

# DECISION



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

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FILE: B-214499

DATE: August 15, 1984

MATTER OF: Space Services of Georgia, Inc.

## DIGEST:

Determination that bid was nonresponsive because unit prices for indefinite quantity portion of contract were not submitted with the bid was proper, since such unit prices are necessary to set the material terms of the contractor's obligation. Since these prices are material the failure to submit them is not waivable as a minor irregularity.

Space Services of Georgia, Inc. protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. N62470-83-B-6700 for housing maintenance and repair at the U.S. Naval Station, Guantanamo Bay, Cuba. Space Service's bid was rejected as nonresponsive because it did not include a unit price schedule for the indefinite quantity work. The protester contends that its bid should not have been rejected because the omission was a minor irregularity which should have been waived.

The protest is denied.

The solicitation required bids on two items. The first item was a lump-sum price for the definite quantity portion of the work to be performed. The second item was a lump-sum price for 80 different types of indefinite quantity work. The solicitation included a schedule of indefinite quantity work which listed items of work, an estimated quantity for each, and provided spaces to enter unit prices, extended prices and a total price. This total price was to be inserted on the bid under the second item. The solicitation required that a completed indefinite quantity work schedule be submitted with the bid.

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Space Services did submit a lump-sum price for the indefinite quantity work, but failed to include the required indefinite quantity work schedule. The protester states that one business day after bid opening, a Navy contract specialist advised it of the omission and requested that the firm submit a completed schedule. Space Services submitted the schedule as requested. Its bid was nevertheless rejected as nonresponsive.

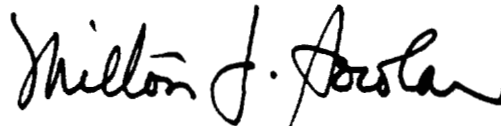
The protester argues that its failure to timely submit the schedule should be waived as a minor irregularity since it submitted the schedule the next business day. Space Services maintains that the information in the schedule was not needed to determine the amount of the bid and its omission could be cured without disadvantage to the other bidders. Thus, the protester contends its bid was improperly rejected as nonresponsive.

We have previously held in cases concerning similar Navy solicitations that unit prices for the indefinite quantity portion of the solicitation must be established at bid opening because in the type of indefinite quantity-type contract to be awarded here the individual work requirements are to be purchased by the issuance of work orders as needs rise, thus while the total price is needed to determine the low bid, unit prices for each item are material terms of the contract which must also be established at bid opening. Garrett Enterprises, Inc., 59 Comp. Gen. 754 (1980), 80-2 CPD ¶ 227; aff'd on reconsideration, B-196659.2, Feb. 6, 1981, 81-1 CPD ¶ 70; Golden Bear Arborists, Inc., B-213409, Feb. 14, 1984, 84-1 CPD ¶ 196.

Further, as we indicated in Golden Bear Arborists, Inc., supra, failure to submit the unit price schedule at bid opening leaves the bidder with no real obligation based on the bid as submitted to perform any item of work at any particular price. To allow Space Services to submit its schedule containing unit prices after bid opening would give that firm an option not afforded any other bidder to accept or reject an award after bids were opened and prices exposed. It is fundamental that the responsiveness of a bid must be established on the basis of the bid submitted at bid opening. Fire & Technical Equipment Corp., B-192408, Aug. 4, 1978, 78-2 CPD ¶ 91.

Finally, Space Services' failure to timely submit the schedule cannot be waived as a minor irregularity because only those deviations which are immaterial and do not go to the substance of the bid may be waived. Fire & Technical Equipment Corp., supra. Since the schedule containing the prices for the indefinite quantity items was, as stated above, clearly material, the failure to submit it could not be waived. See Federal Acquisition Regulation, § 14.405, 48 Fed. Reg. 41,102, 42,181 (1983) (to be codified at 48 C.F.R. § 141.103-1). The protester's bid was thus nonresponsive and properly rejected.

The protest is denied.



Acting Comptroller General  
of the United States