



United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** Ocean Services, LLC

**File:** B-404690

**Date:** April 6, 2011

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Wayne A. Keup, Esq., for the protester.  
Kristopher A. Fischer, Esq., Department of the Navy, for the agency.  
Katherine I. Riback, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest that contracting agency improperly refused to allow the protester to revive its expired proposal is sustained where the revival would not prejudice other offerors or the competitive system, given that the protester's proposal, the acceptance period for which expired on a Saturday, was revived by its extension of the acceptance period on the following Monday morning.

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### DECISION

Ocean Services, LLC, of Seattle, Washington, protests the refusal of the Department of the Navy, Military Sealift Command (MSC) to consider its expired proposal under request for proposals (RFP) No. N00033-10-R-2501.

We sustain the protest.

The MSC issued the RFP on March 25, 2010, as a total small business set-aside, to solicit proposals for the operation and maintenance of the ocean survey vessel (OSV) BOLD. The RFP advised offerors that award was to be made to the lowest-priced, technically acceptable proposal. The original closing date for proposals was April 26. The agency issued three amendments that revised the solicitation, answered questions regarding the solicitation, and ultimately extended the due date for receipt of proposals to June 9. RFP amend. 4.

On June 23, the apparent awardee was announced and the offerors were informed by the agency that any challenges concerning the small business size status of the apparent awardee must be filed by June 30. Two offerors, including Ocean, timely challenged the size status of the apparent awardee. On August 2, the agency

requested that Ocean and the other offerors extend the acceptance period of their proposals. Agency Report (AR) at 3. On that same date, Ocean extended the acceptance period of its proposal to September 30. Id. On September 17, the Small Business Administration determined that the apparent awardee was other than small for purposes of this procurement. Id. On September 24, the agency again requested that Ocean and the other offerors extend the acceptance period of their proposals through November 14, and on that same date Ocean again provided the requested extension. Id. On September 30, the agency extended the incumbent's contract until February 12, 2011. Id. On November 8, 2010, the agency again requested the offerors to extend the acceptance period of their proposals through Saturday, December 18, and, on that same date the offerors, including Ocean, provided the requested extension. Id.

On December 10, the agency issued a market survey for the operation and maintenance of the OSV BOLD. The responses to the market survey were due on December 20. On Monday, December 13, the agency again requested the offerors, including Ocean, to extend the acceptance period of their proposals through February 12, 2011.<sup>1</sup> AR, exh. 3, Email from MSC to Offerors. On that same date, Ocean sent the following question to the agency:

Can you give us an explanation what the extension is for? It appears that you are also going out to the market looking to re-compete this vessel management contract [without] a small business component? We have put considerable effort into this proposal as well as the components of small business vs. large business and respectfully request some clarification.

AR at 4. On Friday, December 17, Ocean received the following email from the agency:

This is just a reminder that your offer on the subject RFP is valid through 18 December 2010. If you wish to extend your offer please do so by email, stating the exact date in your email.

Id. On the following Monday, December 20, Ocean responded to the market survey, and at 10:34 a.m. that same day, Ocean extended its proposal through February 28, 2011. AR, exh. 5, Ocean Email Extending Offer. The other offerors extended their proposals prior to December 18, 2010. AR, exhs. 4 and 5, Emails dated December 13 and 14, 2010, from Offerors Extending Offers. On December 20, the agency sent the following email to Ocean:

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<sup>1</sup> The request did not contain a date certain by which the extension was required to be provided.

I received notice of your proposal extension today. Your proposal was only valid through 18 December 2010. Your offer to extend your proposal was received on 20 December 2010 and is considered late. Your proposal will no longer be considered for award.

AR at 5. This protest to our Office followed.

The record establishes that Ocean's proposal expired because it did not extend the acceptance period of its proposal by December 18. See Trojan Indus. Inc., B-220620, Feb. 10, 1986, 86-1 CPD ¶ 143 at 5. Nevertheless, Ocean contends that the agency should allow it to revive its offer because this would neither prejudice the other offerors nor compromise the integrity of the competitive process. Protester's Comments at 4.

Where a proposal or bid has expired, we have recognized that an offeror or bidder may extend its acceptance period and revive its proposal or bid if doing so would not compromise the integrity of the competitive bidding system. Id. Circumstances that compromise the system's integrity are where the bidder offered an acceptance period shorter than other bidders (if the solicitation afforded bidders or offerors the option to offer less than a standard time frame that otherwise would be presumed to apply), or where the bidder expressly or impliedly refused a request to extend its bid and later granted an extension as its own interests dictated; a bidder's or offeror's limitation of the government's legal ability to accept the bid or proposal in a manner at variance with the terms offered by other competitors limits the bidder's or offeror's exposure to marketplace uncertainties and reduces that bidder's risk. Id.; Camden Shipping Corp. v. United States, 89 Fed.Cl. 433 (2009).

In this case, Ocean did not decline to extend the acceptance period for its proposal, which expired on a Saturday, but extended it on the following Monday morning. We have recognized in such circumstances that even where other bidders or offerors had extended their proposals as required, there is no prejudice to the other bidders or offerors, or to the competitive system, by allowing the expired bid or proposal to be revived. Trojan Indus. Inc., supra, at 5-6 (bid which expired on Saturday revived by bidder's extension of bid period on the following Monday). Reviving the proposal on the morning of the first business day following its expiration negates any

argument that Ocean compromised the procurement process by avoiding market fluctuations to which other offerors were exposed.<sup>2</sup> See id.; compare Discount Mach. & Equip., Inc., B-244392, Oct. 15, 1991, 91-2 CPD ¶ 334 at 4 (prejudice found and bid revival not permitted, where the bidder attempted to extend its bid more than a month after the expiration of the original bid acceptance period, where the other bidders had timely extended their bids); MKB Mfg. Corp., B-208451, Mar. 1, 1983, 83-1 CPD ¶ 204 (same, where bidder attempted to extend bid 15 days after the expiration of bid acceptance period).

We recommend that the MSC accept the revival of Ocean's proposal. We further recommend that the agency reimburse the protester the costs of filing and pursuing its protest, including reasonable attorney's fees. 4 C.F.R. § 21.8(d)(1) (2010). The protester's certified claim for costs, detailing the time spent and the cost incurred, must be filed to the agency within 60 days after receiving this decision.

The protest is sustained.

Lynn H. Gibson  
General Counsel

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<sup>2</sup> Prior to issuing our decision in this matter, our Office brought the Trojan case to the attention of the parties and indicated that it would seem to be applicable to the present situation. The agency attempts to distinguish Trojan by focusing on when the agency's request for extension was received. In Trojan the request for extension was received less than 1 business day before the bid expired, whereas, in the present case, the initial request for extension was received a week before the proposal expired. In our view, the relevant issues are the length of time that the bid or proposal was expired and whether there was prejudice to other bidders or offerors during that time. Here, Ocean's proposal expired on Saturday and was revived on the following Monday. The fact that Ocean's extension was received on the first business day following its expiration indicated that there was no prejudice to the other bidders or the competitive system. We note that the agency has not argued that Ocean's failure to extend was to avoid market uncertainties.