

DECISION

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

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FILE: B-215486 **DATE:** August 17, 1984
MATTER OF: Channel Disposal Co., Inc.

DIGEST:

Changes and Disputes provisions constitute a material part of proposed agreement between bidder and contracting agency and bidder's attempt to specify the price adjustment it would be entitled to for the performance of extra services not provided for in the IFB is inconsistent with these provisions and renders its bid nonresponsive.

Channel Disposal Co., Inc. (Channel), protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. R5-07-84-12 issued by the United States Forest Service for garbage collection services. The Forest Service determined that a separate page of footnotes submitted by Channel with its bid made the bid nonresponsive. Channel argues that the Forest Service has accepted a similar attachment in previous years and that the footnotes did not vary the basic bid, but merely stated the prices which would be charged if additional services were requested.

We deny the protest.

The IFB solicited unit and total prices for an estimated number of garbage pickups at various Forest Service facilities. Based on its experience, Channel submitted a price list for extra services not provided for in the IFB, but which Channel knew the Forest Service would require. A separate letter of four "footnotes" was attached to its bid which stated the prices which would be charged for such extra items as Saturday, Sunday or holiday service and for service in excess of the estimated quantity for both scheduled and unscheduled pickup days. Channel states that because a similar list of charges was accepted by the Forest Service in previous years, Channel did not feel compelled to request the Forest Service to clarify whether extra services would in fact be required under this IFB. Channel points out that it would perform the additional services only if

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requested by the Forest Service and that setting forth its prices beforehand merely eliminates the need to negotiate the price for each extra service after it is performed.

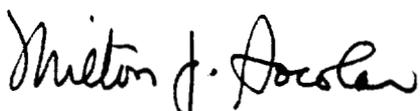
The question of responsiveness of a bid concerns whether a bidder has unequivocally offered to provide the requested items in total conformance with the IFB's specifications. Free-Flow Packaging Corporation, B-204482, Feb. 23, 1982, 82-1 C.P.D. ¶ 162. A bidder's intention must be determined from all the bid documents at the time of bid opening and we have held that where a bidder qualifies its bid to protect itself from future price changes or reserves rights which are inconsistent with a material portion of the IFB, the bid must be rejected as nonresponsive. Data Controls/North Inc., B-205726, June 21, 1982, 82-1 C.P.D. ¶ 610; Data Controls/North Inc.--Request for Reconsideration, B-205726.2, Aug. 16, 1982, 82-2 C.P.D. ¶ 131.

Here, the footnotes added by Channel are intended to predetermine the prices that the Forest Service will have to pay for the performance of extra services. This is inconsistent with the Changes and Disputes provisions contained in the IFB and which generally permit an equitable price adjustment only after it is approved by the contracting officer or settled through the designated disputes procedures. The Changes and Disputes provisions are a material part of the proposed agreement between the bidder and the contracting agency and Channel's attempt to specify the price adjustment it would be entitled to for changes to its contract is inconsistent with these provisions. See Data Controls/North, Inc., B-205726, supra. Accordingly, we agree with the Forest Service's conclusion that Channel's bid was nonresponsive.

Furthermore, we note that to the extent Channel is alleging that the IFB did not accurately reflect the Forest Service's actual needs because extra services are routinely requested, this allegation is untimely. Our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1) (1984), require that protests based on solicitation improprieties must be filed prior to bid opening and since Channel did not file a protest until after bid opening, we will not consider this issue. In addition, Channel's allegation that the Forest Service has previously accepted its bid with a similar

footnote page attached provides no basis for relief. Each procurement action is a separate transaction and the action taken on any one procurement does not govern the conduct of all similar procurements. Rack Engineering Company, B-208554, Mar. 7, 1983, 83-1 C.P.D. ¶ 224. Accordingly, the fact that the Forest Service may have previously accepted such a bid does not require procurement officials to continue to do so.

The protest is denied.


Acting Comptroller General
of the United States