



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Site Development, Inc.

File: B-232813

Date: December 22, 1988

DIGEST

Bidder's failure to acknowledge invitation for bids amendment providing that contractor would be responsible for cost of work involved in relocating a gas meter may be waived where provision merely clarified existing requirements in the solicitation and thus had no material effect on the procurement.

DECISION

Site Development, Inc., protests the award of a contract to Tony Anthony, Inc., under invitation for bids (IFB) No. DTCG47-88-B-00045, issued by the Coast Guard. The IFB called for the construction of a multi-mission Coast Guard station in St. Clair Shores, Michigan.

We deny the protest.

Amendment No. 0002 to the IFB, issued August 26, 1988, instructed bidders to add the following note to Drawing C-3: "Contractor will be responsible for coordination with local utility company and all costs to relocate the gas meter and required extension of service as shown on site utilities plan." Tony Anthony submitted the low bid in the amount of \$2,086,208 without acknowledging amendment No. 0002. Site Development's bid was second low at \$2,118,782. Subsequent to bid opening, Tony Anthony confirmed its bid and indicated that the cost of the work involved in amendment No. 0002 was included in its bid price in accordance with the plans and specifications provided in the IFB. The Coast Guard accepted Tony Anthony's bid after determining that the amendment had only clarified an existing IFB requirement and thus did not represent a material change in the requirement.

Site Development contends that the Coast Guard improperly accepted Tony Anthony's low bid without an acknowledgment

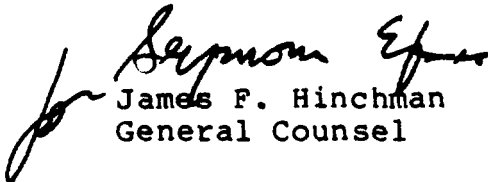
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of the amendment, arguing that the work covered by the amendment would in fact materially affect the cost of the project and increase any bidder's cost. In this regard, Site Development states that a quotation from the gas company establishes the value of this change at \$3,590.00.

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. An amendment is material, however, only if it would have more than a trivial impact on price, quantity, quality, delivery, or the relative standing of the bidders. Federal Acquisition Regulation (FAR) § 14.405; 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, such as, for example, where the amendment 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.

We find that the notation added to drawing C-3 by the amendment imposed no significant additional legal obligation on the contractor, and thus was not material. Paragraph 3.1 of the IFB already required the contractor to "make arrangements with local gas utility company to provide gas distribution system and pay local gas utility company for all costs associated with gas distribution system," and paragraph 1.1 of section 02685 of the specification and drawing M-5 clearly indicate that the meter is part of the gas distribution system. Reading the IFB as a whole, therefore, we think the contractor already was responsible for the costs associated with providing a gas distribution system, including the cost of relocating the gas meter, and that the amendment merely clarified this responsibility. Under these circumstances, Tony Anthony's failure to acknowledge the amendment properly was waived.

The protest is denied.


James F. Hinchman
General Counsel