

DECISION

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

FILE: B-209352

DATE: October 21, 1982

MATTER OF: Morris Plains Contracting Inc.

DIGEST:

1. A contracting agency's rejection of a bid for failure to acknowledge an amendment is proper where the bidder does not show that its failure to receive the amendment was due to a deliberate effort by that agency to exclude it from the competition.
2. The failure of a bidder to acknowledge an amendment containing a wage rate determination may not be waived as a minor informality.

Morris Plains Contracting Inc. protests the rejection of its bid as nonresponsive under solicitation No. IFB-NARO-2-0063 issued by the Department of the Interior (DOI) for certain heating system modifications. Morris Plains alleges that it was improper for DOI to reject the firm's bid for failure to acknowledge an amendment concerning a wage determination.

We summarily deny the protest.

Morris Plains argues that DOI's rejection was improper because the firm never received the amendment and believes that DOI should have sent the amendment by certified mail. A contracting agency, however, is not the insurer of the receipt of a solicitation amendment by prospective bidders. Ingersoll-Rand Company, B-203727, July 2, 1981, 81-2 CPD 6. In this regard, we know of no requirement that amendments be sent to prospective bidders by certified mail. Rather, the risk of nonreceipt rests with those bidders unless the failure to receive is due to a conscious and deliberate effort by the contracting agency to exclude them from participating in the competition. Marino Construction Company, Inc., B-204970, February 25, 1982, 82-1 CPD 167. Morris Plains neither alleges nor provides any evidence that DOI deliberately

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failed to send the firm the amended wage determination. Thus we cannot fault the agency's rejection of Morris Plains' bid on that basis.

In addition, Morris Plains argues that the amended wage determination would not have affected the firm's bid price and that DOI therefore should have waived the firm's failure to acknowledge as a minor informality. We disagree. Where a bidder fails to acknowledge an amendment modifying or adding a wage rate determination, the contracting agency may not waive that failure as a minor informality, regardless of whether the bidder is paying the same or higher wages under labor agreements, since acceptance by the Government of a bid without the acknowledgment does not legally bind the bidder to pay the wages prescribed in the amendment. Vin Construction Company, Inc., B-206526, June 30, 1982, 82-1 CPD 637; X-Cel Constructors, Inc., B-206746, April 5, 1982, 82-1 CPD 311.

The protest is denied.



Acting Comptroller General
of the United States