

**DECISION**

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

**FILE:** B-220957 **DATE:** February 7, 1986  
**MATTER OF:** Hispanic Maintenance Services, Inc.

**DIGEST:**

Bid which failed to acknowledge amendment requiring upward wage rate revision was properly rejected as nonresponsive notwithstanding fact that revision was based on rejected bidder's collective bargaining agreement. Failure to acknowledge amendment could not be waived as minor informality because the effect of the amendment on bid price cannot be said to be clearly de minimus.

Hispanic Maintenance Services, Inc. (Hispanic) protests the rejection of its bid under invitation for bids (IFB) No. 2PPB-MV-24327 issued by the General Services Administration (GSA).

We deny the protest.

The IFB solicited bids for janitorial services for the U.S. Courthouse building, Hato Rey, Puerto Rico, for an initial 1-year period and two 1-year option periods. Hispanic submitted the low bid in the amount of \$1,065,239. GSA rejected Hispanic's bid as nonresponsive because the firm failed to acknowledge amendment No. 1 to the solicitation which incorporated an increased wage rate determination and corrected the number of exterior windows in the building from 165 to 1455. Award was made to the next low responsive bidder, National Building Maintenance Co., Inc. in the amount of \$1,109,935.

The revised wage rate determination incorporated in the amendment increased the hourly wage for janitors from \$4.00 to \$4.30. Hispanic, the incumbent contractor, argues that its failure to acknowledge the revised wage rate determination is immaterial because, under a collective bargaining agreement, the firm is obligated to pay its janitors the higher rate.

This Office traditionally has held that a bid which fails to acknowledge an amendment revising the wage rate for a labor category to be employed under a contract must be

rejected. Reliable Service Technology, B-217152, Feb. 25, 1985, 85-1 C.P.D. ¶ 234. Without acknowledgment of such an amendment, the government legally cannot require the bidder to pay the wages incorporated by the amendment and the bid therefore is nonresponsive. We have recognized, however, that the failure to acknowledge a wage rate amendment may be waived and corrected after bid opening under very limited circumstances not in the bidder's control after bid opening. TCA Reservations, Inc., B-218615, Aug. 13, 1985, 85-2 C.P.D. ¶ 163; Vector Telcom, Inc., B-216008, Oct. 23, 1984, 84-2 C.P.D. ¶ 452. We have held that where the effect of the wage rate in the amendment on bid price is de minimus and the bidder is otherwise obligated under a collective bargaining agreement to pay the wage rate in the amendment, its failure to formally acknowledge the amendment may be cured after bid opening. Brutoco Engineering & Constr., Inc., 62 Comp. Gen. 111 (1983), 83-1 C.P.D. ¶ 9; Vector Telcom, Inc., B-216008, supra. See also Federal Acquisition Regulation, 48 C.F.R. ¶ 14.405 (1984), which permits waiver of a bidder's failure to acknowledge an amendment only where the amendment has no more than a trivial effect on price, quantity, quality, delivery or the relative standing of bidders.

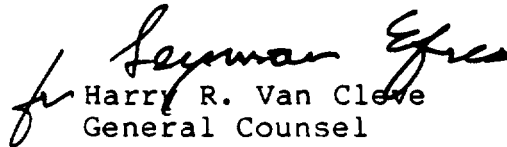
This case does not fall within the limited circumstances for waiving minor informalities in wage rate situations. The amendment cannot be said to have clearly a de minimus effect. GSA estimates that approximately 120 daily man-hours are required to satisfactorily perform the janitorial services required under this contract. Based upon this man-hour estimate, the 30 cent per hour wage increase for janitors required by the amendment would have an impact on bid price of about \$28,000 over the 3 year contract period.

Whether the value of an unacknowledged amendment is trivial or negligible depends on the amendment's estimated impact on bid price and the relationship of that impact to the difference between the 2 low bids; both tests must be satisfied in order to permit waiver. Mike Vanebo, B-219019, Aug. 16, 1985, 64 Comp. Gen. \_\_\_\_ (1985), 85-2 C.P.D. ¶ 184; Marino Constr. Co., Inc., 61 Comp. Gen. 269 (1982), 82-1 C.P.D. ¶ 167. Here, although the estimated increase of \$28,000 is only about 2 percent of Hispanic's bid and therefore insignificant based on this comparison, the more than 50 percent impact on the \$44,696 difference between the two low acceptable bids is significant. Mike Vanebo, B-219019, supra. Therefore, Hispanic's failure to acknowledge the

increased wage rate in the amendment cannot be waived as trivial and GSA acted properly in rejecting the firm's bid as nonresponsive. Since we find that Hispanic's bid properly was rejected for failing to acknowledge the revised wage rate determination, we need not consider the effect of its failure to acknowledge the other terms of the amendment. TCA Reservations, Inc., B-218615, supra.

Hispanic has requested reimbursement for the costs it incurred in submitting a bid and pursuing its protest with this Office. Since we have found Hispanic's protest to be without legal merit, we deny its claim for these costs. See Monarch Engineering Company, B-2183274, June 21, 1985, 85-1 C.P.D. ¶ 709.

The protest is denied.

  
Harry R. Van Cleave  
General Counsel