

DECISION

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

FILE: B-214779.2

DATE: March 22, 1985

MATTER OF: Pioneer Fluid Power Company--Reconsideration

DIGEST:

Prior decision holding that failure to acknowledge formally a material amendment should have been waived as a minor informality is reversed on reconsideration because there is insufficient evidence "clearly indicating" that the bidder received the amendment.

The Naval Facilities Engineering Command (Navy) requests reconsideration of our decision in Pioneer Fluid Power Company, B-214779, Sept. 4, 1984, 84-2 C.P.D. ¶ 246, in which we sustained Pioneer Fluid Power Company's (Pioneer) protest of the Navy's rejection of its low bid for work on air compressors.

The Navy rejected Pioneer's bid as nonresponsive because Pioneer failed to acknowledge an amendment to the solicitation which contained material changes to the specifications and extended the date of bid opening. We determined that the Navy should have accepted Pioneer's bid since the bid contained the extended bid opening date, thereby indicating that Pioneer had received the amendment. We reverse our prior holding.

Our decision sustaining Pioneer's protest recognized that, as a general rule, a bidder's failure to acknowledge the receipt of a material amendment to an invitation for bids (IFB) renders its bid nonresponsive and ineligible for award. Nuclear Research Corporation; Ridgeway Electronics, Inc., B-200793, B-200793.2, June 2, 1981, 81-1 C.P.D. ¶ 437. However, we have held that the failure to formally acknowledge receipt of an amendment should be waived as a minor irregularity if the bid received clearly indicates that the bidder received the amendment, since, in such circumstances, the bidder is bound to the terms set forth

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in the amendment at the price stated in the bid. Protimex Corporation, B-204821, Mar. 16, 1982, 82-1 C.P.D. ¶ 247. Thus we concluded in our prior decision that the inclusion of the amended bid opening date in Pioneer's bid established that Pioneer had received the amendment. Inscom Electronics Corporation, 53 Comp. Gen. 569 (1974), 74-1 C.P.D. ¶ 56. Accordingly, we held that the Navy should have waived Pioneer's failure to acknowledge formally the amendment as a minor informality and accepted the bid.

The Navy points out that the extended bid opening date was not contained on the cover sheet of Pioneer's bid or otherwise used throughout the bid, but rather appeared as a single entry on Standard Form 19-B, Representations and Certifications. As the Navy points out, this form is an unsigned and uncompleted form which

"is not reflective of nor affected by the quality, quantity, price or delivery of IFB items [and] does not indicate that the bidder considered or is even aware of any material changes to the work."

Thus, the Navy urges that the single appearance of the revised date in Pioneer's bid may be explained by circumstances other than actual receipt of the amendment and does not clearly indicate the bidder's intent to be bound by all of the material changes in the amendment.

We are persuaded by the Navy's argument. The exception to the general rule may be invoked when the bid clearly indicates that the bidder received the amendment. Here, the evidence of receipt is based solely on a date appearing on an unsigned bid page and is contradicted by the bid date used by the bidder on the cover page of its bid, which contains the bidder's signature. In these circumstances, there is doubt that Pioneer obligated itself to perform all of the work required, in accordance with the Navy's amended requirements. Compare Berbes Trailer Company, B-213762, Feb. 28, 1984, 84-1 C.P.D. ¶ 250.

Accordingly, we conclude on reconsideration that the contracting officer acted properly in rejecting Pioneer's bid as nonresponsive since Pioneer failed to acknowledge formally a material solicitation amendment and the bid does not clearly indicate that Pioneer received the amendment.

In accord with the above, we reverse our prior decision on this protest.

for *Harry R. Dan Clune*
Comptroller General
of the United States