

## YOU MAY NOT INCREASE YOUR PRICE IN A BID EXTENSION

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Contracting Officers generally have three ways in which they normally specify the minimum bid acceptance period (the time in which their prices remain fixed as stated in their offer):

- Standard form 33 (FAR 53.301-33) includes the following statement in block 12:
  - “[T]he undersigned agrees, if this offer is accepted within \_\_\_ calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s) within the time specified in the schedule.”
- FAR 52.214-16, Minimum Bid acceptance Period: the contracting officer inserts a time period in that clause, similar to Form 33 above; or
- A time period set forth somewhere else in the text of the solicitation.

The Government cannot accept an offer that is beyond the acceptance period, but the agency may request that the offerors extend this period by 15, 30, 45 or some other number of days. The purpose of the extension is to freeze prices while the agency makes its selection, or takes other action. Increasing prices as part of an offeror’s extension will disqualify that offer. *Global Engineering Services, LLC*, B-421866, Oct. 2, 2023.

Global Engineering Services (“Global”) protested an award issued by the Department of Veterans Affairs for construction services at the Cedar City National Cemetery in Cedar City, UT. Apparently, Global was the low responsive bid. Before making award, the 60 day bid acceptance period in the solicitation expired, but the contracting officer decided to extend the period. Instead of extending its bid (at the bid prices), Global submitted a revised bid with approximately a 2 percent price increase. The agency made award to the next-lowest bidder at its bid price.

Global stated that the agency should be estopped (prevented) from proceeding with the award because the contracting officer had indicated that the agency would cancel and resolicit bids. Global had declined to extend its bid acceptance period in reliance on the contracting officer’s assertion that the agency would cancel and resolicit bids.

GAO set forth three reasons for denial of the protest. First, Global was not an interested party to challenge the award because it was no longer an offeror when it submitted a revised bid. Bidders are not permitted to revise bids when granting an extension to their bid because this is tantamount to submitting a second bid after bid opening—something that is contrary to competitive bidding principles.

Second, GAO lacked jurisdiction to consider the protest because it wasn’t an alleged violation of a procurement statute or regulation. Global’s estoppel argument was not a violation of procurement law or regulation, but was “derivative of a proclaimed detrimental reliance on representations made by the contracting officer.”

Finally, GAO stated that the record did not demonstrate the Global had detrimentally relied on the agency's alleged assertion that the agency would cancel and resolicit its requirement if Global failed to extend its bid.

Takeaway: Unless permitted by a solicitation amendment, a request to extend your offer must be done at the originally offered price. Any attempt to increase your offered price will cause your offer to be no longer accepted, and cannot form the basis of award.

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