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DECISION



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

FILE: B-206282.2 DATE: April 2, 1982

MATTER OF: Selma Apparel Corporation

DIGEST:

Protest alleging that bid is ambiguous is denied. Bid modification indicated that original bid prices were to be reduced by stated "UNIT PRICE REDUCTION" and was reasonably susceptible to only one interpretation. Since bid was lowest received, award based thereon was proper.

Selma Apparel Corporation (Selma) protests against award of a contract by the Defense Personnel Support Center to Gibraltar Industries, Inc. (Gibraltar), for supplying camouflage combat coats for use by military personnel. The protester contends that the bid submitted by Gibraltar is ambiguous with regard to price. We disagree and, therefore, deny the protest.

Invitation for bids (IFB) No. DLA100-82-B-0106 was issued on November 20, 1981, and bid opening took place on January 7, 1982. Gibraltar initially submitted a bid for supplying all 1,992,000 coats at a price of \$32.20. Gibraltar submitted a timely telegraphic modification to its bid which stated:

"PLEASE REDUCE OUR DESTINATION PRICES IN ACCORDANCE WITH THE BELOW SCHEDULE:

	<u>QUANTITY</u>	<u>UNIT PRICE REDUCTION</u>
FIRST	400,000 UNITS	\$20.64
NEXT	400,000 UNITS	\$20.34
NEXT	300,000 UNITS	\$20.03
NEXT	300,000 UNITS	\$19.62
NEXT	300,000 UNITS	\$19.32
BAL	292,000 UNITS	\$19.01

PLEASE ALSO ELIMINATE THE MAXIMUM QUANTITY LIMITATIONS SHOWN IN OUR ORIGINAL BID ON PAGE 4."

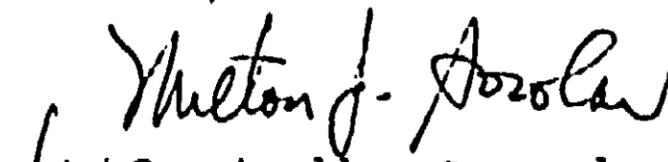
On March 12, 1982, the contracting officer awarded the contract to Gibraltar.

The crux of this protest is whether Gibraltar's bid as modified is reasonably susceptible to more than one interpretation as to the offered prices. Specifically, Selma argues that Gibraltar's telegram was not clear as to whether the original price of \$32.20 per unit should be reduced "to" or "by" the stated amounts. We will use the modification's price for the first 400,000 units to illustrate the two interpretations which are, according to Selma, the result of the modification's lack of clarity. If the modification is interpreted as intending that the original unit price of \$32.20 be reduced "by" \$20.64, then Gibraltar's new unit price is \$11.56 which is the lowest bid price received, and Gibraltar is entitled to award. (This is the interpretation used by the contracting officer in making award to Gibraltar.) If the modification is interpreted as intending that the original unit price of \$32.20 be reduced "to" \$20.64, then Gibraltar's new unit price of \$20.64 is not the lowest, and Selma is entitled to award as the lowest priced bidder. The same result occurs for each of the other quantity ranges.

A preliminary matter raised by Gibraltar is that this protest is untimely under section 21.2(b)(2) of our Bid Protest Procedures (4 C.F.R. part 21 (1981)) which requires that a protest be filed not later than 10 days after the basis for protest is known. Gibraltar argues that Selma should have been aware of the alleged ambiguity created by the telegraphic modification when bids were opened on January 7 and, therefore, the protest (filed in our Office on February 5) is not for consideration on its merits. Timeliness, however, is measured from the time the protester learns that the agency has accepted or intends to accept an allegedly nonresponsive bid, since it is at that time, rather than when the allegedly nonresponsive bid is opened, that grounds for protest arise. Werner-Herbison-Padgett, B-195956, January 23, 1980, 80-1 CPD 66; International Harvester Company, 58 Comp. Gen. 409 (1979), 79-1 CPD 259. Here, the protester did not examine the abstract of bids until January 29, and there is nothing in the record to show that the protester knew that the contracting officer intended to award to Gibraltar at any time before filing the protest. Thus, we find the protest to be timely and will consider it on its merits.

In our opinion, the plain language of the telegraphic modification submitted by Gibraltar is reasonably susceptible to only one interpretation. The modification first states that destination prices are to be reduced in accord with the schedule set forth therein. The column entitled "UNIT PRICE REDUCTION" clearly indicates that the original unit price of \$32.20 is to be reduced by the stated amounts in order to arrive at the net unit prices. If Gibraltar had intended this column's figures to be net prices rather than amounts to be deducted from the original prices to arrive at net prices, then it could have simply labeled the column "Unit Prices." Interpreting the modification language as meaning that the dollar figures stated are net prices would render meaningless the word "reduction." We do not find such an interpretation to be reasonable. Utilization of the term "reduction" is an indication that the amounts which follow are to be deducted from the original unit price. Since the bid as modified was susceptible to only one reasonable interpretation, the award to Gibraltar as low bidder was proper. See 51 Comp. Gen. 831 (1972).

Accordingly, we find no impropriety in the award to Gibraltar.

for 
Comptroller General
of the United States