

**DECISION**

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

*8331*  
*2331*

FILE: B-191070

DATE: November 13, 1976

MATTER OF: Columbus Services International

## DIGEST:

1. Bidder's failure to acknowledge IFB amendment may not be excused on basis that bidder did not receive amendment from agency prior to bid opening where evidence does not indicate deliberate attempt by agency to exclude bidder from competition.
2. Failure to acknowledge amendment containing Service Contract Act wage determination renders bid nonresponsive since bidder is not obligated to pay prescribed rates notwithstanding bidder may be aware of new rates prior to bid opening.

Columbus Services International, Division of Servisco (Columbus), protests the award of a contract to Reliance Electric Company, Haughton Elevator Division (Haughton), under invitation for bids (IFB) 03C8087701, issued by the General Services Administration (GSA), Washington, D.C. The IFB called for elevator and escalator maintenance services for the automatic equipment located in the John Wesley Powell Building, Reston, Virginia, for a period of 3 years from the date specified in the notice to proceed.

GSA contends that Columbus' bid is nonresponsive for failure to acknowledge receipt of Special Notice No. 1 which amended the IFB by incorporating a revised and higher minimum wage determination established by the Department of Labor pursuant to the Service Contract Act of 1965, as amended, 41 U.S.C. § 351, et seq. (1970). Columbus contends that it never received the Special Notice and that its failure to acknowledge the notice should not render its bid nonresponsive since Columbus otherwise indicated its awareness of the accurate wage

rates by letter to GSA of January 16, 1978, which brought to the contracting officer's attention errors in the Department of Labor Area Wage Determination.

The IFB was issued on December 20, 1977, with opening of bids scheduled for January 19, 1978, and it included Department of Labor Wage Determination No. 67-426 (Rev. 14). GSA reports that Special Notice No. 1 amending the subject IFB was mailed on December 27, 1977, to all prospective bidders, including Columbus, advising of the change in wage rates as reflected in Rev. 15 of Department of Labor Wage Determination No. 67-426.

Bids were opened on January 19, 1978, and Columbus was the apparent low bidder but the firm failed to submit an executed acknowledgment of Special Notice No. 1 with its bid or in any document submitted with the bid. The Special Notice No. 1 stated in part:

"All bidders must sign and return this special notice with their bid. Failure to do so may be cause to consider their bid nonresponsive."

Concerning Columbus' failure to receive the amendment, generally, if a bidder does not receive and acknowledge a material amendment to an IFB and such failure is not the result of a conscious and deliberate effort to exclude the bidder from participating in the competition, the bid must be rejected as nonresponsive. Porter Contracting Company, 55 Comp. Gen. 615 (1976), 76-1 CPD 2; Mike Cooke Reforestation, B-183549, July 2, 1975, 75-2 CPD 8. The contracting activity reports that the amendment was mailed to all prospective bidders on the mailing list which includes Columbus. We have no reason to believe that the failure of Columbus to receive the amendment was the result of a deliberate attempt on the part of the contracting activity to exclude Columbus from competition.

Our Office has held that failure to acknowledge an amendment to a solicitation which materially affects the IFB requires rejection of the bid. The failure to acknowledge an amendment containing a Service Contract Act wage determination requires rejection of the bid as nonresponsive and may not be waived as a minor informality. See Electro Coatings, Inc., B-191240,

March 10, 1978, 78-1 CPD 196. Columbus states that its bid should not have been rejected because it was aware of the accurate wage rates as reflected in its letter of January 16, 1978, which states in part: "The rates and fringe benefits listed in page 48 do not reflect the latest union rates as of October 1, 1977. In our proposal, we have used the latest union rates." Although this letter indicates Columbus' awareness that the wage rates listed in the IFB prior to the amendment were inaccurate, the letter does not indicate Columbus' commitment to pay the rates required in the amendment. Columbus' assertion regarding its union labor rates varying from those set forth in the IFB cannot be accepted as an acknowledgment by it of the revised labor rates in the amendment since GSA is not privy to the contract between Columbus and its union, was not aware of the rates in the labor management agreement, and the Government could not have enforced all the terms and conditions of the solicitation.

We have stated that the failure of a bidder to acknowledge an amendment incorporating a wage rate determination in the IFB renders the bid nonresponsive even if the bidder is already paying wages greater than those found in the amendment. See Kuckenbert-Arenz, B-184169, July 30, 1975, 75-2 CPD 67, and cases cited therein. The reason for this rule is that a bidder who fails to indicate by acknowledgment of the amendment or otherwise that he had considered the wage schedule could not, without his consent, be required to pay wage rates which were prescribed therein but which were not specified in the original IFB, notwithstanding that he might already be paying the same or higher rates to his employees under agreements with labor unions or other arrangements.

Inasmuch as our Office is of the view that the bid of CSI was properly rejected as nonresponsive, any failure of GSA to fully comply with our Bid Protest Procedures, 4 C.F.R. part 20 (1978), with regard to a prior protest involving Columbus and Haughton does not appear to have resulted in any prejudice of Columbus and its complaint in that regard is not material to the disposition of this protest.

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For the reasons stated, the protest is denied.

*R. F. Keller*  
Deputy Comptroller General  
of the United States