

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-183680

DATE: June 27, 1975

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MATTER OF: Titan Mountain States Construction Corporation

DIGEST:

Bidder's failure to acknowledge a solicitation amendment containing a number of changes, some of which would decrease the cost of performance substantially, the remainder of which would increase the cost of performance by a trivial amount, may be waived since other bidders are not prejudiced thereby and performance under the specifications without the amendment would be equally acceptable to the Government.

This matter concerns a protest against any award to the low bidder under invitation for bids (IFB) No. DACA45-75-B-0130, issued by the Army Corps of Engineers, Omaha District, for the construction of a barracks complex at Fort Carson, Colorado.

It is argued that the low bid should be rejected for the failure of the bidder to acknowledge receipt of an amendment. Subsequent to the issuance of the solicitation, four amendments were issued with the last of these amendments dated April 11, 1975. Because bid opening was scheduled for April 16, 1975, the Corps of Engineers feared that the late issuance of Amendment 4 would have an adverse effect upon the ability of bidders to submit bids which considered the final amendment. All prospective bidders were contacted telephonically on April 10, 1975, to determine if a postponement of the bid opening would be required. Based upon the results of the telephone conversations, the contracting officer determined that all bidders were aware of the final amendment and that they all agreed that a postponement would not be necessary.

When the bids were opened at the scheduled time, the apparent low bid of \$21,243,755 for the basic item and eight additives was submitted by Santa Fe Engineers, Incorporated (Santa Fe). The second low bid on the same basis was that of Titan Mountain States Construction Corporation (Titan) in the amount of \$21,852,900. At the bid opening, the contracting officer noted the failure of Santa Fe to formally acknowledge Amendment 4. Titan in a timely manner has protested any award to Santa Fe.

Essentially, Amendment No. 4 made the following changes in the specifications:

- (1) deleted the requirement for wet sandblasting of precast concrete slabs prior to the placing of a concrete topping;
- (2) deleted the requirement for door signs on doors not equipped with cylinder locks;
- (3) permitted a lower priced stainless jute backing on carpeting rather than the rubber backing originally required;
- (4) deleted the requirement that contractor furnish certain items of food service equipment and provided that such equipment would be furnished by the Government;
- (5) substituted a more expensive flush drop ring pull for three doors in the gymnasium;
- (6) upgraded the specification for the chapel carpeting;
- (7) clarified an ambiguous specification regarding the earliest date for removal of certain buildings;
- (8) increased the size of certain pipe, fittings and insulation for lines leading to certain fan coil control valves.

For the reasons stated below we believe Santa Fe's bid should be accepted notwithstanding its failure to formally acknowledge receipt of Amendment No. 4.

With regard to the first four changes mentioned above, it is clear that each had the effect of either deleting or relaxing a portion of the specification provisions. In this connection, we stated in our decision 41 Comp. Gen. 550, 553 (1962) that even if it is assumed "that the low bidder's failure to acknowledge the addendum was due to ignorance of its existence, then his bid price would not reflect the lessened requirements of the specifications and, therefore, his failure to acknowledge would only be prejudicial to his competitive position and even possibly beneficial to the position of the other bidders."

However, Titan argues that the above cited decision should be distinguished since the decrease there was trivial, amounting to only \$15 in a \$5, 535 procurement, whereas the decrease

estimated by the contracting officer for these four changes was substantial and could range from \$32,586 to \$126,663. We do not agree with Titan's position since it appears that the four changes in question here are in the nature of a deletion or relaxation of certain requirements and would not render nonresponsive a bid on the more onerous original specifications which are equally acceptable to the Government. B-167073, July 15, 1969. Nor can we agree that this holding is somehow inconsistent with the recognized need to maintain the strict integrity of the competitive bid system. That integrity would be compromised where one or more bidders obtained or appeared to have obtained some advantage in the competition not available to all parties. The legal effect of Santa Fe's failure to acknowledge Amendment No. 4 was a bid on the IFB as modified by the first three amendments. It is conceded that such a bid, which was low, represents an offer to perform pursuant to acceptable but higher standards than ultimately called for. We see no danger to the integrity of the system in accepting a low bid offering acceptable and superior performance which the bidder has no option to withdraw after opening.

As to the remaining changes listed above, the administrative report indicates their total effect would be to increase the contract price by approximately \$1,600, which represents only .0075 percent of Santa Fe's low bid and approximately .24 percent of the difference between the low and second low bids. No question has been raised regarding the proposed correction or waiver of the failure to formally acknowledge receipt of an amendment calling for changes which would increase the contract price by such a trivial amount. See Armed Services Procurement Regulation 2-405 and 52 Comp. Gen. 544 (1973).

Accordingly, Titan's protest is denied.


Deputy Comptroller General
of the United States