



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: North Santiam Paving Co.

File: B-241062

Date: January 8, 1991

Lee D. Bensing for the protester.
Monty L. Bell and Allen W. Smith, Forest Service, United States Department of Agriculture, for the agency.
Anne B. Perry, Esq., Paul Lieberman, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Contracting agency properly rejected as nonresponsive a bid that failed to acknowledge amendment which, in addition to modifying and clarifying specifications, contained a modification of the applicable wage determination which increased wage rates, and there is no evidence that the 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.

2. Agency's failure to send bidder a copy of a material amendment was not improper where the protester was not on the solicitation mailing list, and the record does not support the protester's allegation that the agency sent the firm the original solicitation, or suggest that there are significant deficiencies in the contracting agency's solicitation process, and the protester did not avail itself of every reasonable opportunity to obtain the amendment.

DECISION

North Santiam Paving Co. protests the rejection of its low bid as nonresponsive under invitation for bids (IFB) No. R6-18-90-454, issued by the Forest Service, Department of Agriculture, for the reconstruction of a concrete boat launch, asphalt drive lane and floating dock in the Willamette National Forest. North Santiam contends that its bid was improperly rejected as nonresponsive for failing to acknowledge an amendment because the modifications contained in the amendment did not materially affect its bid, and the agency failed to send it a copy of the amendment.

how de minimis the increase in wage rates, unless the bidder's employees are already covered by a collective bargaining agreement binding the firm to pay wages not less than those prescribed by the Secretary of Labor and reflected in the new wage determination. ABC Paving Co., 66 Comp. Gen. 47 (1986), 86-2 CPD ¶ 436. The reason is that the prescribed wage rates are mandated by statute, so that if an agency were to give the bidder an 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. Thus, the bid must be rejected as nonresponsive where the bidder is not already obligated to pay wages not less than those prescribed. LaCorte ECM, Inc., B-231448.2, supra. Here, since there is nothing in the record showing that North Santiam's employees are covered by an appropriately binding collective bargaining agreement, North Santiam's failure to acknowledge the wage rate amendment cannot be waived as immaterial, or a minor informality, and its bid was properly rejected as nonresponsive on this basis.

North Santiam next argues that it was improper for the agency to reject its bid as nonresponsive since it was the agency's failure to send it the amendment that prevented North Santiam from acknowledging the amendment.

The Competition in Contracting Act of 1984 (CICA), 41 U.S.C. § 253(a)(1)(A) (1988), requires contracting agencies to obtain full and open competition through the use of competitive procedures, the dual purpose of which is to ensure that a procurement is open to all responsible sources and to provide the government with the opportunity to receive fair and reasonable prices. In pursuit of these goals, it is a contracting agency's affirmative obligation to utilize reasonable methods for the dissemination of solicitation documents to prospective competitors. See Ktech Corp., B-240578, Dec. 4, 1990, 90-2 CPD ¶ _____. In particular, the government is required by regulation to add to the solicitation mailing list all firms that have been furnished invitations in response to their requests, so that they will be furnished copies of any amendments, unless it is known that the request was made by an entity which is not a prospective bidder. Federal Acquisition Regulation (FAR) § 14.205(3). Concurrent with the agency's obligations in this regard, prospective contractors have the duty to avail themselves of every reasonable opportunity to obtain solicitation documents, especially in a sealed bid procurement. See Fort Myer Constr. Corp., B-239611, Sept. 12, 1990, 90-2 CPD ¶ 200. Consequently, a prospective offeror's nonreceipt of solicitation documents will not justify overturning a contract award absent significant deficiencies in the dissemination process, the failure to receive fair and reasonable prices, or a deliberate attempt by the contracting agency to exclude a particular