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

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B-180026

DEC 28 1973

Mr. Andre J. Richard
Contracting Officer
Veterans Administration Hospital
200 Springs Road
Bedford, Massachusetts 01730

Dear Mr. Richard:

We refer to your letter of November 9, 1973, reference 518/134, requesting a decision from our Office concerning the protest of Enterprise Equipment Company against the proposed award of a contract to New England Pressure Tap Company, Incorporated (New England), for the installation of a central compressed air system and related construction under invitation for bids (IFB) No. 518-74-33, issued by the Veterans Administration Hospital Bedford, Massachusetts.

Enterprise bases its protest on the failure of New England to acknowledge Amendment No. 0001 to the IFB. Amendment No. 0001, issued on October 1, 1973, amended the solicitation's Schedule of Wage Rates to reflect a modification by the Department of Labor of its earlier Decision No. AQ-3,004. The labor classifications enumerated in the modification were carpenters, soft floor layers, ironworkers, lathers, and sprinkler fitters. Amendment No. 0001 stated that "Failure to acknowledge receipt of this amendment may result in bid being rejected as non-responsive." New England was the only bidder which failed to acknowledge Amendment No. 0001, and this omission was noted by you at the time of bid opening.

It is New England's position that its failure to acknowledge receipt of the amendment should be waived and the contract awarded to it as low bidder since it never received the amendment and was, therefore, not aware of its issuance. However, this does not justify waiving the bidder's failure to acknowledge the bid amendment. See 40 Comp. Gen. 186 (1960). This seemingly harsh rule is necessary to preserve the integrity of the competitive bidding system by preventing a bidder from varying terms after bid opening or becoming bound for less than was required from other bidders on the same contract. B-166255, May 27, 1969.

New England also contends that its failure to acknowledge the amendment affecting the wage determination schedule should be waived as a minor informality under Federal Procurement Regulations (FPR) 1-2.405(d)(2) since

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none of the trades enumerated by the amendment was to be used in the project. This contention finds support in the memorandum of October 29, 1973, prepared by the Chief, Engineering Service, of your hospital wherein it was stated:

> "This installation and construction does not require the use of Carpenters, Soft Floor Layers; Ironworkers; Lathers; or Sprinkler Fitters, as listed on Schedules of Wage Rates, Modification No. 1, dated August 31, 1973."

The anticipated labor needs of the project were further clarified in a memorandum of November 30, 1973, where the Chief of Engineering Services of your hospital stated:

> "1. This project basically involves providing a space within an existing building and installing a Medical Air Compressor.
>
> "2. A description of the work required is as follows:
>
> a. Hand excavate existing crawlspace to proper depth. Personnel required - laborers and truck drivers.
>
> b. Construct concrete floor, concrete block wall and install prehung steel door. No form work required. Personnel required - masons and concrete finishers.
>
> c. Install air compressor and tie into existing air piping within the building. Personnel required - plumbers and pipefitters.
>
> d. Install compressor electrical controls and electrical light fixture with switch. Personnel required - electrician.
>
> e. Laborers could be used in any phase to assist the journeymen in moving equipment, cutting pipe routes, etc."

Subsequent to our receipt of the above memoranda, we were informed by letter of December 7, 1973, from the Director, Supply Service, Department of Medicine and Surgery, Veterans Administration, confirming a telephone conversation of the same date, that in the opinion of the Engineer of V.A.'s Central Office Engineering Service:

> "the carpentry trade would be applicable to framing the concrete pour, installing a metal door frame, and installation of the door."

This conflict between the opinions of the two V.A. engineers indicates that there is a possibility that trades enumerated in Amendment No. 0001 might be used in the project. Since this possibility exists, we feel that the addendum to the wage determination schedule was a material element of the IFB as amended.

In this regard, we note that the Labor Standards Provisions section in the IFB provides that:

"2. DAVIS-BACON ACT (40 U.S.C. 276a--276a-7)

* * * * *

"(d) The Contracting Officer shall require that any class of laborers or mechanics, including apprentices and trainees, which is not listed in the wage determination decision and which is to be employed under the contract shall be classified or reclassified conformably to the wage determination decision, and shall report the action taken to the Secretary of Labor * * *."

By the terms of the above section, any worker doing work which could be classified as carpentry would be entitled to payment for this work based on the wage determination schedule for carpenters. Therefore, the effect of the wage determination schedule set forth in the amendment goes beyond the individual job categories listed therein. See B-176399, January 9, 1973.

Based on the foregoing, we find that New England's bid is nonresponsive.

Sincerely yours,

[illegible]

(Signed) Comptroller General
of the United States