

Dunkard



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Phenix Mechanical Contractors, Inc.

File: B-233061

Date: December 19, 1988

DIGEST

Agency properly rejected bid for failure to acknowledge solicitation amendment adding labor wage rate categories where record indicates that trade services contained in added wage rate categories could be required in the performance of the contract and bidder would not be bound to pay the wage rates prescribed by the Department of Labor.

DECISION

Phenix Mechanical Contractors, Inc., protests the award of a contract under schedule II of invitation for bids (IFB) No. DACA21-88-B-0176, issued as a total small business set-aside by the U.S. Army Corps of Engineers, to replace gas piping at Fort Benning, Georgia. The Corps rejected Phenix's bid because Phenix failed to acknowledge receipt of an IFB amendment which contained revised wage rates for the project. Phenix argues that its failure to acknowledge the amendment should be waived.

We deny the protest.

The IFB, which was issued on August 15, 1988, contained two separate bidding schedules. Schedule I involved a base bid for mechanical repairs to building 3210 and an additive item for new energy monitoring controls. Schedule II provided for the replacement of gas piping. The IFB, as originally issued, incorporated Wage Decision GA88-1, issued by the Department of Labor pursuant to the Davis-Bacon Act, 40 U.S.C. § 276(a) (1982). On August 26, however, the Corps issued amendment No. 1 to the IFB which provided that Wage Decision GA88-1 applied only to schedule I and added Wage Decision GA88-31 to apply to schedule II. The result of the amendment was that the basic hourly rates for labor categories revised by GA88-31 were lower than their corresponding rates as stated in GA88-1. However, GA88-31 added classifications and basic hourly rates for power equipment operators, such as crane, motor grader, roller,

044194 / 137592

and trenching machine operators. Phenix concedes that it does not have a collective bargaining agreement with any labor organization which would require it to pay a particular hourly wage rate.

Phenix, which did not acknowledge the amendment, was the apparent low bidder under both schedules. The Corps determined that Phenix's failure to acknowledge the amendment rendered its bid nonresponsive with respect to schedule II due to the inclusion of Wage Decision GA88-31 in the amendment. Consequently, the Corps awarded schedule II to the second low bidder and awarded schedule I to Phenix on September 30.

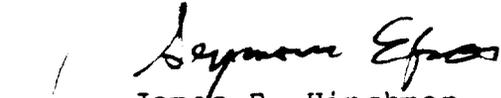
Phenix (which did not receive the amendment) argues that the Corps should waive, as a minor informality, Phenix's failure to acknowledge the amendment because the revised wage rates lowered the applicable rates established by GA88-1. With respect to the added classifications for power equipment operators, Phenix asserts, after bid opening, that it would not use any of the equipment operated by these laborers for the project.

Generally, a failure to acknowledge an IFB amendment increasing or adding wage rates cannot be cured after bid opening, no matter how de minimis the increase in the wage rates. LaCorte EGM, Inc., B-231448.2, Aug. 31, 1988, 88-2 CPD ¶ 195; Hewett-Kier, B-225412, Nov. 6, 1986, 86-2 CPD ¶ 530. Where a reasonable possibility exists that a certain trade's services will be required in the performance of a contract, an amendment increasing the wage rate for that trade or adding wage rates for that trade is material. See RTC Construction, B-217362, Jan. 24, 1985, 85-1 CPD ¶ 95.

Here, the amendment not only lowered wage rates for certain categories, but, as stated above, also added new categories. Thus, the issue is whether a reasonable possibility exists that the added trade categories will be used in the performance of this contract. The Corps has submitted a memorandum signed by the Chief of the Installation Support Section which states that it is reasonable to assume the trades listed could be used to perform the work required in schedule II. While Phenix contests this agency determination and argues, after bid opening, that it does not intend to use these operators because the equipment operated by them is not of the type suitable for the project, we are not persuaded by these arguments. Notwithstanding Phenix's assertions, the Corps states that there is a reasonable possibility that the trades listed might be used to perform this contract because under a prior contract for gas line replacement at Fort Benning, the contractor used a trenching

machine in completing the work. Thus, in our view, there is a reasonable possibility that at least the trenching machine could be used for this contract.

The protest is denied.


James F. Hinchman
General Counsel