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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: Consultants Ltd.

File: B-286688.2

Date: May 16, 2001

Heath Carroll, Esq., for the protester.

Henry P. Wall, Esq., Bruner, Powell, Robbins, Wall & Mullins, for Jackson Enterprises, an intervenor.

Lt. Col. Richard B. O'Keeffe, Jr., and Joseph M. Zima, Esq., Department of the Army, for the agency.

Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where a bidder agrees to hold its bid open for the minimum bid acceptance period required by the solicitation and complies with each agency request for an extension of its bid acceptance period, the bidder has obtained no advantage over the other bidders and the integrity of the bidding system is not compromised if the bidder is subsequently permitted to revive an expired bid.

DECISION

Consultants Ltd. protests the Department of the Army's decision to terminate its contract and make award to Jackson Enterprises under invitation for bids (IFB) No. DAKF40-00-B-0008, for the cleaning of grit chambers, holding tanks, and oil/water separators/interceptors at various locations throughout Fort Bragg and Pope Air Force Base, North Carolina. The protester contends that Jackson's bid should be rejected because Jackson allowed its bid acceptance period to expire.

We deny the protest.

The IFB, which was issued on May 15, 2000, contemplated the award of a requirements contract for a 12-month base period and four 12-month option periods. The solicitation incorporated by reference Federal Acquisition Regulation (FAR)

§ 52.212-1 (Instructions to Offerors--Commercial Items), which set the period for bid acceptance as follows:

(c) *Period for acceptance of offers.* The offeror agrees to hold the prices in its offer firm for 30 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.

RFP at 000071.

The IFB was amended four times after issuance. Amendment Nos. 0001 and 0002 answered questions posed by various prospective bidders and set dates for site visits, while amendment No. 0003 extended the bid opening date indefinitely. Amendment No. 0004 set the bid opening date as July 7 and answered additional bidder questions.

Six bids were received and opened on July 7. Gilesair was the low bidder; Jackson Enterprises was second low; and Consultants was third low. By letter dated July 18, Jackson, which had failed to acknowledge amendment Nos. 0003 and 0004 in its bid, acknowledged these amendments and “extend[ed] [its] submitted bid 90 days or until the Contract is awarded.”

Because preaward processing took longer than expected, the agency was unable to make award during the 30-day acceptance period provided for in the solicitation and sought extensions of their acceptance periods from the bidders. After extending its bid acceptance period several times, Gilesair, whose acceptance period was now due to expire on September 30, failed to comply in a timely manner with an agency request for a further extension; accordingly, the contracting officer determined that Gilesair’s bid had expired as of September 30 and rejected it.¹ The contracting officer then determined that Jackson’s bid was nonresponsive because Jackson had failed to acknowledge amendment No. 0004. On October 17, the contracting officer awarded a contract to Consultants as the responsible firm submitting the lowest responsive bid.

Jackson protested the rejection of its bid to our Office, arguing that the agency should have waived its failure to acknowledge amendment No. 0004 because the amendment was not material. By decision dated February 5, 2001, we sustained Jackson’s protest and recommended that if the agency determined Jackson to be

¹ On October 31, Gilesair filed an agency-level protest objecting to the rejection of its bid. The contracting officer denied the protest on November 28. Gilesair did not pursue the matter in another forum.

otherwise eligible for award, it terminate the award to Consultants and make award to Jackson.

By letter to the contracting officer dated February 6, as supplemented by a letter dated February 21, Consultants protested the prospective termination of its contract and award to Jackson. On March 12, having failed to receive a response to its agency-level protest, Consultants protested to our Office.

Consultants argues that Jackson's bid should be rejected because Jackson, like Gilesair, allowed its bid acceptance period to expire. In this regard, after on July 18 extending its bid for "90 days or until the Contract is awarded", and on September 26 confirming, in response to an agency request, that its bid would remain open until October 16, Jackson did not further extend its bid acceptance period until February 8, 2001, when the contracting officer, who had just received our Office's decision sustaining Jackson's protest, requested that it do so.²

Where a bidder offers a bid acceptance period shorter than that requested in the solicitation, the bidder cannot be permitted to revive its bid by extending its acceptance period, since such an extension would compromise the competitive bidding system by prejudicing the other bidders who assumed a greater risk of price or market fluctuation by offering the requested acceptance period. W. A. Strom Contracting, Inc.; Seubert Excavators, Inc., B-216115, B-216115.2, Dec. 26, 1984, 84-2 CPD ¶ 705 at 2-3. Where, however, a bidder agrees to hold its bid open for the minimum bid acceptance period required by the solicitation and complies with each agency request for an extension of its bid acceptance period, the bidder has obtained no advantage over the other bidders and the integrity of the bidding system is not compromised if the bidder is subsequently permitted to revive an expired bid. See Carnes Constr., Inc., B-241778, Feb. 26, 1991, 91-1 CPD ¶ 215 at 3.

Here, Jackson agreed to hold its bid open for the 30-day period originally requested by the agency. It then extended its bid acceptance period without the agency's having requested it, and confirmed, when requested by the agency to do so, that its bid would remain open until October 16. Thus, the record in no way suggests that Jackson endeavored to obtain an advantage over other bidders by offering less than the requested bid acceptance period. Furthermore, Jackson was not required to extend its bid acceptance period through the pendency of its protest because a party's active participation in a bid protest, without a formal extension of its bid acceptance period, tolls that period until the protest is resolved. See S. J. Groves & Sons Co., B-207172, Nov. 9, 1982, 82-2 CPD ¶ 423 at 2.

² On February 8, 2001 Jackson responded to the contracting officer's request for an extension of its bid through February 28. On February 25, in response to a further request by the agency, Jackson extended its bid acceptance period through April 1, and on March 30, it again extended its bid "until rulings have been made on the current protest and until award of contract is made."

The protester contends that it would compromise the integrity of the competitive bidding process to allow Jackson to revive its expired bid given that the low bidder, Gilesair, was not allowed to revive its expired bid. We disagree. The circumstances surrounding the two bidders' extensions of their bid acceptance periods differ significantly. While Jackson fully complied with agency requests for extension of its bid acceptance period, Gilesair on several occasions extended its bid for less than the requested number of days,³ thereby potentially obtaining an unfair advantage over bidders (such as Consultants itself) that extended for the requested number of days. Moreover, Gilesair allowed its bid acceptance period to expire in the face of a request for extension from the agency, whereas Jackson had received no request for a further extension at the time its acceptance period expired.

The protester also argued in its initial protest that Jackson's bid should be rejected because Jackson falsely represented in its bid (1) that it had not participated in a previous contract or subcontract subject to the Equal Opportunity clause of the solicitation, and (2) that it had not previously had contracts subject to the written affirmative action program requirements of the rules and regulations of the Secretary of Labor.⁴ The agency responded to these allegations in its report, maintaining that any errors or omissions in Jackson's response to the above clauses were not material and thus did not render its bid nonresponsive. In commenting on the agency report, the protester has neither taken issue with nor attempted to rebut the agency argument; accordingly, we consider it to have abandoned this basis of protest. O. Ames Co., B-283943, Jan. 27, 2000, 2000 CPD ¶ 20 at 7.

The protest is denied.

Anthony H. Gamboa
General Counsel

³ For example, on August 3, the agency asked Gilesair to extend its bid acceptance period for 60 days. On August 4, Gilesair responded with an extension of 26 days.

⁴ These are among the representations that bidders responding to solicitations for commercial items are required to complete pursuant to FAR § 52.212-3.