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**Comptroller General  
of the United States**

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

# Decision

**Matter of:** Singleton Enterprises

**File:** B-295562

**Date:** February 25, 2005

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Wayne Singleton for the protester.

Keith A. Moore-Erickson, Esq., Department of Homeland Security, for the agency.  
Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General  
Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Awardee's bid for dredging a boat basin and channel was responsive, even though it failed to acknowledge an amendment, which provided the precise location of disposal area for the dredging material, an area that was identified in the initial invitation for bids, because the amendment did not impose any additional legal obligations and therefore was not material.

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## DECISION

Singleton Enterprises protests the award of a contract to W.C. Fore Trucking, Inc. under invitation for bids (IFB) No. HSCG82-05-B-3WCA20, issued by the United States Coast Guard, for dredging the small boat basin and channel at the Coast Guard Station, Gulfport, Mississippi. Singleton contends that Fore Trucking's bid should have been rejected as nonresponsive for failing to acknowledge a material amendment.

We deny the protest.

The IFB, posted on the Federal Business Opportunities (FedBizOpps) website on November 10, 2004, as a small business set-aside, sought proposals for dredging an estimated base quantity of 20,814 cubic yards of material from the small boat basin and channel. The IFB required the dredge material to be "transported and deposited at the Harrison County Development Commission Dredge Material Disposal Area C-1" in accordance with the "Conditions For Use" of the disposal area, as set forth in an appendix to the IFB. IFB § 01010, ¶ 1.2.1, § 02325, ¶ 3.3, append.

Following release of the IFB, the Coast Guard received approval to use the Mississippi Port Authority terminal for transferring the dredge material to the disposal area. To notify bidders of the authorized transfer point, the agency issued amendment No. 0001, dated October 26, which among other things stated the following:

The Coast Guard has obtained permission from the Mississippi State Port Authority at Gulfport, MS, to use the Northwest corner of the West Terminal to transfer the dredge material onto trucks for final transit to the upland disposal area.

In response to a potential bidder's inquiry concerning the location of the disposal area, the Coast Guard also issued amendment No. 0002, dated November 11, which provided the bidders with aerial maps of the boat basin and channel and Harrison County Development Commission Dredge Material Disposal Area C-1.

At bid opening on November 22, the Coast Guard received a bid of \$411,749.60 from Fore Trucking and a bid from Singleton of \$564,582. Although Fore Trucking's low bid properly acknowledged amendment No. 0001, it did not properly acknowledge amendment No. 0002 because the acknowledgement was sent by facsimile, which was not authorized in the IFB. The Coast Guard determined that Fore Trucking's bid nevertheless was responsive, in that amendment No. 0002 was not material; the failure to acknowledge this amendment therefore could be waived as a minor informality. After bid opening, Fore Trucking claimed a mistake in bid related to its price, which, after agency review, Fore Trucking was allowed to correct; this increased its bid price to \$482,897.60. Award was made to Fore Trucking on December 8. Singleton filed an agency-level protest, which the Coast Guard denied, and this to our Office protest followed.

Singleton contends that amendment No. 0002 was material because it was necessary to calculate the cost of transporting the dredge material from the transfer point to the disposal area and to clarify an ambiguity regarding the location of the disposal area. Singleton maintains that the IFB as issued lacked sufficient information to determine the distance between the transfer point and the disposal area because there was no address, telephone contact, or map of the disposal area. It also argues that amendment No. 0001 created an ambiguity as to what location would constitute the disposal area because of its reference to an "upland disposal area" rather than the Harrison County Development Commission Dredge Material Disposal Area C-1.

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. Federal Constr., Inc., B-279638, B-279638.2, July 2, 1998, 98-2 CPD ¶ 65 at 2. An amendment is material only if it would have more than a trivial impact on the price, quantity, quality, delivery, or the relative standing of the

bidders. Federal Acquisition Regulation (FAR) § 14.405(d)(2); Kalex Constr. & Dev., Inc., B-278076.2, Jan. 20, 1998, 98-1 CPD ¶ 25 at 2. 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 or is a matter of form. Kalex Constr. & Dev., Inc., *supra*. A bidder's failure to acknowledge an amendment that is not material is waivable as a minor informality. FAR § 14.405; Overstreet Elec. Co., Inc., B-283830, B-283830.2, Dec. 30, 1999, 2000 CPD ¶ 8 at 7.

Here, we find that amendment No. 0002 was not material because it only provided bidders with additional information about the location of the Harrison County Development Commission Dredge Material Disposal Area C-1 that was previously designated as the place where bidders were required to transport and dispose of the dredge material. The information regarding the precise location of this disposal site, while useful to bidders that may not have otherwise determined its location, did not impose legal obligations or requirements different from those contained in the original IFB, including amendment No. 0001.<sup>1</sup> See Angus Fire Armour Corp., B-237211.2, Jan. 18, 1990, 90-1 CPD ¶ 68 at 3.

The reference to the “upland disposal area” in amendment No. 0001 did not render ambiguous the location of the required dredge material disposal area. Not only did amendment No. 0001 not change the required disposal area identified in the original IFB, but the Coast Guard advises that “upland disposal area” is a term commonly used to refer to land lying above the level where water flows, as was the case here. In sum, because amendment No. 0002 was not material, the agency properly waived Fore Trucking’s failure to acknowledge this amendment, and properly found the bid responsive.

The protest is denied.

Anthony H. Gamboa  
General Counsel

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<sup>1</sup> The Coast Guard advises that the maps included in amendment No. 0002 were available to anyone who contacted the Commission or searched the Mapquest website on the Internet.