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*W. H.  
Stewart*

**DECISION**



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

FILE: B-190975

DATE: July 7, 1978

MATTER OF: Industrial Maintenance Services, Inc.--  
Request for Reconsideration

DIGEST:

CAO affirms prior decision that failure of bidder to timely acknowledge receipt of IFB amendment which merely clarified, but did not alter work requirements set out in solicitation may be waived as minor informality since bidder, upon acceptance of bid, would be legally bound to perform all work specified by solicitation. Fact that certain other bidders interpreted (incorrectly) solicitation as requiring materially less total manhours than that suggested by amendment is insufficient to establish amendment's materiality since solicitation reasonably should have been interpreted as requiring more manhours than computed by those bidders.

Industrial Maintenance Services, Inc. (Industrial) requests reconsideration of our decision of May 2, 1978 (B-190975) in which we denied Industrial's protest under invitation for bids F08637-78-B-0004, issued by Tyndall Air Force Base, Florida, to provide food attendant services at the base. Industrial was objecting to the prospective award to Chavez Food Service, Inc. (Chavez), contending that Chavez' bid should have been rejected as nonresponsive for its failure to acknowledge, prior to bid opening, Amendment P007 which Industrial alleged to be material.

Chavez was the fifth low bidder and Industrial the seventh low bidder. The bids of the first four low bidders, as well as that of the sixth low bidder, were disqualified for various reasons, leaving Chavez and Industrial as the low and second low eligible bidders, respectively.

By way of background, we note that the original specifications set out the various responsibilities which the contractor was to assume. In addition to the processing and serving of food at specified times, the contractor was required to perform general house-keeping duties such as post-meal clear-ups, vacuuming, cleaning windows and fans, maintenance of ice machines, grass cutting, etc. A manning schedule was set forth specifying the minimum number of personnel and hours that would be required for various classified positions. At the bottom of the manning schedule was the admonition:

"The above required minimum manning does not in any way minimize the contractor's obligation to use as many employees as necessary for proper contract performance."

Amendments P001, P003, and P005 advised of anticipated increased fee requirements and set out adjusted minimum manning requirements to reflect the anticipated increases. Each of these three amendments carried the foregoing admonition. Amendments P003 and P005 further stated that "minimum manning pertains to minimum number of personnel required at times cited."

Amendment P007 was issued only in response to a request by Industrial for clarification, and stated in pertinent part:

"(a) Reference Description/Specifications Paragraph IIB entitled Work Force. Bidders are cautioned that minimum manning called for by this paragraph is not all inclusive. Many cleaning and other tasks called for in the specifications will have to be performed, which was not taken into consideration for minimum manning. The exact amount of labor required is the prerogative of the contractor. While the exact amount of labor necessary is a decision for the bidder to make, each bidder should include an allowance for the area in his bid."

The contracting officer determined the failure of Chavez to timely acknowledge the amendment could be waived in accordance with Armed Services Procurement Regulation § 2- 05(iv)(B) (1976 ed.) which permits waiver where:

"the amendment clearly would have no effect or merely a trivial or negligible effect on price, quality, quantity, delivery, or the relative standing of bidders \* \* \*."

Industrial protested that the amendment must be considered material because, in its absence, the minimum manhour requirements did not clearly indicate that the minimums covered only a portion of the work, i.e., serving food, and not other additional contractor responsibilities. Therefore, it was argued, without the amendment the IFB was defective and without acknowledgement of the amendment, the Chavez bid was nonresponsive. It was further argued that Chavez was misled and could not have contemplated the provision of personnel in excess of those specified as required minimums.

In our decision, we rejected those contentions. We held that it should have been clear from a fair reading of the IFB that the minimum manning schedule was not and could not be all inclusive, especially in view of the referenced admonition following the minimum manning schedule as revised by P001, P003, and P005. Therefore, we concluded that potential bidders were on notice that the contractor was required to perform certain tasks beyond the serving of food, and that the minimum manning levels set forth in the IFB were not based on all of those tasks. Accordingly, we agreed with the contracting officer that P007 was not material since neither the minimum manning nor other IFB requirements were increased by P007, and that P007 merely clarified what was already set out in the solicitation. We stated as follows:

"\* \* \* we have held that while a bidder's failure to acknowledge a material amendment renders its bid nonresponsive, where

the amendment does no more than reiterate what is already in the IFB, so that a bidder is bound to all material requirements without regard to the amendment, the bidder's failure to acknowledge such an amendment does not require rejection of the bid. Dependable Janitorial Service and Supply Company, B-188912, July 13, 1977, 77-2 CPD 20. See 51 Comp. Gen. 293 (1971); Genest Baking, Inc., B-180999, July 12, 1974, 74-2 CPD 25. Consequently, since we find that Amendment P007 added nothing to what the IFB already required of the successful bidder, we believe Chavez was legally bound to comply with all the specifications of the solicitation and therefore its failure to acknowledge Amendment P007 in a timely manner properly was waived by the contracting officer.

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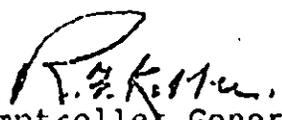
"To the extent that Industrial contends that Chavez's bid contained a mistake because it could not have contemplated the provision of personnel in excess of the specified minimums, we note that Chavez has confirmed its bid price and that it has been determined that Chavez can perform at its offered price, with the consequence that award of a legal and binding contract to that bidder may be made."

The reconsideration request is predicated on information received by Industrial after it filed its protest. This information is primarily in the form of three letters sent by two of the bidders to the contracting officer after bid opening. The letter from the low bidder advised the procuring activity that it had calculated 93 1/2 total hours for labor cost instead of what it now viewed as a minimum manpower requirement of 131 3/4 hours, and requested permission to withdraw its bid. A letter from the third low bidder stated that it had reviewed its bid and found that it "didn't fully include the minimum manning requirement set forth in

the specifications as amended." That bidder also sought to withdraw its bid. A separate letter from the third low bidder further contended that the minimum manning requirement was confusing in that the specified minimum manning requirement was predicated on meal estimates that may have been unrealistically overstated and recommended that the solicitation be canceled.

Industrial submits that the foregoing establishes that these two bidders were misled by the minimum manning set out in the solicitation and asserts that this clearly demonstrates the materiality of P007 by indicating that the IFB was interpreted by some bidders as being materially different from what was stated in the amendment.

We do not agree. We found that from a fair reading of the IFB "it should have been obvious" that the minimum manning schedule was not all inclusive; we did not find that all bidders had interpreted the IFB correctly. The fact that several bidders may not interpret a solicitation as intended by the procuring agency does not automatically establish the validity of their reading. See, e.g., Veterans Administration re Welch Construction, Inc., B-183173, March 11, 1975, 75-1 CPD 146. Here, we do not find that the assertions of bidding errors by the first and third low bidders establish that the IFB was reasonably susceptible to the protester's interpretation so that P007 could be said to have made a material change. In this regard, we note that the low bidder apparently continued to be confused by the IFB requirements even after receipt of P007, and that while the third low bidder apparently believed it should bid according to the manning schedule, it requested relief because it hadn't "fully" done so and at the same time objected that the minimum manning requirements were overstated. Thus, we fail to see how the additional information relied on by the protester warrants modification of our prior decision, which is hereby affirmed.

  
Deputy Comptroller General  
of the United States