

DECISION



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

FILE: B-186263

DATE: May 26, 1976

MATTER OF: B. R. Abbot Construction Company

DIGEST:

- 60915²⁴
U98898/98898
1. Submission of bid which on its face indicates that bidder was aware of amendment to solicitation extending bid opening date constitutes constructive acknowledgment of receipt of amendment so that failure of bidder to formally acknowledge receipt of amendment is minor informality or irregularity which may be waived.
 2. Allegation of bid mistake made by higher bidder more than 10 days after notification of award is untimely filed. Even though preaward warning of possible mistake in another's bid could be sufficient cause for verifying bid, it is questionable whether protester should be heard to argue possibility of mistake in contract price since parties to contract, not protester, must assert rights and bring forth all necessary evidence.
 3. As general rule, bid verification is not required where discrepancy exists on one item which may be awarded only in aggregate and where total bid price is in line with other bids.

B. R. Abbot Construction Company (Abbot) of Chicago, Illinois, protests award to Pickus Construction and Equipment Company, Inc. (Pickus), under Naval Facilities Engineering Command (Navy) IFB N62472-74-B-0259, for expansion and alterations to various buildings located at the Naval Training Center, Great Lakes, Illinois. Through counsel, Abbot asserts that the Pickus bid should have been rejected as nonresponsive since Pickus failed to formally acknowledge receipt of Amendment No. 0001 to the original solicitation.

The effect of that amendment was to extend the date of bid opening from March 19, 1976, to March 23, 1976, and according to Abbot, to increase the cost of performance by somewhat more than 7 percent. Pickus did not formally acknowledge receipt of the amendment but its bid form was dated March 23, 1976, in accordance with the extended bid opening date. Moreover, it appears that Pickus modified the directions for submitting bids as contained on the

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printed bid form by marking out the original opening date of March 19, and substituting March 21 therefor. Although the substituted date (March 21) reflects an apparent clerical error, Pickus' modification further indicates that it knew the time for bid opening had been extended.

It is the Navy's view that the Pickus bid clearly indicates that Pickus received the amendment, and that its failure to formally acknowledge receipt is a waivable minor informality or irregularity under ASPR § 2-405 (1975 ed.). This position is supported by our decisions in which we have indicated that failure to formally acknowledge an amendment is properly waived as a minor informality, where the bid as submitted reflects knowledge of an essential element in the amendment. Thus, if a bid, as in this case, reflects the extended bid opening date, the bidder has constructively acknowledged the otherwise material amendment. Square Deal Trucking Co., B-183529, August 19, 1975, 75-2 CPD 115; S. Livingston & Son, B-183548, July 2, 1975, 75-2 CPD 7; Algernon Blair, B-182626, February 4, 1975, 75-1 CPD 76. See, also, Inscom Electronics Corp., 53 Comp. Gen. 569, 74-1 CPD 56 (1974).

Nevertheless, Abbot maintains that the amendment must be in any event trivial or negligible as to price, quantity, or delivery or performance. Its estimate of the price difference attributable to the amendment is \$136,919, which it argues precludes acceptance of the Pickus bid.

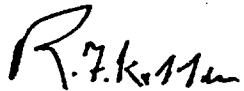
However, our prior decisions are fully controlling on this issue. See, for example, Square Deal Trucking Co., supra, wherein the amendment which was constructively acknowledged involved a material revision to the minimum wage determination in the solicitation. It is not compliance with the requirements of the amended solicitation which is waived, but the bidder's failure to acknowledge, in a particular prescribed form, receipt of a copy of the amendment.

Finally, counsel for Abbot has pointed out after contract award that Pickus' bid for additive Item 2 appears out of line with bids submitted by the next two lowest bidders for that item. It should be noted that Abbot concedes that the amendment "did not change the amount of Item 2 work", and, therefore, a possible mistake in the Item 2 bid would not cast doubt upon the bidder's acknowledgment of the amendment.

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Inasmuch as the possibility of mistake was suggested only in response to the agency's report in this protest and, consequently, more than 10 days after notice of award to the protester, it is not timely for consideration under our Bid Protest Procedures. See 40 Fed. Reg. 17979, § 20.2(2)(1975). Moreover, even though a preaward warning of a possible mistake in another's bid could be sufficient cause for verifying such bid, B-151963, August 16, 1963, we question whether a protester should be heard to argue the possibility of a mistake in contract price since the parties to the contract must assert their rights and bring forth all necessary evidence for resolution of such questions. In any event, a mistake was alleged here only as to Item 2, which was to be awarded in the aggregate with Item 1, and, as a general rule, contracting officers are not required to compare prices for mistakes in individual items where award may be made only in the aggregate and the total aggregate bid is in line with other bids. 42 Comp. Gen. 383 (1963).

Accordingly, Abbot's protest is denied.


Deputy Comptroller General
of the United States