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DECISION



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

FILE: B-214779

DATE: September 4, 1984

MATTER OF: Pioneer Fluid Power Company

DIGEST:

A bidder's failure to acknowledge an amendment formally may be waived as a minor informality where the bid clearly indicates that the bidder received the amendment. Where the amendment, among other things, changes the date of bid opening and the protester's bid contains the new date, the bid may be accepted.

Pioneer Fluid Power Company (Pioneer) protests the rejection of its low bid under invitation for bids (IFB) No. N62467-84-B-3241 issued by the Department of the Navy (Navy) for the overhaul of one Joy air compressor and the inspection of a second Joy air compressor. The Navy rejected Pioneer's bid as nonresponsive because Pioneer failed to acknowledge an amendment to the solicitation.

The protest is sustained.

The solicitation was issued on January 6, 1984. The contracting officer decided to amend the solicitation when it was discovered that several drawings referenced in the IFB were not included in the solicitation package. On February 15, 1984, amendment 0001 was issued, extending the bid opening date from February 23, 1984, to February 28, 1984. The amendment provided three drawings which detailed the extent to which various components in the compressor to be overhauled were out of tolerance, deleted one item from the solicitation requirements, and added a clause to the general requirements.

After Pioneer's low bid was rejected as nonresponsive, award was made to the next low bidder, Hydro-Air Engineering, on March 26, 1984.

The Navy asserts that the amendment was material to the IFB and that Pioneer's bid had to be rejected as nonresponsive since it failed to acknowledge a material amendment.

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However, we believe that the Navy should have waived Pioneer's failure to acknowledge the amendment as a minor informality and accepted the bid.

The general rule is that a bidder's failure to acknowledge the receipt of a material amendment to an IFB renders its bid nonresponsive and ineligible for award. Nuclear Research Corporation; Ridgeway Electronics, Incorporated, B-200793, B-200793.2, June 2, 1981, 81-1 C.P.D. ¶ 437. The failure to formally acknowledge receipt of an amendment, however, should be waived as a minor irregularity if the bid received clearly indicates that the bidder received the amendment. In such circumstances, the bidder is bound to the terms set forth in the amendment at the price stated in the bid. See Protimex Corporation, B-204821, Mar. 16, 1982, 82-1 C.P.D. ¶ 247. In our opinion, the inclusion of the amended bid opening date in Pioneer's bid clearly establishes that Pioneer had received the amendment and constitutes an implied acknowledgment of the receipt of the amendment. See Inscom Electronics Corporation, 53 Comp. Gen. 569 (1974), 74-1 C.P.D. ¶ 56. Therefore, we sustain the protest.

In determining whether it is in the government's best interest to recommend action which may result in the termination of an improper award, we consider factors such as the seriousness of the procurement deficiency, the degree of prejudice to other offerors or to the integrity of the competitive procurement system, and the extent of performance and the cost to the government. See Dillon Supply Company; Department of Energy--Request for Reconsideration, B-203937, Jan. 19, 1982, 82-1 C.P.D. ¶ 41. We have held that remedial relief is not practical where a contract has been substantially performed. See Propper Manufacturing Co., Inc., B-208035, Mar. 22, 1983, 83-1 C.P.D. ¶ 279.

We are advised in the instant case that Hydro-Air Engineering substantially has completed the work under this solicitation. Thus, as a practical matter, corrective action is foreclosed. However, by separate letter of today, we are advising the Navy of the deficiency in this procurement.

for *Shilton J. Aorlan*
Comptroller General
of the United States