



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Air Photo Surveys, Inc.

File: B-228024

Date: November 3, 1987

DIGEST

The failure to acknowledge a solicitation amendment imposing Service Contract Act wage rates cannot be cured after bid opening by a bidder whose employees are not already covered by a collective bargaining agreement binding the firm to pay wages not less than those prescribed by the Secretary of Labor.

DECISION

Air Photo Surveys, Inc. (Surveys), protests the rejection of Surveys' low bid as nonresponsive for failure to acknowledge a wage rate amendment under invitation for bids (IFB) No. DACW05-87-B-0041 issued by the U.S. Army Corps of Engineers (Corps). Surveys contends that the amendment form indicated that acknowledgment was not required and that its failure to acknowledge should be waived as a minor informality.

We deny the protest.

The amendment in question added to the IFB a wage rate determination under the Service Contract Act of 1965, 41 U.S.C. §§ 351-358 (1982). Of the six bidders who responded to the IFB, three acknowledged the amendment and the other three were rejected by the contracting officer for failure to acknowledge a material amendment.

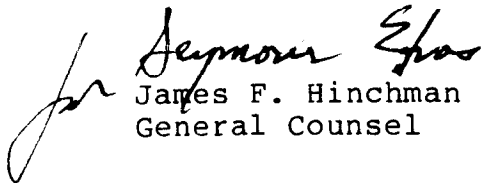
Surveys contends that its failure to acknowledge the amendment is immaterial since Surveys pays its employees more than the amendment's specified minimum wage rates. However, Surveys concedes that its employees are not covered by a collective bargaining agreement.

We have held that the failure to acknowledge an IFB amendment increasing wage rates cannot be cured after bid opening, unless a bidder's employees are covered by a collective bargaining agreement binding the firm to pay

wages not less than those prescribed by the Secretary of Labor. ABC Paving Co., B-224408, Oct. 16, 1986, 66 Comp. Gen. _____, 86-2 C.P.D. ¶ 436. The reason is that the prescribed wage rates are mandated by statute, so that if an agency were to give the bidder the opportunity to acknowledge the wage rate amendment after bid opening, the bidder could decide to render itself ineligible for award by choosing not to cure the defect. Because giving the bidder such control over the bid's acceptability would compromise the integrity of the competitive procurement system, the bid must be rejected as nonresponsive unless the bidder already is obligated to pay wages not less than those prescribed. Fourth Growth Forestry, Inc., B-226438, Apr. 27, 1987, 87-1 C.P.D. ¶ 439.

Surveys also argues that there was a misleading notation on the amendment because, under block 13, the agency had checked a box which indicated that the contractor is not required to sign and return the amendment document. However, section "L" of the IFB includes specific instructions to acknowledge all amendments by bid opening. That section and the amendment form both prescribe three options available to the bidder to accomplish this, one of which is signing and returning the amendment. The other two ways are by either identifying the amendment number and date in the space provided on the bid form or by letter or telegram. The Corps concedes it made a clerical error in marking the amendment. However, this does not relieve Surveys of its responsibility to comply with the instructions in the IFB and to acknowledge all material amendments. While the amendment form as marked relieves the bidder of the obligation to acknowledge by signing and returning the amendment, acknowledgment by one of the other two prescribed methods was necessary for the bid to be responsive. Hillside Metal Products Inc., 51 Comp. Gen. 408 (1972).

The protest is denied.


James F. Hinchman
General Counsel