

DECISION



27288

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

FILE: B-213201

DATE: January 26, 1984

MATTER OF: Emmett R. Woody

DIGEST:

1. An amendment is not material, and a bidder's failure to acknowledge receipt of the amendment thus may be waived, where the amendment imposes no different or additional legal obligations on the bidders from those imposed by the original invitation.
2. Where an amendment merely relaxes a solicitation's specifications, a bid which does not contain an acknowledgment of its receipt, and thus in effect represents an offer to meet the more stringent original requirements, is responsive.

Emmett R. Woody protests the award to Gordon Avery of a contract under invitation for bids (IFB) No. R6-14-83-80J issued by the Department of Agriculture, Forest Service. Woody contends that Avery's bid should have been rejected as nonresponsive for its failure to acknowledge, prior to bid opening, amendment No. 001, which Woody alleges was material. We deny the protest.

The IFB requested offers for two items of silvicultural services at Umatilla National Forest, Oregon, with awards to be made based on the low bids for each item. Bids were opened on September 12, 1983, and of the twelve firms bidding, Avery submitted the low evaluated bid for item 1--\$15,360 for work on 260 acres--and for item 2--\$17,010 for work on 357 acres. Avery, however, failed to acknowledge receipt of amendment No. 001. The second low bids were submitted by Woody in the amount of \$22,520 for item 1, and \$29,826 for item 2.

The contracting officer waived Avery's failure to acknowledge the receipt of the amendment as a minor informality because, in his view, the amendment was issued for informational and clarification purposes and thus made no material changes in the solicitation and imposed no

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additional obligations on the bidders. In this respect, Federal Procurement Regulations (FPR) § 1-2.405(d)(2) (1964 ed.) permits waiver if an amendment has merely a trivial or negligible effect on price, quantity, quality or delivery of the item or services bid on. A contract was awarded to Avery for both bid items on September 29. Woody contests the contracting officer's view of the amendment.

The following changes were made by the amendment. First, while the solicitation's original schedule required bidders to quote only one unit price for both tree thinning and other work for three individual subitems, the amendment substituted a schedule on which the bidders were to show a separate unit price for tree thinning and a separate unit price for other work for these three subitems, and then to total the separate unit prices to arrive at a combined subitem unit price on the revised schedule. (As in the original schedule, unit prices for each subitem were to be totaled by the bidder, with contracts to be awarded based on the low total for each item.) The contracting officer states that this change was solely for informational purposes and that, in any event, the unamended solicitation already contained a provision permitting the contracting officer to require the contractor, after award, to furnish a breakdown of its prices for each principal category of work for the purpose of determining entitlement to progress payments.

A bid which does not include an acknowledgment of a material amendment must be rejected because absent such an acknowledgment, the bidder is not obligated to comply with the terms of the amendment, and its bid is thus nonresponsive. See James Lopez and Sons Wholesale Fumigators, Inc., B-200849, February 12, 1981, 81-1 CPD 97. An amendment is not material, however, where it does not impose any legal obligations on the bidder different from those imposed by the original solicitation. See Reliable Building Maintenance, Inc., B-211598, September 19, 1983, 83-2 CPD 344. In that case, the failure to acknowledge may be waived, and the bid may be accepted. See Dynaweld, Incorporated, B-209091.2, August 15, 1983, 83-2 CPD 207.

Here, the requirement for a breakdown of unit prices for three subitems was not material since no substantive additional or different requirement was imposed on the bidders from that in the unamended IFB. See Owl Resources Company, B-210094, April 29, 1983, 83-1 CPD 461. That is, this element of the amendment had no real effect on price,

quantity, quality or delivery of the services. See FPR § 1-2.405(d)(2). We therefore agree with the contracting officer that the change was not material.

Second, the amendment broadened the type and class of equipment, including tractors, that would be considered acceptable for performance of the work. The amendment also changed several corresponding sections of the specifications, substituting the word "equipment" for the word "tractors" to reflect the relaxed equipment usage standards of the amended solicitation. The protester agrees that the amended solicitation only broadened the type and class of equipment permitted to be used for the performance of the work, but argues that the change nevertheless was material. We merely note, however, that by failing to acknowledge the amendment, Avery submitted a bid in which it in effect agreed to perform the work under stricter equipment usage standards than those permitted by the amended solicitation. In this respect, a bid that 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. This principle is equally applicable when a bidder fails to acknowledge an amendment which merely relaxes the specifications. Abhe & Svoboda, Inc., B-202493, July 27, 1981, 81-2 CPD 63. Accordingly, Avery's failure to acknowledge these changes in the amendment would not require rejection of the firm's bid.

Next, the solicitation, as amended, provided as follows (amendment No. 001 added the underlined sentences):

" . . . Scarify all major skid trails . . . and landings within units. Scarification shall be done to a depth of 18 inches or to bed-rock whichever is reached first. A maximum ripping width of 24" shall be allowed for single rippers. A maximum ripping width of 48" shall be allowed winged rippers."

Woody argues that the amendment, by specifying ripping widths, imposed a "ripping" operation on the bidders that is entirely different from scarification and thus can have a substantial effect on price. The agency states, however, that the operations are similar--both involve breaking up the forest floor by a blade mounted to a tractor in preparation for seeding--and that any price impact is

minimal in relation to the difference in price between the low and second low bids.

Woody has presented no evidence in support of its view that the change imposed a materially different operation on the bidders that could have a substantial effect on price. The agency has furnished our Office extracts from Terminology of Forest Science, Technology Practice and Products (1971), a publication of the Society of American Foresters, which defines the two operations as virtually identical. The protester has the burden of affirmatively proving its case. Reliable Maintenance Service, Inc.--Request for Reconsideration, B-185103, May 24, 1976, 76-1 CPD 337. Based on the record before us, the protester has not met its burden of proof, and we therefore are constrained to accept the Forest Service's characterization of this change as not material.

Finally, the amendment made obviously minor clerical changes: renumbering work area 13 as areas 13A and 13B; adding, for material to be yarded and decked, the words "created and residual" after the words "all material;" and correcting road numbers on a map contained in the solicitation. The protester does not suggest that these changes were material.

Woody also questions the factual reasons advanced by the Forest Service in its determination to proceed with the award of the contract before resolution of the protest. However, since we have found no merit to Woody's protest, so that Avery was entitled to the award in any case, these matters are academic and need not be considered.

The protest is denied.

for 
Comptroller General
of the United States