

F. Phillips
Proct.

DECISION



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

03949

FILE: B-190311

DATE: October 21, 1977

MATTER OF: Rothwell Brothers, Inc.

DIGEST:

Failure by bidder to acknowledge amendment increasing minimum wage rates renders bid nonresponsive, since de minimus doctrine is inapplicable and failure is material deviation which is not subject to waiver, notwithstanding fact that bidder would be paying same or higher wage rates under union labor agreement, because acceptance of bid in form it exists at time of bid opening would not result in contract containing statement of minimum wage rates to be paid as required by Davis-Bacon Act.

By letter of September 27, 1977, the contracting officer at the Veterans Administration (VA) Hospital, Cincinnati, Ohio, requested our views in regard to a protest lodged by Rothwell Brothers, Inc. (Rothwell), against the rejection of its low bid and the proposed award of a contract to the next low bidder for furnishing and installing an automatic transfer switch to an existing emergency generator at the VA Nursing Home at Fort Thomas, Kentucky.

Rothwell's bid was rejected for failure to acknowledge receipt of amendment No. 1. The amendment incorporated a new Davis-Bacon wage determination which appeared in the Federal Register after the solicitation was issued. Rothwell's bid price was \$8,382 while the bid price of the second low bidder was \$9,358, a difference of \$976. In its protest to the VA, Rothwell argues that its bid was valid because it is a union contractor and always pays prevailing wages and had the contracting officer contacted it, he would have discovered that its bid included the prevailing wage rates.

The contracting officer states that the labor on this project is almost exclusively electrician and the wage rate for that trade was increased by the amendment by \$0.55 per hour, which is more than 4 percent above the electricians wage rate originally contained in the solicitation. The contracting officer further advises that the amendment added \$170.50 to the cost of the project,

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which is 2 percent of the low bid price and over 17 percent of the difference between the low and second low bid prices. The contracting officer points out that both of these percentages exceed the corresponding 1 percent and 14.8 percent determined not to be trivial in our decision AFB Contractors, Inc., B-181801, December 12, 1974, 74-2 CPD 329.

We have held that where a bidder fails to acknowledge an amendment increasing the minimum wage rates, the bid is nonresponsive because acceptance of the bid in the form it exists at the time of bid opening would not result in a contract containing a statement of the minimum wage rates to be paid as required by the Davis-Bacon Act, 40 U.S.C. § 276a (1970). Further, it is immaterial that the bidder would be paying the same or higher wage rates under union labor agreements. B-170064, July 21, 1970; B-169581, May 8, 1970.

Finally, the question of whether the failure to acknowledge the amendment may be waived as a minor informality due to the negligible or trivial effect it would have on the contract price is not for consideration. We have held that the de minimus doctrine does not apply to a situation where a bidder fails to acknowledge an amendment increasing minimum wage rates since, as mentioned above, the contract as awarded would not contain a commitment to pay the minimum wages required by the Davis-Bacon Act. Unitranco, B-187858, April 28, 1977, 77-1 CPD 290; Prince Construction Company, B-184192, November 5, 1975, 75-2 CPD 279; I-K Electric Company, Inc., B-184322, July 17, 1975, 75-2 CPD 47.

Accordingly, the failure to acknowledge the amendment is a material deviation which is not subject to waiver and renders Rothwell's bid nonresponsive.

Milton F. Fowler
Comptroller General
of the United States