



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Star Brite Construction Co., Inc.  
File: B-228522  
Date: January 11, 1988

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### DIGEST

1. Contracting officer properly accepted bid that failed to acknowledge a solicitation amendment with changes which either clarified existing specification requirements, made minimal nonmaterial changes or had only a minimal impact on cost.
2. Protest basis first raised in protester's comments which could have been raised in its initial proposal is untimely.

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### DIGEST

Star Brite Construction Co., Inc., protests the award of a contract to Raymond Brothers, Inc., under invitation for bids (IFB) No. DACA61-87-B0017 issued by the U. S. Army Corps of Engineers. The IFB called for the furnishing of all plant, labor, materials, equipment and appliances in performing all operations necessary to replace the roof on major areas of Walson Army Hospital, Fort Dix, New Jersey.

We deny the protest in part and dismiss it in part.

Raymond Brothers submitted the low bid in the amount of \$475,000 without acknowledging Amendment No. 0001. Star Brite's bid was second low at \$593,450. Subsequent to bid opening, Raymond Brothers confirmed its price "in light of" the amendment. Star Brite argues that the Army improperly accepted Raymond Brothers' low bid because Raymond Brothers failed to acknowledge amendment No. 0001 to the IFB which Star Brite argues made several material changes affecting the cost of the project.<sup>1/</sup>

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<sup>1/</sup> In its initial protest, Star Brite argued that the amendment added a liquidated damages clause and a strict performance time limitation that should not be dismissed as minimal. Star Brite, in its comments to the agency report, does not pursue these arguments. In any event, the record indicates both these provisions were contained in the original solicitation. The amendment merely repeats these clauses.

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Amendment No. 0001 identified five pen and ink changes to be made in the drawings contained in the IFB. The amendment changed the requirement for securing wooden coping to concrete from "secured to coping" to "secured to existing coping w/3/16 expansion bolt fasteners 16" on center shim as required to maintain level surface." The amendment changed the dimension for framing shown as "2 x 12 to 2 x framing" on the design detail showing the flashing at the new support platform for the vibrating unit of roof "C". The amendment also identified the bonding adhesive to be used. The amendment further identified the roof substrata material for two sections as concrete. Lastly, the amendment specified that new corners were to be the same as existing corners.

Star Brite argues that the change in the manner of securing wooden coping to concrete would require a contractor to install approximately 100 concrete expansion bolts resulting in an estimated cost of \$16.20 per bolt installed, plus overhead and profit. With respect to the framing, Star Brite contends that this revision requires a contractor to use treated lumber which is a special item that probably cost \$10 to \$15 per lineal foot.<sup>2/</sup> Star Brite states that the ordering of a small amount of such an item will require additional time and would require an estimated additional 16 hours for installation at a total cost per hour of approximately \$35 plus overhead and profit. With respect to the revision concerning the bonding adhesive, the protester acknowledges that this revision is immaterial but nonetheless argues that the cost of compliance is approximately \$600.

The protester argues that the most substantial change concerns the identification of the substratum as concrete. The firm points out that the cost of removal of an existing hot tar roof from a concrete substratum is more difficult and time consuming than from a wooden or metal deck. The protester contends that the identification of the substratum adds approximately \$12,000 in additional cost, plus overhead and profit. In addition, the protester claims this revision also requires the installation of approximately 45 concrete expansion bolts at a cost of \$16.20 each, together with overhead and profit.

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<sup>2/</sup> Star Brite contends that approximately 100-lineal feet will be required.

Finally, the protester contends that by specifying the manner of construction of approximately 24 corners causes an additional cost of approximately \$70 each, plus overhead and profit.

The agency responds that the changes to the drawings required by amendment No. 0001 had no significant impact on price, quality or quantity and are therefore not material. The agency states that the amendment did not impose any additional obligations than those already included in the IFB. The Army asserts that the changes involving the coping, bonding adhesive, and corners merely amplify existing specification requirements. The Army maintains that identification of the roof substrata material as concrete was necessary to ensure that proper fasteners could be used for a wire mesh enclosure support structure and parapet flashing. The Army indicates that the original drawings already indicated that the substrata for four sections of the roof was concrete, the amendment merely stated that the two remaining sections were also concrete. Lastly, the agency states that the change in framing requirements involve a correction to the detail for wood supports for a vibration units platform. The Army maintains that only a \$24 increase could be attributed to new requirements imposed by the amendment.<sup>3/</sup>

A bidder's failure to acknowledge a material IFB amendment renders the bid nonresponsive, since absent such an acknowledgment the government's acceptance of the bid would not legally obligate the bidder to meet the government's needs as identified in the amendment. Maintenance Pace Setters, Inc., B-213595, Apr. 23, 1984, 84-1 CPD ¶ 457; Four Seasons Maintenance, Inc., B-213459, Mar. 12, 1984, 84-1 CPD ¶ 284. An amendment is material, however, only if it would have more than a trivial impact on the price, quantity, quality, delivery or the relative standing of the bidders. See Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.405 (1986); Wirco, Inc., 65 Comp. Gen. 255 (1986), 86-1 CPD ¶ 103. An amendment is not material where it does not impose any legal obligations on the bidder different from those imposed by the original solicitation, that is, for example, it merely clarifies an existing requirement. Maintenance Pace Setters, Inc., B-213595, supra. In that case, the failure to acknowledge the amendment may be waived and the bid may be accepted. Emmett R. Moody, 63 Comp. Gen. 182 (1984), 84-1 CPD ¶ 123.

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<sup>3/</sup> This increase results from changing the dimensions for framing.

We do not find that the changes in the specifications added by amendment No. 0001 imposed any significant legal obligation different from that imposed under the original IFB. The contractor was responsible for furnishing all plant, labor, materials, equipment and appliances in performing all operations necessary to replace roof. In this regard, the IFB invited contractors to inspect the site and acquaint themselves with the site conditions and any problems incident to the execution of the work.

In light of the provisions already included in the IFB, we think the designation of the type of fasteners to use to secure coping did not impose any significant additional obligation on the bidder than it already had. The bidder was already obligated to secure the coping and the typical section illustrated in the solicitation required 3/16 inches expansion bolts, so the amendment merely clarified that section 4/2/5, which was a variation of a typical section, also required 3/16 inches expansion bolts. Further, even if we could conclude that some additional cost may be incurred, we cannot accept the protester's estimate since the protester failed to take into consideration and subtract out the cost of using any other method of securing the coping.

With respect to the identification of the bonding adhesive in this amendment, the protester concedes that the identification of the bonding adhesive is immaterial because the contractor would have to use the bonding adhesive required by the manufacturer in any event. Clearly then this statement merely clarified the requirement and contrary to protester's contention adds no additional cost to performance.

Likewise, with respect to the amendment specifying that new corners should be the same as existing corners, in our view, the change clarified the existing specification. We think it was reasonable that a contractor would be expected to adhere to existing corner design and that this amendment language merely confirmed what was, in effect, the requirement.

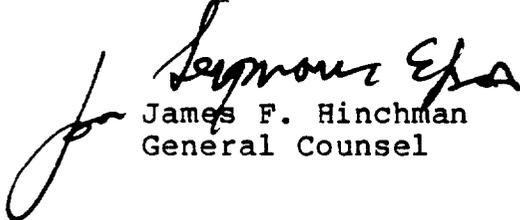
The protester also contends that substantial changes are involved in the framing and identification of the substratum as concrete. As to the latter argument, the record indicates that the roof is divided into six sections, four of which were identified in the original IFB as having a substratum of concrete. In our view, since four of the sections were identified as concrete, the amendment again clarified what should have been reasonably inferred by bidders, that all sections were concrete. In any event, by virtue of a site inspection this condition should have been known to all bidders regardless of the amendment. Thus,

bidders were on notice of the type of substratum and, notwithstanding the amendment should have assessed the cost of removal of a roof from concrete. Therefore, we do not find this revision to be material.

Lastly, the Army estimates that the cost for requiring the contractor to use treated lumber which will satisfy the 2 x framing requirement rather than the originally specified 2 inches by 12 inches material is approximately \$24 for materials only. The protester's calculation including additional installation would result in an added cost of over \$2,000. Although the Army does not provide a well substantiated basis for the cost of the change, we also do not have an adequate basis for accepting the protester's estimate. However, even accepting the protester's estimate that the cost of meeting this requirement amounts to approximately \$2,000, in our view, this estimated increase is de minimis as to price given the total cost of the work and the difference between Star Brite's and Raymond Brother's bids. See Power Service, Inc., B-218248, Mar. 28, 1985, 85-1 CPD ¶ 374. Therefore, in our view, this requirement properly could be waived as a minor informality.

Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1986), a protest must be filed within 10 working days of the date the protester was aware or should have been aware of the basis for its protest. Star Brite's original protest filed on October 14, 1987, concerned the amendment's alleged materiality which is addressed above. In its comments on the agency report, Star Brite now argues that the bid bond and Power of Attorney submitted by Raymond Brothers lack corporate seals and thus are invalid. Our regulations do not contemplate the piecemeal development of protest issues. Contel Information Systems, Inc., B-220215, Jan. 15, 1986, 86-1 CPD ¶ 44. Since bid opening was held on August 5, and all bids could have been inspected at that time, this issue should have been raised in Star Brite's October 14 protest, therefore, it is untimely and not for our consideration. Arndt & Arndt, B-223473, Sept. 16, 1986, 86-2 CPD ¶ 307; Contel Information Systems, Inc., B-220215, supra.

The protest is denied in part and dismissed in part.

  
James F. Hinchman  
General Counsel