

**DECISION**

23925  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-207954

**DATE:** January 10, 1983

**MATTER OF:** Alchemy, Inc.

**DIGEST:**

When agency contends that protester was requested to extend its bid acceptance period but failed to do so, and protester contends that no such request was made, and both contentions are reasonable and supported by credible evidence, protester has not met burden of proving its case. Moreover, bidder has duty to check with contracting officer prior to expiration of bid to ascertain if extension is necessary.

Alchemy, Inc. (Alchemy), protests an award made to Akron Brass Company (Akron) by the Defense Logistics Agency (DLA) under solicitation No. DLA700-82-B-1122 for applicator assembly nozzles. We deny the protest.

Bids received under solicitation No. DLA700-82-B-1122 were opened on April 1, 1982. Alchemy submitted the lowest bid at \$66.65 per unit. Akron was the second lowest bidder at \$68.48 per unit. All bids provided for acceptance within 60 days, by May 31, 1982. Shortly after the bid opening, Akron and Rockwood Systems Corporation, another bidder, protested to DLA that Alchemy was not a qualified manufacturer or regular dealer under the Walsh-Healey Public Contracts Act. On April 14, 1982, DLA requested a preaward survey to determine Alchemy's responsibility and compliance with the Walsh-Healey Act. The survey was completed on June 2, 1982, and indicated that Alchemy was responsible and in compliance with the Walsh-Healey Act.

DLA contends that on May 27, 1982, during the pendency of the preaward survey and shortly prior to the expiration of all bids on May 31, it contacted both Alchemy and Akron by telephone and requested that they extend their bids. Akron extended its bid the same day. According to DLA, Alchemy failed to reply to DLA's request for a bid

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extension, despite several telephone contacts between May 27 and June 9. Alchemy, however, contends that it was never requested to extend its bid. Alchemy's bid expired on May 31, 1982. On June 9, 1982, DLA awarded the contract to Akron. On June 15, 1982, Alchemy contacted DLA and was advised of the award.

Alchemy complains that DLA failed in its affirmative duty to request Alchemy to extend its bid. DLA argues that under prior decisions of our Office it had no duty to request a bid extension from Alchemy, even though it tried to do so.

DLA contends that it contacted Alchemy several times between May 27 and June 9 in an attempt to obtain an extension of Alchemy's bid. In support of this contention, DLA offers a handwritten telephone "Conversation Record" form dated May 27, 1982, and an affidavit of a DLA buyer. The telephone "Conversation Record" indicates that a DLA buyer called Alchemy on May 27 and was informed by "Denise" that only the president of Alchemy could make a decision about the bid. The Alchemy president was not in at the time, but DLA was advised a message would be given to him to call. A further handwritten note on the DLA "Conversation Record" indicates that as of June 2, the president of Alchemy had not returned DLA's telephone call or otherwise extended the bid. The affidavit of the DLA buyer indicates that she contacted Alchemy by telephone several times between May 27 and June 9 concerning an extension of Alchemy's bid, but that Alchemy did not grant any extension or otherwise respond to the request.

Alchemy, however, contends that it was never requested by DLA to extend its bid acceptance period. In support of its position, Alchemy offers a letter signed by Denise Yoder, Alchemy Vice President of Sales, which states that she was never contacted at any time to extend and another letter signed by the president of Alchemy stating that Denise Yoder is authorized to extend bids.

We are presented in this case with different factual contentions, both reasonable and supported by credible evidence. A bid protester has the burden of affirmatively

proving its case, and we will not consider that burden met when the only evidence is conflicting statements by the protester and the agency. The FMI-Hammer Joint Venture, B-206665, August 20, 1982, 82-2 CPD 160; Airwest Helicopters, Inc., B-193277, June 7, 1979, 79-1 CPD 402. Because Alchemy's bid was not extended in response to DLA's request and expired on May 31, DLA acted properly in awarding the contract to Akron. Singleton Contracting Corp., B-201228.2, June 23, 1981, 81-1 CPD 520.

Moreover, while the procurement regulations advise that agencies should obtain extensions of bid acceptance periods, we have recognized a corresponding duty on a bidder to check with the contracting officer before its bid expires if it has a continuing interest in being considered for award. 42 Comp. Gen. 604 (1963). Here, Alchemy did not contact the contracting officer until 2 weeks after its bid had expired.

Alchemy argues that DLA should have used a more "prudent" method of communication than telephone, such as telex or mailgram, to request a bid extension. Defense Acquisition Regulation section 2-404.1(c) reads as follows:

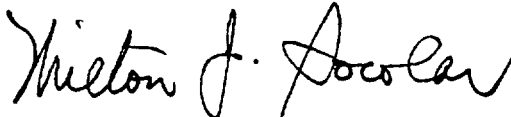
"Should administrative difficulties be encountered after bid opening which may delay award beyond bidders' acceptance periods, the several lowest bidders should be requested, before expiration of their bids, to extend the bid acceptance period (with consent of sureties if any) in order to avoid the need for readvertisement."

DAR § 2-404.1(c) makes no mention of a required method of communication. This is in contrast to other sections of the Defense Acquisition Regulations, such as the sections dealing with solicitation amendments and notice of award, which specifically require written notification. DAR §§ 2-208(a) and 2-407.1. In the case at hand, DLA's use of the telephone to request bid extensions from Alchemy and Akron was both reasonable and in accord with regulations.

Finally, Alchemy contends that, because it was a small business and the low bidder, DLA should have notified the Small Business Administration (SBA) when its bid was

rejected. Alchemy is apparently relying on DAR 1-705.4(c) which concerns SBA's certificate of competency procedures. However, these procedures are not applicable here since Alchemy's bid was rejected because it had expired, not because Alchemy was nonresponsible.

The protest is denied.

*for*   
Comptroller General  
of the United States