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**DECISION**

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

*[Protest of Navy Contract Award]*

FILE: B-196659

DATE: September 29, 1980

MATTER OF: Garrett Enterprises, Inc.

**DIGEST:**

1. Where bid as submitted conforms to invitation's requirements, subsequent submission by bidder cannot affect bid's responsiveness.
2. Basic formal advertising principle that award must be made on basis of bids as submitted contemplates that material elements of contract obligation be set at bid opening so that bidder cannot elect whether to accept or reject award after bids have been exposed.

Garrett Enterprises, Inc. (Garrett) protests the Naval Facilities Engineering Command's (Navy) award of an indefinite quantity-type contract for sewer maintenance services to William F. Gavin, Inc. (Gavin) under invitation for bids (IFB) No. N62472-79-B-4620. Garrett contends that Gavin's bid was qualified and thus non-responsive, and that the bid was unbalanced. We believe that notwithstanding the protester's arguments, the solicitation was defective and that the award to Gavin was improper.

The solicitation included a Schedule of Prices which listed 132 items of work, an estimated quantity for each, and spaces to enter unit prices, extended prices and a total bid. However, firms were to submit only total bid prices before the opening date. The low bidder on that basis then would have 10 days after bid opening as a prerequisite for award to submit a completed Schedule of Prices; the sum of the extended bid prices for each line item listed therein had to equal the total bid initially submitted. If approved by the Officer in Charge of Construction, the Schedule of Prices would "be part of the contract and provide the basis for payments and for any withholding." The invitation further stated:

" \* \* \* unbalancing in the Schedule of Prices submitted shall be cause for withholding approval and requiring submission of a balanced schedule, and may be cause for rejection of the bid."

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The Navy received four bids as follows:

Steam Systems, Inc.	\$207,141.00
Gavin	229,400.00
Garrett	250,524.00
Schaeffer Environmental	273,898.76

Steam Systems, Inc. was permitted to withdraw its bid due to a mistake.

Since Gavin then was the low bidder, it was advised to submit a completed Schedule of Prices. With its Schedule, Gavin submitted an attachment explaining the scope of the work priced. The Navy requested that Gavin rescind the unsolicited attachment because it was, in the Navy's view, "inappropriate." Gavin agreed, and the Navy approved Gavin's Schedule of Prices and awarded the contract to the firm.

Garrett contends that the attachment submitted with Gavin's bid showed that the unit prices were computed on a basis other than that prescribed in the IFB. Garrett argues that the bid thus was nonresponsive, i.e., it did not represent an offer to perform, without exception, the exact thing called for in the invitation.

However, it is fundamental that the responsiveness of a bid must be determined on the basis of the bid submitted at bid opening. Fire & Technical Equipment Corp., B-192408, August 4, 1978, 78-2 CPD 91. Thus, Gavin's attachment to the Schedule of Prices, submitted after bid opening, cannot be considered to affect the bid's responsiveness to the invitation as issued.

Nevertheless, we find that the procurement procedure used here was improper. The statutory provision governing contract awards in formally advertised procurements, 10 U.S.C. § 2305(c)(1976), requires award based on the bid determined to be "most advantageous to the United States, price and other factors considered." That provision contemplates that the solicitation and the responding bids establish, at bid opening, the material terms of the

contractor's obligation--those factors which should define the bid's responsiveness--in order to make the award determination. Storage Technology Corporation--Reconsideration, 57 Comp. Gen. 395, 398 (1978), 78-1 CPD 257; Computer Network Corporation, 55 Comp. Gen. 445, 451 (1975), 75-2 CPD 297. Here, however, the only relevance of the submission required at bid opening--the total bid price--was for the initial determination of the firm eligible for award.

The contract to be awarded here was an indefinite quantity one with the issuance of work orders setting a particular performance obligation. The IFB cautioned that the Government made no representation as to the actual amount of work to be ordered other than that its value would be somewhere between \$50,000 and \$400,000. Clearly then, the critical factors in determining the most advantageous bid under 10 U.S.C. § 2305(c), as well as in administering the contract, were the unit prices of work to be performed in response to a work order, and they therefore should have been required to be submitted at bid opening.

Further, the effect of the failure to require unit prices at bid opening, thereby essentially leaving the bidder with no real obligation based on the bid as submitted to perform any item of work at any particular price, was to give the bidder the option to accept or reject an award after bids were opened and prices exposed; the firm could at its whim refuse to submit a completed Schedule of Prices, or could submit an unacceptable one after seeing the results of the competition. This reservation of control over the bid's acceptability after its submission consistently has been criticized as being clearly inimical to the advertised procurement process. See, e.g., Computer Network Corp., supra.

Finally, reserving the right after bid opening to require a bidder to "resubmit" acceptable Schedule prices in the event of "unbalancing" improperly contemplates negotiation of the material contract terms in an otherwise formally advertised procurement.

The Navy explained the rationale for requiring that only a total bid price be submitted at bid opening, with the unit and extended prices furnished within 10 days thereafter, in a report on an earlier protest to our Office:

"When an IFB contains 40 to 50 bid items which involve the multiplication of a unit times an estimated quantity, the number of arithmetical errors in the preparation of bids increases substantially. On many occasions, this Command has found it necessary to reject low bids, and procurements have been delayed by protests against award. Under a single recent IFB, each of the 12 bidders had arithmetical errors in their bid item computation. The Navy has also made awards to low bidders not realizing that there were discrepancies between the total bid price and the unit prices set out in the bid schedule; this creates substantial post-award embarrassment when a protester points out that award may have been made to the wrong bidder \* \* \*. The preferred approach is to utilize a single bid item and, after bid opening but before award, obtain a schedule of prices."

We would suggest that if this Navy Command finds that there are particular problems in procurements of this nature with respect to mistakes in bidding and the inadvertent acceptance of erroneous bids, it highlight in its invitations the fundamental burden of the bidder to properly prepare its bid, and the substantial limitations on the withdrawal and correction of bids based on claims of mistake. See Defense Acquisition Regulation § 2-406 (1976 ed.). In addition, we would recommend an even more diligent application than usual of the contracting officer's affirmative duty to adequately review bids and request verification if a discrepancy is noted. See Dunbar & Sullivan Dredging Co., B-188584, December 23, 1977, 77-2 CPD 497. We view the

procedure used here in an attempt to dispense with the need for basic arithmetical computations by the parties as an inappropriate substitute for what is a basic responsibility of every bidder and every contracting officer.

Parethetically, we point out that the procedure simply is not even effective for the stated purpose, since the low total bidder still may claim mistake after submitting the Schedule of Prices or the Navy still may accept an erroneous bid. For example, the bidder lower than Gavin in the instant procurement asserted a mistake in its bid as submitted and was permitted to withdraw.

Accordingly, the Navy should have required the submission of the Schedule of Prices at bid opening.

In our view, this fundamental defect in the procurement generally would necessitate corrective action with respect to the award. However, since less than one month remains in the basic contract term, we could recommend only that the Navy not exercise its option in the present contract. We understand, in this regard, that the Navy does not plan to exercise the option but instead plans to resolicit. We are recommending that in future procurements the Navy insure that the material elements of the contractor's obligation be established at bid opening, i.e., that the Schedule of Prices be submitted at that time.

In light of the above, we find it unnecessary to further consider Garrett's contention that the attachment to Gavin's Schedule of Prices qualified the bid, or that Gavin's unit prices were unbalanced.



For the Comptroller General  
of the United States