The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: DeRalco, Inc.

File: B-233996

Date: March 29, 1989

DIGEST

Contracting officer properly accepted bid that failed to acknowledge a solicitation amendment that required contractor to transport less than 200 pounds of government-furnished equipment 5 miles to the work site, since the work had no significant cost or other impact on performance, and thus was not material.

DECISION

DeRalco, Inc. protests the award of a contract to Hightower Construction Company, under invitation for bids (IFB) No. N62467-87-B-0237, issued by the Department of the Navy for the modernization of the truck and railroad loading facility at the Naval Supply Center in Charleston, South Carolina.

We deny the protest.

As issued, the solicitation required the contractor to install two Scully model ST-6-ELK, high level alarm control units (and corresponding Scully model SC-6AS connector kits), to be supplied to the contractor as government furnished equipment (GFE), for use in monitoring the automated loading of tank trucks with petroleum; in addition, the IFB generally required the contractor to furnish all minor materials and work not specifically mentioned but nevertheless necessary for the proper completion of the project. Subsequently, the Navy amended the solicitation (amendment No. 0001) to add the following provision with respect to the GFE:

> "Government-furnished...materials and equipment are located within 5 miles of the job site. The Contractor shall load, transport, unload, uncrate, assemble, install, connect, and test all new and existing Government-furnished materials and equipment. New Government-furnished equipment

> shall be uncrated by the Contractor in the presence of the Contracting Officer's Representative to determine any damage or missing parts. The Contractor shall notify the Contracting Officer in writing at least 14 days in advance of the date the Government-furnished material or equipment will be needed."

Although Hightower submitted the apparent low bid of $612,000, it failed to acknowledge receipt of amendment No. 0001; Hightower subsequently explained that it had not been provided with the amendment when it picked up its bid package. The contracting officer determined that the failure to acknowledge the amendment properly could be waived as a minor informality pursuant to Federal Acquisition Regulation (FAR) § 14.405(d)(2), and made award to Hightower. Thereupon, DeRalco, the second low bidder, with a bid of $619,142, filed this protest with our Office.

DeRalco argues that amendment No. 0001 was material, and that Hightower's bid therefore should have been rejected as nonresponsive, because the amendment imposed new, substantial obligations on the contractor. Specifically, the amendment required the contractor to load, transport, unload, uncrate, assemble, install, connect, and test pieces of costly, highly sophisticated electronic equipment; that it assume liability for the safe transport of the equipment to the project site; and that it assume the additional risk of providing a 14-day notice of its need for the GFE and then wait to uncrate the equipment until a representative of the contracting officer was present. DeRalco asserts that it was prejudiced competitively by Hightower's failure to acknowledge the amendment, because DeRalco increased its bid by $10,000 to cover the extra work and risk created by the amendment and would have been the apparent low bidder had it not had to do so.

The Navy concedes that the amendment imposed a new obligation upon the contractor, i.e., to transport the GFE for a distance of up to five miles. However, the agency maintains that the impact of the additional work was trivial at most. In this regard, the agency reports that the two control units are relatively small (15"x14"x8") and lightweight (55 pounds each), and that, likewise, the connectors consist of 20 feet of coiled cable that only weigh 13 pounds per kit. In addition, the agency points out that no special packaging was required, as the control units were already packed in explosion-proof enclosures and the cables were encased in plastic, and that no additional employees or special vehicles were necessary for transport.

Moreover, the Navy contends, since the solicitation as issued already required the contractor to maintain comprehensive general liability coverage ($500,000), automobile liability coverage ($200,000 per person and $500,000 per occurrence), workmen's compensation, and employer's liability coverage ($100,000), and the value of the GFE itself was only $5,558, the added responsibility of transporting the GFE for five miles would result in no significant change in the contractor's exposure to liability. Finally, the Navy asserts that the 14-day notice requirement and the requirement that a government representative be available at the uncrating should not have presented any cost burden from possible delays, since the solicitation allowed 240 days for contract performance.

A bidder's failure to acknowledge a material amendment to an IFB renders its bid nonresponsive since, absent such an acknowledgement, the government's acceptance of the bid would not legally obligate the bidder to meet the government's needs as identified in the amendment. However, an amendment is material only if it would have more than a trivial impact on price, quantity, quality, or delivery of the item bid upon, or would have an impact on the relative standing of bidders. See Federal Acquisition Regulation § 14.405(d)(2); Star Brite Construction Co., B-228522, Jan. 11, 1988, 88-1 CPD ¶ 17. A bidder's failure to acknowledge an amendment that is not material is waivable as a minor informality. See Power Service, Inc., B-218248, Mar. 28, 1985, 85-1 CPD ¶ 374. No precise rule exists to determine whether a change required by an amendment is more than negligible; rather, that determination is based on the facts of each case. Wirco, Inc., B-220327, 65 Comp. Gen. 255 (1986), 86-1 CPD ¶ 103.

We do not find that the language added by the amendment imposed any significant legal obligations different from those imposed under the solicitation as issued; there is no evidence that the amendment would significantly increase the cost of performance. The contractor already was responsible for installing the alarm control units, including furnishing any minor materials and work necessary for installation; once the contractor installed and connected the equipment, the original solicitation required it to conduct a complete test of the automated petroleum dispensing system, of which the alarm control units were one component. Further, since the solicitation as issued did not make any specific provision for when and how the government would furnish the alarm control units, and in view of the 240-day period of performance, we think the requirement to give the Navy 14 days notice to furnish the GFE reasonably can be viewed as a clarification of how the contract would operate.

Similarly, the requirement to transport the alarm control units was an insignificant added task that we find should not have had any material effect on the cost of performance. The load was relatively small and lightweight, already packaged, and should not have required any special transport arrangements; moreover, as the GFE was located a maximum of five miles from the job site, no significant amount of time should have been required for transport. We also agree with the Navy that the contractor was subjected to no significantly increased liability from the transportation requirement. The contractor already was required to maintain extensive insurance coverage, and the equipment itself was worth only $5,558. Indeed, DeRalco has alleged no increase in its cost of insurance as a result of the amendment.

Although DeRalco has provided our Office with a letter from a potential electrical subcontractor stating that the transportation requirement added by the amendment caused it to increase its quotation to DeRalco by $10,000, we do not find this evidence persuasive. In our view, the subcontractor's statement is no more than a blanket statement by a party in interest that does not detail or explain how the amendment increased its performance cost; the subcontractor provided neither its worksheets nor any other evidence explaining how its quotation was affected by the amendment. Similarly, DeRalco has not furnished us a copy of the subcontractor's quotation, its own worksheets, or any evidence that DeRalco's bid reflects some increased cost due to amendment No. 0001.

We conclude that the amendment was not material, and that the Navy thus properly could waive Hightower's failure to acknowledge the amendment as a minor informality.

The protest is denied.

James F. Hinchman
General Counsel