

**DECISION**

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

FILE: B-206526

DATE: June 30, 1982

MATTER OF: Vin Construction Company, Inc.

**DIGEST.**

1. Failure to acknowledge a wage rate determination amendment may not be waived as a minor informality in the bid and constitutes a defect in substance not merely form.
2. Correction of a nonresponsive bid may not be permitted after bid opening since it would permit the bidder an election to accept or reject the bid which would adversely affect the integrity of the competitive bidding system.

Vin Construction Company Inc. (Vin), protests rejection of its bid as nonresponsive to invitation for bids (IFB) DACA31-82-B-0016 issued by the Baltimore District of the Army Corps of Engineers for construction.

Wage rates for trades necessarily needed to be employed to perform the contract were added to the solicitation by amendment 0001 issued effective December 18, 1981, and by amendment 0002 issued effective December 31, 1981. On bid opening at 3 p.m., on January 22, 1982, the bid of Vin was rejected as nonresponsive because Vin failed to acknowledge receipt of either amendment.

We deny the protest.

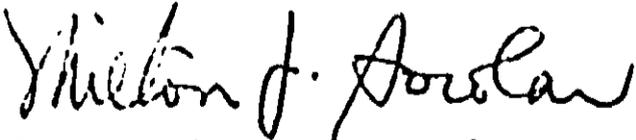
Vin alleges that the amendments had a trivial effect on price and no effect on quality, quantity, delivery or the relative standing of bidders, and the failure to indicate in the bid that the amendments had been received was a minor informality which should be waived. Vin contends that the contracting officer had an obligation to give Vin an opportunity to cure the deficiency resulting from this minor informality. Vin also alleges that it is willing to stand by its submitted bid which was

based on information in the amendments and that Vin is a signatory to a contract with the AFL-CIO, which requires the hire of union personnel at wages not less than those in the amendments. Vin also argues that since the changes in the wage rates were insignificant and the Vin bid is some \$60,000 less than the next low bid, rejection of the bid because of the failure to acknowledge the amendments sacrifices substance to form.

This case is governed by our decision in Lexington Fire Protection Company, Inc., B-200844, October 23, 1980, 80-2 CPD 326, in which we held that 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 labor agreements, since acceptance by the Government of a bid which does not contain an agreement to pay the appropriate wages does not bind the contractor/employer to the Government to pay wages to which its employees are entitled under the Davis-Bacon Act. The wage determination is designed to protect the bidder's employees and their rights may not be waived by the Government. Whether or not an enforceable contractual obligation exists is a matter of substance and not a mere matter of form as alleged.

A bid which is nonresponsive may not be corrected by the bidder after bid opening. To allow the bidder to correct a material deviation from the solicitation after bid opening would permit a bidder to accept or reject a contract after bids are exposed by correcting or refusing to correct its bid, which would adversely affect the integrity of the competitive bidding system. Singleton Contracting Corp., B-202649, August 4, 1981, 81-2 CPD 90.

We deny the protest.

for   
Comptroller General  
of the United States