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DECISION



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

Protest of Bid Rejection as Nonresponsive

FILE: B-201339

DATE: March 10, 1981

MATTER OF: Signal, Inc.

DIGEST:

Failure to acknowledge prior to bid opening material amendment to IFB renders bid nonresponsive. However, failure to acknowledge timely amendment which decreases cost of contract performance is minor informality which may be waived.

On September 29, 1980, the Department of Transportation, Federal Aviation Administration (FAA), issued invitation for bids (IFB) DTFA09-80-B-20041 for the furnishing and installing of fire detection devices and associated equipment at the Air Traffic Control Tower, Lambert Field, St. Louis, Missouri.

The FAA issued two amendments to the IFB. Amendment No. 1 changed one specification, but it did not alter the bid opening date of November 4, 1980. Amendment No. 2 was issued to "clarify" that certain work mentioned in an IFB drawing was not, in fact, required for the contract and to extend the bid opening date to November 10, 1980.

Forty-one prospective contractors were solicited. The lowest of the six bids received was submitted by Signal, Inc. (Signal), on November 4, 1980. Signal's bid acknowledged receipt of amendment No. 1; however, Signal did not acknowledge amendment No. 2 until 2 days after bid opening.

The FAA contends that amendment No. 2 was material because "it affects price" and that Signal's failure to acknowledge the material amendment prior to bid opening renders the bid nonresponsive. Signal protests the FAA's decision. The FAA has withheld an award during the pendency of Signal's protest.

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We agree with the FAA that a bidder's failure to acknowledge, prior to bid opening, a material amendment to the IFB renders a bid nonresponsive. However, the failure of the low bidder to acknowledge timely an amendment which merely effects a decrease in price should be waived as a minor informality. Imperial Fashions, B-182252, January 25, 1975, 75-1 CPD 45; Mills Manufacturing Corporation, B-188672, June 15, 1977, 77-1 CPD 430. As we said in 41 Comp. Gen. 550, 553 (1962):

"* * * if we assume 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."

Moreover, in a situation where the bidder fails to acknowledge an amendment having the effect of decreasing the cost of performance, the bidder does not have the option of remaining silent and not receiving the award, since the Government may waive the failure to acknowledge the amendment and make award on the basis of the bid as submitted. Imperial Fashions, above.

Since the only possible effect of amendment No. 2 was to decrease the cost of performance, Signal's failure to acknowledge timely that amendment does not render its bid nonresponsive. Consequently, award may be made to Signal if the contracting officer finds Signal otherwise entitled to award.

The protest is sustained.

Milton J. Aroslan

Acting Comptroller General
of the United States