

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

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FILE: B-180999

DATE: July 12, 1974

MATTER OF: Genest Baking, Inc.

DIGEST: Bidder's failure to acknowledge amendment to IFB instructing bidders to insert symbol "lbs" (pounds) as unit of issue for items 4, 6, 7 and 8, which had been inadvertently omitted from IFB as originally issued, may be waived pursuant to FPR 1-2.405 since amendment imposed on bidder no additional obligations than those required under the original solicitation, and bid complied with original IFB instructions.

Genest Baking, Inc. (Genest), which was found to be nonresponsive for failing to acknowledge receipt of an amendment to the solicitation, protests this determination by the contracting officer on grounds that the amendment had no effect on its bid.

Invitation for bids (IFB) 518-74-77 was issued by the Veterans Administration Hospital (VA) in Bedford, Massachusetts, on February 26, 1974, for bread and rolls requirements for fiscal year 1975. On March 5, 1974, the VA issued an amendment to the IFB to correct an inadvertent omission of the unit of issue for items 4, 6, 7 and 8 by instructing bidders to insert the symbol "lbs" (pounds) as the unit of issue for each item offered.

The amendment was prompted by the low bidder, Genest, bringing to the VA's attention that there were blank spaces in the unit columns of the IFB where units of issue should have been entered for items 4, 6, 7 and 8. While Genest had written in the symbol "lb" for item 4 in its bid, it failed to acknowledge receipt of the amendment prior to bid opening on March 28, 1974.

The protester asserts that there was no need for it to acknowledge the amendment, since it had initially bid on the basis of pounds in its bid in compliance with the IFB instructions on page 12 which stated as follows: "NOTE: Bidders shall state the price per pound not the price per load or unit."

The contracting officer, however, found that the amendment did affect its bid, because by failing to acknowledge the amendment or to

otherwise indicate the basis of its bid for items 6, 7 and 8, Genest had not manifested its intent to comply with the specifications of the IFB. Since Genest had not stated in a definite manner that it would supply bread and rolls in the unit of pounds as required by the IFB, the contracting officer believed that Genest's bid, if accepted, would not legally bind it to supply the quantity of items called for should it offer bread and rolls in units rather than pounds. Therefore, the contracting officer rejected Genest's bid as nonresponsive pursuant to Federal Procurement Regulations (FPR) 1-2.207(b)(4).

The purpose for issuing the amendment was simply to apprise bidders that items 4, 6, 7 and 8, for which the unit of issue had been inadvertently omitted from the IFB, must also be offered on a pound basis. As such, the amendment operated merely to reiterate the instructions already included in the IFB at page 12, and thereby imposed on the bidder no additional obligations from those required under the original solicitation. In view of this fact, as well as the fact that the pattern of Genest's bidding would indicate that its prices for items 6, 7 and 8 were on a pound basis as well, its bid was in full compliance with the original IFB instructions which are controlling.

Consequently, it is our conclusion that the amendment did not materially affect price, quality, quantity, or delivery, nor did it materially alter the legal relationship between the parties and the failure of Genest to acknowledge the amendment may be waived as a minor informality or irregularity pursuant to FPR 1-2.405.

Accordingly, we find no legal basis for objection to the acceptance of Genest's bid as submitted.


Deputy Comptroller General
of the United States