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DECISION



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

FILE: B-187328

DATE: December 15, 1976

**MATTER OF: F. E. Gregory and Sons, Inc.;
Hutchison Brothers, Inc.**

DIGEST:

Agency's finding that low bid was nonresponsive is sustained where bid was qualified by "minimum charge" and agency was unable to evaluate minimum charge's effect on price.

F. E. Gregory and Sons, Inc. (Gregory) and Hutchison Brothers, Inc. (Hutchison), respectively, protest the award of a contract to any other bidder under the Government of the District of Columbia's (District) solicitation number 07820AA-38-06-MW for rental of construction equipment. Hutchison is the low bidder, but the District has concluded that the award should be made to Gregory, the third low bidder. The District has concluded that Hutchison's bid is nonresponsive, because it included a minimum charge for the services performed and that the second low bid is nonresponsive for another reason which is not pertinent here.

Hutchison agrees that its bid, if accepted, would impose the minimum charge, but argues that its insertion of the "8-hour minimum" is a minor deviation that should be waived. It argues that the furnishing of equipment for periods of at least 8 hours was contemplated by the District; and the fact that the equipment-use estimated hours set forth in the solicitation is divisible by 8 further shows that use for periods of less than 8 hours--the normal Government workday--was not contemplated.

We do not believe that Hutchison's 8 hour minimum charge condition can be regarded as minor or immaterial. The District reports that on previous invitations for rental of construction equipment it requested bidders to quote an hourly rate with a minimum charge. For this procurement, however, an hourly rate with a minimum charge was not requested. In effect, Hutchison imposed a condition not authorized by the invitation. For such condition to be waived as a minor informality or irregularity it must be one which is merely a matter of form or is some immaterial variation from the exact requirements of the solicitation, having no effect or merely a trivial or negligible effect on price,

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quality, or delivery of the supplies or performances 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. See, Government of the District of Columbia Material Management Manual (1975) § 2620.14. It is impossible to project what effect on price the minimum charge will have because of the nature of the condition and the uncertainty of the District's future need for equipment in less than 8-hour increments. We cannot conclude, therefore, that Hutchison's conditioning of its bid has little or no effect on price. Consequently, we will not object to the contracting officer's conclusion that the informality in Hutchison's bid is not waivable.

Accordingly, Hutchison's protest is denied.

Paul S. Hunkler
for the Comptroller General
of the United States