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DECISION

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

FILE: B-218615 **DATE:** August 13, 1985

MATTER OF: TCA Reservations, Inc.

DIGEST:

A bidder is responsible for receipt of amendments unless it is shown that the contracting agency made a deliberate effort to exclude the bidder from competing. Where no such effort is shown, a bid that fails to acknowledge an amendment incorporating a new wage rate determination properly is rejected as nonresponsive.

TCA Reservations, Inc. (TCA) protests the rejection of its bid as nonresponsive for failure to acknowledge an amendment to invitation for bids (IFB) No. F41800-84-B-8831 issued by the United States Air Force, San Antonio Area Contracting Center, Texas. The IFB involves word processing services for Randolph Air Force Base, Texas, and was issued for the purpose of a cost comparison to determine whether the services should be performed in-house or under contract.

We deny the protest.

The amendment, issued after TCA submitted its bid on July 25, 1984, incorporated a new higher wage rate determination under the Service Contract Act, 41 U.S.C. §§ 351-358 (1982) added a work center and set a new bid opening date of August 17, 1984. After the rejection of the first and second lowest bidders, TCA, the third lowest bidder, was rejected as nonresponsive for failure to acknowledge the amendment. Since none of the four remaining bids was lower than the Air Force's estimate for in-house performance, the Air Force canceled the solicitation and retained the services in-house. The Air Force notified TCA of this action by letter dated April 15, 1985, and TCA filed its protest on May 9.

TCA alleges that it did not receive a copy of the amendment, and argues that it was the Air Force's

responsibility to insure TCA's timely receipt of the amendment. The protester further suggests that its failure to acknowledge the amendment should be waived as a minor irregularity since, according to TCA, its planned wages are higher than the minimum wages prescribed by the wage rate determination, and because TCA took into account the added work station based on the contracting officer's oral advice that the IFB would be amended.

The Air Force argues that the protest should be dismissed on several procedural grounds, as follows: 1) TCA did not provide the contracting officer with a copy of the protest within 1 day of its filing with the GAO as required by our Bid Protest Regulations, 4 C.F.R. § 21.1(d) (1985); 2) TCA is not an interested party because its bid acceptance period had expired; and 3) the protest is untimely under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2), because it was not filed within 10 days after bid opening when TCA knew or should have known of its failure to receive the amendment.

We disagree with the Air Force's procedural arguments.

Dismissal on the basis that the protester failed to file a copy of the protest with the contracting agency within 1 day is not warranted where, as here, the contracting agency has actual knowledge of the protest grounds and timely files a report without previously raising any objection to its failure to receive the copy. Sabreliner Corp., B-218033, Mar. 6, 1985, 64 Comp. Gen. ____, 85-1 CPD ¶ 280. Regarding the expiration of TCA's bid, a bidder may extend its acceptance period, and thus revive its expired bid, where it offered the acceptance period required by the IFB, and revival of the bid would not compromise the integrity of the competitive bidding process. W.A. Strom Contracting, Inc., et al., B-216115, et al., Dec. 26, 1984, 84-2 CPD ¶ 705; Isometrics, Inc., B-204556, Apr. 13, 1982, 82-1 CPD ¶ 340. Nothing in the record indicates that the revival of TCA's bid would be improper under this standard. Lastly, we believe the protest is timely since it was filed within 10 working days after the date (May 1) the protester states it received the Air Force's April 15 rejection letter first notifying TCA that the amendment in fact had been issued. See 4 C.F.R. § 21.2(a)(2); Microtech Industries, Inc., B-210499, June 13, 1983, 83-1 CPD ¶ 651. We point out that, for the purpose of determining

the protest's timeliness, we resolve any doubt about when the protester actually received the Air Force's letter in the protester's favor. Association of Village Council Presidents, B-209712, July 26, 1983, 83-2 CPD ¶ 126.

Regarding the merits, it is well-established that a bidder bears the risk of not receiving IFB amendments unless it is shown that the contracting agency made a deliberate effort to exclude the bidder from competing. E.g., Reliable Service Technology, B-217152, Feb. 25, 1985, 85-1 CPD ¶ 234. TCA does not allege that the Air Force attempted to preclude TCA from competing. Furthermore, the failure to acknowledge an amendment that upwardly revises a wage rate generally renders a bid nonresponsive, because without the acknowledgment, the bid does not legally obligate the bidder to pay the wages prescribed by the amendment. Id.

We have recognized that the failure to acknowledege a wage rate amendment may be waived and corrected after bid opening under very limited circumstances not in the bidder's control after bid opening. U.S. Department of the Interior--Request for Advance Decision, et al., 64 Comp. Gen. 189 (1985), 85-1 CPD ¶ 34, (where the amendment had a de minimus effect on price, amounting to only a 0.013 percent increase in the original bid price); Brutoco Engineering & Construction, Inc., 62 Comp. Gen. 111 (1983), 83-1 CPD ¶ 9 (where the effect on price was de minimus, only 0.8 percent, and the bidder was otherwise obligated under a collective bargaining agreement to pay wages exceeding the amended minimum wage rate). But see Grade-Way Construction v. U.S., 7 Cl. Ct. 263 (1985). The protester does not allege that any of these circumstances are present here.

While the protester contends that its wage plan would provide higher wages than the minimum wages prescribed by the amendment, the bidder's intention to comply with the IFB's rquirements, as amended, must be manifest from the bid itself, and may not be provided by explanations after bid opening. Aeroflow Industries, Inc., B-197628, June 9, 1980, 80-1 CPD ¶ 399. Since the protester's bid itself did not express the TCA's intention to be bound to the revised wage rates, the Air Force properly rejected the bid as nonresponsive. We therefore need not consider the effect of the protester's failure to acknowledge the other terms of the amendment.

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The protest is denied.

for Seymour Efros
Harry R. Van Cleve
General Counsel

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