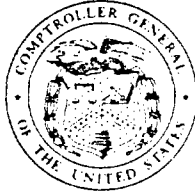


DECISION

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

*no log
number.*

FILE: B-185109

DATE: February 19, 1976

98417

MATTER OF: Kings Point Manufacturing Company, Inc.

DIGEST:

Telegraphic modification to bid created no ambiguity where bidder offered revised firm fixed prices and fact that remainder of telegram manifesting bidder's willingness to accept an award for less than the quantities advertised in solicitation at a further reduction in price may have been initially confusing does not render bid nonresponsive, where contracting officials are able to satisfy themselves after further examination of bid so as to remove any doubt as to bidder's intent and arrive at a reasonable interpretation of bidder's statements.

Kings Point Manufacturing Company, Inc. (Kings Point) protests the proposed award of a contract to Lite Industries, Inc. (Lite) by the Department of the Navy's Aviation Supply Office, (ASO), Philadelphia, Pennsylvania, under invitation for bids (IFB) No. N00383-76-B-0048, a total small business set-aside. The IFB solicited bids on 14 items of coveralls. Items one through six and 14 were for coveralls known as "innershells" and items seven through 13 were for coveralls known as "outershells". Stepladder or alternate quantities (ranging from three to five) were listed for each of the items which appeared on the invitation's "Bid Form". ASO intended that a single award would be made for all the items at one of the selected stepladder quantities set forth for each such item. Award of the contract to Lite has been withheld pending resolution of the protest.

Three bids were received and opened on August 28, 1975. Lite, the low bidder, submitted two timely telegraphic modifications to its bid. The first modification, dated August 28, 1975, revised Lite's initial bid prices (reduced the unit bid prices for each stepladder quantity of items one through 13 and increased the unit bid price for each stepladder quantity of item 14) and made the following representations (for purposes of discussion and to facilitate identification the contracting officer added paragraph letters b, c, and d to the various parts of the telegram):

"b. If awarded items 1 thru 6 and 14, innershells, reduce our prices on equal quantity within 10% on items 7 thru 13, outershells, by an additional \$15 each.

"c. Price Revision submitted by stepladder quantities only for purposes of establishing minimum quantities at adjusted price.

"d. We will accept any combination of stepladder quantities within 5%."

Kings Point does not challenge the price revisions effected by the aforementioned telegram. However, protester alleges that the remainder of the telegram rendered Lite's bid ambiguous and thus not eligible for award for the following reasons:

"We simply do not know what Lite Industries meant when they based their reduction of \$15.00 'on equal quantities within 10%'. He has neither stated the quantities he refers to nor does he state the base to which the 10% should apply. Also, what does 'minimum' quantities mean at 'adjusted' prices? The final sentence in his telegram of 'accepting any combination of stepladder quantities within 5%' is totally meaningless to us."

Furthermore, Kings Point contends that the ambiguity inherent in Lite's statements precludes the Government from discerning the full import of Lite's telegram, and therefore, this inability of the Government to define Lite's intent should invalidate the telegram in its entirety and award should be made to Kings Point as the second low responsive bidder.

While it is well established that an ambiguous bid is not eligible for award, the mere allegation that something is ambiguous does not make it so. An ambiguity exists where the terms of a bid are subject to two or more reasonable interpretations. 51 Comp. Gen. 831, 833 (1972). However, an item in the bid may be confusing without being ambiguous if an application of reason would serve to remove the doubt. 48 Comp. Gen. 757, 760 (1969). Since questions as to a bidder's intention must be determined from the bid itself, anything contained in the bid which creates an ambiguity as to what the bidder is offering will of necessity qualify the bid unless the ambiguity can be resolved within the four corners of the bid. B-178996, August 23, 1973.

In the instant situation, the administrative report indicates that the contracting officials present at bid opening were "reasonably clear" of Lite's intent as manifested by its telegraphic modification with the exception of paragraph "d", but after further examination of the bid, were able to discern the full import of the bidder's proposals. The fact that the bidder's intent was only reasonably clear at bid opening due to the existence of some initial confusion as to the meaning of the telegram was not fatal to the eligibility of the bid but, rather only necessitated further examination of the bid by contracting officials in order to remove any doubt as to the terms of the bid modification.

We concur that the only reasonable construction of paragraph "b" is that Lite proposes to reduce its unit bid prices quoted on items seven through 13 by the amount of \$15 for each coverall (outershell) if awarded a total quantity under items seven through 13 that is within 10 percent of the total quantity awarded for items one through six and 14. While Kings Point argues that the word "quantity" and numerical figure "10 percent" used in paragraph "b" are ambiguous in that each could be construed as referring to either innershells or outershells, we believe the ASO's explanation of the statement is the only possible interpretation and clearly represents the bidder's intention. Furthermore, while we agree with the contracting officer that Lite's statement in paragraph "c" that its revised bid prices are based on the award of not less than the full stepladder or alternative quantity designated for each item indicates the bidder's failure to understand paragraph C-323 of the IFB that states award would be made for the full stepladder quantity selected, such fact does not effect the eligibility of its bid for award.

Finally, although ASO reports that the contracting officer did experience "some difficulty" in interpreting paragraph "d" of Lite's telegram, it is nevertheless clear that such initial confusion was resolved upon further examination of the modification in light of the terms of the IFB and Lite's apparent misinterpretation thereof. As stated previously, an item in a bid may be confusing without being ambiguous so as to render the bid ineligible, where the application of reason serves to remove any doubt as to the meaning of such item. In the instant situation, ASO contracting officials, while initially confused as to the intent of Lite's telegram, were able after further examination to satisfy themselves and remove any doubt as to the bidder's

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intent and arrive at what they believe to be a reasonable interpretation of paragraph "d". Under the circumstances, we agree, that it is entirely reasonable to construe that Lite intended to convey to ASO that it would accept award of any combination of the stepladder quantities at its revised prices provided the amount of each stepladder quantity selected for award was within 5 percent of the stepladder quantity advertised.

Paragraphs "b", "c" and "d" were in the Government's best interest and did not affect Lite's competitive position in regard to the other bidders. Specifically, paragraph "a" of Lite's telegram offered revised firm fixed bid prices to ASO and while the IFB advised bidders that a single award would be made on an "all or none" basis, Lite apparently was unaware of such fact and as a result proposed to accept an award for other than the entire quantities advertised at a further reduction in price. We note in regard to paragraph "b" of Lite's telegram that the sum total of the alternate quantities proposed to be awarded for items seven through 13 is in fact within 10 percent of the sum total of the alternate quantities selected for items one through six and 14.

Accordingly, we have no legal objection to ASO's proposed award to Lite and therefore, Kings Point's protest is denied.


Deputy Comptroller General
of the United States