

**DECISION**

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

**FILE:** B-221995

**DATE:** February 28, 1986

**MATTER OF:** Marbex, Inc.

**DIGEST:**

Telegraphic bid submitted in response to a solicitation which did not authorize telegraphic bids was properly rejected. Language contained in solicitation which discussed late offers/modifications/withdrawals does not permit submission of a telegraphic bid where authorization language specifically references only modifications/withdrawals.

Marbex, Inc., protests the rejection of its telegraphic low bid under solicitation No. DLA120-86-B0032 issued by the Defense Logistics Agency (DLA). Marbex asserts that the solicitation included language which appeared to permit telegraphic bids, but DLA rejected Marbex's timely received telegraphic bid (a mailed copy of the bid was received late) on the basis that telegraphic bids were not authorized.

We dismiss the protest.

As a general rule, telegraphic bids may not be considered by a procuring agency unless they are explicitly authorized by the solicitation. Electro-Mechanical Industries, Inc., 52 Comp. Gen. 281, 284 (1972). Moreover, DLA has informally advised our Office that the solicitation in question incorporated Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.214-5(b) (1984) which provides that: "telegraphic bids will not be considered unless authorized by the solicitation; however, bids may be modified or withdrawn by written or telegraphic notice, if such notice is received by the time specified for receipt of bids."

Marbex argues that the solicitation was ambiguous as to whether telegraphic bids were permitted because of the inclusion of clause L59 entitled "Timeliness and Place of

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Receipt of Offers/Modifications/Withdrawals." Paragraph (a) of this clause provides that "telegraphic, facsimile (teletypewriter) and mailgram modifications/withdrawals are authorized." Marbex argues that since later in the same clause, at (c)(2), reference is made to "telegraphic offer/modification/withdrawal," this suggests that telegraphic bids were permitted, in the absence of language prohibiting telegraphic bids. We disagree.

As noted above, the rule is clear, and the solicitation explicitly provides that telegraphic bids are not permitted unless authorized. Clause L59 specifically authorizes telegraphic modifications and withdrawals, but not telegraphic bids. The language at paragraph (c)(2) referred to by Marbex contains explanations and rules relating to late bids and modifications which would apply to telegraphic bids only if they were authorized. There is no language in these clauses which provides such authorization.

In addition, the solicitation at paragraph L-11 entitled "Solicitation Provisions Incorporated by Reference" (FAR, § 52.252-1) included a box for incorporating FAR, § 52.214-13, which could have been checked to authorize telegraphic bids. However, the box was not checked, making it clear that the clause was not incorporated into the solicitation. Marbex argues that it believed that this clause was incorporated because the box next to FAR, § 52.252-1, was checked. However, this argument fails because of the caveat in the preceding paragraph that the individual provisions listed are applicable only when marked. Thus, it is clear that the clause authorizing telegraphic bids was not incorporated into the solicitation, nor was it intended to be incorporated. Since telegraphic bids were not authorized, DLA properly rejected Marbex's telegraphic bid.

We have reached this decision on the basis of the protester's submission, without obtaining an agency report, since the protest on its face is legally without merit. Desert Dry Waterproofing Contractors, B-219996, Sept. 4, 1985, 85-2 C.P.D. ¶ 268.

  
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