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DECISION



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

30509

FILE: B-182626

DATE: February 4, 1975

MATTER OF: Algernon Blair, Inc.

DIGEST:

1. Failure to formally acknowledge amendment to invitation, which included material changes as well as extension of bid opening date, may be waived as minor informality under ASPR § 2-405(iv)(A) (1974 ed.), inasmuch as bid was dated and submitted on the extended opening date indicating that bidder was aware of amendment so as to charge bidder with knowledge of all information contained therein.
2. Failure of low bidder to acknowledge an amendment with an estimated value of \$3,240 which is 0.037 percent of the \$8,843,000 low bid may be waived as a minor informality under ASPR § 2-405(iv)(B) (1974 ed.), where the value of the amendment is only 2.473 percent of the \$131,000 difference between the low bid and the next low bid, and had no effect on the competitive standing of bidders.

Algernon Blair, Inc., the second low bidder under invitation for bids (IFB) No. N62467-71-B-0661, issued by the Naval Facilities Engineering Command, protests the award of a contract to the low bidder, Olson Construction Company (Olson) on the grounds that the Olson bid, which failed to acknowledge receipt of amendments 1 and 2 to the IFB, was nonresponsive.

The IFB, issued on August 8, 1974, called for performing all work for Bomb Loading Plant Modernization, Naval Ammunition Depot, McAlester, Oklahoma. The IFB was revised by two amendments, each of which contained a notation that "Each bidder shall refer in his bid to all amendments to this specification; failure to do so may constitute an informality in the bid." Bids were opened on October 10, 1974, and five bids were received. Olson's bid was \$8,843,000 while the second low bid, submitted by Algernon Blair, was \$8,974,000. The record discloses that Olson did not expressly acknowledge receipt of either amendment prior to bid opening but contains a letter from Olson to the procuring activity after bid opening stating that its firm received the amendments but inadvertently failed to acknowledge them.

Olson contends that its bid incorporated and included the contents of both amendments. Amendment 1 extended bid opening from September 19, 1974, to October 10, 1974, and added the Davis-Bacon Act wage determination. The Navy states, in a report on the protest to our Office that, normally, failure to acknowledge an amendment adding a wage determination is fatal to the consideration of a bid. However, the Navy reports that the IFB, plans, specifications, and amendment 1 were mailed together to Olson on September 10, 1974, and Olson inserted in its bid the extended date of bid opening as established by amendment 1. The Navy contends that these facts clearly indicate that Olson had received amendment 1 and was basing its bid thereon. Therefore, it is the Navy's view that the failure of Olson to acknowledge receipt of amendment 1 may be waived as a minor informality pursuant to Armed Services Procurement Regulation (ASPR) § 2-405(iv)(A) (1974 ed.), which provides for waiver where:

"the bid received clearly indicates that the bidder received the amendment, such as where the amendment added another item to the invitation for bid and the bidder submitted a bid thereon * * *"

Algernon Blair contends that Olson's dating and presenting its bid on the extended date does not clearly indicate that Olson received amendment 1 and was basing its bid thereon on the theory that Olson could have known of the bid date by any number of means absent amendment 1, such as, through industry publications (e.g. Dodge Reports) or information from suppliers and subcontractors.

With respect to amendment 1, Olson's bid, dated October 10, 1974, reflects actual knowledge of one of the essential terms of the amendment, i.e., the extension of the bid opening date. ASPR § 2-208(a) (1974 ed.) clearly requires a change in bid opening date to be accomplished by issuance of an amendment to the invitation, and all bidders are chargeable with knowledge of that requirement. Since amendment 1 extended the bid opening date, Olson is chargeable with knowledge that the amendment had been issued. We have held that where a bid evidences actual knowledge of the extension of the bid opening date, the bidder is chargeable with all information contained in the amendment

extending such date. Inasmuch as Olson's bid was dated and submitted on the extended bid opening date, we believe this is sufficient to constitute an implied acknowledgment of amendment 1, thereby binding Olson to perform all of the other changes set forth in the amendment at the price stated in its bid. The fact that Olson may have obtained knowledge of amendment 1 from a source other than the amendment itself, as Algernon Blair contends, would not affect our conclusion. See B-176462, October 20, 1972; B-179169, December 21, 1973; Matter of Inscom Electronics Corporation, 53 Comp. Gen. 569 (1974); and Matter of American Monorail, Inc., B-181226, July 31, 1974. Therefore, the contracting officer properly waived Olson's failure to acknowledge the amendment as a minor informality under ASPR § 2-405(iv)(A) (1974 ed.).

With regard to amendment 2, certain changes were effected to the plans and specifications. The Navy states that whether or not the failure to acknowledge receipt of this amendment renders the bid nonresponsive depends on whether the amendment "clearly would have no effect or merely a trivial or negligible effect on price, quality, quantity, delivery, or the relative standing of bidders." ASPR § 2-405(iv)(B) (1974 ed.). The Navy reports that it reviewed amendment 2 and prepared its own estimate of its value. This estimate indicates that the net value of this amendment is \$2,700 plus an allowance of 20 percent for profit, overhead, and bond, for a total of \$3,240. This is 0.037 percent of the Olson \$8,843,000 bid for the work and 2.473 percent of the \$131,000 difference between the Olson and Algernon Blair bids.

The Navy contends that Olson's failure to acknowledge receipt of amendment 2 may be waived as a minor informality. In support of its position, the Navy refers to our decision reported in 52 Comp. Gen. 544 (1973) wherein we stated that the failure to acknowledge receipt of an amendment may be waived in circumstances where the monetary change effected by the amendment is trivial or negligible in relation to the scope of the overall work and the difference between the two low bid prices. In that decision, we agreed with the procuring activity that the failure to acknowledge receipt of an amendment may be waived as a minor informality since the value of the amendment was \$966, or 0.138 percent of the overall \$702,000 bid for the work (as compared with the value of the amendment in the present case of \$3,240 or 0.037 percent of the overall \$8,843,000 bid for the work), and 5.682 percent of the \$117,000 difference between the two lowest bids (as compared with the 2.473 percent of the \$131,000 difference between the Olson and Algernon Blair bids). Since the percentage differences in the present case

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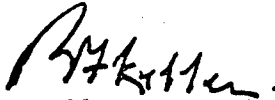
are smaller than those involved in the above decision, the Navy contends the contracting officer properly waived Olson's failure to acknowledge amendment 2 as a minor informality.

In discussing the standard for determining "trivial or negligible effect on price" under ASPR § 2-405(iv)(B) (1974 ed.), we stated in 52 Comp. Gen., supra:

"* * * Indeed, we do not believe that any specific figure may be determinative without reference to the particular facts. In that connection, it is our view that whether the change effected by the amendment is trivial or negligible in terms of price must be determined in relation to the overall scope of the work and the difference between the low bids."

In the instant case, the value of amendment 2 as computed by the Navy amounts to a total of \$3,240 or only 0.037 percent of the overall contract price offered by Olson and 2.473 percent of the \$131,000 difference between the Olson and Algernon Blair bids. In addition, it is clear that Olson's failure to acknowledge amendment 2 did not affect the competitive standing of the bidders. In view thereof, we believe that it is reasonable to conclude under the circumstances that Olson's failure to acknowledge receipt of amendment 2, was properly waived as a minor informality under ASPR § 2-405(iv)(B) (1974 ed.).

For the reasons stated above, the protest is denied.


Deputy Comptroller General
of the United States