

12292 *Levin*

Protest
646

DECISION



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

FILE: B-195659

DATE: December 13, 1979

MATTER OF: Mars Signal Light Company C 1965

DIGEST:

[Protest Alleging Awardee Submitted Nonresponsive Bid]

1. Where bid form did not explicitly require bids on all items, failure to bid on one item did not render bid nonresponsive.
2. Protester's allegation that corporate minutes of organizers' meeting were fraudulently altered and in fact no officer of low bidder had authority to sign bid is denied where corporate minutes of subsequent directors' meeting evidence agent's authority to sign bid.
3. Question of whether bidder is manufacturer under Walsh-Healey Act is dismissed because matter is for determination by contracting agency, subject to review by Secretary of Labor.

2 Mars Signal Light Company (Mars) protests the Defense Logistics Agency's (DLA) award of a contract for vehicular warning lights under invitation for bids (IFB) No. DLA 400-79-B-2807 to Tek-Lite, Inc. For the reasons that follow, the protest is denied. 378

3 Mars maintains that Tek-Lite submitted a nonresponsive bid because it failed to enter a price for one item. Mars bases its contention on paragraph 1 of clause D4 of the IFB. This paragraph provided: D3484

"BASIS FOR SUBMISSION AND EVALUATION OF BIDS/PROPOSALS (1975 Jan.)

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1. Bids/proposals are invited on a FOB Destination basis for items ALL. Bids submitted on any other basis will be rejected as non-responsive."

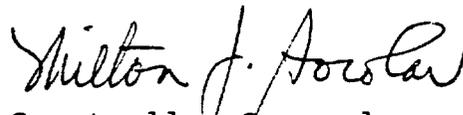
In our opinion, this provision is intended to specify the F.O.B. basis upon which offers must be submitted, and requires that bids provide for delivery on an FOB Destination basis of all items bid; it does not preclude bids for less than all items solicited. It merely warns, pursuant to Defense Acquisition Regulation (DAR) § 19-208.3(a) (1976 ed.), that bids submitted on a basis other than F.O.B. destination will be rejected as nonresponsive.

We find no other clause in the IFB that requires bidders to bid on all items solicited. Moreover, the solicitation provided in paragraph 10(c) of Standard Form (SF) 33A that "UNLESS OTHERWISE PROVIDED IN THE SCHEDULE, OFFERS MAY BE SUBMITTED FOR ANY QUANTITIES LESS THAN THOSE SPECIFIED." In this case neither the schedule nor any other portion of the solicitation required bids on all items so as to render Tek-Lite's bid nonresponsive. See Mitchell Brothers General Contractors, B-192428, August 31, 1978, 78-2 CPD 163.

Initially, Mars also questioned whether any officer of Tek-Lite had authority to sign Government bids and whether there had been a "[f]raudulent altering of corporate minutes [of the organizers' meeting of March 29, 1979], to influence awards." The agency reports that prior to bid opening Tek-Lite submitted a copy of the minutes of its Board of Directors meeting of April 9, 1979, evidencing that the Board authorized the signatory of the subject bid to execute bids and contracts for the corporation. Inasmuch as this document was dated and was in the possession of the Government prior to bidding on this procurement we find no basis for questioning the authority of the signatory of the Tek-Lite bid to bind the Corporation.

Mars also contends that Tek-Lite does not meet the qualifications of a manufacturer as defined in the Walsh-Healey Act, 41 U.S.C. §§ 35-45 (1976). We do not consider this issue because it is for the contracting agency's determination in the first instance, subject to the Secretary of Labor's review. DAR § 12-604(a)(3) and Snowbird Industries, Inc., B-193792, June 28, 1979, 79-1 CPD 468. In this regard, the contracting officer has advised us that the matter has been referred to the Department of Labor, which has yet to reach a decision. This portion of Mars' protest therefore is dismissed.

The protest is denied in part and dismissed as to the remainder.



For The Comptroller General
of the United States