



The Comptroller General
of the United States

Washington, D.C. 20548

Morrow

Decision

Matter of: Warfield and Sanford, Inc.
File: B-223976
Date: October 23, 1986

DIGEST

1. A bidder's failure to acknowledge a solicitation amendment which deleted line item regarding overtime services from evaluation and made award of item optional, may be waived because even if bid required award of item, overtime could only be authorized by contracting officer and therefore government incurred no extra cost.
2. Failure to acknowledge amendment which merely alerted bidders that other contractors would be doing renovation which could cause delays in performance may be waived because such amendment did not change obligations of parties. Delays could have been handled without amendment through changes clause.

DECISION

Warfield and Sanford, Inc. (Warfield), protests the proposed award of a contract for elevator maintenance service to Elevator Control Service (ECS), under invitation for bids (IFB) No. GS-11P86MJD0086, issued by the General Services Administration (GSA). Warfield alleges that ECS's bid was nonresponsive because it failed to acknowledge an allegedly material amendment to the IFB.

We deny the protest.

ECS did not acknowledge amendment No. 3 to the IFB. That amendment stated that prices for overtime services would not be evaluated and advised that the government may or may not make an award for overtime services. As originally issued, the IFB stated award would be made for overtime services and the prices would be evaluated. The amendment further advised bidders that the successful contractor would be required to cooperate with other contractors which may be upgrading or modernizing elevator equipment and/or systems during the

037188

performance of the contract and that GSA reserved the right to alter the performance requirements following the completion of any of these refurbishing projects.

We have stated that a bidder's failure to acknowledge receipt of a material amendment to an IFB renders the bid nonresponsive, since in the absence of such an acknowledgment, the government's acceptance of the bid would not legally obligate the bidder to meet the needs of the government as reflected in the amendment. The amendment to be material, however, must have more than a trivial impact on price, quality, quantity, delivery, or the relative standing of the bidders. See Teleflex Incorporated, B-220848, Feb. 5, 1986, 86-1 C.P.D. ¶ 133. We also consider the amendment material if it changes the legal relationship between the parties. See Gibraltar Industries, Inc., B-218537.3, July 3, 1985, 85-2 C.P.D. ¶ 24. However, an amendment is not material if it merely clarifies an existing IFB requirement and the bidder's failure to acknowledge such an amendment can be waived as a minor informality.

We find that the amendment here was immaterial because it did not meet any of the requirements stated above and merely clarified an existing IFB requirement.

GSA reports that the net effect of the portion of the amendment that changed the evaluation criteria was that the additional cost of performing overtime services was not evaluated as part of the bidder's total price. Prior to the amendment, bidders were required to submit a price for performing overtime services, which would be awarded and used to determine the total cost of the bid.

Warfield, however, argues that the government lost the right not to make award for overtime services because ECS's bid, without acknowledging the amendment, was based on the award of overtime services. The record indicates that ECS's bid including overtime was significantly lower than the other bids received both with or without the cost of providing overtime services. Moreover, whether overtime services were awarded or not gave no rise to the right of the bidder to such payment. The only time overtime services were to be furnished was after it was authorized by the government. Therefore, accepting ECS's bid as submitted and awarding the overtime services line item would, in actuality, cost the government no more. Therefore, this change contained in the amendment does not make it material.

Regarding the requirement that the successful contractor cooperate with other contractors, Warfield argues that it

changed the legal obligation of the parties because the contractor has the affirmative duty to cooperate and that the potential for disruption and delay should be viewed as materially changing the contract because it was a new requirement outside the scope of the original IFB. We are not persuaded by this argument. In our opinion, the amendment merely alerted bidders to the fact that other work may be occurring during performance. Any delays so necessitated could be handled under the IFB's standard changes clause and therefore, this part of the amendment only restated a requirement that was already part of the original IFB.

Consequently, we are not convinced that ECS's failure to acknowledge the amendment materially altered the ultimate performance requirement of ECS to provide elevator maintenance service to any lesser degree than bidders acknowledging the amendment. See Power Service Inc., B-218248, Mar. 28, 1985, 85-1 C.P.D. ¶ 374. Therefore, GSA properly may waive ECS's failure to acknowledge the amendment.

The protest is denied.

for
Signature
Harry R. Van Cleve
General Counsel