



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: John T. Jones Construction Company

File: B-240643

Date: November 27, 1990

Peter R. Healy, Esq., Svoboda & Mitts, P.C., for the protester.
Lester Edelman, Esq., Department of the Army, for the agency.
Catherine M. Evans, and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency did not afford protester opportunity to extend bid is untimely where filed more than 10 working days after the bid acceptance period expired, the point at which the basis of protest was apparent.
2. Protest that agency improperly awarded contract to third-low bidder, whose bid had not expired, instead of allowing protester to revive expired bid, is denied where agency properly determined that allowing protester to revive bid would compromise integrity of competitive bidding process.

DECISION

John T. Jones Construction Company protests the award of a contract to the third-low bidder, Interstate Landscaping Company, Inc., under invitation for bids (IFB) No. DACA41-90-B-0002, issued by the U.S. Army Corps of Engineers for construction of housing at Whiteman Air Force Base, Missouri. Jones, the low bidder, alleges that the contracting officer afforded Interstate an opportunity to extend its bid while allowing Jones' bid to expire, and that the contracting officer improperly awarded the contract to Interstate without first offering Jones the opportunity to revive its bid.

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

Bid opening took place on January 11, 1990. Due to a Department of Defense moratorium on military construction funding, the Corps was unable to award the contract, but bidders were requested on several occasions to extend their bid acceptance periods. Ultimately, both Jones and Interstate

agreed to extend their bids to June 22. By that time, the funding moratorium had been extended through November 15. On June 22, three contract specialists telephoned Jones' project manager to determine whether Jones intended to extend its bid; according to the agency, the project manager stated he was concerned about rising costs in the event that funding would not be available until November, and on that basis declined to extend Jones' bid. While the Corps maintains that the project manager affirmatively stated that he would not extend Jones' bid to either July 15 or July 31, Jones contends that the Corps did not ask the project manager to extend Jones' bid to any particular date. It is undisputed, however, that Jones did not extend its bid. The Corps confirmed Jones' failure to extend its bid by letter, which Jones claims it did not receive.

On July 25, the Secretary of Defense granted a request by the Air Force for a waiver of the funding moratorium, as a result of which the Corps was authorized to award this contract. As the Corps had not heard from Jones since the June 22 extended acceptance period date, it considered Jones' bid to have expired as of that date, and proceeded with award to Interstate, the only bidder that properly had extended its bid. Meanwhile, Jones learned from a supplier of the proposed award to Interstate, and wrote to the Corps on July 27 offering to extend its bid to August 15. The contracting officer notified Jones by telephone on July 31 that its bid had expired on June 22 and that the contract was being awarded to Interstate. Jones filed its protest in our Office on August 2.

Jones first alleges that the Corps improperly failed to request an extension of Jones' bid acceptance period to any certain date. Under our Bid Protest Regulations, protests of other than improprieties in a solicitation must be filed no later than 10 working days after the protester knew or should have known of the basis for its protest. 4 C.F.R. § 21.2(a)(2) (1990). In this case, Jones clearly should have known of the basis for its protest--the agency's failure to request an extension of its bid to a certain date--no later than June 22, when its bid expired. Industrial Slings Co., B-225952, Jan. 14, 1987, 87-1 CPD ¶ 60. Since Jones did not file its protest until August 2, more than 5 weeks later, this aspect of the protest is untimely and will not be considered.

Jones also argues that the Corps should have allowed it to extend its bid acceptance period, thus reviving its expired bid, when funds for the contract became available. The Corps responds that allowing Jones to revive its bid more than 4 weeks after its bid had expired would have compromised the integrity of the competitive bidding process. We agree with the agency.

We recognize that a bidder may extend its bid acceptance period, and thus revive its expired bid, if doing so would not compromise the integrity of the competitive bidding system. TLC Sys., B-231969, Sept. 13, 1988, 88-2 CPD ¶ 238. Thus, we have held it proper for an agency to allow a bidder to revive an expired bid where the bidder did not seek an advantage over other bidders. Id; see also Rubbermaid, Inc., B-238632, May 2, 1990, 90-1 CPD ¶ 444. Here, however, we think that allowing Jones to revive its expired bid would afford it an unfair advantage over other bidders. Jones allowed its bid to expire, and expressed an interest in extending its bid only after it learned that there was no risk of increased performance costs because funding for the contract had become available, while Interstate had assumed the risk of increased performance costs by extending its bid in June. Allowing Jones to revive its bid would ignore the additional risk Interstate accepted, and thereby compromise the integrity of the competitive bidding process. The Corps therefore properly declined to allow Jones to revive its bid. See Mid Atlantic Label, Inc., B-234120, Mar. 31, 1989, 89-1 CPD ¶ 338.

The protest is dismissed in part and denied in part.


A James F. Hinchman
General Counsel