



DECISION

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

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FILE: B-186601

DATE: August 6, 1976

MATTER OF: Artisan Inc.

DIGEST:

Low bidder's failure to formally acknowledge receipt of amendment to solicitation postponing bid opening date indefinitely is waivable as minor informality pursuant to ASPR § 2-405(iv)(B). Bidder's failure to formally acknowledge receipt of another amendment which inter alia established new bid opening date is waivable under ASPR § 2-405(iv)(A) since bid bore new bid opening date constituting constructive acknowledgment of receipt of otherwise material amendment.

By letter dated May 20, 1976, Artisan Inc. (Artisan) protests the award of a contract to Adrian L. Merton, Inc. (Merton), under Naval Facilities Engineering Command invitation for bids (IFB) No. N62477-75-B-0278 for mechanical modifications to Building 56, Naval Observatory, Washington, D.C.

Artisan asserts that Merton's low bid should have been rejected as nonresponsive since Merton failed to formally acknowledge receipt of amendments 0002 and 0003 to the IFB. Amendment 0002 indefinitely postponed bid opening originally scheduled for February 18, 1976. Amendment 0003 revised the IFB Davis-Bacon Act minimum wage rates and the technical specifications, and established a new bid opening date of May 5, 1976.

It is the Navy's view that Merton's failure to formally acknowledge amendment 0002 is a minor informality which was properly waived pursuant to Armed Services Procurement Regulation (ASPR) § 2-405(iv)(B) (1975 ed.). With regard to amendment 0003, the Navy cites the May 5, 1976, date borne by Merton's bid as conclusive evidence that Merton, in fact, received the amendment or was aware of its contents.

ASPR §§ 2-405(iv)(A) and (B) provide:

"* * * A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the invitation for bids, having no effect or merely a trivial or negligible effect on price, quality, quantity, or delivery of the supplies or performance of the services being procured, and the correction or waiver of which would not affect the relative standing of, or be otherwise prejudicial to, bidders. The contracting officer shall either give to the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid, or, waive any such deficiency where it is to the advantage of the Government. Examples of minor informalities or irregularities include:

* * * * *

(iv) failure of a bidder to acknowledge receipt of an amendment to an invitation for bids, but only if--

- (A) 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, or
- (B) 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, such as an amendment correcting a typographical mistake in the name of the Government purchasing activity;* * *

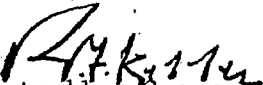
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In view of the fact that amendment 0002 merely postponed bid opening, it clearly had no effect on price, quality, quantity, delivery, performance, or the relative standing of bidders. Thus, we find that the Navy properly waived Merton's failure to acknowledge receipt of amendment 0002 as a minor informality under ASPR § 2-405(iv)(B). See Inscom Electronics Corporation, 53 Comp. Gen. 569 (1974), 74-1 CPD 56.

With regard to Merton's failure to acknowledge receipt of amendment 0003, we have held that the failure to formally acknowledge an amendment is properly waived as a minor informality under ASPR § 2-405(iv)(A) where the bid as submitted reflects knowledge of an essential element of the amendment. For example, in B. R. Abbot Construction Company, B-186263, May 26, 1976, 76-1 CPD 344, we considered a situation factually similar to the instant case, where a bidder failed to formally acknowledge receipt of an amendment establishing a new bid opening date, as well as containing a material revision having a significant impact on the bidder's price. We held that the submission of the bid bearing the new bid opening date constituted constructive acknowledgment of the otherwise material amendment. In these circumstances, the bidder is bound to perform all of the material changes set forth in the amendment at the price stated in the bid. See Algernon Blair, Inc., B-182626, February 4, 1975, 75-1 CPD 76; and Square Deal Trucking Co., B-183529, August 19, 1975, 75-2 CPD 115.

We believe that this precedent is controlling here. Therefore, the Navy properly waived Merton's failure to acknowledge receipt of amendment 0003 as a minor informality.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States