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DECISION



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

FILE: B-205098

DATE: May 11, 1982

MATTER OF: Sere Construction Corp.

DIGEST:

Where contract was awarded on basis of total price bid for deposit of estimated quantity of backfill behind seawall, but bid failed to include unit prices for quantities over or under the estimated amount required by modified bid schedule, the omission may be viewed as a minor informality or irregularity and waived because the bidder did submit a single unit price for the estimated work, which along with its bidding pattern on the other items, would govern the bidder's price should the actual work be less than or exceed the estimate. Thus, it does not appear that the bidder obtained a competitive advantage because of the omission.

Sere Construction Corp. protests the award of a contract to Cash Bros. Mechanical Contractors, Inc. under invitation for bids No. SA-RSB-81-0014VA issued by the Department of Commerce for waterfront rehabilitation projects at the United States Merchant Marine Academy, Kings Point, New York. Sere's protest is based on Cash's failure to include unit prices for work over or under the quantity estimated by the agency. We deny the protest because Cash's omission was not material.

The solicitation sought a base bid for the construction of a seawall and pier, an "alternate" bid for backfilling dredged material near the seawall, and four "additive" bids for other related work. The solicitation

stated that the alternate and additive items were listed in descending order of desirability and that the award would be for the base items and "as many of the additive items * * * that can be included within the funds available." In addition to spaces for the unit and total prices for each item the bid schedule also provided spaces for unit prices in the event the estimated amount of work was more or less than that actually needed for each item other than the alternate bid item and the fourth additive item.

Because of ambiguities in the solicitation's bidding scheme the agency issued two amendments which eliminated the "alternate" bid item (backfilling near the sea wall), included it in item #1 of the four additive items, changed the order of the additive items and altered the method of award to eliminate any reference to the "alternate" item. In addition, the first amendment transmitted a new bid schedule which reflected these changes and added unit price spaces for increased or decreased work needed for backfilling dredged material near the seawall (the old "alternate" bid item placed in the new bid schedule with additive item #1.)

Cash acknowledged both amendments but filled in its prices on the original bid schedule rather than the revised bid schedule. Funding limitations required that award be made only on the base work and additive #1. Cash was low on these items. However, because the original bid schedule did not provide for unit prices for work over or under the estimated quantity on the backfilling, Cash's bid contained no prices for more or less work. Cash did, however, insert a single unit price of \$20.00 per cubic yard in the space provided next to its total price. Since the unit prices for work over or under the estimated amount of backfilling were not included in the evaluation of the bid prices the agency made award to Cash as the low bidder at \$286,000.

The original and the modified bid schedule as they pertain to the backfilling of dredged material are as follows:

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Original

ALTERNATE BID	Quantity	Unit	Unit Price	Amount
Lump sum fixed price for the backfilling (Dredged Material) Area 2	300	Cu. Yd.		\$ _____

(Cash inserted \$20.00 for its unit price and \$6,000 as its total)

Amended Schedule

Additive #1 Dredging Hague Basin	4000	Cu. Yd.	\$ _____	\$ _____
Additive per Cu. Yd.			\$ _____	
Delete per Cu. Yd.			\$ _____	
Suitable dredged material to be used behind Sea-Wall	300	Cu. Yd.	\$ _____	\$ _____
Additive per Cu. Yd.			\$ _____	
Delete per Cu. Yd.			\$ _____	
TOTAL Lump Sum Fixed Price Additive #1				\$ _____

(Sere bid a unit price of \$15.00 for the estimated amount and for the additive and \$5.00 for delete. Its total price for depositing the estimated amount of dredged material was \$4,500.)

Sere (the second low bidder at \$296,500) contends that Cash's failure to use the amended bid schedule, which provided for the insertion of unit prices for use if more or less work is required for backfilling dredged material under additive item #1, gave that firm an unfair advantage. Sere argues it should receive the award as the lowest responsive bidder on the items awarded.

We conclude that Cash's failure to submit unit prices for quantities of backfill either over or under the estimated

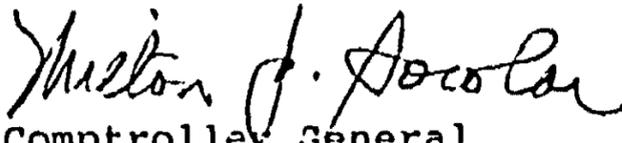
amount used in evaluation of bids was a minor informality or irregularity which may be waived under Section 1-2.405 of the Federal Procurement Regulations (FPR). The solicitation did not explain how the unit prices for more or less backfilling, or for additional dredging or other work for that matter, would be evaluated and in fact those unit prices were not used in determining the low bidder. We have stated in analogous situations that the failure to insert a unit price where an aggregate total price is invited by the solicitation was waivable since the missing price was not material to the evaluation of bids. Wickham Contracting Co., Inc., B-190490, March 24, 1978, 78-1 CPD 23 Mountain Engineering and Construction and Weisz and Sons, a Joint Venture, B-194472, August 27, 1979, 79-2 CPD 153. While Commerce did not expressly waive Cash's failure to include unit prices for backfilling as a minor informality or irregularity under FPR § 1-2.405, Commerce did properly conclude that rejection of Cash's bid would have been improper because the deficiency noted was immaterial, and did not affect price, quantity or quality.

Sere contends that Cash's failure to use the proper bid form was prejudicial in that Cash had a competitive advantage over Sere and the other bidders who submitted their prices on the proper, amended form. Apparently, Sere believes this advantage accrued because in the event the actual amount of backfill required behind the seawall either exceeds or falls short of the estimated quantity, Cash will be in a position to negotiate any price it wishes while Sere and the other bidders which included unit prices for more or less work would be bound to those prices.

This simply isn't so. The record indicates that the agency and the bidders view the 300 cubic yards of dredging material as an estimate only, with the contractor to be paid on the basis of the actual amount of material required. Sere, using the amended Schedule pages, established different reimbursement rates for itself depending upon whether more or less than the 300 cubic yards was required. Cash, using the original Schedule pages, obligated itself to accept its basic unit price of \$20 regardless of the amount ultimately actually required. Any question concerning Cash's intent in this regard would be easily resolved, we believe, by an

examination of how Cash bid on the other Schedule items-- for other items with additive and delete prices, Cash submitted the same unit price on the additive and delete lines as it did for the basic estimated quantities. Thus, we think that while Cash did not adhere to the same bidding format as Sere for the dredging material, its bid established its legal obligations and provided it with no particular competitive advantage.

Under the circumstances, we conclude that the omission in Cash's bid was properly waivable as a minor informality and the protest is denied.

for 
Comptroller General
of the United States