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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Consolidated Contracting & Engineering

**File:** B-274319

**Date:** November 6, 1996

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Raymond H. Royce, Esq., Royce & Brain, for the protester.

Richard C. Harding, Esq., and Marian Sullivan, Esq., Department of the Air Force, for the agency.

Linda C. Glass, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Agency acted reasonably in waiving a bidder's failure to acknowledge an amendment that had no material effect on bidder's obligations.
2. A bidder's failure to initial changes in a bid is a matter of form that may be considered an informality and waived if the bid leaves no doubt as to the intended price. This rule also applies where changes in the bid are initialed by someone other than the person who signed the bid.

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## DECISION

Consolidated Contracting & Engineering protests the award of a requirements contract to Marengo, Inc. to replace fire alarm systems at Elmendorf Air Force Base, Alaska, under invitation for bids (IFB) No. F65501-96-B-0003, issued by the Department of the Air Force. Consolidated asserts that Marengo's low bid should have been rejected as nonresponsive because Marengo failed to acknowledge a material amendment to the solicitation.

We deny the protest.

The IFB was issued on May 23, 1996, and was amended six times prior to bid opening. The IFB, as originally issued, required a performance bond with a penal amount of 100 percent of the contract price, but not to exceed \$1 million. Amendment No. 0002, among other things, reduced the bond requirement to 20 percent of the bid price, but did not include a revised bid schedule. Amendment No. 0007 (in actuality the sixth and final amendment) replaced two pages of the bid schedule, the only effect of which was to reflect that amendment No. 0002 had lowered the bond requirement from 100 percent/\$1 million to 20 percent of the bid price.

Marenco's bid of \$711,000 for the base period was the lowest of the five bids received by bid opening. Consolidated's bid of \$948,582 for the base period was second lowest. Marenco acknowledged five of the six amendments, failing to acknowledge the sixth amendment that provided the revised bid schedule pages. Marenco submitted its bid on the old bid schedule which differed only in that it contained a line item designating a \$1 million performance bond. Also, in the bid schedule submitted by Marenco, the "unit price" entered in item No. 0001 (CLIN 1) was initially written, then crossed out. Above the crossed out figure was written the figure ".00961" followed by the initials "SRS." Since Marenco's price for CLIN 1 was substantially lower than that of the other bidders, the contracting officer requested verification of this line item on August 27. Marenco verified the amount on August 29. Subsequently, the contracting officer waived Marenco's failure to acknowledge the amendment as a minor informality.

Consolidated asserts that Marenco's failure to acknowledge amendment No. 0007 renders its bid nonresponsive. Consolidated contends that the amendment concerned a specific line item that was utilized in computing the overall price for the bid and is therefore material. The protester also argues that Marenco's bid should be rejected because Marenco failed to initial the changes made in its bid schedule. Lastly, the protester contends that Marenco's price for CLIN 1 reflects a mistake because it was substantially lower than the prices of the other bidders for the same item.

Generally, a bid that does not acknowledge a material amendment must be rejected because absent such an acknowledgment, the acceptance of the bid would not obligate the contractor to comply with the amendment's terms. Gulf Elec. Constr. Co., Inc., 68 Comp. Gen. 719 (1989), 89-2 CPD ¶ 272. However, an amendment is not material if it does not impose any legal obligations on the bidder different from those in the original solicitation; the failure to acknowledge an amendment that merely clarifies an existing requirement therefore may be waived. See Federal Acquisition Regulation (FAR) § 14.405(d)(2); Mechanical Resources, Inc., B-241403, Jan. 30, 1991, 91-1 CPD ¶ 93. Failure to acknowledge an amendment may also be waived where the amendment results in less stringent obligations on the bidder since acceptance of a bid premised on the more stringent requirements in the original solicitation would not prejudice any other competitor. Pro Alarm Co., Inc., 69 Comp. Gen. 727 (1990), 90-2 CPD ¶ 242.

Here, amendment No. 0007 made no change to any of the requirements under the solicitation. It merely provided the revised bid schedule reflecting the performance bond requirement already implemented by amendment No. 0002, which was properly acknowledged by Marenco. Further, reduction of the bonding requirement from 100 percent of the bid price or \$1 million to 20 percent of the bid price placed a less stringent requirement on the bidders. Accordingly, there was no basis to reject Marenco's bid for failure to acknowledge the amendment.

As to the issue of Marengo's price change, in its comments to the agency report, the protester concedes that Marengo apparently did initial the changes in its bid schedule, but argues that the initials appearing on the changes do not appear to be the initials of the person who executed the bid.

We have held that a bidder's failure to initial such changes is a matter of form that may be considered an informality and waived if the bid leaves no doubt as to the price intended. R.R. Gregory Corp., B-217251, Apr. 19, 1985, 85-1 CPD ¶ 449. This rule also applies where changes in the bid are initiated but by someone other than the person who signed the bid. Walsky Constr. Co., B-213158, Nov. 21, 1983, 83-2 CPD ¶ 603. In such cases, where it is apparent that the changes were made before bids were opened, the bidder is responsible for the content of its bid and may be required to perform at the prices as submitted. Walsky Constr. Co., supra. There is no requirement for the government to prove either the identity or the authority of the person who actually made or initiated the change.

Here, the handwritten changes on Marengo's bid are clear, and there is no doubt as to Marengo's intended price. In addition, there is nothing which indicates, and the protester does not allege, that the changes were made after bid opening. Accordingly, the question of who initiated the changes provides no basis to challenge the propriety of the proposed award to Marengo.

Lastly, the protester maintains that Marengo made a mistake in its price for CLIN 1 because it was substantially lower than the prices of the other bidders. As explained above, because of Marengo's low price for this item, the contracting officer requested verification; in response, Marengo verified its price for this item. Our Office will not consider one bidder's claim that another bid may be mistaken since it is the responsibility of the contracting parties--the government and the low bidder--to assert rights and bring forth the necessary evidence to resolve mistake questions. Reliable Trash Serv., Inc., B-258208, Dec. 20, 1994, 94-2 CPD ¶ 252; Riverport Indus., Inc., 64 Comp. Gen. 265 (1985), 85-1 CPD ¶ 201.

The protest is denied.

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of the United States