

VanSchaik
PL-II

DECISION



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

FILE: B-220569

DATE: January 13, 1986

MATTER OF: Loren Preheim

DIGEST:

Contracting officer properly accepted a bid that failed to acknowledge a solicitation amendment which merely relaxed a portion of the agency's requirements.

Loren Preheim protests the award of a contract to Richard Newman under invitation for bids (IFB) No. R6-20-85-43 issued by the Forest Service. Preheim contends that Newman's bid should have been rejected as nonresponsive because Newman failed to acknowledge an amendment prior to bid opening. We deny the protest.

The IFB contained line items for road maintenance work at three different geographical areas. Awards were to be based on the low, responsive bid for each item. As issued, the IFB required road surface compaction using an "8 - 10 ton pneumatic steel or equivalent vibrating roller." The amendment added two commas. As amended, the IFB called for an "8 - 10 ton pneumatic, steel, or equivalent vibrating roller."

Eighteen bids were submitted. The low bid on item 1 was rejected as nonresponsive for reasons unrelated to the protest. Newman, the second low bidder, did not acknowledge the amendment. However, the contracting officer determined that Newman's failure to acknowledge could be waived as a minor informality.

Preheim contends that the amendment was material and that it, as the third low bidder, should have been awarded item 1. Preheim says the original IFB allowed only a pneumatic steel or equivalent vibrating roller, while the amended IFB allowed a pneumatic, a steel or any other

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equivalent vibrating roller. According to the protester, the original language allows the contractor to use a pneumatic steel vibrating roller, equipment which differs from a pneumatic or steel vibrating roller. Preheim argues that the amendment cannot be waived because its effect on cost depends on what equipment each bidder has available. Preheim also asserts, without explanation, that the amendment could affect the quality of work.

The Forest Service argues that the amendment merely corrected an obvious typographical error. It indicates that while vibrating steel rollers are commonly available, there is no such thing as a pneumatic steel vibrating roller, which would have to be custom built. In the circumstances, the Forest Service asserts, the amendment, by allowing a vibrating steel roller, lessened the solicitation requirement. Since Newman's bid was the low responsive bid, the Forest Service contends, award to Newman would not prejudice any other firm.

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 non-responsive. Emmett R. Woody, B-213201, Jan. 26, 1984, 84-1 CPD ¶ 123. An amendment is material, however, only if it would have more than a trivial impact on the price, quantity, quality or delivery terms the government would have to accept were it to award a contract not containing the amendment. Federal Acquisition Regulation, 48 C.F.R. § 14.405 (1984).

We agree with the Forest Service that no offeror would be prejudiced by award to Newman. At worst, Newman offered to use a pneumatic steel vibrating roller that, the record shows, would have to be custom built, but which would be equivalent to the roller required by the amended solicitation and therefore, would conform to the amended solicitation. Perhaps Newman simply read the IFB as requiring only what the amendment requires. Regardless of Newman's intent, however, its bid was the low responsive bid and Newman's failure to acknowledge the amendment does not allow it to avoid its obligation to use acceptable compaction equipment.

The protest is denied.

for *Raymond E. Gros*
Harry R. Van Cleve
General Counsel