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**DECISION**



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

**FILE:** B-190956

**DATE:** April 13, 1978

**MATTER OF:** Dependable Janitorial Service  
and Supply

**DIGEST:**

1. Question concerning small business size status of offeror is not for consideration by GAO since conclusive authority over such question is vested by statute in SBA.
2. Completion after bid opening of various standard representations and certifications is proper since they do not relate to bid responsiveness and failure to submit them with bid may be waived as minor informality. Legal obligation of bidder does not change as number of omitted standard representations and certifications increases.

Dependable Janitorial Service and Supply (Dependable) protested against any award being made to San Francisco Bay Maintenance Corp., d.b.a. Golden State Building Maintenance Co. (San Francisco), under invitation for bids (IFB) N62474-78-B-6985 issued by the Department of the Navy (Navy) for custodial services to be performed at the Naval Supply Center, Oakland, and Alameda Facility, Alameda, California. Notwithstanding the protest, award was made to San Francisco pursuant to Armed Services Procurement Regulation (ASPR) § 2-407.8(b)(3) (1976 ed.).

Dependable alleges that San Francisco is not a small business concern. Furthermore, Dependable contends that San Francisco's bid should be rejected since the Naval Facilities Form 4330/39, Representations and Certifications (Service Contract), was not submitted with the bid prior to bid opening and this omission cannot be characterized as a minor informality. We note that the Navy permitted San Francisco to submit form 4330/39 after bid opening.

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With regard to the first issue, the questioning of San Francisco's eligibility as a small business, the Small Business Administration (SBA), pursuant to 15 U.S.C. § 637(b)(6) (1976), has been granted conclusive authority to determine the size status of small business concerns for procurement purposes. Therefore, our Office does not review such questions. See Sachs/Freeman Associates, Inc., B-190990, January 24, 1978, 78-1 CPD 65.

Concerning Dependable's second allegation, omission of form 4330/39 is not a minor informality, the Navy disagrees, arguing that ASPR § 2-405 (1976 ed.) permits the submission of the form after bid opening, since it contains "minor information." That section, in pertinent part, provides:

"2-405 Minor Informalities or Irregularities in Bids. A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the invitation for bids, having no effect or merely a trivial or negligible effect on price, quality, quantity, or delivery of the supplies or performance 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. The contracting officer shall either give to the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid, or, waive any such deficiency where it is to the advantage of the Government. \* \* \*"

Form 4330/39 contains seven representations and certifications and, in the instant case, Navy utilized a continuation sheet (Form 4330/52) to supplement form 4330/39 by adding two representations and certifications. The resulting form listed the following standard representations and certifications:

1. Small Business
2. Contingent Fee

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3. Type of Organization
4. Independent Price Determination
5. Affirmative Action Program
6. Parent Company and Employee Identification Number
7. Certification of Equal Employment Compliance
8. Clean Air and Water Certification
9. Handicapped

It is Dependable's position that each provision, listed above, is absolute and nonwaivable. Furthermore, Dependable, in what appears to be an alternative position, contends that the cumulative effect of the omission of form 4330/39 from San Francisco's bid should be characterized as a major deviation rendering San Francisco's bid unacceptable.


We do not agree. Our Office has consistently held that completion of representations and certifications of the type involved here is not required to determine whether a bid meets the requirements of the specifications or other solicitation provisions and, therefore, does not affect responsiveness of the bid, with the result that failure to complete such items may be waived or cured after bid opening. City Ambulance of Alabama, Inc., B-187964, January 13, 1977, 77-1 CPD 29; Bryan L. & F.B. Standley, B-186573, July 20, 1976, 76-2 CPD 60; Tennessee Valley Service, Inc., B-186380, June 25, 1976, 76-1 CPD 410. Therefore, postponing completion of the certifications would not be legally objectionable.

Finally, with regard to Dependable's concern with the cumulative effect of not submitting the nine representations and certifications with the bid, since, as indicated above, each individual certification does not affect the responsiveness of a bid, the offeror with or without one or more certifications would be bound to comply with the terms and conditions of the IFB, assuming all other portions of the bid are proper. The legal

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obligation of the bidder does not change as the number of certifications omitted increases.

Accordingly, Dependable's protest is dismissed in part and denied in part.

  
Deputy Comptroller General  
of the United States