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**DECISION**



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

**FILE:** B-219993.2 **DATE:** December 24, 1985  
**MATTER OF:** Comet Cleaners Company

**DIGEST:**

Bid is nonresponsive when it fails to acknowledge amendment that changed payment clause from one providing for monthly payment based on quantities in the contract subject to an adjustment in price if quantities varied by plus or minus 5 percent to one providing for payment based on the actual workload quantity.

Comet Cleaners Company (Comet) protests the rejection of its low bid as nonresponsive under invitation for bids (IFB) No. DAKF23-85-B-0061 issued by Fort Campbell, Kentucky, for operation of a laundry/dry cleaning facility.

We deny the protest.

Comet's bid was rejected as nonresponsive for failure to acknowledge a material amendment and for failure to comply with an IFB provision limiting the price for special one-day laundry service.

The amendment, among other things, changed the payment clause. Under the original clause, the contractor was to receive a monthly payment based on the quantities in the contract subject to an adjustment in price if the quantities varied by plus or minus 5 percent. The amendment deleted the plus or minus 5 percent adjustment provision and provided instead that the monthly payment would be made for the actual workload quantity.


AS Comet points out, the amendment is more favorable to the contractor from the standpoint of increased workload. Under the amendment, the contractor is paid for the actual quantities serviced whereas, under the original clause, the contractor is paid only for extra quantities when they are 5 percent or more. Where a bidder fails to acknowledge an amendment that results in a less stringent requirement, the

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amendment usually may be waived as a minor informality.  
Patterson Enterprises Ltd., B-207105, Aug. 16, 1982, 82-2  
C.P.D. ¶ 133.

However, at the same time that the amendment is less stringent, it is more onerous. Under the amendment, the payment to the contractor will be reduced if the quantities are reduced at all whereas under the original clause the contractor would have been entitled to the same payment as long as the quantity reduction did not reach 5 percent. Here, by failing to acknowledge the amendment, Comet has restricted the government's right to reduce the price if there is any reduction in workload. While it may be speculative as to whether the adjustment provision will become operative, we consider the failure to acknowledge the amendment as having a material effect upon the government's right to adjustment. Where bids take exception to contract provisions, we have considered the bids to be nonresponsive even though it is speculative whether the government will exercise its rights under the provisions in administering the contracts. Hewlett-Packard Co., B-216530, Feb. 13, 1985, 85-1 C.P.D. ¶ 193. Although the failure to acknowledge the amendment in this case may not have been deliberate, the effect of the failure is the same as if it were. Accordingly, we agree with the agency that Comet's bid was nonresponsive.

In view of our conclusion that the failure to acknowledge the amendment rendered the bid nonresponsive, there is no need to address the propriety of the other basis upon which the agency determined Comet's bid to be nonresponsive.

*for*   
Harry R. Van Cleve  
General Counsel