

**DECISION**



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

V. Ahearn

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**FILE:** B-213409

**DATE:** February 14, 1984

**MATTER OF:** Golden Bear Arborists, Inc.

**DIGEST:**

Cancellation of IFB was proper where solicitation required only a total bid price at bid opening and post-bid-opening submission of and possible negotiation of unit prices for indefinite quantity portion of contract, since unit prices are necessary at bid opening to set the material terms of contractor's obligation.

Golden Bear Arborists, Inc. (Golden Bear), protests the Naval Facilities Engineering Command's (NAVFAC) cancellation of invitation for bids (IFB) No. N62474-83-B-5676, for a definite and indefinite quantity contract for the removal and disposal of refuse and the resolicitation of the requirement. Golden Bear maintains that it was the low, responsive bidder under the original solicitation which NAVFAC states it canceled because there was no means to establish pricing for the indefinite quantity work.

The protest is denied.

Firms were to submit a total bid price for both types of work before the bid opening date. As a prerequisite for award, the low bidder would have 10 days after bid opening to submit a completed Schedule of Deductions/Prices which listed items of work, a definite or indefinite quantity for each, and spaces to enter unit prices, extended prices and a total bid. 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 Maintenance Contracts, the schedule would be part of the contract and provide the basis for payments and for any withholding. The IFB provided that unbalancing in the schedule submitted after bid opening would be cause for withholding approval and requiring submission of a balanced schedule.

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The contracting officer determined that the solicitation did not comply with procurement regulations and canceled the solicitation because the schedule unit prices for the indefinite quantity work were not included as bid items. Thus, there was no means to establish prices for the indefinite quantity work ordered under the contract.

The requirement was resolicited and award has not been made. The resolicitation requires bidders to bid on two items. The first item is a lump-sum price for the definite quantity portion of the work to be performed, with the submission of unit prices, as in the original solicitation, 10 days after bid opening. The second item is a lump-sum price for the performance of the indefinite quantity portion of the work. However, in the resolicitation, unit prices for the indefinite quantity work are to be submitted with the bid.

Golden Bear contends that the cancellation was arbitrary and capricious since there was no material defect in the bid specifications. The protester requests that the original solicitation be reinstated and that award be made to it as the low, responsive bidder.

We have previously held that the NAVFAC procedure used here for the indefinite quantity portion of the solicitation is improper, as a fundamental procurement defect precluding award thereunder. Garrett Enterprises, Inc., 59 Comp. Gen. 754 (1980), 80-2 CPD 227; aff'd on reconsideration, B-196659.2, February 6, 1981, 81-1 CPD 70. We held that NAVFAC should require the submission of unit prices with the initial bids for an indefinite quantity contract for the following reasons:

- "1. The contract to be awarded was an indefinite quantity-type with individual requirements to be purchased by the issuance of work orders as needs arose. The individual unit prices for each item, not the total 'price,' were therefore to be the material terms of the contract which were not established contrary to statutory requirements [10 U.S.C. § 2305(c) (1982) which requires award based on bid determined to be 'most advantageous to the United States, price and other factors considered'].

- "2. The Navy's procedure permitted the low bidder the option to accept or reject an award, after bids were opened and prices exposed, merely by deciding whether or not to submit a completed Schedule or a balanced one.
- "3. The Navy's reservation of the right to require a bidder to resubmit a balanced Schedule after bid opening in the event of unbalancing improperly contemplated negotiation in an otherwise formally advertised procurement." Garrett Enterprises, Inc.--Reconsideration, supra.

In light of the Garrett cases and the fact that award was to be made to one bidder for the definite and indefinite work, we conclude that the cancellation was proper.

While the procurement procedure for the definite quantity portion of the contract remained on resolicitation, we have held that the prior use of a similar NAVFAC procedure did not require cancellation, in and of itself. James M. Smith Inc.--Reconsideration, B-202647.2, October 2, 1981, 81-2 CPD 271.

Accordingly, the protest is denied.

for *William J. Auster*  
Comptroller General  
of the United States