



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: MIBO Construction Co.

File: B-224744

Date: December 17, 1986

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### DIGEST

1. An amendment which deletes the option of using asbestos roofing materials in the construction of a building is material since it significantly affects the quality of performance; thus, rejection of a bid as nonresponsive for failure to acknowledge receipt of the amendment is proper.

2. A nonresponsive bid may not be accepted even though it would result in monetary savings to the government since acceptance would be contrary to the maintenance of the competitive bidding system.

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### DECISION

MIBO Construction Company protests the rejection of its low bid as nonresponsive under invitation for bids (IFB) No. N62472-86-B-4465, issued by the Department of the Navy for the construction of a paint storage building at the Philadelphia Naval Shipyard. The Navy rejected MIBO's bid for failure to acknowledge receipt of an amendment, which the contracting officer determined was material because it significantly affects the type of material and the system to be used for the roofing on the paint storage building. MIBO argues that its bid was improperly rejected since the amendment was not material.

We deny the protest.

The IFB was amended four times prior to bid opening. MIBO acknowledged the first three amendments but did not acknowledge the fourth one. Amendment four expressly deleted asbestos roofing material as a permissible option wherever mentioned in the IFB due to its hazardous nature. The amendment also deleted one of two acceptable roofing systems, allowed by the original IFB, because of its use of asbestos felt. The amendment thereby specified only one roofing system, a glass mat system which does not utilize asbestos, as the only system that would meet the agency's needs.

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Where a bidder fails to acknowledge a material solicitation amendment, the bid must be rejected as nonresponsive. Doyon Construction Co., Inc., 63 Comp. Gen. 214 (1984), 84-1 C.P.D. ¶ 194. If the amendment is determined not to be material, the failure to acknowledge can be waived as a minor informality. Doyon Construction Co., Inc., 63 Comp. Gen. at 215, 84-1 C.P.D. ¶ 194 at 2. An amendment is material where it would have more than a trivial impact on the price, quantity, quality or delivery of the item bid upon. Federal Acquisition Regulation, 48 C.F.R. § 14.405(d)(2) (1985).

MIBO argues that amendment four is not material because it could have no impact on its price other than to lower its already low bid, thereby maintaining the relative standing of the bidders. The Navy argues that it is unnecessary to consider materiality on the basis of price since the amendment had more than a de minimus effect on the quality of the product that could be offered. We agree that, even if the impact on price is trivial, where an amendment affects the quality of performance in more than a negligible way, the amendment is material. See L. B. Sanford, Inc.; Geiger Co., B-215859; B-215859.2, Nov. 14, 1984, 84-2 C.P.D. ¶ 533.

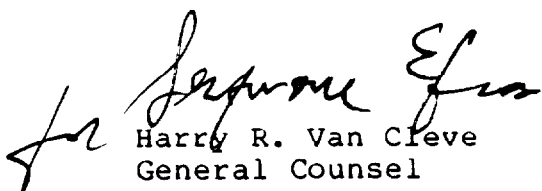
MIBO also argues, however, that the amendment is not material as to quality since the changes made provided for only a decrease in the obligation of the bidders. MIBO cites Titan Mountain States Construction Corp., B-183680, June 27, 1975, 75-1 C.P.D. ¶ 393, in support of this conclusion. In Titan Mountain States, we held that a low bidder's failure to acknowledge an IFB amendment could be waived where the changes made either deleted or relaxed a portion of the specification provisions, substantially decreased the cost of certain aspects of performance, and increased the cost of the remaining aspects of performance by a trivial amount. In Titan Mountain States, we found that the low bid, which failed to acknowledge receipt of the amendment, represented an offer to perform pursuant to acceptable but higher standards than ultimately called for in the amendment since the original, more onerous, specifications were equally acceptable to the government. The rule in Titan Mountain States is not controlling here because MIBO's low bid does not represent an offer to perform pursuant to acceptable but higher standards since the purpose of amendment four was to delete the use of asbestos roofing material as an acceptable specification option. The original specifications were, thus, no longer acceptable to the government.

Given the inherently hazardous nature of asbestos, there is a significant difference between the asbestos roofing material and the alternative roofing materials called for in the IFB. The amendment deleting the optional use of asbestos was, therefore, a material change in the quality of the performance solicited in the IFB, regardless of its possible impact on bid prices or the relative standing of the bidders. The Navy, thus, properly rejected MIBO's low bid as nonresponsive for failure to acknowledge a material amendment.

In its comments on the Navy's report on the protest, MIBO states that it is willing to perform the contract in accordance with the amended IFB and that it would be unreasonable to expect it to do otherwise since the use of asbestos involves a more dangerous and costly roofing system. MIBO concludes that acceptance of its low bid would result in furnishing the government's needs at the lowest price.

If a contract were awarded to MIBO, the changes in the requirements of the quality of the roofing system would not be legally enforceable upon it since it failed to acknowledge receipt of the amendment making those changes. Thus, the Navy would bear the risk that the completed system would not meet its needs, as stated in the amended IFB, in that MIBO would be free to use asbestos materials despite its current statements to the contrary. See Doyon Construction Co., Inc., 63 Comp. Gen. 215 at 217 (1984), 84-1 C.P.D. ¶ 194 at 4. Although rejection of MIBO's bid may result in additional cost to the government on this procurement, we have consistently held that a nonresponsive bid may not be accepted, even though it would result in savings to the government, since such acceptance would compromise the integrity of the competitive bidding system. Vertiflite Air Services, Inc., B-221668, Mar. 19, 1986, 86-1 C.P.D. ¶ 272.

The protest is denied.

  
Harry R. Van Cleave  
General Counsel