

DECISION

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

26743

FILE: B-211454**DATE:** November 14, 1983**MATTER OF:** Black People of America**DIGEST:**

The failure of the low bidder to acknowledge an amendment in a solicitation for painting may be waived because the bid without the amendment leaves the government free to award a contract consistent with the requirements specified in the unacknowledged amendment.

Black People of America (BPOA) protests the award of a painting contract to Hellas Painting Contractor under invitation for bids (IFB) DAKF 70-83-B-0043 issued by the Department of the Army. BPOA contends that Hellas is nonresponsive because it failed to acknowledge Amendment 2 to the IFB. The Army concedes that Hellas did not do so, but contends that the defect is a minor informality which it may waive because the amendment merely clarified its requirements and did not materially alter them. We agree with the Army and deny the protest.

The IFB solicited bids for interior painting at Fort Richardson, Alaska. As originally issued, the IFB tabulated 13 separate categories of work to be done, including the following:

<u>Surface</u>	<u>1st coat</u>	<u>2nd coat</u>	<u>3rd coat</u>
Interior gypsum board, concrete, concrete brick cement board.	TF-E-543	TT-P-1511	Type 1

This was amended by Amendment 2 to read as follows:

027145

<u>Surface</u>	<u>1st Coat</u>	<u>2nd coat</u>	<u>3rd coat</u>
Interior gypsum board, concrete, concrete brick cement board.	TP-E-543	TT-P-1511 Type 1	None

TT-P-1511 designates the Federal Specification for Latex Paint. Type 1 is a semi-gloss paint.

According to the Army, Hellas' failure to acknowledge Amendment 2 is waivable. It says the change merely clarified its requirement by deleting "Type 1" under the heading "3rd Coat" and by inserting "None" because no third coat was required. The description "Type 1" was then placed under the heading "2nd Coat", the Army says, to clarify that a semi-gloss latex second coat was required. In the Army's view, this placed no additional burden on the bidders, but if anything, reduced the requirement because it made it clear that no third coat was required.

On the other hand, BPOA insists that Amendment 2 was material in that it obviously was intended to correct an ambiguity in the IFB. The amendment has an impact on price, BPOA says, because it imposed a requirement that the second coat be type 1 (semi-gloss) paint. Prior to the amendment, BPOA points out, the contractor had a choice of paints for the second coat. The amendment also had an impact on price, BPOA says, because it eliminated the third coat.

The Army may waive Hellas' failure to acknowledge the amendment. Paint specification TP-E-543 is used throughout the specification as a first or primer coat. TT-P-1511 specifies two types of interior latex paint--type I (semi-gloss) and type II (gloss). There is no paint specification designated simply as type I, the original paint specified for the third coat in the unamended solicitation. As a result, the reference to type I only can be given meaning by reading it in conjunction with TT-P-1511, and the bid can only be interpreted as offering to provide a finish coat of semi-gloss paint. While arguably Hellas, by failing to acknowledge the amendment, offered to furnish an extra (third) coat of paint, the fact that a bidder offers to do something extra does not preclude acceptance of a bid. Abhe & Svoboda, Inc., B-202493, July 27, 1981, 81-2 CPD 63. The Army, therefore, is free to award a

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contract to Hellas consistent with its needs as set forth
in Amendment 2.

The protest is denied.

Milton J. Jordan

Acting Comptroller General
of the United States