

13239 PL-11  
Mr. Lebow



**DECISION**

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

FILE: B-197604

DATE: March 25, 1980

MATTER OF: Fil-Coil Company, Inc.  
4228

**DIGEST:**

Bidder's failure to acknowledge amendment cannot be waived merely because bidder suggested need for amendment to agency.

Fil-Coil Company, Inc. (Fil-Coil) protests the rejection of its bid under invitation for bids (IFB) DLA900-79-B-4075 issued by the Defense Electronics Supply Center (DESC), Defense Logistics Agency. Acc00925

DESC rejected Fil-Coil's low bid for filters because the firm failed to acknowledge an amendment to the IFB prior to bid opening. Fil-Coil's position is that its failure to acknowledge the amendment should be waived because the changes in the amendment were not significant. DESC contends that the amendment materially changed the IFB.

The failure to acknowledge an amendment usually renders the bid nonresponsive. Porter Construction Company, 55 Comp. Gen. 615 (1976), 76-1 CPD 2. Nevertheless, Defense Acquisition Regulation § 2-405 allows acknowledgement of an amendment to be waived, if the amendment clearly would have no effect or only a trivial effect on price, quality, quantity or the relative standing of the bidders. See Mills Manufacturing Corporation, B-188672, June 15, 1977, 77-1 CPD 430. The basis for this rule is that acceptance of a bid which disregards a material provision of an invitation, as amended, would be prejudicial to the other bidders. Clarification of the bid after opening may not be permitted because the bidder in such circumstances would have the option to decide to become eligible by furnishing extraneous evidence that the amendment had been considered, or to avoid award by remaining silent. Mills Manufacturing Corporation, supra.

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[Protest Involving Failure To Acknowledge  
Amendment]

DESC states the amendment significantly modified the IFB in three areas. The amendment affected the specifications by deleting an incorrect drawing and adding a correct drawing that contained essential requirements for the filters. The amendment also indicated that shipping was to be on an FOB destination basis only, rather than on the FOB origin or destination terms originally solicited. Lastly, the amendment stated that certain filters that had been scheduled to be shipped to Dayton, Ohio, should instead be shipped to Richmond, Virginia.

Fil-Coil believes the changes affecting the shipping terms and delivery are inconsequential. Fil-Coil, however, does note that "the correction as to the drawing was a material change". As to the drawing change, Fil-Coil suggests that its failure to acknowledge the amendment is not important in this case because Fil-Coil itself pointed out to the agency the original specification discrepancy that was corrected by the amendment.

We have previously considered a protester's contention that its bid should not have been rejected for failure to acknowledge an amendment originally proposed by the protester. See Aqua-Trol Corporation, B-191648, July 14, 1978, 78-2 CPD 41. In that case, as here, the protester maintained that its suggestion of the amendment was sufficient acknowledgement of its assent to the terms of the amendment to have its bid considered responsive. We rejected the protester's position in Aqua-Trol and similarly cannot agree with Fil-Coil, as oral discussion cannot cure the bidder's failure to acknowledge in writing its intention to be bound by the amendment. See Paragon Heating and Plumbing Co., B-170162, August 17, 1970. Therefore, even without reviewing the other changes made by the amendment, we must conclude Fil-Coil's bid was nonresponsive.

The protest is denied.



For The Comptroller General  
of the United States