

DECISION

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

House
26560

FILE: B-212465**DATE:** October 19, 1983**MATTER OF:** Lear Siegler, Inc.**DIGEST:**

1. An amendment to an IFB has been acknowledged constructively where the submission of the bid on the extended date for bid opening as set by the amendment clearly demonstrates that the bidder had received the amendment and was aware of its contents.
2. In determining the low bidder under an IFB, an agency may not consider the expense of changing contractors unless the IFB indicates that such costs will be considered.

Lear Siegler, Inc. protests the award of any contract to AAI Corporation under invitation for bids (IFB) No. F04612-83-B-0018 issued by the Department of the Air Force. Lear Siegler alleges that AAI's low bid is nonresponsive because of AAI's failure to acknowledge receipt of a material amendment to the IFB. We deny the protest.

The solicitation was issued on May 31, 1983 to obtain console operators to man the T45 Navigator Flight Simulator at Mather Air Force Base, California. The solicitation's schedule indicated that estimated yearly operator hours were required as follows: 7,428 for fiscal year 1984; 7,392 for fiscal year 1985; and 7,656 for fiscal year 1986. Prior to the scheduled July 6 bid opening, contracting personnel discovered that the monthly work hours stated in Technical Exhibit No. 4 to the solicitation's specifications did not coincide with the estimated yearly operator hours expressed in the schedule. Accordingly, the Air Force issued an amendment to correct this discrepancy. For example, Technical Exhibit No. 4 had erroneously indicated that monthly requirements for 1984 would be 596; by the amendment, this was changed to the correct figure of 619 (7,428 divided by 12). The amendment also extended bid opening to July 20.

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Lear Siegler, the second low bidder, protests that AAI's low bid is nonresponsive because the firm failed to acknowledge, in its bid, receipt of the amendment. Lear Siegler argues that the amendment was material in that it might have caused a bidder who had calculated its bid price based on the monthly requirements stated in Technical Exhibit No. 4 to change its price when it received the amendment.

The Air Force disputes Lear Siegler's argument that the amendment was material. The agency also points out that section L of the solicitation provided that in the event of any inconsistencies in solicitation provisions, the items of the schedule would take clear precedence over the specifications, which would include Technical Exhibit No. 4. AAI notes that the amendment itself indicated that it did not have to be signed or returned, which the firm argues is evidence of the amendment's non-materiality. AAI also points out that it submitted its bid on the extended bid opening date, which proves that the firm received and considered the amendment in preparing its bid.

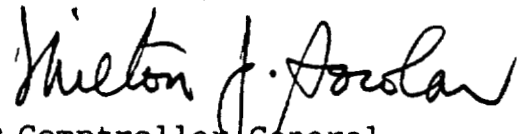
Generally, the failure of a bidder to acknowledge the receipt of an amendment or to demonstrate clearly an obligation to perform the amendment's requirements renders the bid nonresponsive. S&D Mechanical Contractors, B-209535, April 15, 1983, 83-1 CPD 411. There are, however, exceptions to the basic rule. Under Defense Acquisition Regulation (DAR) § 2-405(iv)(B) (1976 ed.), a failure to acknowledge an amendment may be waived if the amendment is not material, that is, it does not affect in other than a negligible manner either price, quantity, quality or delivery, or the relative standing of the bidders. M. C. Hodom Construction Company, Inc., B-209241, April 22, 1983, 83-1 CPD 440. In addition, where an amendment extends the bid opening date, the submission of a bid on the new date may constitute constructive acknowledgment of the amendment. Arrowhead Linen Service, B-194496, January 17, 1980, 80-1 CPD 54; see DAR § 2-405(iv)(A).

Even if we were to agree with Lear Siegler's contention that the amendment was material, we find that there was constructive acknowledgment by AAI. As stated earlier, the amendment extended the bid opening date from July 6 to July 20. The fact that AAI submitted its bid on the latter date clearly demonstrates that the firm had received the

amendment and was aware of its contents. Baker Manufacturing Company, Inc., et al. 59 Comp. Gen. 573 (1980), 80-2 CPD 1; Arrowhead Linen Service, supra. We therefore see no basis to conclude that AAI based its bid price on other than the yearly operator hours stated in the IFB's schedule.

Lear Siegler, as the incumbent, also protests that the small difference in price between its bid and the low bid of AAI does not justify the expense to the government of changing contractors. There is no legal merit to Lear Siegler's argument. The contract in a formally advertised procurement must be awarded to the low bidder as determined by the evaluation terms of the IFB. See Emerson Electric Company, B-209272, November 4, 1982, 82-2 CPD 409. Because the Air Force's IFB did not include the cost of changing contractors as a factor in evaluating bids, that cost could not properly be considered. If Lear Siegler believed that such cost should have been a factor in determining the low bidder, the firm should have complained about the IFB's failure to so state before bids were opened on July 20. See 4 C.F.R. § 21.2(b)(1) (1983).

The protest is denied.

for 
Comptroller General
of the United States