

01346

**DECISION**



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

**FILE: B-187345, B-187356**

**DATE: December 6, 1976**

**MATTER OF: Ulysses, Incorporated; Orlotronics Corporation**

**DIGEST:**

Although words "no bid" were entered in lieu of prices in initial bid submission, prices subsequently submitted by telegram were properly considered as modification of existing bid rather than as unauthorized telegraphic bid. Moreover, bidder's intention to be bound by terms of solicitation is clear since bidder signed initial bid and completed all certifications and representations. Facts are not distinguishable from earlier decisions where bidder was allowed to add prices by telegram prior to bid opening.

The separate protests of Ulysses, Incorporated and Orlotronics Corporation in connection with different solicitations present the same issue for our consideration—whether a telegram sent to the Navy by H.N. Bailey & Associates (Bailey) constitutes a telegraphic offer, which is not authorized by the solicitation, or merely a modification of an existing offer, which is authorized. In each case award has been withheld pending the decision of this Office.

Invitations for bids (IFB) N00383-76-B-0466 and N00383-76-B-0539 were issued, respectively, on June 30, 1976 and July 27, 1976 by the Navy Aviation Supply Office, Philadelphia, Pennsylvania (Navy). Each IFB called for unit prices on various quantities of the product sought, namely, special cable assembly under IFB-0466 and oil sampling kits under IFB-0539. At the July 30, 1976 bid opening of IFB-0466, and again at the August 27, 1976 bid opening of IFB-0539, it was discovered that Bailey's signed and otherwise properly executed bid submission contained the handwritten notation "no bid" in each of the spaces provided for the listing of unit prices. Prior to each bid opening, however, the Navy received from Bailey a telegraphic request that its "\*\*\* bid be revised \*\*\*" to include unit prices contained therein. Each telegram contained a listing of all unit prices for the particular IFB that it referenced. The Navy considered these telegraphed unit prices and, in both instances, Bailey was found by the Navy to be the low responsive and responsible bidder.

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Ulysses, protesting in connection with IFB-0466, and Orlotronics, protesting under IFB-0539, contend that the method of bidding utilized by Bailey contravenes Paragraph 5(b) of Standard Form (SF) 33A, which was contained in both solicitations. That clause advised bidders that:

"(b) Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified by telegraphic notice, provided such notice is received prior to the hour and date specified for receipt.\* \* \*"

Since no such authorization was contained in either of the solicitations, it is asserted by the protesters that the telegram from Bailey cannot be regarded as a modification of its bid because no prior bid existed which could be modified.

In this connection, both protesters attempt to distinguish two earlier decisions of our Office, 39 Comp. Gen. 163, (1959) and B-160131, October 7, 1966 which are cited by the Navy, from the facts of this case. In 39 Comp. Gen. 163 the low bidder omitted prices on some of the line items in his initial submission but forwarded the missing prices to the agency by telegram prior to bid opening. In B-160131, the bidder submitted an otherwise properly completed solicitation but for the fact that all bid prices had been omitted. These prices were supplied by telegram received by the agency prior to bid opening. Each of these solicitations contained a clause equivalent to Paragraph 5(b) of SF 33A. Neither solicitation authorized telegraphic bids or offers. Both decisions held that the telegram received prior to bid opening was to be viewed as a modification. Specifically, we pointed out that the word "bid" (then appearing in place of the word "offer" in the clause authorizing telegraphic modifications) had reference to the bid document itself as distinguished from the bid details such as price, quantity, discount, and delivery terms included therein. We stated that:

"\* \* \* the formal bid document may be modified prior to opening by telegraphic notice in any particular even though it may represent quotations on items not theretofore bid upon, provided such modification is otherwise responsive to the invitation. \* \* \*" 39 Comp. Gen. 163, supra, at 164 (emphasis added).

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Further, in B-160131, supra we cited this language in holding that the absence of bid prices in the initial bid submission did not prevent a telegram which quoted prices from being considered as a bid modification. Contra B-163575, May 17, 1968; but see B-163575, July 12, 1968.

The protesters contend that the instant case is distinguishable on the ground that the words "no bid" were used by Bailey in its initial submission. It is asserted that since these words were used no further consideration should have been given to Bailey's bid.

We see no distinction between the instant case and the prior cases. The purpose of the prohibition against telegraphic bids is to prevent consideration of a bid not accompanied by the formal bid document. See B-116567, August 26, 1953. Here, as in the two cases cited above, formal bid documents were submitted by Bailey, even though bid prices were not included therein. The fact that Bailey inserted the notation "no bid" does not alter the situation. In our opinion the prohibition against telegraphic bids does not apply.

The protesters make the further argument that Bailey has not bound itself to the terms and conditions of the IFB. They argue that Bailey is not bound to the terms of the initial submissions because by inserting the notation "no bid" it negated any obligation. Specifically, in the case of IFB-0539, where Bailey's telegram stated that all terms and conditions of the solicitation remain unchanged, Orlotronics argues that Bailey effectively has "freed itself from any obligation to comply with the various requirements of the IFB, by clearly stating \* \* \* that its submission was to be regarded as no bid. The later telegram merely added a price, and did not contravene the wording of the IFB, previously submitted, relieving itself of the obligation to comply with all other requirements of the IFB."

We do not agree with this argument. As the Navy notes, Bailey signed the formal bid documents and completed all certifications and representations. By doing so, Bailey offered " \* \* \* to furnish any or all items upon which prices are offered \* \* \*." See Standard Form 33, Solicitation, Offer, and Award. When Bailey's telegraphic bid modifications are read together with its initial bid submissions, it is clear that the bidder intended to be bound to all the terms and conditions of these solicitations.

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Accordingly, the protests are denied.

*W. K. ...*  
Deputy Comptroller General  
of the United States