



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Western Helicopters, Inc.

File: B-243445

Date: April 3, 1991

James P. Davidson for the protester,
Catherine M. Evans, Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest of rejection of bid for failure to acknowledge an invitation for bids amendment establishing wage rates pursuant to the Service Contract Act is dismissed; such an amendment is material, and therefore must be acknowledged, except where employees are covered by a collective bargaining agreement binding the firm to pay wages not less than those prescribed by the Secretary of Labor, which protester does not allege.

DECISION

Western Helicopters, Inc. protests the rejection of its bid under invitation for bids (IFB) No. R5-91-07, issued by the Department of Agriculture, Forest Service, for helicopter services. The agency determined Western's bid nonresponsive for failure to acknowledge an amendment establishing wage rates pursuant to the Service Contract Act (SCA). Western asserts that the wage rates it used in preparing its bid were higher than the SCA wage rates, and that its failure to acknowledge the amendment therefore is a minor informality that can be cured after bid opening.

We dismiss the protest.

The failure to acknowledge an IFB amendment establishing minimum wage rates for a contract 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. Apex Micrographics, Inc., B-235811, August 31, 1989, 89-2 CPD ¶ 205. 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 non-responsive unless the bidder already is obligated to pay wages not less than those prescribed, Id. As Western does not allege that it is so obligated, we have no basis for finding that the agency should not have rejected its bid.

The protest is dismissed.



John M. Melody
Assistant General Counsel