The Comptroller General
of the United States

Washington, D.C. 20548

89-1 CPD 82
PR

Decision

Matter of: Head Inc.

File: B-233066

Date: January 25, 1989

DIGEST

Contracting agency properly accepted low bid that failed to acknowledge a solicitation amendment making changes that either had only a minimal impact on cost, or merely clarified requirements already contained in the solicitation.

DECISION

Head Inc. protests the award of a contract to Lobar, Inc., for construction work on two warehouse buildings at the Navy Ship Parts Control Center in Mechanicsburg, Pennsylvania, under invitation for bids (IFB) No. N62472-87-B-0094, issued by the Department of the Navy. Head asserts that Lobar's low bid should have been rejected as nonresponsive because it failed to acknowledge an amendment to the IFB until after bids had been opened.

We deny the protest.

The amendment at issue contains three major provisions applicable to each of the two warehouses. First it modifies the sprinkler system called for in the IFB to protect the exterior loading dock area; instead of a system in which water from the interior of the building is conducted to the exterior by pipes that penetrate the sidewall of the building at 60 points, as specified in the IFB, the amendment provides for a system in which water is carried from the interior by a single pipe to multiple overhead sprinklers located in the canopy above the loading dock. Essentially, the amendment changes the system from a sidewall to an overhead type. Second, the amendment illustrates, through an engineering sketch, the appropriate camber (that is, curvature, or deviation from a straight line) for the steel beams used to support the warehouse roof. Finally, the amendment provides certain design

PUBLISHED DECISION
68 Comp. Gen 198

details for the building's electrical system that were not previously included in the IFB.

According to Head, since these three major provisions (as well as several less important ones) materially affect either the work to be performed or the cost of the project, the failure to acknowledge the amendment renders Lobar's bid nonresponsive. The Navy, on the other hand, asserts that, while the amendment may increase the contractor's cost of performance by at most $6,000, when considered in the context of Head's bid of $5,305,152 and Lobar's bid of $4,761,576 (a difference of $543,576), the cost impact of the amendment is de minimis. Further, the Navy denies Head's allegation that failure to include the amendment in the contract significantly affects the nature of the work to be performed.

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. 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. In that case, the failure to acknowledge the amendment may be waived and the bid may be accepted. Star Brite Construction Co., Inc., B-228522, Jan. 11, 1988, 88-1 CPD ¶ 17.

Sprinkler System

Head asserts that the substitution of overhead sprinklers for the sidewall type constitutes a material change in the quality of work to be performed, and was included in the amendment because the Navy realized that the original system called for in the IFB was inadequate. The change, according to Head, entails different configurations of pipe and different types of sprinkler heads and pipes, and results in an increased cost of approximately $44,421.

The Navy responds that the changes made by the amendment not only do not require any additional effort or any significant additional materials, but in fact relax the level of work called for initially. The overhead system specified in the amendment, according to the agency, is much more common

than the original design for loading docks of the size in question, since it is easier and more economical to install. Further, the Navy contests Head's allegation that the original method was inadequate; in an affidavit of a senior fire protection engineer, the agency states that both the original and modified systems comply with applicable Navy criteria and National Fire Protection Association standards. Accordingly, the Navy contends that the changes do not affect the quality or nature of the work.

Both the Navy and Lobar take issue with Head's cost estimate, based in part on a differing view of the additional materials required. Head, for example, asserts that, prior to the amendment, it intended to install the exterior sprinkler heads directly into the "wet" pipe system already required for the interior building. (A "wet" sprinkler system is one in which water is contained in the pipe at all times; it is appropriate for a heated area where the pipe is not exposed to the danger of freezing temperatures, such as the interior of the warehouse building. A "dry" system, on the other hand, is one in which water is not permitted into the sprinkler pipes or head unless released by a valve, as needed; it is typically used for areas subject to freezing temperatures, such as the exterior loading dock.) After the amendment, however, Head states that an additional 600 feet of pipe is required to run the exterior length of the building. Lobar, on the other hand, states that its subcontractor for the sprinkler work reports that even prior to the amendment, the additional 600 feet of interior pipe was required to supply the exterior dry sprinklers; under the amendment, it would simply run outside of the building rather than inside. The Navy agrees that no additional pipe is required by the amendment, and that the cost of installing the sprinklers overhead is in fact lower than that of making multiple penetrations of the building sidewalls, as would have been required with the original sidewall system. The Navy concedes there are some increased sprinkler system costs associated with the amendment, but estimates that the net impact is only $1,100. Lobar places the increased cost even lower, at $853.

We agree with the Navy that the amendment provisions regarding the sprinkler system, viewed in the context of the solicitation as a whole, do not make material changes. This is a comprehensive construction contract for the repair of the warehouse roofs, and only limited aspects of the overall work are affected by the amendment; a new sprinkler system is required only because the existing one must be removed when the old roofs are removed. The main wet-type

sprinkler system called for in the IFB (and unaffected by the amendment) protects approximately 240,000 square feet of interior building space. In contrast, the dry system that is affected by the amendment protects only 15,600 square feet of exterior space; that is, only about 6 percent of the protected space is affected at all by the provisions of the amendment relating to the sprinkler system. Moreover, the sprinkler system as a whole constitutes only about 4 percent of the total construction project.

With respect to the small portion of the sprinkler system that is affected by the amendment, furthermore, we find the change negligible. Both the IFB and the amendment provide for a dry system, which is standard in exterior areas subject to freezing. The amendment merely calls for a different configuration of the pipes and hardware required. In effect, we view this change as no more than a minor modification of what was already required by the IFB, and not, as Head suggests, the imposition of a material, new and separate legal obligation. Since even Head's estimate of the cost impact of the amendment is de minimis in the context of the contract as a whole and the disparity in the two firms' bid prices, see Pittman Mechanical Contractors, B-225486, Feb. 25, 1987, 87-1 CPD ¶ 218, we reject Head's argument that Lobar's failure to acknowledge these provisions renders its bid nonresponsive.

Camber

Head asserts that a sketch included with the amendment provides, for the first time, specific ordinates for the amount of required curvature at 16 designated points along each beam. Head states that the sketch thus sets forth new and significant specifications, and that beams must be custom fabricated to meet the new requirements at an additional cost of about $57,000. In support of its position that the multiple ordinates represent special requirements, Head refers to the American Institute of Steel Construction (AISC) Manual of Steel Construction, which states that camber is ordinarily specified by the ordinate at the mid-length of the beam to be curved, and that ordinates at other points should not be specified.

The Navy responds that the camber ordinates shown on the sketch do not specify new requirements, but merely provide more specific guidance to the contractor in erecting the beams; in the absence of the sketch, the contractor would have had to formulate its own camber ordinates in any event. Further, the Navy explains that the specified camber ordinates are all within normal mill tolerances of natural cambering and therefore require no special fabrication; that

is, standard steel beams may be used, as produced by the mill, with the normal amount of camber that is present as a result of the routine manufacturing process. The sketch merely indicates how the naturally cambered beams are to be ordinated. Thus, according to the Navy, since custom manufacturing is not necessary, there is no increase in cost associated with this portion of the amendment. The Navy explains that camber is not specified in the sketch in the usual manner described in the AISC Manual (as a single mid-length ordinate) because, under the terms of the IFB, the contractor has the option of splicing beams; specifying a single ordinate in the typical manner thus would be neither practical nor helpful, since the length of beam segments will depend on whether the contractor chooses to splice together shorter beam segments or fewer, longer ones.

We find the Navy's position reasonable. That is, the record seems to support the view that the ordinates furnished in the amendment were intended, not to impose a significant new requirement on bidders, but to assist bidders by indicating a set of acceptable ordinates; the multiple ordinates were necessary due to the possibility that beams would be spliced. While we would agree that the ordinates might represent a material change in the requirement if, as Head alleges, they would necessitate expensive, custom fabrication of the beams, this does not appear to be the case. In this regard, the AISC Manual clearly indicates that the specified ordinates are within standard mill tolerances, and Head has presented no persuasive evidence to the contrary. As possibly costly custom fabrication of beams thus apparently is not necessary, we consider this aspect of the amendment a mere clarification of the existing requirement to erect the roof support beams in an acceptable manner. Pittman Mechanical Contractors, B-225486, supra.

Electrical System

The amendment makes certain changes to the building electrical system that, according to Head, increase the cost of the contract by $34,388. According to Head, the major change, one that constitutes a new legal obligation, is a requirement that the roof ventilator fans and louvers be interfaced with the fire alarm system so that they would shut down automatically in the event of fire. Head characterizes this as a new and major safety feature added by the amendment that must be acknowledged regardless of the impact on cost. We disagree. The IFB specifications, at section 16722-2, paragraph 1.3, and section 15895-7, at paragraph 3.1, require compliance with National Fire Prevention Association (NFPA) standard 90A, which provides that smoke detectors, when activated, shall automatically

shutdown the relevant ventilation system in order to cut off the air supply to the fire. In our view, therefore, this portion of the amendment merely clarifies a pre-existing obligation to conform to a standard (incorporated by reference) by providing more specific information on the electrical design for the required interfacing.

Head maintains that the amendment makes a number of other electrical system changes that, while not as significant as the modifications to the one above, nonetheless impose new obligations on the contractor. For example, the firm states that under the amendment electrical feeder lines must be added to the heater rooms and offices in each warehouse, while the original IFB does not provide for an electrical supply to those areas. According to Head, the agency's decision to add electricity to these areas constitutes a material modification.

Again, we do not agree. While the Navy concedes that the omission of an express requirement for an electrical supply to these areas was an oversight, it also points out that the work was required in any event by section 01011-3, paragraph 14(b), of the IFB. This section specifies that work affected by the construction process must be repaired or replaced so that its condition is as good as before the renovation commenced. Since the areas in question presently are supplied with electricity, which will have to be disconnected in the course of renovating the building, electricity will have to be restored to these areas, even without the amendment, as before the work was done to leave the building in the same functioning condition. The amendment thus makes no material changes to the electrical work already required under the IFB.

Other Changes

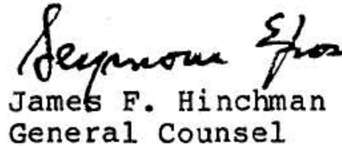
For the most part, in its post-conference comments, Head has abandoned other objections that it initially raised in its protest. The protester continues to object, however, to a provision in the amendment that increases from 30 years to 50 years the period of time the contractor is required to maintain complete and accurate medical records of employees exposed to asbestos during the removal of the existing duct work. According to the protester, any modification that requires a contractor to do anything for an additional 20 years must be considered material.

Head's position is without merit. Medical record retention is a minuscule part of the overall scope of the work, and the precise period of time involved (particularly given that the life expectancy of the contractor's business itself is

an unknown quantity), is a matter too speculative to characterize as material in the context of this contract. It is our view, moreover, that even if the arrangements required to be in place to satisfy the original 30-year retention period would have entailed a significant or costly effort on the contractor's part, merely extending those arrangements for an additional period does not constitute such a significant change, in terms of increased cost or obligation, that the failure to acknowledge the change renders a bidder ineligible for award.

We conclude that the amendment added no significant requirements materially increasing the contractor's obligation or cost of performing under the IFB, and that Lobar's failure to acknowledge the amendment therefore properly was waived by the Navy.

The protest is denied.



for James F. Hinchman
General Counsel