

DECISION



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

FILE: B-218387 **DATE:** June 21, 1985
MATTER OF: Harris Construction Company, Inc.

DIGEST:

A garbled telegraphic modification increasing the bid price in an uncertain amount which was received prior to bid opening may not be ignored, nor may it be corrected by a subsequent message which arrived late. Since the garbled telegram made the bid price uncertain and not fixed, that bid could not be subject of award.

Harris Construction Company, Inc. protests the award of a contract to Abhe and Svoboda Inc. (A&S) under solicitation No. N62470-84-B-4205 to demolish a seaplane hangar, Bldg. A-1 at the United States Naval Air Station Annex, Bermuda.

The protest is sustained.

In response to the Navy solicitation bids were received from Harris and A&S in the amounts of \$231,000 and \$223,610, respectively. A&S attempted to modify its bid by sending a telegram to the Navy. The telegram, which was received prior to bid opening, acknowledged two amendments to the solicitation and stated "We hereby increase our bid price in the amount of EP+ JJ X GALE X KKBIU."

Shortly after bid opening Western Union sent the Navy a corrected version of the garbled message. The corrected version increased the bid by \$194,000 for a final bid price of \$417,610.

A&S initially filed a protest with our Office challenging the failure of the Navy to award it the contract at its original bid price of \$223,610. Prior to our issuing a decision on the protest, the Navy agreed with A&S and awarded the contract to it. Harris now protests the award of the contract to A&S.

Harris argues that either the garbled message made A&S's bid nonresponsive or A&S should have its intent to modify its bid reflected by adding the \$194,000 increase to its initial bid of \$223,610, thus making Harris the low

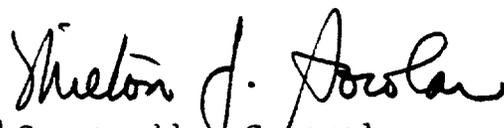
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bidder. Harris argues that the Navy has improperly allowed A&S to accept the award or reject it at A&S's option. Accordingly, Harris asks that the contract be terminated and it be allowed reasonable costs of filing and pursuing its protest including attorney fees.

The Navy argues that the unintelligible telegraphic modification must be ignored in considering A&S's bid since the intelligible version of the telegram arrived after bid opening. The Navy cites Southern Rock, Inc., B-182069, Jan. 30, 1975, 75-1 C.P.D. ¶ 68, where an agency ignored a late telegraphic modification which would have made the bidder no longer low and we permitted award to that bidder after it verified its original bid price.

Bid responsiveness requires an unequivocal offer to provide, without exception, exactly what is required at a firm-fixed price. Medi-Car of Alachua County, B-205634, May 7, 1982, 82-1 C.P.D. ¶ 439. Where a bidder indicates prior to bid opening that its price is not firm, as was the case here, its bid cannot be said to offer a fixed price. Cf. Burroughs Corporation, 56 Comp. Gen. 142, 150 (1976), 76-2 C.P.D. ¶ 472 (offeror, which states shortly prior to closing date for receipt of proposals that its price would be adjusted upwards approximately \$120,000 as a result of a proposal mistake has not proposed a fixed price that can be accepted by the government). A&S's bid was indefinite since the message stated that the bid price was raised by an indeterminate amount. Accordingly, the A&S bid did not offer a firm-fixed price at bid opening. The Southern Rock case cited by the Navy is distinguishable from the present situation because in that case the telegram arrived after bid opening, so it could not be considered. Moreover, the garbled telegram here which rendered the bid indefinite could not be ignored since it also acknowledged two material amendments; without this acknowledgment, A&S's bid would have been nonresponsive.

We sustain the protest and we recommend that the Navy terminate its contract with A&S and make an award to Harris. In view of our recommendation that award be made to Harris, Harris' claim for costs of filing and pursuing its protest including attorney fees is not allowable under our Bid Protest Regulations. 4 C.F.R. § 21.6(e).

for 
Comptroller General
of the United States