

April



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Pegasus Alarm Associates, Inc.

File: B-225597

Date: April 16, 1987

DIGEST

1. When an agency requests bidders to extend their bid acceptance periods, it is the responsibility of a firm that desires to extend to communicate this, either by ensuring that the agency receives an express extension or by conduct from which the agency can infer an intent to extend. In the rare instances where such an inference is possible, the bidder has taken some other affirmative step that provides clear evidence of its intent to extend, and the agency is aware of this action.

2. When facts concerning a bidder's intent to extend its bid acceptance period are in dispute, and it appears that the bidder could argue either that it had extended or that its bid had expired, the integrity of the competitive system is best served by an award to the second-low bidder.

DECISION

Pegasus Alarm Associates, Inc. protests the rejection of its low bid for failure to timely acknowledge a request for a second extension of its bid acceptance period under Naval Facilities Engineering Command solicitation No. N62470-86-B-5238. The solicitation was for maintenance of fire protection and warning systems at Oceana Naval Air Station, Virginia Beach, and Auxiliary Landing Field Fentress, Chesapeake, Virginia. Pegasus contends that the agency improperly awarded the contract to the second-low bidder, Old Towne Services, Inc. when the contracting officer had reason to know that Pegasus intended to extend its bid.

We deny the protest.

Bid opening occurred on September 18, 1986, but due to administrative difficulties in making award, the Navy twice requested bidders to extend their bid acceptance periods.

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Its first request was by letter dated October 27; all bidders, including Pegasus, responded and agreed to hold their bids open from November 17 to December 16. The Navy requested a second extension, covering the period from December 17 to January 16, 1987, by letter dated December 9. According to the Navy, when Pegasus failed to respond in a timely fashion, its bid automatically expired.

The protester states that it did not receive, and was not otherwise informed of, the second request for an extension. Pegasus alleges that the Navy ignored a change of address, thus contributing to its failure to receive the second request. The protester argues that its conduct in preparing and offering information related to its responsibility; its contacts with the Navy in an effort to correct a mistake in bid (not at issue here); and its prompt, affirmative response to the agency's first request for an extension provided an adequate reason for the Navy to know that Pegasus intended to extend again.

The Navy, however, contends that it made every reasonable effort to effectuate award to Pegasus, but that it was frustrated by the prospective contractor. According to the Navy, despite numerous attempts to contact Pegasus on a series of dates following bid opening, contracting officials either got no answer at the telephone number listed for Pegasus or were forced to leave messages on an answering machine. Specifically, the contracting officer states that by a letter also dated December 9, and during a telephone conversation with Pegasus on December 10, she requested, and the firm agreed to provide, financial and other responsibility-related information. According to the contracting officer, when she had not received either this information or an express extension of its bid acceptance period from Pegasus by December 17, the day following expiration of the bid, she left a message on Pegasus' answering machine, asking to be called back by noon on December 18. The Navy, having received no response, made award to the second-low bidder on Friday, December 19.

Pegasus, which claims that the contracting officer's call was not recorded until December 18, returned it on the following Monday, December 22, at which time it was advised of the award. Also on December 22, the Navy received a list of references and other responsibility-related information from Pegasus. The firm alleges that the Navy acted precipitously and unreasonably in making the award before receipt of this material; it seeks termination of the Old Towne contract and an award to itself.

The Federal Acquisition Regulation (FAR) states that before expiration of bids, if necessary, agencies should request the lowest bidders to extend, in writing, their bid acceptance periods. 48 C.F.R. § 14.404-1(d) (1986). We have recognized a corresponding duty on the part of bidders to check with the contracting officer before bids expire if they have a continuing interest in being considered for award. Alchemy, Inc., B-207954, Jan. 10, 1983, 83-1 CPD ¶ 18, citing 42 Comp. Gen. 604 (1963). When an agency does request an extension, it is the responsibility of the firm that desires to extend its bid to communicate assent, either by ensuring that the agency receives an express extension or by conduct from which the agency can infer the bidder's intent to extend. Trojan Industries Inc., B-220620, Feb. 10, 1986, 86-1 CPD ¶ 143; Dunrite Tool & Die, Inc., B-211735, June 6, 1983, 83-1 CPD ¶ 610.

Here, Pegasus clearly did not submit an express extension before its bid expired on December 16. The question therefore becomes whether, as the firm argues, the Navy could have inferred an extension and, by accepting the bid, could legally have bound Pegasus to perform at its original bid price.

In those rare instances where we have permitted agencies to infer an extension of a bid acceptance period, the bidder has taken some other affirmative step that provides clear evidence of its intent to extend, and the agency has been fully aware of this action. See, e.g., Surplus Tire Sales, 53 Comp. Gen. 737 (1974), 74-1 CPD ¶ 161 (bidder signs waiver of description of specifications and submits it to the contracting agency); American Photographic Industries, Inc., B-206857, Sept. 29, 1982, 82-2 CPD ¶ 295 (bidder orally agrees to extend and agency telephone records reflect this agreement, as well as the fact that the bidder is obtaining an extension of a letter of credit supplied as a bid bond); cf. Trojan Industries, Inc., supra (bidder responds on Monday to a request for extension made less than 1 day before Saturday expiration of bids and gains no unfair competitive advantage by this slight delay).

We think the evidence of Pegasus' intent to extend beyond the December 16 expiration date is less convincing than in the cited cases. The Navy, as previously indicated, requested the second extension and responsibility-related information by letters dated December 9. It sent both letters by certified mail, return receipt requested, and addressed both to the post office box in Bausman, Pennsylvania that Pegasus had indicated, in box 15A of Standard Form 33, submitted as part

of its bid, was its mailing address. Sometime after bid opening Pegasus apparently changed its mailing address to a post office box in Lebanon, Pennsylvania.^{1/} Agency correspondence relating to the mistake in bid, as well as the first request for an extension, must have been forwarded, since although the Navy sent them to the Bausman address, Pegasus responded using a typed letterhead that included the Lebanon address. Pegasus states, however, that it never received the letters of December 9, and the Navy states that after award, a number of letters were returned to the sender with a notation that the post office box had been closed.

Pegasus contends that the Navy should have noted its change of address and sent the second request for an extension to the new post office box. The contracting officer, however, states that during the December 10 telephone conversation with Pegasus, although she did not discuss the request for an extension, she did reconfirm the firm's mailing address and was given the one listed on Standard Form 33. Pegasus denies having confirmed the old address.

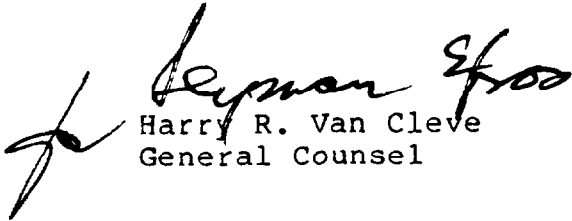
Given these facts, many of which are in dispute, we cannot conclude that Pegasus took the affirmative steps necessary to permit an inference that it intended to extend its bid acceptance period. The firm did not specifically advise the Navy of its change of address, and may have orally confirmed its old address. It apparently did not arrange for forwarding of mail from the old address for a period long enough to ensure that it received all correspondence relating to its outstanding bid, thus contributing to the nonreceipt of the letters requesting an extension. Nor did Pegasus forward responsibility-related information by any means such as express mail or telex, so that it would have been certain to arrive before expiration of the bid acceptance period. Finally, the firm failed to return the contracting officer's phone call, made either December 17 or 18, before the December 19 award.

We conclude that Pegasus is now attempting to revive an expired bid. Such action may be appropriate where there is no compromise to the integrity of the competitive bidding system. Trojan Industries, Inc., supra. Here, however,

^{1/} The firm apparently also changed its name from Pegasus Alarm Association, which appears on its bid, to Pegasus Alarm Associates, Inc. The parties have not raised the question of whether these are the same legal entity.

Pegasus could also choose to contend, if the government attempted to make an award, that it did not have a valid bid. In our opinion, the integrity of the competitive system is therefore best served by the Navy's acceptance of the second-low bid. See 42 Comp. Gen. supra at 608; Arscos International, B-202607, July 17, 1981, 81-2 CPD ¶ 46.

The protest is denied.


Harry R. Van Cleve
General Counsel