

C. Sklarew



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Star Brite Construction Company, Inc.

File No: B-238428

Date: April 5, 1990

Gregory M. Maguire, Esq., DeNoia & Greene, for the protester.
Judith A. Sukol, Esq., and Captain Shelley R. Econom, Department of the Army, for the agency.
Christina Sklarew, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting agency properly may accept low bid that failed to acknowledge solicitation amendments making changes that were merely a matter of form, imposing no new legal obligations.

DECISION

Star Brite Construction Company, Inc., protests the proposed award of a contract to LaMirage Builders, Inc., for the repair and replacement of roofs at Fort Monmouth, New Jersey, under invitation for bids (IFB) No. DAAB08-90-B-0002, issued by the Department of the Army. Star Brite contends that LaMirage's bid should have been rejected as nonresponsive because it failed to acknowledge two amendments to the IFB until after bids had been opened. We deny the protest.

The Army concurrently issued the IFB with amendment No. 0001, which changed the original dates for the site visit and bid opening. The agency later issued amendment Nos. 0002 and 0003. The second amendment replaced the bidding schedule in order to eliminate some redundant pricing lines that had been included in the original schedule. For example, the unamended schedule included a line for the insertion of a price for item 0002 as well as pricing lines for subline items 0002AA and 0002AB; however, item 0002 merely reflected the sum of the subline items, 0002AA and 0002AB, and was not an additional item involving

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an additional price. Under the amended schedule, only the pricing lines that actually required the insertion of subline prices were included. The third amendment extended the bid opening date by two weeks.

LaMirage submitted a timely low bid which acknowledged amendment No. 0001. It later submitted its acknowledgment of the other two amendments by mailgram, which did not, however, reach the contracting officer until after bid opening. The contracting officer waived the firm's failure to acknowledge these amendments as a minor informality, finding that they were administrative in nature. This protest followed.

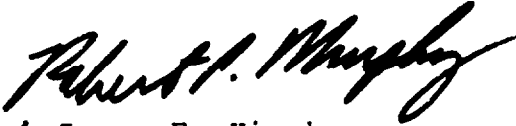
Star Brite contends that amendment No. 0002 was material because the bidding format provided in the unamended IFB (with the extra pricing lines) was ambiguous and could have been generally confusing to bidders, resulting in ambiguously priced bids.

Generally, a bidder's failure to acknowledge a material amendment to an IFB renders the bid nonresponsive, since absent such an acknowledgment the government's acceptance of the bid would not legally obligate the bidder to meet the government's needs as identified in the amendment. Pittman Mechanical Contractors, Inc., B-225486, Feb. 25, 1987, 87-1 CPD ¶ 218. An amendment is material, however, only if it would have more than a trivial impact on the price, quantity, quality, delivery, or the relative standing of the bidders. Id.; Federal Acquisition Regulation § 14.405 (FAC 84-53). An amendment is not material where it does not impose any legal obligations on the bidder different from those imposed by the original solicitation; that is, for example, where it merely clarifies an existing requirement or is a matter of form. In that case, the failure to acknowledge the amendment may be waived and the bid may be accepted. Star Brite Constr. Co., Inc., B-228522, Jan. 11, 1988, 88-1 CPD ¶ 17.

Here, while the protester has asserted that a bid submitted under the original schedule would be ambiguous, the record shows that LaMirage's bid in fact was precisely the same as it would have been under the amended schedule, since the firm ignored the redundant pricing lines on the original schedule, inserting only the necessary subline prices. We therefore conclude that LaMirage's failure to acknowledge this amendment properly was waived since the amendment had no impact whatsoever on its bid.

Similarly, amendment No. 0003, which extended the bid opening date, had no impact on price, quantity, quality, or delivery. The failure to acknowledge receipt of an amendment that merely extends the bid opening date may be waived as a minor informality. Combustion Equip. Co., Inc., B-228291, Dec. 24, 1987, 87-2 CPD ¶ 627.

The protest is denied.


for James F. Hinchman
General Counsel