Company, Inc., B-195716, October 17, 1979, 79-2 CPD 265; Mil-Std Corporation, B-197610, March 7, 1980, 80-1 CPD 182.

The protest is denied.



For the Comptroller General
of the United States