

DECISION

29744
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-216829

DATE: November 5, 1984

MATTER OF: BFI of Arkansas

DIGEST:

Failure to acknowledge a material amendment which contained a Service Contract Act wage rate determination generally renders a bid nonresponsive.

BFI of Arkansas protests the rejection of its bid as nonresponsive under invitation for bids (IFB) 598-142-84 issued by the Veterans Administration (VA) for miscellaneous trash and nonedible garbage removal. The VA rejected the bid because BFI failed to acknowledge an amendment incorporating a Service Contract Act wage rate determination. BFI argues that it was in substantial, if not technical, compliance with the amendment, since BFI complied with wage rates significantly above the minimum during 3 previous years of service to the VA.

The failure to acknowledge a wage rate determination is a material deviation that generally cannot be waived because, notwithstanding the bidder's asserted intent, in the absence of such an acknowledgment the bidder would not be legally obligated to pay the specified wages to its employees. See Air Services Co., B-204532, September 22, 1981, 81-2 CPD ¶ 240. The only exception is where the impact of the amendment's wage rates on the bid price is minimal and the bidder is required by union contract to pay wages not less than those in the wage determination. Brutoco Engineering & Construction, Inc., 62 Comp. Gen. 111 (1983), 83-1 CPD ¶ 9; Law Brothers Contracting Corp., B-208877, May 17, 1983, 83-1 CPD ¶ 521.

There is nothing in the record which indicates that BFI is legally required to pay wages at the rate in the wage determination. Under these circumstances, the VA acted properly in rejecting BFI's bid as nonresponsive.

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We summarily deny the protest.

for *Milton J. Fowler*
Comptroller General
of the United States