

7664

*F. Conroy, Jr.*

**DECISION**



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

FILE: B-191919

DATE: September 18, 1978

MATTER OF: Prestex, Inc.

**DIGEST:**

1. Bid on FOB Origin basis renders bid non-responsive where IFB requires bid on FOB Destination basis.
2. Where bid is nonresponsive on one of two items, and all other bids are submitted on "all or none" basis, acceptance of aggregate bid is proper even though partial award for one item would result in less cost to Government for the one item.

Prestex, Inc. (Prestex) of Great Neck, New York, protests the proposed rejection of its bids under invitation for bids (IFB) No. DLA100-78-B-0559, issued by the Defense Personnel Support Center (DPSC), Defense Logistics Agency, Philadelphia, Pennsylvania, for 177,000-linear yards of knitted nylon fleece cloth. Prestex contends that it was the low responsive bidder for the two line items contained in the IFB, while DPSC takes the position that Prestex was not responsive to Item No. 0001AB, for 53,100 yards to be delivered on an FOB Destination basis, and cannot be awarded Item No. 0001AA because of the "all or none" restriction found in all bids received.

The IFB, as originally issued, provided that "[p]rices offered will be based on Delivery FOB Destination, 0001AB and F. O. B. Origin for Item 0001AA." Amendment No. 0001, dated April 13, 1978, made the following change:

"ON PAGE 20 SECTION E, AFTER STATEMENT 'PRICES OFFERED WILL BE BASED ON' AMEND ITEM 0001AA TO READ 'FOB ORIGIN AND OR DESTINATION' IN LIEU OF 'FOB ORIGIN.'"

The IFB schedule page for Item No. 0001AA had a place for an FOB Origin or Destination bid while the page for Item No. 0001AB could be completed only for FOB Destination. Prestex, in its original written bid, did not complete the schedule pages, but instead bid for the total of Item No. 0001 as follows:

"We offer a total of 177,000 linear yards at a total price of \$2.50 per linear yard, FOB Lestinations."

Prior to bid opening, however, Prestex sent a telegraphic amendment to its bid as follows:

"We revise our bid previously mailed as follows:

Item 0001AA - We offer 123,900 yards, for Memphis, Tn. at \$2.28 (Dollar Sign Two Point Two Eight) Cents Per Yard.

Item 0001AB - We offer 53,100 yards, FOB Origin, at \$2.22 (Dollar Sign Two Point Two Two) Cents Per Yard.

MINIMUM - 100% of all items to be awarded or none"

Prestex readily admits that its amended bid was not in conformity with the requirements of the IFB that Item 0001AB be bid on an FOB Destination basis. Prestex contends, however, that its bid on Item No. 0001AB should be considered for award because the FOB Origin indication in its bid resulted from a typographical error caused at least in part by a confusing IFB. Prestex presents its position as follows:

"The initial [IFB] had awkward language in it in that it reversed the normal order of the items, putting Item 0001AB before 0001AA. This reversal of normal order was further compounded in that initially the solicitation mandated that only a destination price could be submitted for Item 0001AB and only an origin price could be submitted for Item 0001AA. This awkwardness and confusion in language in the solicitation was further complicated by Amendment 0001 which changed only Item 0001AA to now read that either origin or destination prices could be submitted for that item. Prestex intended to bid FOB Destination for Item 0001AB. It did in fact submit a price based on delivery to that destination for that item. Inadvertently, as a result of the transposition of the items in the solicitation, Prestex used the language "FOB Origin" instead of using the term "FOB Memphis." [should be FOB Richmond].

"We respectfully submit that it is clear from the entire four corners of the bid including the initial solicitation as revised by Amendment 0001, that Prestex intended to bid FOB Destination for Item 0001AB and that is how its bid should be interpreted by the Contracting Officer."

We agree with DPSC that Prestex' amended bid for Item No. 0001AB was nonresponsive. Paragraph D26 of the IFB provides that "[w]hen F.O.B. Destination offers only are desired, any offers submitted on a basis other than FOB Destination will be rejected as nonresponsive." The IFB clearly required bids for Item No. 0001AB to be FOB Destination. The requirement was explicitly set forth in paragraph E10 of the IFB, and the portion of the schedule to be completed by a bidder for Item No. 0001AB had the printed space for

delivery FOB Origin crossed out. While the IFB delivery provision was somewhat unusual in specifying delivery terms for Item No. 0001AB before Item No. 0001AA, it should not have been confusing to a bidder in light of the other clear indicia in the IFB that FOB Destination was required for Item No. 0001AB. We note in this regard that Prestex in its original bid and the two other bidders were not misled by this transposition of the items with regard to delivery points.

We do not agree that it is clear from the Prestex bid that Prestex intended to bid FOB Destination. The bid itself states FOB Origin, and the lower bid price for Item No. 0001AB was consistent with the FOB Origin basis. Thus, the cases cited by Prestex, Con-Chen Enterprises, B-187795, October 12, 1977, 77-2 CPD 284 and 52 Comp. Gen. 604 (1973), for the proposition that since the bidding pattern of Prestex was clear, its bid could be accepted, are inapposite here since those decisions involved situations where bidders, who failed to insert a price for one of many items called for by the IFB, were held to be responsive because their bids as submitted indicated the exact nature of the bid actually intended.

We have consistently taken the position, that, to insure the Government the benefits of free and open competition, it is mandatory that awards of contracts for required services or supplies be made upon the basis of the advertised specifications submitted for competition, including delivery and other performance requirements, and that only inconsequential or immaterial defects or variations which do not affect the price, quantity, or quality of the articles offered may be waived. In our decision of August 7, 1961, B-146451, it was stated:

"Our Office has held that a deviation from advertised requirements is material if it affects either the price, quantity or quality of the articles offered. See 30 Comp. Gen. 179; 31 id. 660; and 33 id. 421. Under the facts stated by you, your offer

to furnish the equipment on an f.o.b. origin basis, if it had been accepted, would have varied the obligation intended to be assumed by a prospective contractor under the invitation. In other words, under such a contract you could have satisfied the delivery requirement by merely handing it to a common carrier at South Norwalk, Connecticut, thus relieving your company of any further liability for loss or damage en route, and at the same time place upon the Government the burden and expense incident to the determination of responsibility for possible loss or damage in transit. The changes in contract terms which would have resulted from acceptance of your bid must be regarded as affecting the contract price. In the circumstances outlined by you it would appear that your bid was properly rejected as being non-responsive."

The same rationale is equally applicable in this case. See also Hart Metals, Inc., B-186833, September 24, 1976, 76-2 CPD 280; B-160294, December 5, 1966.

Prestex also contends that even if its bid for Item 0001AB is determined to be nonresponsive, its bid for Item 0001AA was the low responsive bid and award for that item should be made to Prestex. The other two bidders, however, bid on an "all or none" basis. That means that each bid is available for acceptance only if all items are awarded to the bidder. See General Fire Extinguisher Corporation, 54 Comp. Gen. 416 (1974), 74-2 CPD 278; B-175689, August 28, 1972. Thus, if award were to be made to Prestex for Item No. 0001AA, DPSC would be unable to award Item No. 0001AB to any bidder and would be unable to satisfy its needs. Under such circumstances, DPSC may accept the low aggregate bid, provided the bid prices are reasonable, even though a partial award for one item would result in less cost to the Government for that item. Minnesota

B-191019

6

Mining and Manufacturing Company, B-185456, May 13, 1976, 76-1 CPD 321; C. Martin Trucking, Inc., B-190277, March 10, 1978, 78-1 CPD 192. Here DPSC reports that it can make an aggregate award at reasonable prices. Accordingly, DPSC's rejection of the Prestex bid is not improper.

The protest is denied.

*R. F. K. 11/11/78*  
Deputy Comptroller General  
of the United States