

**DECISION**



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

**FILE:** B-216571; B-216571.2; **DATE:** May 17, 1985  
B-216571.3  
**MATTER OF:** Walsky Construction Co.; A&A Roofing Co.,  
Inc.; Pacific Rainier Roofing, Inc.

**DIGEST:**

Bid is responsive where bidder acknowledged an amendment transmitting a revised bid form but submitted its bid on the unamended bid form because it is clear from the acknowledgement that bidder intended to comply with amended bid acceptance period requirement and that the use of the unamended form was merely an oversight.

Walsky Construction Company protests that the bids submitted by A&A Roofing Co., Inc. and Pacific Rainier Roofing, Inc. under invitation for bids (IFB) No. DACA85-84-B-0055, issued by the Army Corps of Engineers are nonresponsive because they were submitted on the improper bid form. A&A Roofing and Pacific Rainier, on the other hand, maintain that Walsky's bid under the same solicitation is nonresponsive because it was qualified as to the amount of work that Walsky would accept.

We deny Walsky's protest and we dismiss A&A Roofing's and Pacific Rainier's protests because Walsky is not the low bidder.

Background

The solicitation was for roofing work at Fort Wainwright. The bidding schedule was substantially as follows:

SCHEDULE A	Lump sum \$ _____
SCHEDULE B	Item 1, Lump sum \$ _____
	Item 2, Lump sum \$ _____
	Total of Items 1 & 2 \$ _____
	Total of Schedules A & B \$ _____

The solicitation stated: "Award will be made to the low responsive, responsible bidder or bidders on Schedule A and B together or separately, whichever is in the best interest of the government."

The solicitation also included Standard Form 21 which contained a provision stating "the undersigned agrees that, upon written acceptance of this bid . . . within \_\_\_\_\_ calendar days . . . after the date of opening," it will execute the required forms and bonds. The agency erroneously inserted "10" in the blank, which is normally to be completed by the bidder. This resulted in an obvious discrepancy with another solicitation provision stating that bids offering less than 30 days for acceptance would be rejected.

Consequently, the agency issued an amendment to correct the erroneous bid form. The amendment contained a revised Standard Form 21 which omitted the "10" in the bid acceptance blank and changed the provision limiting bid acceptance form 30 days to 60 days. This amendment required that it be acknowledged but it did not specifically state that bids should be submitted on the revised form.

The Army received three bids. Although all bidders acknowledged receipt of the amendment regarding Standard Form 21, A&A Roofing and Pacific Rainier submitted their bids on the original unamended form. Walsky's bid, submitted on the amended bid form, contained the following statement: "Our bid is based on the inclusion of at least one item of Schedule B. Schedule A will not be accepted alone."

The bids were as follows:

	Schedule A	Schedule B	Total
Walsky		Item 1: \$383,333	
		Item 2: 383,333	
	\$227,766	Total: 766,666	994,432
A&A Roofing		Item 1: 355,670	
		Item 2: 355,273	
	\$319,720	Total: 710,943	1,030,663
Pacific Rainier		Item 1: 380,726	
		Item 2: 380,726	
	\$280,660	Total: 761,452	1,042,112

B-216571; B-216571.2; B-216571.3

The Corps maintains that the IFB requires award to be made in the aggregate or on the basis of schedule A and B separately, whichever would result in the lowest cost to the government. Walsky's bid is the lowest aggregate bid. The cost to the government would be lower, however, if schedule B were awarded to A&A Roofing and schedule A to Walsky. Walsky's qualification prevented such an award. Therefore, the Corps proposes to award schedule A to Pacific Rainier, the next low bidder on that schedule and schedule B to A&A Roofing. This split award would result in a lower price than an aggregate award to Walsky. Walsky, however, maintains that it is entitled to the award because the A&A Roofing and Pacific Rainier bids are nonresponsive. Walsky also argues that even if the other two bids are responsive, it is entitled to at least part of the award because an award based on Walsky's bid on schedule A and item 1 of schedule B along with A&A Roofing's bid on item 2 of schedule B would result in the lowest cost to the government.

Walsky essentially contends that A&A Roofing's and Pacific Rainier's acknowledgment of the amendment along with their use of the unamended bid form rendered their bids ambiguous and thus nonresponsive. We disagree.

A bidder can obligate itself to the contents of some amendments merely by acknowledging their receipt (amendments changing certain specifications, for example), Fischer-White-Rankin Contractors, Inc., B-213401, Apr. 24, 1984, 84-1 CPD ¶ 471. It is possible to argue that by acknowledging the amendment but submitting their bids on the unamended form including the number "10" in the space provided for the bidder's offered bid acceptance period, both A&A Roofing and Pacific Rainier submitted bids which included 10-day bid acceptance periods. We think it is more reasonable to assume, as the Corps argues, that because both A&A Roofing and Pacific Rainier acknowledged the amendment, they intended to comply with the amended 60-day bid acceptance period requirement and the use of the unamended form was merely an oversight. In this connection, we note that the amendment did not require that bids be submitted on the revised form and, in fact, stated that the revised pages "are substituted for the superseded page(s)." That phrase certainly implies that the revised form would be incorporated by acknowledging the amendment.

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3/22/4

B-216571; B-216571.2; B-216571.3

Regarding Walsky's argument that it is entitled to the award even if the other bids are responsive based on splitting the award so that Walsky receives award on schedule A and one item under schedule B, the solicitation clearly provides for splitting the award only between schedules A and B. It does not permit an award splitting the two items under schedule B. The award therefore should be made, if otherwise appropriate, on the basis set forth by the Corps.

We need not consider Pacific Rainier's and A&A Roofing's protests that Walsky's bid is nonresponsive since we have concluded that their bids are responsive and thus Walsky is not in line for award.

We deny Walsky's protest and dismiss those of A&A Roofing and Pacific Rainier.

*Harry R. Van Cleve*  
Harry R. Van Cleve  
General Counsel