

B. Coles



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: W.S. Jenks & Son
File: B-240865
Date: November 28, 1990

Jack Rephan, Esq., Sadur, Pelland & Rubinstein, for the protester.
W.S. Spotswood, Jr., for Snyder Corporation, an interested party.
Roger D. Waldron, Esq., General Services Administration, for the agency.
Barbara C. Coles, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. An amendment to an invitation for bids (IFB) is material where the amendment changes the contract period from June 1 or date of award, whichever is later, through May 31, to October 1 or date of award, whichever is later, through September 30, because it has a significant impact on the delivery terms required under the IFB.
2. Bid is properly rejected as nonresponsive where bidder fails to acknowledge a material amendment requesting a modified contract period, because, absent such acknowledgment, the bidder is not obligated to furnish the item during the new period.

DECISION

W.S. Jenks & Son protests the rejection of its bid under invitation for bids (IFB) No. 6FEC-D4-890002-S, issued by the General Services Administration (GSA) for tool kits. Jenks's bid was rejected as nonresponsive because it failed to acknowledge an amendment to the IFB.

We deny the protest.

GSA issued the IFB on February 28, 1990, with bid opening scheduled for April 18. The IFB called for award of a 2-year requirements contract for the tool kits. The contract period contained in the solicitation was June 1, 1990, or date of award, whichever is later, through May 31, 1992.

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Prior to bid opening, GSA issued eight amendments to the solicitation. Amendment No. 8 changed the contract period to October 1, 1990, or date of award, whichever is later, through September 30, 1992; the amendment did not extend the June 28 bid opening date established by amendment No. 5. Amendment No. 8 advised bidders that their bids may be rejected if their acknowledgment of the amendment was not received at the place designated for receipt of bids prior to the hour and date specified in the solicitation.

Although Jenks acknowledged amendment Nos. 1 through 7, the firm failed to acknowledge amendment No. 8 prior to the June 28 bid opening date. Jenks's acknowledgment of amendment No. 8 was sent by regular mail on June 22 and was received at the bid opening room on July 9. Since Jenks failed to acknowledge amendment No. 8 prior to bid opening, GSA rejected Jenks's bid as nonresponsive; by letter dated August 13, GSA informed Jenks of the rejection. Jenks's August 22 protest to our Office followed.

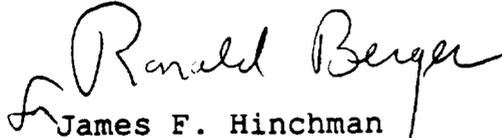
Jenks argues that it is entitled to the award as the low responsive bidder, notwithstanding its failure to acknowledge the amendment prior to bid opening, because, since the amendment neither changed the 2-year requirements period nor the quantity of kits to be delivered, the amendment is not material. In this regard, the protester contends that the amendment merely shifted forward the 2-year requirements period in order to give the agency time to evaluate the bids and make award.

A bid that does not include an acknowledgment of a material amendment must be rejected because absent such acknowledgment, the bidder is not obligated to comply with the terms of the amendment, and thus its bid is nonresponsive. Mar-Mac Precision Corp., B-214604, Aug. 13, 1984, 84-2 CPD ¶ 164. An amendment is material if it would have more than a trivial impact on price, quantity, quality, delivery, or the relative standing of the bidders. Customer Metal Fabrication, Inc., B-221825, Feb. 24, 1986, 86-1 CPD ¶ 190. The test to be applied in determining bid responsiveness is whether the bid as submitted is an offer to perform, without exception, the exact thing called for in the solicitation, which, upon acceptance, will bind the contractor to perform in accordance with all the terms and conditions thereof. See Rocky Ridge Contractors, Inc., B-224862, Dec. 19, 1986, 86-2 CPD ¶ 691.

Amendment No. 8 substantially changed the solicitation by changing the contract period from the original period--June 1, 1990, or date of award, whichever is later, through May 31, 1992--to a new period--October 1, 1990, or date of award, whichever is later, through September 30, 1992. In doing so,

amendment No. 8 clearly had more than a trivial impact on delivery and, therefore, was material. Absent an acknowledgment of the amendment, Jenks did not obligate itself to furnish the supplies from June to September 1990; rather, Jenks only obligated itself to furnish the kits until the expiration of the original period on May 31, 1992. Accordingly, GSA properly rejected Jenks's bid as nonresponsive.

The protest is denied.


James F. Hinchman
General Counsel