

DECISION



8258 M. L. Hunt 1206
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-193107

DATE: November 7, 1978

MATTER OF: Corner Construction Company

DIGEST:

Failure to acknowledge wage rate determination addenda may not be waived as minor informality in bid.

Corner Construction Company (Corner) protests the National Park Service's refusal to consider its bid under invitation for bids No. 1560-78B issued by the National Park Service.

Corner's bid was rejected because the firm failed to acknowledge two solicitation addenda, including a revised wage determination. Corner argues that its bid was valid because it is a union contractor and pays its employees at least the prevailing wages.

The established rule as to the effect of a bidder's failure to acknowledge an amendment to an invitation for bids is that when the amendment affects, in other than a "trivial or negligible" manner, the price, quality, quantity or delivery schedule of the procurement, the bidder's failure to acknowledge the amendment in compliance with the terms of the invitation or amendment cannot be waived. See Federal Procurement Regulations § 1-2.405 (1964 ed. circ. 1).

Where a bidder fails to acknowledge an amendment which modifies or adds a wage rate determination, the failure may not be waived as a minor informality even though the bidder is paying the same or higher wages under union labor agreements. This result is required because the Government's acceptance of a bid which does not contain an agreement to pay the appropriate Davis-Bacon wages does not bind the contractor/employer to pay

wages to which its employees are entitled under the Davis-Bacon Act. Thus, the wage determination is designed to protect the bidder's employees and their rights may not be waived by the Government. See Prince Construction Company, R-184192, November 5, 1975, 75-2 CPD 279; Rothwell Brothers, Inc., R-190311, October 21, 1977, 77-2 CPD 316, and cases cited therein.

Accordingly, the failure to acknowledge the addendum revising the wage rate determination is a material deviation which is not subject to waiver. The protest is summarily denied. Inflated Products Company, Inc., R-190877, May 11, 1978, 78-1 CPD 362.

R. G. Killian
Deputy Comptroller General
of the United States