

DECISION



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

FILE: B-201846

DATE: June 2, 1981

MATTER OF: Yardney Electric Division

DIGEST:

1. Where protester alleges unreasonable delay in making award, which required it to decline to extend bid acceptance period, it is interested party under GAO Bid Protest Procedures since nature of issue and requested remedy of cancellation and resolicitation are such that protester has established direct and substantial interest.
2. Protest that award was unreasonably delayed and bid acceptance period extensions were improperly requested is denied where delay was relatively short and resulted from administrative problems which agency reasonably believed required resolution in order to make award.

Yardney Electric Division (Yardney) protests the award of a contract under invitation for bids (IFB) No. DAAB07-80-B-1353, issued by the Department of the Army for certain silver-zinc battery units. Yardney asserts that it was the low bidder but, because the Government unreasonably delayed making award for 105 days after bid opening, Yardney was unable to grant a requested bid extension at its initial bid price. Therefore, Yardney asserts that the Army should cancel the award and resolicit the requirement. We do not find any merit in Yardney's contention.

Bids were opened on September 19, 1980. Yardney submitted the low bid of \$2,297 per battery unit. Eagle Pitcher Industries, Inc. (Eagle Pitcher), the only other bidder, submitted a bid of \$2,875 per unit. Yardney's bid properly limited its acceptance period to 60 calendar days from the receipt of bids. As the result of

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several problems concerning such items as the effect of the apparent illegibility of certain aperture cards which were part of the bid package, a question concerning the amount of Government-furnished silver to be supplied to the contractor, and the need for the contractor to supply an IFB-mandated subcontracting plan, award was delayed and the Government requested bid extensions.

The initial request, made on November 13, 1980, was granted by both bidders. Yardney subsequently granted two additional bid extensions, the last until January 2, 1981. On December 30, 1980, the Government again requested Yardney to extend its bid, in particular to allow Yardney, the anticipated awardee, enough time to submit a required subcontracting plan. Yardney declined to extend its bid acceptance period, indicating that it desired either to negotiate a new price or participate in a resolicitation for the batteries. Eagle-Pitcher granted an extension. Yardney protested to our Office on January 19, 1981. The Army subsequently awarded the contract to Eagle-Pitcher.

As a threshold issue, the Army contends that, once it refused to extend its offer, Yardney was no longer an interested party under GAO Bid Protest Procedures. The Army cites Don Greene Contractor, Inc., B-198612, July 28, 1980, 80-2 CPD 74, in support of its position. This case stands for the proposition that where a bidder refuses to extend a bid, it is no longer an interested party under our Bid Protest Procedures when, even if our Office were to sustain the protest, the protester has rendered itself ineligible for award under the solicitation being protested.

However, as a general rule, in determining whether a party is sufficiently "interested" under our Bid Protest Procedures, in order to have its protest considered by our Office, we will review the party's status in relation to the procurement and the nature of the issues involved. See generally, American Satellite Corporation (Reconsideration), B-189551, April 17, 1978, 78-1 CPD 289; Cobar Services Inc., B-200360, March 2, 1981, 81-1 CPD 155. In this case, the issue being protested is the reasonableness of the requested bid extension. The requested remedy is not award under the solicitation, but rather cancellation and resolicitation. Thus, in view of the nature of the issue raised and the relief requested, we believe that Yardney is a sufficiently interested party under our Bid Protest Procedures.

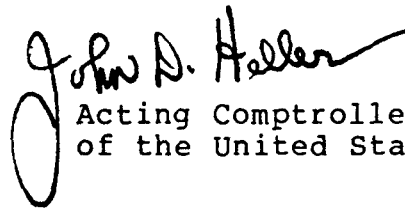
Yardney cites a number of GAO decisions for the propositions that: an agency may not delay award of a contract without a justifiable reason; extension of bid acceptance periods are proper only when required by administrative necessities; and such extensions may properly be sought only as long as the integrity of the competitive procurement system is not compromised.

We have, in the cases cited, approved a panoply of actions as falling within the scope of "administrative delays" warranting extension requests, and we have afforded procuring agencies substantial leeway to request--but not to require--bid acceptance period extensions. See, for example, Tennessee Apparel Corporation, B-194461, April 9, 1979, 79-1 CPD 247. None of the cases cited have limited the appropriateness of such extension requests to narrowly circumscribed situations entailing administrative "necessities," as asserted by Yardney. The cited caveat against compromising the integrity of the procurement system as expressed in R.H. Whelan Company, B-194193, May 7, 1979, 79-1 CPD 313, was stated in relation to the fact that a bidder which extended its bid acceptance period and accrued expenses in anticipation of an award was not entitled to Government reimbursement for such expenses if it did not receive award. That case emphasized the voluntary nature of bid extensions and cited a prior case for the general proposition that a contracting officer has the right to request--but not to insist upon--a bid acceptance period extension as long as the integrity of the competitive procurement system is not compromised. This language (in the prior case cited) was specifically used to clarify the permissibility of a bid extension request in the situation where an extension would revive an expired bid. United Electric Motor Company, Inc., B-191996, September 18, 1978, 78-2 CPD 206. It is irrelevant to the fact situation in the case at hand.

The rule regarding the permissibility of an agency request for a bid acceptance period extension in a situation such as this one is simply that while the Government has no right to force a bidder to grant such an extension, it is appropriate to make such a request pursuant to Defense Acquisition Regulation § 2-404.1(c) (1976 ed.), where the bidder has offered the full acceptance period provided in the IFB and the agency experiences administrative delays. Environmental Tectonics Corporation, B-183616, October 31, 1975, 75-2 CPD 266. Accordingly,

we see no reason to assess each specific incident contributing to the delay, which was only for a total of just over 45 days beyond the original bid acceptance period. Yardney argues that each of these factors was primarily attributable to, and essentially the fault of, the Army, while the Army contends otherwise. The record indicates that the delays were relatively brief and were not unreasonable under the circumstances since, regardless of the precise causes, they were occasioned by legitimate problems and associated concerns on the part of the agency. As such, they fall within the category of administrative delays which properly may occasion a delay in making award and a request for bid acceptance period extension. The bidders were free to elect not to grant such an extension, as did Yardney.

The protest is denied.

A handwritten signature in black ink, reading "John D. Heller". The signature is written in a cursive style with a large, looped initial "J".

Acting Comptroller General
of the United States