



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Holiday Inn-Laurel, Maryland

File: B-262249

Date: December 11, 1995

Mark R. Eskew for the protester.

Aimee Arroyo-Madison for Howard Johnson Lodge, Baltimore, Maryland, an interested party.

John M. Kinsey, Esq., Department of Transportation, for the agency.

Wm. David Hasfurthur, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where the provisions in a solicitation amendment either had no affect on the terms of the solicitation or made the original terms less onerous, and thus less costly, the failure by a bidder to acknowledge receipt of the amendment did not render its bid nonresponsive, and the failure was properly waived.

DECISION

Holiday Inn-Laurel, Maryland protests the award of a contract to Howard Johnson Lodge, Baltimore, Maryland under invitation for bids (IFB) No. DTCG40-95-B-30058, issued by the United States Coast Guard to obtain lodging for crews working at the United States Coast Guard Yard, Baltimore, Maryland. Holiday Inn contends that since Howard Johnson did not acknowledge amendment No. 0001, its bid was nonresponsive and should have been rejected.

We deny the protest.

The IFB requested the submission of a unit price for both double- and single-occupancy rooms over 1-year base and 1-year option periods. The agency's requirements for the 12-month base year period were estimated to be 400 rooms. The proposed lodging facility had to be within a 17-mile radius of the Yard. Subsequent to the IFB's issuance, Holiday Inn asked for information relating to the large difference between the estimated needs for this contract and the previous contract, if subcontractors could be used to perform the contract, and what the typical schedule was for utilization of the hotel facility by the crews, *i.e.*, the estimated evening arrival and morning departure times and the number of days per

week rooms would be used. These questions were answered in amendment No. 0001. The amendment stated that the estimated room usage depended on the "estimated projected repair availabilities" and "estimated scheduled project work" and thus varied from year to year. The amendment further stated that the prime contractor could subcontract if it desired, but it alone would be held accountable for contract performance. Further, the amendment stated that arrival and departure times would be governed by hotel check-in and check-out times and that the number of days rooms would be used during a 1-week period depended upon the work that the crews would be doing. Bids were opened on June 15. Award was made to Howard Johnson.

Holiday Inn contends that Howard Johnson's bid should have been rejected as nonresponsive because the awardee failed to acknowledge receipt of the amendment which the protester asserts contained information critical to the preparation of bids.

A bidder's failure to acknowledge a solicitation amendment may be waived as a minor informality unless the amendment is material and acknowledgment is required so as to obligate the bidder to comply with the terms of the amendment. Hospitality Inn--Downtown, B-248750.3, Oct. 28, 1992, 92-2 CPD ¶ 291. An amendment is material when it has more than a trivial impact on price, quantity, quality, or delivery of the item being procured or would have an impact on the relative standing of the bidders. Coopers Constr., Inc., B-260364; B-260364.2, May 30, 1995, 95-1 CPD ¶ 268. No precise rule exists to determine whether an amendment is material--such a determination will be based on the facts of each case. Id.

We conclude that the amendment was not material and that the agency properly waived Howard Johnson's failure to acknowledge receipt of the amendment. In this regard, the amendment made no changes in the basic requirement for lodging services of 400 rooms for the 12-month base year period. In response to Holiday Inn's request for information, the agency confirmed in the amendment that subcontracting was permitted. We do not think this confirmation was material since the IFB did not prohibit subcontracting. Also, the amendment stated that length of occupancy would vary based on the projects at the Yard; this information, in our view, was not material since the IFB contained estimates of lodging services and stated that a bidder would not be obligated to accept any order in excess of 60 rooms or "three (3) months lodging." Finally, regarding arrival/departure times, the amendment stated that the awardee's regular check-in and check-out times

would govern. Again, we view this statement as merely providing information which confirmed what bidders already should have assumed since the IFB did not solicit anything other than routine lodging services. Coopers Constr., Inc., supra.

The protest is denied.

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