

**DECISION**

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

58910

FILE: B-184322

DATE: July 17, 1975

MATTER OF: I-K Electric Company, Inc.

97373

**DIGEST:**

Bid which failed to acknowledge IFB amendment increasing Davis-Bacon wage rates properly was rejected as nonresponsive, since failure to acknowledge amendment was material deviation not subject to waiver and de minimis doctrine does not apply to amendments of Davis-Bacon wage rates. Furthermore, since agency states that amendment was mailed to all prospective bidders at time of issue, protesting bidder's failure to receive and acknowledge amendment cannot be viewed as result of conscious and deliberate effort to exclude bidder from competition.

On April 29, 1975, the Veterans Administration (VA), North Little Rock, Arkansas, issued invitation for bids (IFB) No. 598-87-75 for a "New Electrical System" at the North Little Rock VA Hospital. Amendment No. 1 to the IFB was issued on April 15, 1975, and deleted all work at Building No. 159. Amendment No. 2 to the IFB was issued on May 7, 1975, and incorporated Modifications No. 2, dated April 4, 1975, No. 3, dated April 25, 1975, and No. 4, dated May 2, 1975, to United States Department of Labor Decision No. AR75-4058, dated February 28, 1975, which increased the wage rates of several crafts, including construction laborers, concrete laborers and excavating laborers.

The bid of I-K Electric Company, Inc. (I-K), was rejected for failure to acknowledge amendment No. 2. I-K protested its rejection to the contracting officer contending that (1) it had not received the amendment; and (2) that the effect of the amendment was trivial. Following a denial of the protest by the contracting officer, the matter was presented to our Office for decision.

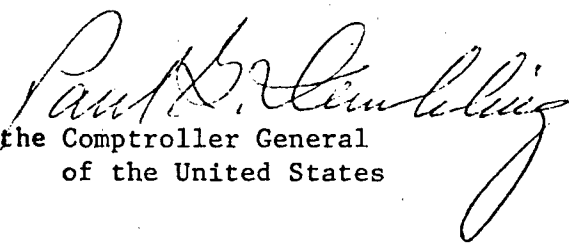
Addressing first the failure of I-K to receive the amendment, generally, if a bidder does not receive and acknowledge a material amendment to an IFB and such failure is not the result of a conscious and deliberate effort to exclude the bidder from participating in the competition, the bid must be rejected as nonresponsive. 40 Comp. Gen. 126, 128 (1960). In the report regarding the protest, the contracting officer states that amendment No. 2 was forwarded by certified mail, return receipt requested, to all prospective bidders at the time of issue. Therefore, we have no reason to believe that the failure of I-K to receive the amendment was the result of a deliberate attempt on the part of the VA to exclude it from competition. Mike Cooke Reforestation, B-183549, July 2, 1975; Torotron Corporation, B-182418, January 30, 1975.

Secondly, we cannot accept I-K's statement that the effect of amendment No. 2 was immaterial and trivial and that, therefore, I-K's failure to acknowledge the amendment can be disregarded. In decision B-157894, November 30, 1965, we considered the propriety of accepting a bid where the bidder failed to acknowledge the amendment to an invitation for bids which furnished, prior to bid opening, the wage rate decision of the Secretary of Labor. We held that the failure to acknowledge the amendment was a material deviation which was not subject to waiver and rendered the bid nonresponsive.

In addition to the fact that the wage rates required to be paid by a contractor affect his cost of performance, the Davis-Bacon Act, 40 U.S.C. § 276a (1970), directs that construction contracts such as here involved "\* \* \* shall contain a provision stating the minimum wages to be paid \* \* \*," whereas acceptance of the I-K bid in the form it existed at the time of opening would not result in a contract containing a statement of the applicable minimum wage rates. B-170064, July 21, 1970, and B-160176, October 11, 1966.

Moreover, in the latter decision we concluded that the de minimis doctrine was not applicable to situations of this nature. Therefore, the fact that I-K states that amendment No. 2 amounts to only \$22.56 of a \$411,350 bid is not important.

Accordingly, the protest of I-K is denied.

  
For the Comptroller General  
of the United States