



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Capital Hill Reporting, Inc.

File: B-254011.4

Date: March 17, 1994

Herb Kroll for the protester.
David R. Lloyd, Esq., Cotten & Selfon, for Bayley Reporting, Inc., an interested party.
Charles D. Raymond, Esq., and Vaughn E. Hill, Esq., the Department of Labor, for the agency.
Daniel I. Gordon, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency may properly request bidders to extend acceptance period, thus reviving expired bids, where such action does not compromise the integrity of the bidding system.

DECISION

Capital Hill Reporting, Inc. protests the award of a contract to Bayley Reporting, Inc. under invitation for bids (IFB) No. D/L 93-8, issued by the Department of Labor (DOL). Capital Hill contends that the agency improperly awarded the contract after all bids had expired.

We deny the protest.

DOL issued the IFB, a total small business set-aside, on June 11, 1993. The IFB sought court reporting services for a base year with two 1-year options. At the August 12 bid opening, seven timely bids were disclosed. Of those, Bayley's was low and Capital Hill's was fourth low. All the bids offered the required minimum acceptance period. A challenge to Bayley's status as a small business was received and referred to the Small Business Administration (SBA), which found in December that the company did qualify as small for purposes of this procurement.

On October 11, while the size protest was pending before the SBA, the acceptance period for all seven bids was allowed to expire through inadvertence on the part of DOL. When the

matter was discovered, the agency wrote to the seven bidders, noting that bids had expired and requesting that bidders wishing their bids to be considered submit a letter confirming that their bid prices would be valid through January 14, 1994. The agency's letter to the bidders was dated December 1, 7 weeks after the date on which the bids expired. All offerors except Capital Hill and one other bidder agreed to revive their bids.

Capital Hill contends that the agency acted improperly in requesting that bidders revive and extend their bids.

The Federal Acquisition Regulation (FAR) provides that, where award may be delayed beyond bidders' acceptance periods, "the several lowest bidders whose bids have not expired . . . should be requested, before expiration of their bids, to extend in writing the bid acceptance period . . . in order to avoid the need for resoliciting." FAR § 14.404-1(d). This provision plainly anticipates that bid extension will be requested prior to the bids' expiration. Capital Hill contends that, once bids have expired, agencies are prohibited from requesting extensions of bids, or making award based on an expired bid, where, as here, at least one of the bidders objects. Capital Hill concludes that DOL was required to cancel the IFB and resolicit the requirement here.

While FAR § 14.404-1(d) makes clear that agencies should generally seek extension of bids prior to their expiration, failure to do so does not mandate cancellation of the solicitation and resolicitation. Rubbermaid, Inc., B-238631, May 2, 1990, 90-1 CPD ¶ 444. Rather, there are a number of circumstances in which an expired bid or proposal may properly be revived, with the guiding criterion being the need to protect the integrity of the competitive bidding system. Western Roofing Serv., 70 Comp. Gen. 323 (1991), 91-1 CPD ¶ 242; see FAR § 14.404-1(a)(1). Thus, agencies may have a bidder extend the acceptance period of an expired bid, thereby reviving the bid, so long as doing so does not compromise the integrity of the competitive bidding system. Western Roofing Serv., supra.

Accordingly, DOL could have properly requested that Bayley extend its expired bid, and then made award to that company. We see no meaningful difference between the agency's taking that course and its requesting that all bidders revive their

bids by extending their acceptance period. We therefore conclude that the agency's action here was proper.¹

The protest is denied.

Robert P. Murphy
Robert P. Murphy
Acting General Counsel

¹The only prejudice, either to the competitive bidding system or to Capital Hill, suggested by the protester is that it based its bid on the initial acceptance period. While this may be true, it does not establish prejudice here. Capital Hill does not dispute that the agency could properly have requested, prior to the bids' expiration on October 11, that bidders extend their bids. The agency's requesting the identical extension several weeks later would not appear to be any more prejudicial to the protester or to the competitive bidding system.