



Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Pacer Contracting Corporation

**File:** B-241644

**Date:** February 20, 1991

Terry L. Salazar, Esq., Winstead, Sechrest & Minick, P.C., for the protester.

Lester Edelman, Esq., Department of the Army, for the agency. Paula A. Williams, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Bid submitted on the original bid schedule instead of the amended bid schedule was properly rejected as nonresponsive, although the bid expressly acknowledged the amendments, because the requirements described on the original bid schedule do not encompass the additional requirements described on the amended bid schedule. At best, it is unclear if the bidder bound itself to perform all work as substantively changed in the amendments.

## DECISION

Pacer Contracting Corporation protests the rejection of its bid as nonresponsive and the subsequent award of a contract to Kinsel Industries under invitation for bids (IFB) No. DACW63-90-B-0137, issued by the United States Army Corps of Engineers for the renovation of existing campsites and other work to repair flood damage at Benbrook Lake, Tarrant County, Texas. Pacer's bid was rejected as nonresponsive because although the firm had acknowledged the amendments to the IFB, Pacer submitted its bid on the original bid schedule rather than on the latest amended bid schedule.

We deny the protest.

The IFB contemplated the award of a requirements-type construction contract under which delivery orders would be issued to have the contractor provide specified equipment and operators for a designated number of hours. The IFB contained a bid schedule for 10 line items and required unit and extended prices for the estimated quantities shown. The

solicitation was amended twice before bid opening. Amendment No. 0001 deleted and replaced the original bid schedule; amendment No. 0002 deleted the revised bid schedule and substituted a new bid schedule which further changed the requirements.

Four bids were opened on August 21. All four bidders acknowledged the amendments to the solicitation.<sup>1/</sup> The apparent low bid was rejected by the contracting officer as nonresponsive (for the same reason as Pacer's); the second low bidder withdrew from the competition because of a mistake in its bid. Pacer's third low bid was rejected by the contracting officer as nonresponsive because by submitting its bid on the original bid schedule rather than the amended bid schedule, it was unclear whether Pacer had obligated itself to comply with the revised requirements in amendment No. 0002. Award was made to the fourth-low bidder on September 29 and upon learning of the award, Pacer filed this protest.

Pacer maintains that, contrary to the contracting agency's determination, its bid was responsive. Citing our decision in Cillessen Constr. Co., B-212565, Nov. 15, 1983, 83-2 CPD ¶ 568, Pacer argues that it is entitled to the award notwithstanding its failure to use the amended bid schedule since, by specifically acknowledging the amendments, the firm evidenced its intention to be bound by the changes therein. In the Cillessen decision, we stated that an amendment had only changed the bidding schedule format and not its substance. For the reasons stated below, we reach a different conclusion in this case.

The test for responsiveness is whether a bid qualifies as an unconditional offer to provide the exact item or service called for in the amended solicitation so that acceptance of the bid will bind the contractor to perform in accordance with the solicitation's material terms and conditions. Cooper Sportswear Mfg. Co., Inc., B-238998.5, Sept. 18, 1990, 90-2 CPD ¶ 225. As the protester points out, we have enunciated a general principle that the specific acknowledgment of an amendment binds the bidder to perform all work as substantively changed in the amendment. See, for example, Rocky Ridge Contractors, Inc., B-224862, Dec. 19, 1986, 86-2 CPD ¶ 691, and cases cited therein. However, in such cases the work called for in the original bid schedules encompassed the work affected by the amendments, and it was reasonable to

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<sup>1/</sup> In its comments on the agency report, Pacer questions whether the awardee acknowledged receipt of amendment No. 0002. Our review confirms that both amendments were acknowledged by the awardee.

interpret the bids as offering to perform all work as substantively changed in the amendments. Id. The same is not true here.

In the current solicitation, the bidding schedule contains the only detailed description of the agency's requirements. Section C of the IFB, "Descriptions/Specifications," contains only generally worded requirements, such as "[t]he Contractor is to provide the equipment listed in the schedule and the necessary fully qualified personnel to safely operate this equipment" and "[t]he work to be accomplished, using the equipment listed in the bidding schedule, will generally consist of . . . ." (Emphasis added). It is the description of each line item which appears in the IFB's bidding schedule, therefore, which governs what the contractor is to provide.

Here, the work called for in the original bid schedule does not encompass the work called for in the amended bid schedule. Specifically, amendment No. 0001 changed the requirements for line item 0004 by increasing the crawler tractor's minimum net flywheel horsepower from 60 to 160; for line item 0006, the dump truck capacity was changed from 2 1/2 tons to 5 tons; and for line item 0010 there was added the requirement that the truck and water wagon each have a minimum capacity of 1,000 gallons. Amendment No. 0002 again changed the requirement for line item 0006 by increasing the dump truck's capacity from 5 to 15 tons; for line item 0009, there was added a new requirement for a pickup truck operator; and for line item 0010, there was added the requirement for an operator on the truck and water wagon.

Clearly, these amendments impose legal obligations on the bidder which are different from those imposed by the original solicitation. As evidenced by the protester's own admission, the requirements of the amended bid schedule are substantial; consequently, the changes reasonably would have a significant impact on a bidder's price. See Federal Acquisition Regulation § 14.405. Mere acknowledgment of the amendments is not sufficient to constitute a bid for performing the work using the larger equipment and additional personnel added by the amendments because the bid as submitted on the original bid schedule does not encompass these added requirements. See Main Elec. Ltd., B-224026, Nov. 3, 1986, 86-2 CPD ¶ 511; Fischer-White-Rankin Contractors, Inc., B-213401, Apr. 24, 1984, 84-1 CPD ¶ 471.

Apart from Pacer's acknowledgment of the amendments, there is nothing in Pacer's bid to support the conclusion that the firm intended to furnish the equipment and personnel described on the amended bid schedule. At best, its bid is ambiguous in this regard. Since responsiveness must be determined solely

on the bid documents at the time of bid opening, see, Huff & Huff Serv. Corp., B-233740.5, Feb. 9, 1990, 90-1 CPD ¶ 167, Pacer's bid fails to unequivocally offer to comply with the material terms of the amended solicitation and was properly rejected as nonresponsive.

The protest is denied.

  
for James F. Hinchman  
General Counsel