



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Dyna Construction, Inc.

File: B-275047

Date: January 21, 1997

Theodore M. Bailey, Esq., for the protester.

Lee Casstevens, Esq., Wood, Burney, Cohn & Viles for Braselton Construction Co., an intervenor.

Diane D. Hayden, Esq., Department of the Navy, for the agency.

Paula A. Williams, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly rejected as nonresponsive protester's bid which failed to acknowledge an amendment that added an additional material requirement.

DECISION

Dyna Construction, Inc. protests the rejection of its bid and the award of a contract to Braselton Construction Company under invitation for bids (IFB) No. N62467-96-B-7664, issued by the Department of the Navy for construction services to repair/upgrade the quarters used to house enlisted sailors at the Naval Air Station in Kingsville, Texas. Dyna's bid was rejected as nonresponsive because the protester failed to acknowledge amendment No. 0002 to the IFB.

We deny the protest.

As issued, the solicitation asked prospective bidders to submit lump-sum prices for furnishing all labor, materials, and equipment required to perform various construction services required to complete the repair and renovation specified in the statement of work and solicitation drawings. The project was divided into numerous sections, including the removal and replacement of doors. The initial specifications and drawings require the contractor to provide 200 new sliding closet doors (Door Type 15) in the remodeled bedrooms but did not identify the frame type to be used to mount the new doors. This aspect of the project was the subject of a written bidder inquiry in which the bidder noted that while the solicitation drawings state at Note 10 on Drawing Sheets A2, A3, and A4 that the contractor must furnish "[n]ew door, frame, and hardware[] [-] [r]efer to door schedule," there is no indication on the door schedule (drawing sheet A8) or the bid specifications as to the type of frame to be furnished. Upon reviewing the drawings and

specifications, the agency determined that the solicitation was ambiguous as to the type of door frame required. Specifically, the contracting officer noted that a bidder reasonably could infer that the opening for the type 15 sliding closet doors could be framed in sheetrock or wood rather than the desired hollow metal framing since the solicitation package did not identify any particular door frame for type 15 doors but did so for the other type doors. The agency also added a requirement for 1" trim. Thus, the agency issued amendment No. 0002 which stated:

"In detail 1/A8/A8 [of drawing 5317914 (A-8)] add the following to Door Type 15 between the words "Doors" and "HW-8": 'including hollow metal frame with 1" x 1" wood trim at the head and jambs.'"

The agency received seven bids, ranging from \$2,153,000 to \$4,351,000. Dyna submitted the apparent low bid of \$2,153,838 and Braselton the next low of \$2,220,000; the government estimate was \$1,886,617.¹ Upon review, the contracting officer discovered that while Dyna had acknowledged amendment No. 0001 it had failed to acknowledge amendment No. 0002. The contracting officer rejected Dyna's bid because the agency regarded the amendment as material. The contract was subsequently awarded to Braselton, the next low bidder. Dyna timely protested to the contracting agency; the agency denied the protest, and Dyna filed this protest in our Office.

Dyna alleges that the amendment was immaterial because it did not impose any new, substantial obligations on the bidders. In this regard, Dyna asserts that the solicitation as issued required hollow metal frames for the type 15 closet doors because paragraph 2.7, Section 08110 of the solicitation required the contractor to provide "steel frames for doors unless otherwise indicated" and Note 10 of the solicitation drawings (Drawing Sheets A2, A3, and A4) was silent as to the type of framing required for these doors. Dyna states that since there are no "solid" steel door frames (that is, steel door frames are always "hollow"), the steel frames referred to by paragraph 2.7 had to be hollow, and concludes that therefore amendment No. 0002 did not add a new requirement or clarify any ambiguity regarding the type of framing to be used, but only added a requirement for wood trim around all the closet doors that, according to Dyna, had a negligible effect on the cost of frame.

Without resolving the need for the amendment as it relates to the door frames, we think that the amendment was material in any event because it added an additional requirement for 1"x1" wood trim for these 200 doors.

¹The estimated cost for the repair work was listed in the amended IFB as between \$1 million and \$5 million.

Generally, a bid that does not include an acknowledgment of a material amendment must be rejected, since acceptance of the bid would not legally obligate the bidder to meet the government's needs as identified in the amendment. Innovative Refrigeration Concepts, B-271072, June 12, 1996, 96-1 CPD ¶ 277. An amendment is material when it has more than a trivial impact on price, quantity, quality, or delivery of the item being procured or would have an impact on the relative standing of the bidders. Federal Acquisition Regulation § 14.405(d)(2); Moon Constr. Co., B-228378, Dec. 17, 1987, 87-2 CPD ¶ 605. No precise rule exists to determine whether an amendment is material; rather, that determination is based on the facts of each case. The Hackney Group, B-261241, Sept. 5, 1995, 95-2 CPD ¶ 100.

First, the record does not support the protester's view that the price impact of the requirement for wood trim is negligible. Although the protester has furnished its own estimate for the wood trim requirement at slightly more than \$1,000, the agency has its own estimate of \$10,715 for the work and points out that another Navy engineer priced the work at \$15,000. The protester asserts that the labor to install the wood trim is minimal² and that certain prices the government used in its estimates are high. The protester, however, has not shown why the Navy estimate of \$10,715, which includes a detailed breakdown of the work necessary to install the wood trim, does not represent a reasonable estimate of the cost of the work. Under the circumstances here, we do not believe, and the protester does not assert, that an impact exceeding \$10,000 is trivial. Second, the agency official in charge of construction states that the wood trim affects both aesthetics and "the quality of the final product." The protester does not rebut this conclusion. Since this contract is intended to both repair and upgrade sailors' living quarters, we think this requirement had more than a trivial impact on the quality of the final product. That being so, the requirement is material even if it had little effect on bid price. See, e.g., American Sein-Pro, B-231823, Aug. 31, 1988, 88-2 CPD ¶ 209.

Accordingly, the protest is denied.

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²The protester estimates labor costs of approximately \$500 for the wood trim on 200 closet doors.