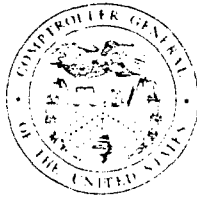


**DECISION**

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

57032

FILE: B-184268

DATE: September 23, 1975

MATTER OF: Harold N. Hall Construction, Inc.

97434

**DIGEST:**

1. Failure to provide bid bond, as required in IFB, is a material omission rendering bid nonresponsive.
2. Where amendment to solicitation merely corrects typographical error in Government estimate of cost range, and effects decrease in cost of performance, failure to acknowledge amendment may be waived and award made to otherwise low bidder on basis of bid as submitted.

Harold N. Hall Construction, Inc. (Hall Construction), has protested against the award of a contract to either of the two lowest bidders responding to invitation for bids (IFB) N62467-74-B-9659, issued by the Southern Division, Naval Facilities Engineering Command (Navy), on May 19, 1975. Hall Construction contends that the low bidder, Coronado Construction Co., is nonresponsive because it failed to submit a bid bond with its bid and that Emcon, Inc., the second low bidder, is nonresponsive because it failed to acknowledge an amendment to the solicitation.

The subject procurement was for the construction of a transmitter building at the Naval Air Station, Dallas, Texas. Originally, the solicitation contained three references to a requirement for the demolition of an old transmitter building, but, prior to its issuance, two references which described the demolition were crossed out and a notation was added which explained that this work was to be done "by others". Inadvertently, the reference to the demolition was not removed from the paragraph which gave a general description of the requirements. On May 29, 1975, amendment 0001 to the solicitation was issued which deleted the mention of the demolition requirement from the general description and corrected a typographical error which had resulted in the solicitation erroneously giving the estimated cost of the project at between \$100,000,000 and \$500,000,000, instead of the intended estimate of between \$100,000 and \$500,000.

The Navy agrees that the lowest bid was nonresponsive in that it failed to include a bid bond. The Navy disagrees, however, with the protester's contention that the second low bid is nonresponsive for failing to acknowledge amendment 0001. The Navy argues that the amendment did not affect the price, quality, or quantity of the procurement and, therefore, the failure to acknowledge amendment 0001 can be waived

as a minor informality. This view is based upon the contention that it was obvious from the solicitation as issued that the demolition work was not required under this solicitation, and that the estimated cost range was an overstatement. Therefore, it was only out of "\*\*\* an excess of caution \*\*\*" that the amendment was issued to "\*\*\* clarify the situation."

We have long held that the bid bond requirement is a material part of the invitation and that the contracting officer cannot generally waive the failure to comply, but must reject as nonresponsive a bid not accompanied by the required bond. 38 Comp. Gen. 532 (1959). Therefore, the decision not to consider the bid of Coronado Construction Company is proper.

The general rule as to the effect of a bidder's failure to acknowledge an amendment to an invitation for bids is that when the amendment affects, in other than a "trivial or negligible" manner, the price, quantity, or quality of the procurement, the bidder's failure to acknowledge the amendment cannot be waived. However, the failure to acknowledge an amendment which does not increase the cost or affect the quality of the contract performance but merely clarifies the existing specifications may be waived as a minor informality. Armed Services Procurement Regulation (ASPR) 2-405(iv)(B) (1974 ed.); 51 Comp. Gen. 293 (1971); 48 Comp. Gen. 555 (1969).

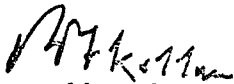
In our opinion amendment 0001 merely clarified the existing specifications. The amendment merely corrected the estimated cost range of \$100,000,000 and \$500,000,000 to \$100,000 and \$500,000, and deleted the reference to demolition work in the "General Description" paragraph of the specifications. However, we believe it was clear from the original specifications that the demolition work was to be performed by others and that the estimated cost range of \$100,000,000 to \$500,000,000 obviously was incorrect. In any event, the downward revisions in the estimated cost range and the deletion of the specification reference to demolition work effected by amendment 0001 did not in any way increase the cost or the scope of the work required under the original specification. Under the circumstances, it is proper for the Navy to waive the requirement that amendment 0001 be acknowledged.

In addition the protester has questioned whether Emcon, Inc., is qualified for the procurement as a small business. This matter was considered by the Navy. However, the record indicates that the protester failed to provide detailed evidence to support its challenge as required by ASPR 1-703. Accordingly, the Navy concluded

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that Emcon, Inc., was a small business concern, and we find no reason to question that determination. See E. H. Morrill Company, B-181778, October 17, 1974, 74-2 CPD 213.

Accordingly, the protest as to Emcon, Inc.'s bid is denied.

  
Deputy Comptroller General  
of the United States