



DECISION

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

FILE: B-202493

DATE: July 27, 1981

MATTER OF: Abhe & Svoboda, Inc.

DIGEST:

Failure of bidder to acknowledge receipt of IFB amendment which clarified, but did not materially alter IFB requirements, was properly waived as minor informality since bidder was bound to perform all work specified by IFB notwithstanding failure to acknowledge receipt of amendment.

Abhe & Svoboda, Inc. (A&S), protests the award to Ken Christiansen Painting, Inc. (Christiansen), of a contract under invitation for bids (IFB) No. DACW45-81-B-0057 issued by the Army. A&S, the second low bidder, contends that Christiansen's low bid is nonresponsive for failure to acknowledge receipt of amendment 0002 of the IFB prior to bid opening. A&S asserts that the amendment had a material effect on the IFB since it clarified an ambiguity which allegedly could have had a substantial effect on price. A&S requests reimbursement for bid preparation costs.

We find the protest without merit, and we deny the request for bid preparation costs.

The subject IFB, a 100-percent small business set-aside, was for painting penstocks--units 2 and 6--at Fort Randall Dam-Lake Francis Case. Two amendments were issued to the IFB. Christiansen acknowledged receipt of amendment 0001, but not amendment 0002. The contracting officer states that amendment 0002 was issued to correct paragraph 1, the "scope" portion of section 9A, entitled "Painting With Vinyl Paint," in order to make it consistent with the requirements as they were set forth in other provisions in the IFB. The contracting officer states that the amendment was issued only for clarification and it made no material changes and imposed no additional obligations on the bidders. The contracting officer asserts that Christiansen's failure to acknowledge the receipt of the amendment was properly waived as a minor

Protest Alleging that Awardee's Bid Was Nonresponsive

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informality under Defense Acquisition Regulation (DAR) § 2-405(iv)(B) (1976 ed.), which permits waiver if:

"* * * 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 * * *."

The paragraph in question, as amended, reads as follows:

"1. SCOPE. The work covered by this section of the specifications consists of furnishing all plant, labor, equipment, appliances, and materials in performing all operations in connection with the removal of existing coal tar enamel coating, cleaning and preparation of ferrous surfaces, and application of vinyl paint to interior ferrous surfaces of the Penstock Tunnel of power unit number 6 and to the ferrous surfaces of the spiral case, wicket gates, stay vanes, stay rings, runner and draft tube liner of power unit numbers 2 and 6 located at Ft. Randall Dam. This work shall be accomplished in complete and strict accordance with the specifications and the applicable drawings and shall be subject to the terms and conditions of the contract."
(Changes underlined)

The exact word changes made by amendment 0002 consisted of: 1. deleting "penstock tunnel," from line 11 where it had appeared after the phrase "ferrous surfaces of the," and relocating it in line 9 (thereby making it clear that it related only to unit 6); 2. adding "runner" to line 12; and 3. changing the unit number reference in line 13 from "7" to "6."

The agency contends that these changes merely make the paragraph consistent with the work as it was specified in the IFB in section 9A, paragraphs 10.2, 12, and 13, as well as other sections which more particularly describe the requirements. The agency takes the position that since the requirements were clearly set forth in other paragraphs of the IFB, the amendment was for consistency and clarification purposes only, and notes that there was no addition to the Government's estimated cost of the project as a result of the amendment.

Paragraph 10.2, "Paint Systems and Painting Schedule," provides, in relevant part:

"Items or surfaces to be coated:
Interior ferrous surfaces of penstock tunnel
of Power Unit No. 6 and for the spiral case,
wicket gates, stay vance, stay rings,
runner, and draft tube liner of Power Unit
Numbers 2 and 6."

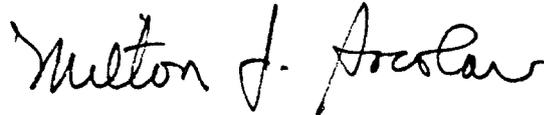
Paragraph 12, "Surface Areas," provides approximate square footage for features to be painted in units 2 and 6 and references "runner." Paragraph 13, "Measurement and Payment," references units 2 and 6, and references "runner" for both. As the agency notes, various other references throughout the IFB all relate to units 2 and 6 (with no other reference to unit 7), and encompass the "runners" as part of the work described.

We agree that the IFB read as a whole clearly establishes that the work being solicited relates entirely to units 2 and 6, and that it is readily apparent that the reference in the scope paragraph to unit 7 was erroneous. The "runners" were also specified in several specification sections of the IFB and were unquestionably required to be a part of the work to be performed. Similarly, the relocation of the Penstock Tunnel reference to make it clear that it required only the painting of the ferrous surfaces of the Penstock Tunnel in unit 6 constituted only a restatement of what was elsewhere clearly referenced and established in the IFB. In regard to this particular clarification, we note that, in any case, the unamended scope provision seemed to require the painting of all the ferrous surfaces in two entire power units rather than one. In this respect, we have held that a bid which offers to supply more than that which is required by the Government under an IFB properly may be accepted as responsive. Charles V. Clark Company, Inc., 59 Comp. Gen. 296 (1980), 80-1 CPD 194. Thus, the change served to make the IFB consistent, thereby clarifying it, but did not effect any material change in the already-specified requirements.

We have held that while a bidder's failure to acknowledge receipt of 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

receipt of such an amendment does not require rejection of the bid. Gillette Industries, Inc., d/b/a La Crosse Garment Mfg. Co., B-194552, July 27, 1979, 79-2 CPD 59; Industrial Maintenance Services, Inc., B-190975, May 2, 1978, 78-1 CPD 339. Accordingly, since we find that amendment 0002 added nothing to what the IFB already required of the successful bidder, we believe that Christiansen was already bound to comply with the IFB specifications and its failure to acknowledge receipt of the amendment was properly waived by the agency.

Because the protest is denied, A&S's claim for bid preparation costs is also denied.



Acting Comptroller General
of the United States