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P.L. 119200

DECISION



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

FILE: B-207105

DATE: August 16, 1982

MATTER OF: Patterson Enterprises Limited

DIGEST:

Amendment to the IFB extending time for completion of the construction project lessens contractor's risk of noncompletion and decreases cost of performance. Consequently, failure of the low bidder to acknowledge the amendment may be waived as a minor informality.

Patterson Enterprises Limited (Patterson) protests the bid of Chancellor and Son, Inc. (Chancellor), on invitation for bid (IFB) No. DACW38-82-B-0025 issued by the United States Army Corps of Engineers.

The IFB was for the construction of stone protection for the Yazoo River channel at the Illinois Central Gulf Railroad bridge in Leflore County, Mississippi. An award pending Patterson's protest was made by the Corps of Engineers on June 8, 1982, because of the urgent need to remove the threat of further structural damage to the railroad bridge.

Eleven bids were received in response to the IFB. It was subsequently discovered that Chancellor, the apparent low bidder, had failed to provide formal written acknowledgement to amendment No. 2 to the IFB. This amendment had changed the time of performance from 100 calendar days to 130 calendar days. Patterson contends that Chancellor's bid was nonresponsive because of Chancellor's failure to acknowledge an amendment which materially affected the requirements of the IFB.

For the reasons set forth below, we deny the protest.

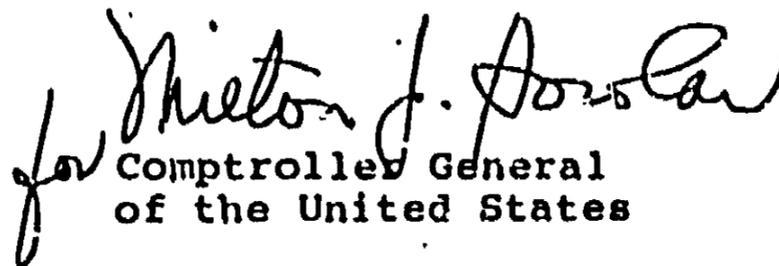
Patterson argues that, since amendment No. 2 made a significant change in the contract time, the amendment materially affected a contractor's obligations to perform as well as the price factor used by the contractor in making a bid. Patterson goes on to argue that a bidder's failure to furnish written acknowledgement of amendments that affect the price, quantity or quality of the contract work is a material deviation that renders the submitted bid nonresponsive.

The Corps of Engineers takes the position that amendment No. 2 did not go to any material aspect of the IFB and, thus, Chancellor's failure to acknowledge the amendment could be waived as a minor informality. In this regard, the Corps of Engineers refers to our decision in MBAssociates, B-197566, June 4, 1980, 80-1 CPD 383, where we held that a bidder who fails to acknowledge an amendment that results in a less stringent solicitation requirement should not have his bid rejected, but instead have the failure to acknowledge waived as a minor informality. The Corps of Engineers also argues that the amendment No. 2 extension of the time of performance decreased the cost of a bidder's performance so that the amendment had no affect on the relative standing of the bidders.

In response, Patterson asserts that an extension in the length of the contract time does have a significant impact on contract costs because it is foreseeable the contractor will have to be on the project for the extended length of time. As an example, Patterson alleges that it can be assumed that the field supervision personnel will have to stay on the construction site for the extended length of performance time and that certain items of fixed cost such as equipment and utilities will have to be paid during the extended length of performance time. According to Patterson, what amendment No. 2, in essence, alerted bidders to was that there was a "slowdown" of the work to be performed. Therefore, Patterson alleges that it took this fact into account when submitting its bid on the IFB.

We agree with the Corps of Engineers that the extension of the time for completion of the construction work resulted in the imposition of a less stringent requirement on the prospective contractor. In

our opinion, the extension lessened the risk to the contractor that the work would not be completed. Also, we think that the extension lessened any need the contractor might have had to devote either extra personnel or overtime work to complete the construction within the time originally provided by the IFB. As to Patterson's argument that it is likely the contractor will have to be on the project for the extended length of time, the amendment giving the extension created no obligation that the contractor remain at the construction site through the extension period. All that was required under the terms of the amended IFB was that the work be completed by the contractor within 130 days after receipt from the Corps of Engineers of notice to proceed. The contractor is free, then, to complete the work at any time prior to the expiration of the 130-day period. Therefore, we conclude that the failure of Chancellor to acknowledge amendment No. 2 to the IFB may be waived as a minor informality under Defense Acquisition Regulation § 2-405(iv)(B) (1976 ed.).

for 
Comptroller General
of the United States