



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Delta International Machinery Corporation
File: B-229800
Date: March 3, 1988

DIGEST

Where solicitation required first article test report and commercial manuals, and amendment only added separate line items for pricing these requirements, bidder's failure to acknowledge the amendment may be waived as minor informality where bidder was eligible for waiver of first article and where solicitation stated that omission of prices for manuals would be construed to mean that cost of manuals is included in the offered price for the principal item.

DECISION

Delta International Machinery Corporation protests the Defense Logistics Agency's (DLA) award of a contract to General Manufacturing Company of Canada under invitation for bids (IFB) No. DLA400-87-B-5785 for upright drilling machines. Delta contends that General failed to acknowledge an amendment to the solicitation, rendering its bid nonresponsive, and that award of the contract to General was therefore improper.

We deny the protest.

The IFB was issued on June 16, 1987, and required first article testing, but did not provide a separate line item for bidders to price the first article test report. Additionally, the IFB included clause L46, "Waiver of First Article Approval Test," in which the government reserved the right to waive the first article approval test where supplies identical or similar to those called for in this solicitation have been previously furnished by the bidder and have been accepted by the government. The IFB also required bidders to provide commercial manuals for the drilling machines but did not include separate line items for pricing the manuals. DLA issued amendment 0001 on

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July 14, 1987, which extended the bid opening time and added separate line items for pricing the first article test report and the commercial manuals.

When bids were opened, General's bid was the second low among the six timely received bids. Delta's bid was third low. Both the low bidder, American Machine Tool Company, and General failed to acknowledge amendment 0001 by the designated bid opening deadline. The agency's Directorate of Quality Assurance determined that first article testing could not be waived for American because it had no evidence that the firm had ever performed or received first article approval for the equipment being procured. Consequently, American's bid was rejected as nonresponsive. However, waiver of first article was recommended for General because first article approval had already been given for a similar item under a previous contract for which General was the supplier with "no adverse quality recorded." DLA waived first article and awarded the contract to General. This protest followed.

Generally, a bid that does not include an acknowledgement of a material amendment must be rejected because absent such an acknowledgement, the bidder is not obligated to comply with the terms of the amendment, and its bid is thus nonresponsive. Delco Industrial Textile Corp., B-223968, Oct. 29, 1986, 86-2 CPD ¶ 490. An amendment is material, however, only if it would have more than a trivial impact on the price, quantity, quality, or delivery terms. See Federal Acquisition Regulation § 14.405 (FAC 84-12). Further, an amendment is not material where it does not impose any legal obligations on the bidder different from those imposed by the original solicitation, as, for example, where it merely clarifies an existing requirement. Pittman Mechanical Contractors, Inc., B-225486, Feb. 25, 1987, 87-1 CPD ¶ 218. In such cases, the failure to acknowledge the amendment may be waived and the bid may be accepted. Id.

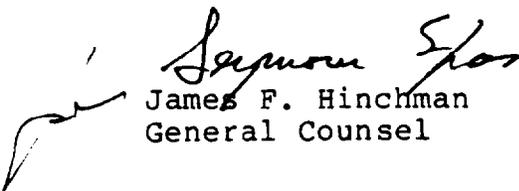
Here, the amendment merely provided a separate line item for bidders to price first article test reports and, thus, was of concern only to those bidders that were not eligible for waiver of first article. Since the agency waived first article for General, the amendment had no impact on the price, quantity, quality, or delivery terms of General's offer. It is therefore clear that this portion of the amendment is not material as to General, and its omission did not render General's bid nonresponsive.

Delta also alleges that General's bid was nonresponsive because its failure to acknowledge amendment 0001 meant that it failed to submit prices for the commercial manuals as separate line items. The agency contends, however, that

General's bid already included the obligation to furnish the manuals, and thus the firm's failure to acknowledge the amendment could be waived as a minor informality. The IFB included Clause M8, "Evaluation of Manuals," which provided that bids would be evaluated "on the basis of furnishing two manuals with each end item; if the offeror fails to indicate a unit price for manuals, it will be construed to mean that the cost of acceptable manuals, in the quantity required, is included in the offered price for the applicable end item(s) and the offer will be evaluated accordingly."

Thus, in our view, General was already legally bound by its bid to furnish the required commercial manuals at no extra charge. The firm's acknowledgement of amendment 0001 would not have represented any additional legal obligation for General. We therefore conclude that this portion of the amendment was not material as to General's bid and that the firm's failure to acknowledge the amendment could properly be waived as a minor informality.

The protest is denied.



James F. Hinchman
General Counsel