



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Ceredo Mortuary Chapel, Inc.

File: B-232373.5

Date: January 9, 1989

DIGEST

A contractor may waive an agency's failure to provide timely written notice of its intent to exercise an option and once the condition of notice is waived, the exercise of the option results in a binding contract between the parties.

DECISION

Ceredo Mortuary Chapel, Inc. protests the exercise of an option to extend contract No. V581P-1526, issued by the Veterans Administration Medical Center, Huntington, West Virginia for ambulance services. Ceredo also questions the the contracting officer's May 1988 decision to make split awards for ambulance services and for hired car services under the original solicitation. We dismiss the protest.

Ceredo argues that because the contracting officer failed to give the required 60 days notice of the government's intent to exercise the option to the incumbent contractor, the option exercise was ineffective, requiring resolicitation of the services.

We do not agree. The notice requirement included in the contract protects the contractor and may be waived either expressly or by conduct. See 3A Corbin, Contracts § 759 (1960). When the condition of notice is waived, a valid contract results. See generally Burroughs Corp., DOTCAB No. 1327, 83-1 BCA ¶ 16,427 (1983); Fourth Street Estates, Inc., GSBICA No. 5813, 81-2 BCA ¶ 15,299 (1981). Therefore, as the incumbent contractor apparently accepted the option exercise, the contract is valid for the extended term.

The protest concerning the split award is clearly untimely since it was filed several months after the awards were made. See 4 C.F.R. § 21.2 (1988). In any event, we point out that the solicitation permits the government to award any item or group of items unless a bidder qualifies its bid by a specific limitation such as an "all or none" bid.

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Federal Acquisition Regulation § 52-214-10. Split or multiple awards were, therefore, proper.

Accordingly, the protest is dismissed.

A handwritten signature in cursive script that reads "Ronald Berger". The signature is written in black ink and is positioned above the typed name and title.

Ronald Berger
Associate General Counsel