

19416

*Allyman*



**DECISION**

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

FILE: B-204436

DATE: September 21, 1981

MATTER OF: G.E. Webb

**DIGEST:**

1. Low bid was properly rejected as nonresponsive where protester failed to acknowledge material amendment to IFB.
2. Contracting agency complied with the appropriate regulations when it mailed a copy of a material amendment to the protester. The risk of non-receipt rests on the bidder. Therefore, having complied with the regulations, the agency was under no legal obligation to furnish the protester an additional copy of the amendment at the time the protester requested and received a second copy of the IFB.
3. Contracting agency did not treat bidders unequally when it rejected protester's low bid as nonresponsive but accepted the next low bid, even though that bid contained a pricing error. GAO has recognized that a bid may be corrected where it indicates on its face not only the possibility of error but also the exact nature of the error and the amount intended. Such was the case here. Thus, two different and distinct bidding situations occurred, and the contracting agency had to apply a different rule for each.

G.E. Webb (Webb) protests the rejection of its low bid as nonresponsive for failing to acknowledge a material amendment under invitation for bids (IFB) No. F08637-81-B0036, issued by the Department of the Air Force (Air Force). The IFB was for grounds maintenance of family housing at Tyndall Air Force Base, Florida. We find that the rejection was proper.

~~01855~~ → 116354

According to Webb's initial submission, amendment No. P00001 incorporated a new Service Contract Act wage determination into the solicitation. The contracting officer sent Webb a copy of this amendment by regular mail, but Webb never received it and thus did not learn of the amendment's existence until bid opening. Webb's bid was low (\$33,232.71), but, because it did not acknowledge amendment No. P00001, the Air Force rejected Webb's bid as nonresponsive and awarded the contract to the next low bidder (\$35,575), Wayne Mauldin Co. (Mauldin).

Webb acknowledges that it has had trouble in the past with mail being misdelivered and believes that the Postal Service, rather than the Air Force, is probably responsible for its nonreceipt of amendment No. P00001. However, Webb argues that, since this error was due to no fault of its own, it should not be penalized for failing to acknowledge the amendment. Further, Webb states it was aware of the wage determination from a prior solicitation and, therefore, computed its bid based on the determination.

Webb also notes that 2 days before the bid opening Webb's representative stopped by the Air Force contracting office to obtain a new copy of the IFB because he had made some errors on the original form. The Air Force employee did not give Webb a copy of amendment No. P00001 at that time. In Webb's opinion, this oversight is another reason why it should not be penalized for having failed to acknowledge the amendment.

Finally, Webb argues that Mauldin had an error in its bid price, but that the Air Force waived the error to make the award. Webb questions what appears to be a double standard on the Air Force's part.

The question of responsiveness deals with the bidder's legal obligation under the bid, as submitted, and not whether he intended to be bound by the requirements of the solicitation, as amended. Thus, a bid which fails to acknowledge a material amendment to an IFB does not obligate the bidder to the terms of the

amendment, and the bid, therefore, is nonresponsive and cannot be accepted. James Lopez & Sons Wholesale Fumigators, Inc., B-200849, February 12, 1981, 81-1 CPD 97.

An amendment is material if it has more than a trivial or negligible effect on price, quantity, quality or delivery of the item bid upon. Defense Acquisition Regulation (DAR) § 2-405(iv)(b) (1976 ed.). In light of this, we have held that an amendment which incorporates a revised Service Contract Act wage determination into the solicitation is material since it clearly has a significant effect on the bid price. See, e.g., Columbus Services International, B-191070, November 13, 1978, 78-2 CPD 338.

We have also held that the contracting agency is not an insurer of delivery of bid documents to prospective bidders, but that the risk of nonreceipt is on the bidders. Scott-Griffin, Incorporated, B-193053, February 9, 1979, 79-1 CPD 93. Thus, if a bidder does not receive and acknowledge a material amendment, and there is no evidence that this failure is the result of a conscious or deliberate effort on the contracting agency's part to exclude the bidder from the competition, the bid must normally be rejected as nonresponsive. James Lopez & Sons Wholesale Fumigators, Inc., supra.

Here, the Air Force maintains that it mailed Webb a copy of the amendment, and there is no evidence of a conscious or deliberate effort on the Air Force's part to exclude Webb from the competition. Further, since amendment No. P00001 incorporated a revised Service Contract Act wage determination into the IFB, it is clearly a material amendment. Therefore, Webb's failure to acknowledge the amendment, even though it never received a copy, renders its bid nonresponsive.

This result remains unchanged even though Webb argues that its bid complies with the revised wage determination. As indicated above, it is not enough that a bidder intends to be bound by a material amendment, but rather the bid itself must legally obligate the bidder to comply. Without a proper acknowledgment, no legal obligation arises, and the bid, therefore, is nonresponsive and cannot be accepted.

As to the the failure of the Air Force to furnish Webb with a copy of amendment No. P00001 at the time it requested a new copy of the IFB, this has no bearing on the question of whether Webb's bid is responsive or not. The Air Force complied with the regulations when it dispatched a copy of the amendment through the mail. See DAR § 2-208(a) (1976 ed.) and Scott-Griffin, Incorporated, supra. No further action was required. While it is true that the Air Force could have eliminated the reason for this protest if it had furnished a copy of the amendment at the time Webb picked up a new copy of the IFB, it was under no legal obligation to do so. The Air Force took the required steps to notify Webb of the revised wage determination and Webb must bear the risk of not having received this material amendment.

The Air Force has advised us informally that Mauldin did have an error in its bid price, but that the mistake was a simple clerical error apparent on the face of the bid which was easily corrected.

We have recognized that a bid may be corrected where the bid, as submitted, indicates on its face not only the possibility of error but also the exact nature of the error and the amount intended. Marine Power & Equipment Co., Inc., B-200692, February 19, 1981, 81-1 CPD 113. According to the Air Force, this is the situation presented by the Mauldin bid. In light of this, we do not believe that the Air Force has treated the two bidders unequally, as Webb implies. Rather, it is clear that two different and distinct types of bidding situations occurred under this solicitation and that the Air Force applied the appropriate rule to each.

Protest denied.

*Milton J. Jordan*

Acting Comptroller General  
of the United States