



Comptroller General
of the United States

501009

Washington, D.C. 20548

Decision

Matter of: Jenness Woodkuts, a Joint Venture

File: B-257345

Date: September 22, 1994

Timothy S. Kerr, Esq., Elliott, Reihner, Siedzikowski, North & Egan, P.C., for the protester.
Joseph M. Picchiotti, Esq., and Vera Meza, Esq., Department of the Army, for the agency.
John L. Formica, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting Officer properly rejected a bid as nonresponsive where the bidder failed to acknowledge an amendment which changed the legal relationship between the parties by imposing an obligation on the contractor not contained in the original solicitation, thus rendering the amendment material; absent acknowledgment of the amendment, the bidder would not be required to furnish the services in accordance with the terms of the solicitation as amended.

DECISION

Jenness Woodkuts, a Joint Venture, protests the rejection of its low bid and the award of a contract to South Bend Lathe Corporation under invitation for bids (IFB) No. DAAA09-93-B-0077, issued by the Department of the Army for milling machines. Woodkuts argues that its failure to acknowledge an amendment to the IFB should be waived as a minor informality.

We deny the protest.

The agency issued the IFB on June 3, 1993. The IFB included a warranty provision that requires the contractor to correct, replace, or compensate the government for nonconforming goods. Two amendments to the IFB were issued. Amendment No. 0001, issued on July 19, added, among other things, the standard Army Materiel Command clause "Accountability Instructions for Warranty Repair." This clause sets forth certain accountability and reporting requirements applicable in the event that the supplies delivered to the agency under the contract are not in

accordance with the contract's terms and the warranty is invoked. Amendment No. 0002, issued on September 20, 1993, added clauses concerning ozone-depleting substances and packaging requirements, and established October 13, 1993, as the bid opening date.

Woodkuts, the apparent low bidder, acknowledged amendment No. 0002 to the IFB but failed to acknowledge amendment No. 0001. The contracting officer determined that the Accountability Instructions for Warranty Repair clause, set forth in amendment No. 0001, constituted a material change to the IFB and that Woodkuts's failure to acknowledge the amendment rendered its bid nonresponsive.

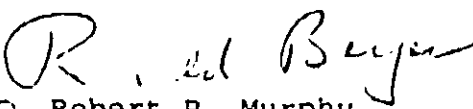
Woodkuts argues that its failure to acknowledge amendment No. 0001 did not render its bid nonresponsive because the amendment did not materially affect the solicitation requirements concerning quantity, quality, delivery, or price. The protester characterizes the additional obligations imposed by the Accountability Instructions for Warranty Repair clause as "simple record keeping requirements," and concludes that its failure to acknowledge amendment No. 0001 should therefore be waived as a minor informality.

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. Firetech Automatic Sprinklers, Inc., B-248452, Aug. 12, 1992, 92-2 CPD ¶ 100. Even where an amendment may not have a clear effect on price, quantity, quality, or delivery, it still is considered material if it changes the legal relationship between the parties, such as by adding, increasing, or decreasing the contractor's obligation or responsibilities in some material manner. Id. The materiality of an amendment which imposes new legal obligations on the contractor is not diminished by the fact that the amendment may have little or no effect on the bid price or the work to be performed. Id.

The Accountability Instructions for Warranty Repair clause imposes several recordkeeping requirements on the contractor concerning the accountability for government property when such property is returned to the contractor under the warranty provisions of the contract. For example, the clause requires the contractor to keep an inventory and make periodic reports to the agency concerning property to which the contractor has taken possession under the IFB's warranty provisions, and requires that the contractor prepare and deliver discrepancy reports whenever the condition, quantity, or type of item returned to the contractor does

not match that described in the shipping documents. These recordkeeping requirements impose legal obligations on the contractor to which it would otherwise not be bound under the IFB and are necessary for the agency to account for its property; accordingly, we find that the amendment is material. See Rite-Way Servs. of San Antonio, Inc., B-243231, July 11, 1991, 91-2 CPD ¶ 46 (bid which did not acknowledge amendment setting forth certain recordkeeping requirements was properly rejected as nonresponsive). Consequently, Woodkut's failure to acknowledge the amendment could not be waived as a minor informality and the agency properly rejected the firm's bid as nonresponsive. Id.

The protest is denied.


for Robert P. Murphy
Acting General Counsel