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DECISION



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

FILE: B-223244.2 **DATE:** June 30, 1986
MATTER OF: VACAR Battery Manufacturing Co., Inc.

DIGEST:

Procuring agency properly rejected bid, which included restriction on the disclosure of the bid to the public, as nonresponsive, notwithstanding that the procuring agency disclosed the price at bid opening.

VACAR Battery Manufacturing Co., Inc. (VACAR), protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DLA400-86-B-3578 issued by the Defense General Supply Center (DGSC), Defense Logistics Agency, Richmond, Virginia, for storage batteries.

We dismiss the protest without requiring the submission of an agency report pursuant to our Bid Protest Regulations because the protest clearly is without legal merit. 4 C.F.R. § 21.3(f) (1986).

DGSC rejected VACAR's bid because it contained a statement, signed by the president of the company, which read:

"This completed bid package is confidential. The viewing of this package is restricted to officials of the Defense Logistics Agency."

Since 10 U.S.C. § 2305(b)(3) (Supp. II 1984) requires public opening of sealed bids, DGSC rejected the bid as nonresponsive. VACAR contends that it only intended to restrict the physical handling of the bid package, not the contents, and that the above statute does not apply to this situation because its bid price was in fact called out at the bid opening.

We find that DGSC properly rejected VACAR's bid as nonresponsive. We have interpreted the requirement for a public opening to mean that the bid must publicly disclose the essential nature and type of products offered and those elements of the bid which relate to price, quantity, and

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delivery terms, since the purpose of public opening of bids is to protect both the public interest and the bidders against any form of fraud, favoritism or partiality and to leave no room for suspicion. Automated Business Systems and Services, Inc., B-207380, June 30, 1982, 82-1 C.P.D. ¶ 639. Therefore, we have held that restricting the disclosure of the bid renders it nonresponsive, and that the procuring agency's disclosure of the restricted bid price at bid opening does not cure the bid's nonresponsiveness. See Northern Telecom, Inc., B-209412, Apr. 12, 1983, 83-1 C.P.D. ¶ 382. A bidder which restricts disclosure of its bid would still have the option, even if its price is exposed, to accept or reject award of the contract because the bid was conditioned on nondisclosure. Id.

In this case, notwithstanding VACAR's explanation of the restrictive statement, we find that the statement is susceptible to the interpretation that the information in the bid is restricted. Under the circumstances, VACAR is foreclosed from clarifying its bid after bid opening to remove or explain the restrictive legends, since the bid cannot be changed after bid opening. See 1010 Incorporated of Alamogordo, B-204742, Dec. 21, 1981, 81-2 C.P.D. ¶ 486.

The protest is dismissed.



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