

DECISION

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

30286

FILE: B-217362**DATE:** January 24, 1985**MATTER OF:** RTC Construction**DIGEST:**

Bidder--a family-run and family-operated concern--failed to timely acknowledge a solicitation amendment which contained an increased wage rate for general laborers--a trade that the protester effectively admits will be used on the construction project in question. This failure rendered the low bidder's bid nonresponsive. The bidder was not otherwise legally obligated to pay the specified wage rate under a collective bargaining agreement. Further, the bidder was also legally free to subcontract with firms that were subject to this wage rate; however, the concern's bid did not contain a commitment to pay the increased wage rate to general laborers of all potential subcontractors.

RTC Construction (RTC) protests the rejection of its bid under Department of the Army solicitation No. DAKF57-84-B-0211 for the replacement of water service lines at Fort Lewis, Washington.

We conclude that the protester's initial submission shows that the protest is without legal merit. We therefore summarily deny the protest without obtaining a report from the Army since to do so would not serve any useful purpose. See King-Fisher Company, B-216284, Sept. 24, 1984, 84-2 C.P.D. ¶ 338.

The protester notes that its low bid was rejected because RTC failed to acknowledge a solicitation amendment which contained revised wage rates issued by the Department of Labor (DOL) under authority of the Davis-Bacon Act, 40 U.S.C. § 276(a) (1982). RTC notes that the wage rate admittedly increased specified wages for "general laborers" who "could possibly be utilized on the contract." But RTC argues that the "net [price effect] . . . is trivial" and that, in any event, as a "small, family-owned" business, RTC is not subject to the DOL wage rate.

031075

Where a reasonable possibility exists that a certain trade's services will be required in the performance of a contract, an amendment revising the wage rate for that trade is material. Porter Contracting Company, B-184228, Jan. 2, 1975, 76-1 C.P.D. ¶ 2. Thus, the failure to acknowledge such an amendment may not be waived since, without acknowledgment, a bidder legally cannot be required by the government to pay the wages prescribed in the amendment. See, e.g., Morris Plains Contracting Inc., B-209352, Oct. 21, 1982, 82-2 C.P.D. ¶ 360. The waiver of the failure to acknowledge a wage-rate amendment is permissible only where a bidder is already obligated under a collective bargaining agreement to pay employees at the revised rate, the impact of the wage revision on the bidder's price is minimal, and waiver would not otherwise be prejudicial. Brutoco Engineering & Construction, Inc., 62 Comp. Gen. 111 (1983), 83-1 C.P.D. ¶ 9.

RTC admits, in effect, that laborers, whose wages were increased by the amendment, will be used on the contract so that the revised wage rate for that trade was material. Further, RTC admits that it is not obligated under a collective bargaining agreement to pay laborers at the revised rate. Consequently, RTC's bid cannot be accepted under the above precedent even if the effect of the revised wage rate on RTC's price would be minimal.

The only other argument RTC makes to appose rejection of its bid concerns its allegation that its failure to acknowledge the amendment should be waived because RTC is a family-owned and family-operated concern.

As RTC points out, in T.W.P. Company--Reconsideration, 61 Comp. Gen. 231 (1982), 82-1 C.P.D. ¶ 87, we determined that we would not insist upon adherence to our decision in T.W.P. Company, 59 Comp. Gen. 422 (1980), 80-1 C.P.D. ¶ 295. Our 1980 decision had concluded that "individual members of a partnership [in that case a husband, wife and two sons], serving as a subcontractor, performing the work of laborers or mechanics" are subject to the wage determinations issued by DOL.

RTC's bid did not contain a commitment to pay mandated wages to employees of any subcontractor whom RTC might hire. Although RTC insists that its "only possible subcontractor is the same kind of firm," RTC's bid does not obligate RTC to subcontract only with family-owned and family-operated firms. Since RTC could legally subcontract