



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: T & S Maintenance Services

File: B-278598

Date: February 18, 1998

Tommie W. McKoy for the protester.

James R. Barfield, for Barfield's Maintenance Service, an intervenor.

Col. Nicholas P. Retson and Capt. John C. Lavorato, Department of the Army, for the agency.

Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly rejected as nonresponsive a low bid that failed to acknowledge a material solicitation amendment which added a requirement that the contractor routinely perform certain maintenance work that had been the government's responsibility under the original solicitation.

DECISION

T & S Maintenance Services protests the rejection of its low bid and the award of a contract to Barfield's Maintenance Service under invitation for bids (IFB) No. DAKF40-97-B-0016, issued by the United States Department of the Army for the operation and maintenance of a Classified Material Destruction Facility (CMDF) at Fort Bragg, North Carolina. T & S's bid was rejected as nonresponsive because it did not acknowledge amendment No. 0001. T & S contends that the amendment was not material and that its failure to acknowledge the amendment should be waived as a minor informality.

We deny the protest.

The solicitation, issued August 15, 1997, contemplated the award of a firm, fixed-price contract for 1 year with four 1-year options for the operation and maintenance of the CMDF. Among other things, paragraph C.3.2.6 of the original solicitation, entitled "Grounds Maintenance," provided that: "Maintenance of the grounds area is the responsibility of the Government unless effected by negligence of the Contractor whereupon it becomes the sole responsibility of the Contractor."

On September 3, the agency issued amendment No. 0001, responding to five questions concerning the solicitation requirements. As is relevant here, one of the questions was: "Is the contractor responsible for area maintenance around the

facility, i.e., mowing of grass and snow removal. If so, will a lawn mower be provided as GFE [Government Furnished Equipment]?"

The agency responded in amendment No. 0001 by stating: "Yes the contractor will be responsible for maintenance of the area. The government will provide the necessary tools to perform these tasks. Incorporate this response as a part of Section C-3, Government Furnished Property and Services."

Eleven bids were received by the bid opening date. When asked to verify its bid, the apparent low bidder withdrew, whereupon T & S's total bid of \$210,000 became low and Barfield's \$213,216 bid became second low. However, because T & S's bid failed to acknowledge amendment No. 0001, which the Army determined was material, the Army rejected the bid as nonresponsive. Award was made to Barfield's on October 20, and this protest followed, in which T & S asserts that amendment No. 0001 only clarified requirements that were already contained in the IFB and did not affect the legal obligations of the contracting parties or the price, quality, or quantity of the services being procured.

A bidder's failure to acknowledge a material amendment to an IFB renders the bid nonresponsive since, absent such an acknowledgment, the government's acceptance of the bid would not legally obligate the bidder to meet the government's needs as identified in the amendment. G. R. Sponaugle & Sons, Inc., B-257784, Nov. 7, 1994, 94-2 CPD ¶ 178 at 2. On the other hand, a bidder's failure to acknowledge an amendment that is not material is waivable as a minor informality. Federal Acquisition Regulation (FAR) § 14.405; DeRalco, Inc., 68 Comp. Gen. 349, 351 (1989), 89-1 CPD ¶ 327 at 3. An amendment is material where it would have more than a negligible effect on price, quantity, quality, or delivery, FAR § 14.405(d)(2); Star Brite Constr. Co., Inc., B-238428, Apr. 5, 1990, 90-1 CPD ¶ 373 at 2, or, even if it has only a trivial price impact, if it changes the legal relationship between the parties, such as by increasing or decreasing the contractor's obligation in a material manner. Jeness Woodkuts, A Joint Venture, B-257345, Sept. 22, 1994, 94-2 CPD ¶ 112 at 2.

Here, the solicitation as originally issued did not require the contractor to perform routine maintenance of the area around the facility unless the need for the maintenance arose from the contractor's negligence. Amendment No. 0001 shifted the responsibility for maintaining this area from the government to the contractor, thereby imposing maintenance requirements on the contractor which were not envisioned by the original solicitation. The agency estimated that the cost impact of this added contractor maintenance responsibility would be approximately \$6,500 over the life of the contract, an amount which the protester does not dispute. Considering the value of this contract, this amount is clearly more than negligible, particularly in view of the fact that it is greater than the price difference between the bids of T & S and Barfield's. Further, these amended maintenance requirements constitute additional material obligations imposed on the contractor. Accordingly,

the amendment at issue is material¹; T & S's failure to acknowledge the amendment could not be waived as a minor informality; and the agency properly rejected the protester's bid as nonresponsive.

The protest is denied.

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¹The agency also determined that other changes included in amendment No. 0001 relating to the contractor's responsibility to train its employees to operate facility equipment were material. We need not address these changes, since the change to the maintenance requirements was, by itself, material.