

7653

DECISION



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

FILE: B-191996

DATE: September 18, 1978

MATTER OF: United Electric Motor Company, Inc.

DIGEST:

1. Protest against continued evaluation of best and final offers that were not extended until after they had expired is denied. Since only right conferred by expiration of acceptance period is conferred upon offeror, contracting officer may allow offeror to waive such right.
2. Although bid under IFB is irrevocable for acceptance period indicated, offeror in negotiated procurement may withdraw offer any time before award.

Request for proposals (RFP) No. F04606-77-R-0595 was issued on June 29, 1977, by the United States Air Force for the repair of motor generators. Proposals were due by August 12. Ten proposals were received and evaluated and discussions were held with all offerors. Best and final offers were submitted by November 7.

All best and final offers were to expire 60 calendar days from November 7 (January 6, 1978), which is the standard RFP proposal acceptance period (no offeror indicated a different expiration date in its best and final offer). On December 23, 1977, while proposals were still being evaluated, United Electric Motor Company, Inc. (United Electric), extended its offer an additional 60 days.

The evaluation of proposals was not completed by January 6, 1978, and all offers except United Electric's therefore expired. On January 11, the contracting officer requested that all offerors extend their offers to March 7. United Electric then filed a protest with the contracting officer

against the continued evaluation of proposals other than its own. United Electric contended that since the proposals had expired they could neither be accepted nor revived by the contracting officer.

The protest was denied by letter of May 11. United Electric filed a protest on the matter in our Office on May 22. Extensions of the other offers through November have been obtained and award is being withheld pending resolution of United Electric's protest.

United Electric contends that our decisions in this area fall into five groups distinguishable by factors such as whether it was in the Government's interest to accept an expired offer; the number and acceptability of the offers that expired; and the number of offerors that agreed to renew their offers. United Electric characterizes the present situation as being one of a group where an acceptable offer did not expire but other acceptable ones did. United Electric cites our decisions in Surplus Tire Sales, B-179929, April 2, 1974, 74-1 CPD 161, and 42 Comp. Gen. 604 (1963), as reflecting our position that in such situations offerors may not be permitted to revive expired offers. United Electric recognizes that the cited cases involve formally advertised procurements, but points out that we have stated that considerations with regard to expired bids apply as well to expired offers in negotiated procurements. See in this connection Riggins & Williamson Machine Company, Incorporated, et al., 54 Comp. Gen. 783 (1975), 75-1 CPD 168.

Notwithstanding United Electric's characterization of our decisions in this area, our basic position is that a contracting officer may allow a bidder/offeror to waive the expiration of its bid/offer acceptance period so as to make an award on the basis of the bid/offer as submitted.

The rationale therefor is that the only right conferred by expiration of the acceptance period is conferred upon the bidder/offeror, who may therefore waive such right and accept an award at its discretion. Radionics, Incorporated, B-185597, April 14, 1976, 76-1 CPD 252; Donald N. Humphries & Associates, et al., 55 Comp. Gen. 432 (1975), 75-2 CPD 275; Riggins & Williamson Machine Company, Incorporated, et al., supra. Of course, waiver is not permitted if it would compromise the integrity of the competitive procurement system. See Veterans Administration-request for advance decision, 57 Comp. Gen. 228 (1978), 78-1 CPD 59; Boque Electric Manufacturing Company, B-189118, September 22, 1977, 77-2 CPD 217.

In the cases cited by the protester, Surplus Tire Sales, supra, and 42 Comp. Gen. 604 (1963), we discussed the type of situation in which the prejudicial effect on competition would preclude the acceptance of an expired bid. In each case, the bidder whose bid expired had limited its acceptance to a period shorter than the standard one prescribed in the IFB. We stated essentially that, where there was another acceptable bid not so limited, allowing the expired bid to be revived would compromise the integrity of the competitive procurement system because the low bidder, by not assuming the risk of fluctuations in the marketplace, in effect sought and gained an advantage after bid opening not sought by the other bidder--the advantage of reviving its bid in short increments or allowing it to lapse as his interests dictate. See also Veterans Administration-request for advance decision, supra, at 230.

United Electric argues that waiver of the expiration of offers here would prejudice United Electric and compromise the competitive system on the following basis:

** * * They each had the opportunity to review their pricing in the light of current rapidly escalating price changes and 'get off the hook' on their proposal if they so desired. On the other hand, United Electric is being unfairly prejudiced and penalized for keeping its offer viable because United Electric has to maintain the price structure inherent in its still viable offer without the opportunity to review its pricing position and 'get off the hook' if price escalations would indicate that this is desirable from United Electric's point of view."

It thus appears that United Electric believes that any of the other offerors could refuse an award under the RFP on the basis of its best and final offer or could revise its proposal when extending the acceptance date therefor and that neither option is available to United Electric.

Although our basic position in this area is essentially the same with regard to both formally advertised and negotiated procurements, in determining whether prejudice would result by allowing the waiver of an expired acceptance period certain fundamental differences in the two procurement methods must necessarily be considered. In formal advertising, absent a mistake in bid, a bidder must accept a contract awarded prior to the expiration of the initial acceptance period. 50 Comp. Gen. 383, 385 (1970). In situations such as those in the decisions cited by United Electric, bidders submitting acceptable bids with standard acceptance periods therefor clearly assume marketplace risks which bidders indicating shorter acceptance periods do not. However, in a negotiated procurement, an offeror may withdraw its proposal at any time before award. Paragraph 8(f), Solicitation Instructions

and Conditions, Standard Form 33-A. Thus, United Electric can "get off the hook" if it so desires. In addition, once best and final offers have been submitted, an offeror cannot further revise its proposal unless all offerors in the competitive range are afforded the same opportunity. 51 Comp. Gen. 479 (1972); 50 id. 202 (1970). In this connection, the January 11 request by the contracting officer that offers be extended to March 7, and all subsequent requests, specifically stated that "Revisions to offers will not be accepted." See also Radionics, Incorporated, supra.

Accordingly, we do not agree that either United Electric or the competitive system is prejudiced by the contracting officer's actions. The protest is denied.

R. F. Katten
Deputy Comptroller General
of the United States