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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: TTCC, Inc.

File: B-412874

Date: May 17, 2016

Daniel J. Cragg, Esq., Eckland & Blando LLP, for the protester.
Col. Matthew J. Mulbarger, Lt. Col. Damund E. Williams, and
Capt. Christopher J. Elliott, Department of the Air Force, for the agency.
Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly rejected protester's proposal for airfield grounds maintenance services is denied where proposal failed to acknowledge amendment to request for proposals that provided new information that would affect offeror's performance.

DECISION

TTCC, Inc., doing business as Tried & True Corporate Cleaning, of La Mesa, California, a small business, protests the rejection of its proposal by the Department of the Air Force under request for proposals (RFP) No. FA4625-16-R-0002 for airfield grounds maintenance services at Whiteman Air Force Base (AFB), Missouri. TTCC argues that although the firm mistakenly failed to acknowledge an amendment¹ in its proposal, the amendment was not material, and thus the Air Force acted improperly in rejecting TTCC's proposal.

We deny the protest.

¹ In its protest, TTCC refers to the amendment at issue as amendment 3 (as the amendment was numbered when issued). The Air Force has explained that the numbering was incorrect because the second, third, and fourth amendments were unnumbered, making "amendment 3" actually the sixth amendment. In the interest of consistency in this decision, we have adopted the original numbering, so we refer to the amendment at issue as amendment 3.

BACKGROUND

The Air Force issued the RFP on February 2, 2016, seeking proposals to perform services for a base year and 4 option years. RFP at 3-10. Over the following weeks, the Air Force issued six amendments. The protest concerns whether the final amendment was material, so we summarize each briefly. Amendment 1 revised the RFP and removed “DRAFT” markings from the original RFP. RFP amend. 1, at 1-2. Three unnumbered amendments then followed, which provided answers to offeror questions seeking clarification of the agency’s requirements. RFP unnumbered amends. The next amendment, labeled as amendment 2, provided notice of and instructions for attending a site visit, and also extended the due date for proposals. RFP amend. 5, at 1-2. The sixth amendment was labeled as amendment 3. Amendment 3 reiterated the earlier answers from the unnumbered amendments but also provided new information: minutes of the site visit, and a final set of questions and answers generated by the visit. RFP amend. 3, at 1 & attach. B at 5-8. Among the new information was the following:

Question 28: Can the government provide a linear footage of fencelines?

Answer: The old fence lines have gravel installed under them. The linear footage of the new fences without gravel is approximately 10,500 LF [linear feet].

* * *

Question 30: Will ditches need to be maintained that are in Areas 1 & 2 that are north of the main fence?

Answer: No, these ditches are not included in this contract.

Id. attach. B at 6.

On March 9, TTCC submitted its proposal, but did not acknowledge amendment 3. Protest at 2; Agency Report (AR) at 3. On March 14, the Air Force rejected TTCC’s proposal on that basis, after which TTCC filed this protest. Protest at 2; AR at 4.

ANALYSIS

TTCC’s protest argues that the firm received and understood amendment 3, but inadvertently failed to expressly acknowledge the amendment. Protest at 2. TTCC argues that the failure to acknowledge the amendment did not make its proposal unacceptable because the amendment was not material. Id. at 2-3.

The Air Force argues that the answers to vendor questions in amendment 3 provided new information that removed particular areas from the scope of the contract, or at least clarified that a particular area was not within the scope of the contract. AR at 6. Additionally, the Air Force argues that the answer to question 28 informed offerors that 10,500 LF of fencing had been installed without a gravel border (making it unlike other fencing at the base). The Air Force argues that this information was not evident from the RFP or previous amendments, and thus made amendment 3 material because offerors needed to include significant additional effort to control vegetation along that section of fence.

In support of the Air Force's position, the superintendent for the 509th Civil Engineer Squadron (CES) at Whiteman AFB submitted a statement to our Office. Among other things, his statement explained the significance of the response to question 28 contained in amendment 3:

Under normal circumstances during perimeter fence construction at Whiteman AFB there is a 2' wide gravel barrier/mow strip installed under the fence. During construction of the two (2) mile fence line in question, located on the south west Whiteman property line, a gravel barrier/mow strip was not installed. This was due to the line item not being in the contract that installed it. This detail was not covered in the PWS for Airfield Mowing. Based on a laborer or tractor operator walking the 2 mile stretch by foot, it would take approximately 12 man hours. Based on two (2) mowings required per month and seven (7) months in the growing season, this is 168 man hours per year or 840 man hours over the life of the contract.

AR, Tab 12, Statement of 509th CES Superintendent, at 1.

Accordingly, the Air Force argues, amendment 3 was material, and thus TTCC's failure to acknowledge the amendment required the rejection of its proposal. AR at 6.

In response, TTCC does not appear to dispute that amendment 3 provided new information about the lack of gravel along 10,500 LF of fence.² TTCC's argument, essentially, is that amendment 3 had an "effect [that is] trivial compared to the overall scope of work." Protester's Comments at 1. Regarding the information provided in question 28, TTCC acknowledges that the answer was "information

² TTCC does not argue that the amendment was acknowledged implicitly, such as by pointing to any aspect of its proposed approach that specifically addressed maintaining a fence that lacked a gravel barrier, or by referencing any other aspects specific to the amendment.

[that] may be useful to responders” but argues that it did not modify the contractor’s responsibilities because it “did not add or remove any work requirements.” Id. at 2.

As a general rule, an offeror's failure to acknowledge a material amendment renders the proposal unacceptable and such proposal may not form the basis for award. ECI Def. Group, B-400177; B-400177.2, July 25, 2008, 2008 CPD ¶ 141. While no precise rule exists as to whether a change required by an amendment is more than negligible, such that failure to acknowledge the amendment renders the proposal unacceptable, an amendment is material where it imposes legal obligations on a party that are different from those contained in the original solicitation, or if it would have more than a negligible impact on price, quantity, quality, or delivery. Id.

To the extent that TTCC argues that some aspects of amendment 3 (such as question 30) clarified the scope of work in ways that reduced the contractor’s obligations, or simply repeated them, we have held that failure to acknowledge an amendment may be waived where the amendment imposes insignificant obligations on the offeror, since acceptance of an offer premised on the requirements in the original solicitation would not prejudice any other competitor. See DBI Waste Sys., Inc., B-400687, B-400687.2, Jan. 12, 2009, 2009 CPD ¶ 15 at 3-4 (agency properly waived awardee’s failure to acknowledge amendment that changed identification of item required by one contract line where record showed no effective price difference between the items). However, we need not address these aspects of amendment 3 because we conclude that the Air Force correctly concluded that the amendment also made a material change to the scope of work: that the 10,500 linear feet of new fencing lacked a gravel barrier/mowing strip.

TTCC does not meaningfully challenge the Air Force’s explanation of the amount of additional effort needed to perform the contract services along that fence line. We have no basis to conclude that the need to supply approximately 168 hours of additional effort each year could be considered negligible or insignificant to the offerors’ pricing. According, the Air Force’s decision to reject TTCC’s proposal for failure to acknowledge amendment 3 was reasonable.

The protest is denied.

Susan A. Poling
General Counsel