

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548Flores
24326FILE: B-209985
B-209985.2

DATE: February 28, 1983

MATTER OF: Guida Clothing Co., Inc.; Amertex
Enterprises, Ltd.**DIGEST:**

Telegraphic modification, "We wish to reduce our price \$32.20 each," can be reasonably construed to mean only that \$32.20 is to be deducted from the original bid price, and bid so modified is unambiguous, responsive, and low.

Guida Clothing Co., Inc. (Guida), and Amertex Enterprises, Ltd. (Amertex), protest the proposed award by the Defense Personnel Support Center of the Defense Logistics Agency (DLA) to Odessa Garment Corporation (Odessa) under invitation for bids (IFB) No. DLA100-82-B-1307 (256,000 field packs). The protesters contend that, since Odessa's telegraphic bid modification is ambiguous, Odessa is not the low bidder. The protests are denied.

The contracting officer contends that Amertex is not an interested party under our Bid Protest Procedures (4 C.F.R. § 21.1(a) (1982)) because its bid was eighth low out of 15 bids. Amertex contends it is an interested party because Odessa's price would affect the fair market value of the field packs and thereby affect the price it receives under a section 8(a) contract for the same item. We decline to resolve this issue. Amertex and Guida (the low bidder if Odessa is not low) have filed identical protests. No purpose would be served by our consideration of Amertex's status because we would nevertheless have to resolve Guida's protest. See Educational Projects, Inc., 56 Comp. Gen. 381 (1977), 77-1 CPD 151.

Odessa submitted a sealed bid on October 29, 1982, which contained a \$56.91 unit price. By telegram dated November 18, Odessa submitted an amendment stating, "We wish to reduce our price \$32.49 each. All other conditions remain unchanged." By telegram dated November 19, the day of bid opening, Odessa submitted a second amendment which

024681

states in part, "We would like to reduce our unit price by \$5.51. All other conditions remain unchanged." (Emphasis added.)

The crux of the protests is whether Odessa's bid as modified is reasonably susceptible to more than one interpretation as to the offered price. Specifically, the protesters contend that Odessa's first telegram is ambiguous as to whether the original basic bid price of \$56.91 is to be reduced "to" or "by" \$32.49. If the first telegram is interpreted as reducing the original basic bid price of \$56.91 "by" \$32.49, then Odessa's bid (with the second \$5.51 reduction) is \$18.91 each, and Odessa is the low bidder. If the first telegram is interpreted as reduce "to" \$32.49, then Odessa's bid (with the \$5.51 reduction) is \$26.98 each, and Guida is the low bidder at \$20.95 each. Odessa becomes the tenth low bidder. We note that, in these circumstances, the bids range in a relatively close upward progression from \$20.95 each to \$45 each.

The protesters note that Odessa used the term "by" in the second telegram. They contend that Odessa's failure to use similar language in the first telegram reasonably suggests the existence of a different meaning.

DLA and Odessa contend that the only reasonable construction of the telegram is "reduce by." They contend that it is the practice in the clothing and textile industry to submit a sealed high bid which is subsequently amended by telegraphic modification. Since the telegram is seen by a number of people prior to bid opening, they contend, bidders will usually indicate the amount of change rather than the new price to assure secrecy. Therefore, Odessa, as an experienced Government contractor, would be aware of the dangers of telegraphing a modified price as opposed to a reduction in price.

The protesters note in response that one of the six bidders which telegraphically modified its price reduced it to a specific price. They note that the other five clearly and expressly reduced their bids by using, rather than implying, the word "by." The protesters argue that a bidder which knew it was going to send a second telegram just before bid opening would not be concerned with the competition seeing the price in the first telegram. In fact, they

argue, it might fool the competition to send what appears to be a final price, while retaining an "ace up the sleeve" to play at the last minute. The protesters rely on several of our decisions, including 50 Comp. Gen. 302 (1970) in which we held that a telegraphic bid modification which read, "Increase item 13 bid \$8,900" was ambiguous since it was not clear whether the bidder meant to increase the bid by \$8,900 or to \$8,900.

In our view, the plain meaning of the sentence, "We wish to reduce our bid \$32.20 each," is that \$32.20 is to be deducted from the original bid price. We recognize that the facts of this case are similar to 50 Comp. Gen. 302, supra, involving a Government surplus property sale, where we interpreted the language "Increase * * * bid \$8,900" as being ambiguous. We note that under the reported facts of that case the bidder itself seemed to have initially agreed at the bid opening that its bid price had been increased to \$8,900 and then adopted the interpretation that its bid was to be increased by \$8,900 to \$15,061.61, when all the other bids were subsequently read aloud and another bidder had bid \$15,010. In any event, we decline to follow that decision here. Under the plain and reasonable meaning of its bid, Odessa is the low bidder at \$18.91 per unit.

The protests are denied.

for 
Comptroller General
of the United States