



Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** K Services

**File:** B-238744

**Date:** June 13, 1990

Karen Hammond, for the protester.  
Vasio Gianulias, Esq., Office of the General Counsel,  
Department of the Navy, for the agency.  
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Office of the General Counsel, GAO, participated in the  
preparation of the decision.

## DIGEST

Contracting agency properly accepted low bid that failed to acknowledge solicitation amendments making changes that either had only a minimal impact on cost or merely clarified requirements already contained in the solicitation.

## DECISION

K Services protests the award of a contract to Cochran Sales and Contracting for grounds maintenance services at the Naval Weapons Station, Charleston, South Carolina, under invitation for bids (IFB) No. N62467-89-B-4167, issued by the Department of the Navy. K Services asserts that Cochran's low bid should have been rejected as nonresponsive because it failed to acknowledge the amendments issued to the IFB.

We deny the protest.

The IFB was issued on May 1, 1989, and was amended three times prior to bid opening. Amendment No. 1 scheduled a prebid conference for May 23 and amendment No. 3 distributed the minutes of that conference to all potential bidders. Amendment No. 2 redistributed some of the landscaping work for parcel No. 14 by decreasing the number of shrubs to be pruned from 5,025 to 789 (resulting in a \$17,710.50 decrease in the government's estimated cost of performance of the contract). The amendment also added 5,025 square feet of pruning and mulching of landscaped plants and flowerbeds (resulting in an estimated cost increase of

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\$502.50, based on the original government estimate of \$0.10-per square foot of pruning and mulching.)

K Services submitted the apparent low bid (at \$359,165) of the 14 bids received by bid opening on June 1, 1989. Cochran submitted the apparent second low bid of \$416,391.30. Suspecting a possible error in K Services' bid since it was substantially lower than any of the other bids, the Navy requested by letter of June 6 that the protester confirm its bid price. On June 19, K Services reported an alleged clerical error in its bid and requested correction of its bid to reflect its intended bid price of \$423,965. The agency granted the protester's correction request. Consequently, Cochran displaced K Services as the apparent low bidder. On June 23, K Services requested that the Navy find Cochran's bid nonresponsive for failing to acknowledge the three amendments to the IFB. The Navy determined that none of the amendments were material and that Cochran's failure to acknowledge receipt of the amendments properly could be waived as a minor informality pursuant to Federal Acquisition Regulation (FAR) § 14.405(d)(2) (FAC 84-12). Having determined Cochran to be the low responsive, responsible bidder, the Navy awarded a contract to that firm on February 14, 1990. K Services filed its protest with our Office on February 28, 1990. The Navy has advised us that performance of Cochran's contract has not been suspended.

Generally, 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. O'Brien's Fire Protection Co., Inc., B-233248, Nov. 3, 1988, 88-2 CPD ¶ 437, Loren Preheim, B-220569, Jan. 13, 1986, 86-1 CPD ¶ 29. However, the failure of a bidder to acknowledge receipt of an amendment may be waived where the amendment has either no effect or merely a negligible effect on price, quantity, quality, or delivery of the item bid upon. FAR § 14.405(d)(2); Gulf Elec. Constr. Co., Inc., 68 Comp. Gen. 719 (1989), 89-2 CPD ¶ 272. No precise rule exists to determine whether a change required by an amendment is more than negligible; rather, that determination is based on the facts of each case. DeRalco, Inc., 68 Comp. Gen. 349 (1989), 89-1 CPD ¶ 327.

K Services essentially argues that Cochran's bid must be rejected as nonresponsive for not acknowledging any of the amendments, especially amendment No. 2, which K Services contends changed two landscaping requirements which could have an effect on a bidder's price.

The Navy, however, asserts that the three amendments were immaterial since they either had only a minimal impact on cost or merely clarified requirements already in the solicitation. Consequently, the Navy contends that Cochran's failure to acknowledge these amendments in its bid can properly be waived. We agree.

First, amendment No. 1, which scheduled the prebid conference, was administrative in nature. Amendment No. 3 which distributed the minutes of that conference was also administrative in nature and merely clarified IFB requirements without imposing any additional obligations on the contractor. As such, we find that the awardee's failure to acknowledge these amendments was properly waived by the Navy as a minor informality. See Head, Inc., 68 Comp. Gen. 198 (1989), 89-1 CPD ¶ 82.

Regarding amendment No. 2, the Navy states that since this amendment results in an estimated net decrease of \$17,208 in the cost of performance, Cochran's failure to acknowledge the amendment would not effect the standing of the bidders. Although the Navy concedes that amendment No. 2 also had the effect of adding some additional pruning and mulching requirements to the contractor's obligations, the agency maintains that the impact of the additional work was trivial at most. In this regard, the Navy reports that no additional labor or equipment was called for under amendment No. 2 since the required pruning and mulching (i.e., spreading of pine needles at the base of landscaped plants and flowerbeds) was a minimal task which was similarly required for other parcels of land, and which could easily be performed in conjunction with the contractor's other landscaping responsibilities.

In cases involving an amendment which both increases and decreases the contract requirements, as amendment No. 2 does here, we determine the materiality of the amendment by considering the increasing portion of the amendment separately. Gulf Elec. Constr. Co., Inc., B-235635, *supra*; G. C. Smith Constr. Co., B-213525, July 24, 1984, 84-2 CPD ¶ 100. Further, whether the value of an unacknowledged amendment is trivial or negligible depends on the amendment's estimated minimal impact on bid price and the relationship of that impact to the difference between the two low bids. Both parts of this test must be satisfied in order to permit waiver or correction of the failure to acknowledge the amendment. See Marino Constr. Co., Inc., 61 Comp. Gen. 269 (1982), 82-1 CPD ¶ 167.

Here, the estimated cost impact of the increasing portion of the amendment is \$502.50, which is only 0.1 percent of

Cochran's bid price and 6.6 percent of the difference between Cochran's low bid of \$416,391.30 and K Services' second low bid of \$423,965. As such, we find that the additional pruning and mulching responsibilities of amendment No. 2 would have only a negligible impact on overall contract cost and also on contractor obligations. The protester has not presented any evidence to rebut this. Therefore, we cannot conclude that amendment No. 2 was material. See G. C. Smith Constr. Co., B-213525, supra. Accordingly, we find that Cochran's failure to acknowledge the IFB amendments properly was waived by the Navy.

The protest is denied.



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General Counsel