

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

60122

FILE: B-184192

DATE: November 5, 1975

MATTER OF: Prince Construction Company

97776

DIGEST:

Failure to timely acknowledge amendment modifying Davis-Bacon general wage determination will not render bid nonresponsive where amended wage rates are inapplicable to contract work and were routinely incorporated in amendment. Recommendation made to GSA that procedures be instituted to prevent incorporation into solicitations of inapplicable modifications of general wage decisions.

Prince Construction Company (Prince) protests the award to John F. Feezer Co., Inc. (Feezer) of a contract for a Fire Protection Sprinkler System at the Interstate Commerce Building, Washington, D. C. on the ground that Feezer's bid was nonresponsive by virtue of its failure to acknowledge receipt of Amendment No. 1 to invitation for bids (IFB) No. 080521 issued April 30, 1975 by the General Services Administration.

Amendment No. 1 was issued May 28, 1975 and contained a wage rate modification, 40 Fed. Reg. 22743 (May 23, 1975), of the wage rates contained in the invitation for bids. Bid opening took place on May 30, 1975. Of the five bidders for this contract, two, including the low bidder, Feezer, failed to acknowledge receipt of Amendment No. 1. Feezer contends that it did not receive the amendment until June 2. Both Feezer and the contracting officer contend that the wage determination contained in Amendment No. 1 is inapplicable to any of the crafts to be employed under this contract.

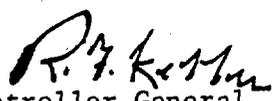
Prince's initial protest to the General Services Administration was denied on the ground that section 1-2.405(d)(2) of the Federal Procurement Regulations (cir. 1, 1969 ed.) provides for waiver of a bidder's failure to acknowledge an amendment to the solicitation if "the amendment involves only a matter of form or is one which has either no effect or merely a trivial or negligible effect on price * * *." Similarly, decisions of this Office have permitted waiver of minor informalities. 52 Comp. Gen. 544 (1973) and 37 Comp. Gen. 785 (1958). However, if the amendment contains a wage rate determination by the Secretary of Labor, the failure to acknowledge such an

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amendment generally may not be waived even though its affect on the contract price may be minimal. B-184332, July 17, 1975; B-170064, July 21, 1970; B-160176, October 11, 1966; B-180026, December 28, 1973. This result is required since the Government's acceptance of a bid which does not contain an agreement to pay the appropriate Davis-Bacon wages does not bind the contractor/employer to pay wages to which its employees are entitled under the Davis-Bacon Act. Thus, although a wage rate amendment may have only a trivial effect from the point of view of the Government, the wage determination is designed to protect the bidder's employees, and their rights may not be waived by the Government.

In the instant case, however, the contracting officer reports that the modification of the general wage rate decision is inapplicable to the contract work but was routinely incorporated as an amendment to the solicitation. Moreover, Prince has produced no evidence to rebut the contracting officer's determination that the amendment is inapplicable to the work required in this case. In the circumstances, we believe that the low bidder has committed itself to pay all applicable rates mandated by the Davis-Bacon Act, and there is no danger that employees may be deprived of protected rights as a result of the acceptance of Feezer's bid. Thus, Feezer's failure to timely acknowledge the inapplicable amendment does not render its bid nonresponsive and the protest of Prince, therefore, is denied.

However, we have been informally advised by the contracting officer that consideration will be given to instituting procedures whereby contracting officers, prior to amending solicitations, will consider the applicability of general wage rate modifications that are published in the Federal Register shortly before bid opening. We are recommending to the Administrator that appropriate procedures be instituted so as to avoid incorporating into solicitations inapplicable modifications to general wage decisions.


Acting Comptroller General
of the United States