

# DECISION



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

FILE: B-209091.2

DATE: August 15, 1983

MATTER OF: Dynaweld, Incorporated

## DIGEST:

1. An amendment to a solicitation that explicitly states a technical feature of the equipment sought is not material where the specifications without the amendment already required bidders to supply equipment with that feature.
2. An amendment specifying information omitted from the solicitation is not shown to be material where the agency submits evidence, which the protester does not challenge, that the information was easily determinable without the amendment.

Dynaweld, Incorporated protests the award of a contract to Parkhurst Manufacturing Company, Inc. under solicitation No. DAAE07-82-B-5264 issued by the Department of the Army. The solicitation sought bids to supply a heavy-duty cargo trailer. Dynaweld contends that Parkhurst's bid was nonresponsive because the firm failed to acknowledge a material amendment to the solicitation.

We deny the protest.

Amendment 0002 to the solicitation set forth in major part the following revisions of the solicitation: (1) included the complete text of certain engineering changes, with some accompanying drawings, that had only been incorporated by reference in the original solicitation; (2) clarified the proper tire size by deleting a paragraph of Engineering Release Record (ERR) TAC-H-7774, dated November 24, 1981, which was incorporated into the solicitation and stated the wrong size, and by restating the proper size; (3) established the configuration of the wheel sought, which had previously been omitted; and (4) cross-referenced certain Army drawing numbers to the corresponding part numbers of the axle vendor.

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At bid opening, Parkhurst was the apparent low bidder. Two days later, the Army received Parkhurst's acknowledgment of amendment 0002 and thereafter notified Parkhurst that its bid had been rejected for failure to acknowledge the amendment. Parkhurst protested to the contracting officer and to this Office. The contracting officer subsequently determined that Parkhurst's failure to acknowledge amendment 0002 could be waived and awarded the contract to that firm. Thereafter, Parkhurst withdrew its protest and Dynaweld filed a protest here.

Dynaweld contends that amendment 0002 was material in two respects and thus Parkhurst's failure to acknowledge it could not be waived. First, Dynaweld argues that a provision of the solicitation established a precise order of precedence for construing the various sections of the specifications in the event they were inconsistent. Since ERR TAC-H-7774 was placed second in that order and contained the incorrect tire size, Dynaweld continues, offerors would have to have ignored any references to the correct tire size in other, lower-ordered portions of the provision until amendment 0002 deleted the paragraph of the ERR containing the incorrect size. In addition, Dynaweld emphasizes, amendment 0002 was material because it designated the type of wheel sought.

The Army argues that amendment 0002 was not material. Concerning the tire size, the Army asserts that, while the order of precedence clause listed ERR TAC-H-7774, which designated the wrong size, the solicitation without the amendment specified the correct size as follows:

1. the schedule, as revised by amendment 0001, noted that ERR TAC-H-7774 R1, dated April 20, 1982, applied;
2. ERR TAC-H-7774 R1 was set forth in full in the original solicitation to "update previously released technical data" and incorporated all changes shown in Engineering Change Proposal (ECP) TAC-J6533; and

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3. ECP TAC-J6533 identified the correct tire size.

The Army also notes that an ordnance drawing furnished under amendment 0001 stated the correct tire size.

Moreover, the Army continues, the appropriate wheel size was determinable from the tire size. The Army asserts that, by reference to the Tire and Rim Association Yearbook, which the Army emphasizes is the nationally-recognized industry standard for the design of tires and wheel rims, a bidder would have arrived at the wheel dimension set forth in amendment 0002. The Army notes that, while the Yearbook also listed another wheel dimension that, with modifications, would fit the correct tire size, either wheel would have functioned equally well on the cargo trailer.

Finally, the Army argues that the wheel's offset measurement and 8-hole stud configuration, both specified in amendment 0002, were determinable from the design of the axle. Since the remainder of the amendment was merely informational, the Army concludes, the amendment was not material.

We agree with the Army. An amendment that does not affect price, quantity, quality or delivery in other than a trivial manner, but only clarifies the existing solicitation, is not material, and thus a bidder's failure to acknowledge it may be waived. Defense Acquisition Regulation § 2-405(iv)(B) (1976 ed.); see 51 Comp. Gen. 293 (1971). In our view, amendment 0002 merely clarified the existing solicitation. For instance, we believe that, while the specifications without the amendment may have been somewhat cryptic concerning the correct tire size, they clearly required bidders to supply the size specified later in the amendment. Specifically, we note that although ERR TAC-H-7774 was incorporated into the solicitation and stated the incorrect size, the solicitation also incorporated ERR-H-7774 R1, which clearly updated the earlier ERR and cited an engineering change proposal designating the correct size. In addition, the specifications included an ordnance drawing that explicitly stated the correct size. Thus, the order of precedence, which operated only to resolve specification inconsistencies, was inapplicable because the

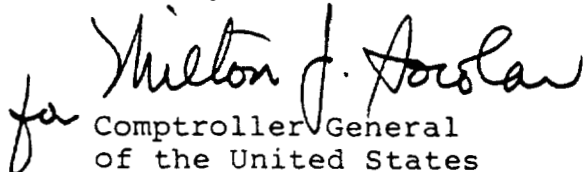
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specifications were not inconsistent. We conclude therefore that amendment 0002 was not material concerning the tire size.

We are also not convinced that amendment 0002 was material because it specified the size and other features of the wheel. The Army submits reasonable evidence, which Dynaweld has not challenged, that the proper wheel configuration was easily determinable, without the amendment, from the tire size and from the design specifications for the axle. We have held that an amendment is merely an explanation of the obvious and, as such, is not material where the unamended solicitation is susceptible of only one reasonable interpretation consistent with generally understood technical capabilities. Microform, Inc., B-208117, December 28, 1982, 82-2 CPD 582. In this case, the record shows that the solicitation without amendment 0002 was susceptible of only one reasonable interpretation since any possibility of supplying the wrong wheel was foreclosed by virtue of the axle design and the tire size. Therefore, the amendment was immaterial concerning the wheel.

Since Dynaweld does not assert that the remainder of amendment 0002 was material and, in our view, the amendment's additional provisions were strictly informational, we conclude that the waiver of Parkhurst's failure to acknowledge the amendment was proper.

The protest is denied.

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Comptroller General  
of the United States