

**DECISION**



19093  
~~18093~~  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-203081.2

DATE: August 12, 1981

MATTER OF: Central Mechanical Construction  
Company, Inc.

**DIGEST:**

1. Where it has not been shown that affected class of employees covered by amendment to Davis-Bacon wage rate determination is not appropriate for project, fact that bidder does not intend to employ that category of labor for project does not absolve bidder of requirement to acknowledge amendment since issue is bidder's legal obligation to pay a particular wage to class of employees who could properly be employed on project.
2. Failure to acknowledge wage rate determination amendment may not be waived as minor informality in bid because wage determination is designed to protect employees and their rights may not be waived by Government.

Central Mechanical Construction Company, Inc. (Central) protests the refusal of the Department of Health and Human Services (HHS) to consider its bid for heating system modifications at Fort Riley Elementary School, Fort Riley, Kansas, issued under IFB 81-RVII-02. Central's low bid was rejected as nonresponsive because the firm had failed to acknowledge solicitation amendment No. 2 which specified the applicable Davis-Bacon wage rates for laborers. Central contends that the unacknowledged amendment was immaterial to its bid because Central had no intention to employ laborers on the project and Central's hourly wage rate was \$10 higher than that contained in amendment No. 2.



~~017851~~

116063

It is clear from Central's initial submission that this protest is without legal merit. Therefore, we are deciding the matter without receiving a report from HHS. See Walker's Royal, Inc., B-200583, October 20, 1980, 80-2 CPD 301.

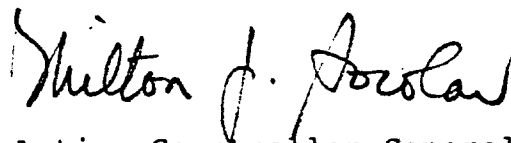
It is Central's position that this case falls squarely within the rule of Prince Construction Co., B-184192, November 5, 1975, 75-2 CPD 279, in which we held, that contractor's failure to acknowledge a Davis-Bacon wage rate amendment may be waived as a minor informality where the un rebutted evidence indicated that the amendment was inapplicable to the work required and where there was no danger that employees would be deprived of protected rights. Central points to the fact that it intended to use plumbers or plumber's assistants instead of laborers to support its contention that the wage determination for laborers on this project was unnecessary. It has not shown or even alleged, however, that the affected class of employees covered by the amendment in question were not appropriate for the work; it asserts only that it has not used that category of labor in the past and that it does not intend to use it for this contract.

Here, there has been no determination that the wage rate is inapplicable to the project. Thus the issue is Central's legal obligation to pay a particular wage rate for a class of labor which properly could be employed on the project--its past practices and future intent are beside the point.

Where a bidder fails to acknowledge an amendment which modifies or adds a wage rate determination, the failure may not be waived as a minor informality. This result is required because the Government's acceptance of a bid which does not contain an agreement to pay the appropriate Davis-Bacon wages does not bind the contractor/employer to pay wages to which its employees are entitled under the Davis-Bacon Act. The wage determination is designed to protect the bidder's employees and their rights may not be waived by the Government. Midwest Interiors, Inc., B-200835, October 27, 1980, 80-2 CPD 321.

Accordingly, the failure to acknowledge the amendment revising the wage rate determination is a material deviation which is not subject to waiver. We find HHS correct in rejecting Central's bid.

The protest is summarily denied.

A handwritten signature in dark ink, reading "Milton J. Forolan". The signature is written in a cursive style with a large, stylized initial "M".

Acting Comptroller General  
of the United States