

**DECISION**



976<sup>19</sup>  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-183548

50869  
DATE: July 2, 1975

MATTER OF: S. Livingston & Son, Inc.

**DIGEST:**

Failure to formally acknowledge amendment to invitation, which included material change in delivery schedule as well as extension of bid opening date, was properly waived as minor informality under FPR § 1-2.405(d)(1), inasmuch as bid was dated and submitted between original and extended opening date indicating that bidder was aware of amendment so as to charge bidder with knowledge of all information in amendment. Other bid accepted for award did not evidence receipt of amendment by bidder and agency is in process of terminating contract.

On December 6, 1974, the Federal Aviation Administration (FAA) issued invitation for bids (IFB) No. LGM-5-0141B1 for uniforms for various classes of employees at Dulles International and Washington National Airports. The bid opening date was to have been January 8, 1975. However, by amendment No. 1, dated December 13, 1974, the bid opening date was extended to January 15, 1975, several changes were made in the requirements, and the period of performance was extended from June 30, 1975, to 365 days after award.

S. Livingston & Son, Inc. (Livingston), has protested the award of contracts for certain items under the IFB to Potomac Uniform Company (Potomac) and Hanover Shirt Company (Hanover) because of the failure of these two firms to acknowledge receipt of amendment No. 1 in their bids.

Section 1-2.405(d) (1964 ed. Circ. 1) of the Federal Procurement Regulations (FPR) permits the contracting officer to waive the failure to acknowledge the receipt of an amendment as a minor informality or irregularity only if:

"(1) The bid received clearly indicates that the bidder received the amendment, such as where the amendment added another item to the invitation for bids and the bidder submitted a bid thereon; or

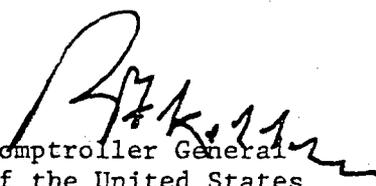
B-183548

"(2) 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, quantity, quality, or delivery of the item bid upon."

In a report to our Office on the protest, the FAA states (and our Office agrees) that the amendment, in significantly extending the period of performance under the contract, cannot be considered to have "merely a trivial or negligible effect" on delivery.

Our Office has held that the failure to acknowledge receipt of a material amendment may be waived where the bid itself includes one of the essential items appearing only in the amendment. See American Monorail, Inc., B-181226, July 31, 1974. The bid of Hanover is dated January 10, 1975, 2 days after the original bid opening date. In these circumstances, we have held that the dating and submission of a bid between the original bid opening date and the extended opening date is sufficient to constitute an implied acknowledgment of receipt of an amendment which extends the opening date. In our view, this binds the bidder to contractually perform all changes included in the formally unacknowledged amendment. See Inscom Electronics Corporation, 53 Comp. Gen. 569 (1974). Therefore, our Office concludes that the award to Hanover was proper and that portion of the protest is denied.

The same situation is not present with respect to the bid of Potomac. Potomac's bid is dated December 26, 1974, prior to the original bid opening date. Therefore, there is no evidence from the bid itself that Potomac received amendment No. 1 and would be bound by its terms. In its report to our Office, the FAA has recognized this defect, fatal to the responsiveness of the bid, and is presently in the process of terminating the contract with Potomac.

  
Deputy Comptroller General  
of the United States