GAO

United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-229077

September 30, 1987

The Honorable Earl Hutto
House of Representatives

Dear Mr. Hutto:

This is in response to your letter of September 4, 1987, on behalf of Mr. Y.M. Floyd of Y.M. "Bud Floyd" Domestic Laundry whose bid under invitation for bids (IFB) No. F08637-87-B-0041 was rejected by the Air Force because the bidder failed to acknowledge an amendment which incorporated a new higher wage rate determination pursuant to the Service Contract Act, 41 U.S.C. § 351-358 (1982). According to the information you provided, Domestic Laundry never received the amendment which only increased labor rates by $.09 per hour (while fringe benefits were apparently decreased). You suggest that it is unfair that a competitor for this type of contract could be denied the award where nonreceipt of an amendment is not the contractor's fault. You ask for our position on this matter.

The failure to acknowledge an amendment that adds a wage rate determination is a material deviation that generally cannot be waived and, therefore, requires that the bid be rejected because, in the absence of such an acknowledgment, the bidder would not be legally obligated to pay the specified wages and provide the specified fringe benefits to its employees. See Action Porta Systems, B-220199.2, Nov. 8, 1985, 85-2 CPD ¶ 533. In this regard, the United States Claims Court has ruled that regardless of how negligible its impact upon the price of the item bid, a failure to acknowledge an amendment incorporating a new wage rate determination renders the bid nonresponsive. Grade-Way Construction v. United States, 7 Cl. Ct. 263 (1985). Our Office has also adopted this view. ABC Paving Co., B-224408, Oct. 16, 1986, 66 Comp. Gen. ____, 86-2 CPD ¶ 436.

Further, while it is unfortunate that Domestic Laundry never received the amendment, a bidder bears the risk of not receiving IFB amendments unless it is shown that the

contracting agency made a deliberate effort to exclude the bidder from competing. TCA Reservations, Inc., B-218615, Aug. 13, 1985, 85-2 CPD ¶ 163. This is because a contracting agency cannot be the insurer of all mail delivery. In this respect, Domestic Laundry could have called the agency prior to bid opening to ascertain whether any amendments had been issued of which the bidder was unaware.

Accordingly, we think that Domestic Laundry's bid was properly rejected by the Air Force. We trust this answers your inquiry. We have enclosed copies of the decisions discussed.

Sincerely yours,

Harry R. Van Cleve
General Counsel

Enclosures