



Comptroller General
of the United States

Washington, D.C. 20548

h. Riback

145935

Decision

Matter of: Pettinato Associated Contractors and
Engineers, Inc.

File: B-246106

Date: February 19, 1992

Brian J. Cali, Esq., for the protester,
Sherry Kinland Kaswell, Esq., and Justin P. Patterson, Esq.,
Department of the Interior, for the agency.
Katherine I. Riback, Esq., and John Brosnan, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. A condition in a bid that modifies a material solicitation requirement which is not divisible from the remainder of the solicitation requirements may not be waived as a minor informality.

2. The importance of maintaining the integrity of the competitive bidding system outweighs the possibility that the government might realize monetary savings if a material deficiency in a bid is corrected or waived.

DECISION

Pettinato Associated Contractors and Engineers, Inc. (PACE) protests the rejection as nonresponsive of its bid under invitation for bids (IFB) No. STEA-101HA issued by the Department of the Interior, National Park Service for site restoration and installation of new utilities at the Steamtown National Historic Site, Scranton, Pennsylvania. Pace argues that a notation which it made in its bid schedule was a minor informality that should be waived by the contracting officer.

We deny the protest.

The IFB, issued on August 19, 1991, included a bid schedule that contained 16 bid items. Next to each bid item the contracting agency provided an estimated quantity and spaces for unit and extended prices. The IFB stated that the quantities listed were estimates only and that payment would be made for the actual quantities of work completed.

PACE submitted the low bid at \$1,361,513, but the firm placed the following notation at the bottom of the last page of the bid schedule:

"Exclusions and Additions

Replacement rail if required to be supplied by National Park Service Item 5.

Item 10 and 11 must be in excess of 20cy (cubic yards) each, including soil analysis testing."

Bid item No. 5 is for the replacement of an estimated 300 linear feet of existing rail. Bid item No. 10 is for the excavation, removal and disposal of an estimated 300 cubic yards (cy) of industrial waste material, while item No. 11 pertains to the excavation, removal and disposal of an estimated quantity of 100cy of hazardous waste material.

The contracting officer determined that PACE's notation which concerned item 5 was a minor irregularity that could be waived pursuant to Federal Acquisition Regulation (FAR) § 14.405 because it would not effect price, quality, or delivery as replacement rail would not be needed. However, he decided that the second item in PACE's notation was material in that it appeared to alter the firm's obligation to perform all the work represented by item Nos. 10 and 11 in accordance with the IFB terms.

The protester does not disagree with the agency's view that the statement in its bid concerning the two waste material excavation items did, in fact, limit the firm's obligation to remove the material only if the amount to be removed under each of the two line items exceeds 20cy. That, in our view, is the only reasonable interpretation of the notation in PACE's bid. PACE, however, argues that its notation should be waived under FAR § 14.405 as a minor informality, and the bid accepted. In this regard, PACE points out that the discrepancy in both bid items at most amounts to \$22,860 worth of work¹ which in the protester's view is de minimis when compared to the total bid price of \$1,363,513 and to the \$81,601 difference between the protester's bid and the next low bid.

A bid is responsive only if the bidder has unequivocally offered to provide the requested items or services in total conformance with the material requirements specified in the


¹Most of the cost impact, \$21,000, relates to item No. 11, the removal of 20cy of hazardous material.

IFB, Power Ten, Inc., B-236725, Dec. 18, 1989, 89-2 CPD ¶ 563. As a general rule, a bid must be rejected if, as is the case here, it attempts to impose conditions that modify material requirements of the IFB or limit the bidder's liability to the government. Municipal Leasing Sys., Inc., B-242648.2, May 21, 1991, 91-1 CPD ¶ 495. However, a condition in a bid which modifies a material IFB requirement may be waived where the affected requirement itself or the portion which is impacted by the condition is divisible from the solicitation's overall requirements, is de minimis as to the total cost and would not affect the competitive standing of the bidders. Custom Envtl. Serv., Inc., B-234774, May 24, 1989, 89-1 CPD ¶ 501.

It is our view that the removal of even a relatively small volume, 20cy of industrial waste material and 20cy of hazardous waste material, potentially would have a significant impact on the project and is a function which cannot go unperformed. For example, if hazardous material is discovered during the excavation, we do not believe that the project can go forward without its removal and disposal, even if the volume is 20cy or less. Thus, even though the protester argues that the price at which both of these functions are to be performed should be considered de minimis, the waiver cannot be allowed due to the nondivisibility of the items. E.H. Morrel Co., 63 Comp. Gen. 348 (1984), 84-1 CPD ¶ 508; HH&K Builders, B-232140, Oct. 20, 1988, 88-2 CPD ¶ 379.

Finally, PACE argues that the government would save money if PACE, the low bidder, was awarded the contract. The importance of preserving the integrity of the competitive bidding system, however, outweighs the possibility that the government might realize monetary savings if a material deficiency in a bid is corrected or waived. AAA Roofing Co., Inc., B-240852, Dec. 12, 1990, 90-2 CPD ¶ 485.

The protest is denied.


James F. Hinchman
General Counsel