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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** The Nutmeg Companies, Inc.

**File:** B-277676

**Date:** September 3, 1997

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Jason L. Bugbee for the protester.

Anthony J. Buccitelli, Esq., for Roads Corporation, an intervenor.

John E. Lariccia, Esq., Department of the Air Force, for the agency.

Christine Davis, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Where the apparent low bidder submitted its bid on an outdated and ambiguous Standard Form (SF) 1442, but acknowledged an amendment transmitting a revised and unambiguous SF 1442, it is clear from the acknowledgement that the bidder intended to comply with the solicitation requirements, as clarified by the amendment, such that the submission of the unamended form was a minor informality that did not affect the bid's responsiveness.

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## DECISION

The Nutmeg Companies, Inc. protests the award of a contract to Roads Corporation by the Department of the Air Force under invitation for bids (IFB) No. F19650-97-B-0011 for the installation of basement drainage systems in various housing units at Hanscom Air Force Base, Massachusetts. Nutmeg protests that Roads's bid was nonresponsive because it was submitted on an outdated and ambiguous Standard Form (SF) 1442.

We dismiss the protest.

The IFB, issued on June 18, 1997, contemplated the award of an indefinite delivery, indefinite quantity contract for a base year with 2 option years. The SF 1442 accompanying the IFB contained certain provisions that conflicted with each other or with other IFB requirements. Specifically, one provision of the SF 1442 stated a 60-day minimum bid acceptance period; another provision of the SF 1442 invited bidders to offer a longer bid acceptance period, but, in the blank meant to be completed by the bidder, the Air Force inserted a 30-day bid acceptance period, which obviously conflicted with the admonition that bids offering less than a 60-day acceptance period would be rejected. In addition, the SF 1442 stated a 45-day performance period, not the 1-year basic performance period provided elsewhere in

the IFB. Finally, Section I of the IFB required the awardee to submit both payment and performance bonds, as mandated by the Miller Act, 40 U.S.C. § 270a (1994), for construction contracts of this type, whereas the SF 1442 only stated that the awardee was to post a performance bond.

On July 18, the agency issued Amendment No. 0001 to the IFB, which included a revised SF 1442 and stated "[replace] SF 1442 in original bid package with attached SF 1442." The revised SF 1442 corrected the various errors in the original SF 1442. In particular, it deleted the 30-day bid acceptance period mistakenly inserted by the Air Force; it deleted the reference to a 45-day performance period; and it provided that the contractor was to post both payment and performance bonds, consistent with Section I of the IFB and the Miller Act.

At the July 25 bid opening, Roads submitted the apparent low bid and Nutmeg submitted the next low bid. Although Roads acknowledged Amendment No. 0001, Roads submitted its bid on the original SF 1442, not the revised SF 1442. The contracting officer determined that Roads, having acknowledged Amendment No. 0001, clearly intended to comply with the 60-day minimum bid acceptance period, the 1-year performance period, and the requirement to post both performance and payment bonds, and that Roads's failure to use the revised SF 1442 was a minor informality that did not render Roads's bid nonresponsive.

Nutmeg protests that Roads's use of the unamended SF 1442 rendered its bid nonresponsive.

To be responsive, a bid must show on its face at the time of bid opening that it is an unqualified offer to comply with all the material requirements of the solicitation and that the bidder intends to be bound by the government's terms, as set forth in the solicitation and any amendments. John P. Ingram, Jr. & Associates, Inc., B-250548, Feb. 9, 1993, 93-1 CPD ¶ 117 at 3. Where the bid contains a provision which as completed by the bidder creates an ambiguity as to the bidder's intent to perform the work, as set forth in the solicitation and any amendments, the bid should be considered nonresponsive. Id. In contrast, where the bidder did not create an ambiguous provision already contained on outdated bid form originally contained in a solicitation and acknowledges a solicitation amendment clarifying the ambiguity and containing an amended bid form, the acknowledgement generally obligates the bidder to the solicitation requirements as substantively changed in the amendment, such that the bid should be considered responsive, even if it was submitted on the original bid form rather than the amended bid form. Walsky Constr. Co., et al., B-216571 et al., May 17, 1985, 85-1 CPD ¶ 562 at 3.

The facts of this case are virtually indistinguishable from those of Walsky. In Walsky, the agency filled in a bid acceptance period on the SF 21 (a form similar to the SF 1442) in a manner which conflicted with the minimum bid acceptance period stated elsewhere in the IFB. The agency issued a corrected SF 21 through an IFB

amendment, which stated that the revised SF 21 was "substituted for the superseded page(s)." The low bidder in Walsky acknowledged the amendment, but submitted its bid on the original bid form with the erroneous bid acceptance period. We found it reasonable to conclude that the low bidder had agreed to comply with the amended bid acceptance period and that the use of the old bid form was an oversight that did not render the bid nonresponsive. In this regard, we noted that the low bidder did not itself fill in the erroneous bid acceptance period, and we determined that the revised form, with the proper bid acceptance period, was incorporated into the bid when the bidder acknowledged the amendment.

Here, while Roads submitted the wrong SF 1442 with its bid, Roads did not itself fill in the erroneous bid acceptance period, performance period, or bond requirements appearing in the SF 1442. Cf. John P. Ingram, Jr. & Associates, Inc., *supra* (where a bidder filled in blanks on an outdated bid form that created ambiguity whether the bidder complied with the IFB requirements). Rather, as the protester recognizes, "all of the errors were Government caused" on the SF 1442 submitted with Roads's bid. Consequently, consistent with Walsky, by acknowledging the amendment that clarified the ambiguities created by the original SF 1442, Roads incorporated the amended SF 1442 into its bid and obligated itself to comply with the 60-day bid acceptance period, the 1-year performance period, and the statutorily-mandated payment and performance bond requirements.

The protester's attempts to distinguish Walsky are unpersuasive. First, Nutmeg points out that this case involves three alleged defects in Roads's bid (the bid acceptance period, the performance period, and the bond requirements), whereas Walsky involved only one alleged defect in the apparent low bid (the bid acceptance period). We see no reason to distinguish the instant case on this basis. While the original SF 1442 in this case contained more ambiguities than the SF 21 in Walsky, the fact remains that the Air Force introduced, and later clarified, each ambiguity in an amendment acknowledged by Roads.

Second, Nutmeg argues that the amendment issued in Walsky, which stated that the revised SF 21 was "substituted for the superseded" SF 21, did not require bidders to submit the revised SF 21 with their bids, but implied that the revised form would be incorporated into their bids by acknowledging the amendment. *Id.* at 3. According to the protester, the amendment issued in this case, which advised bidders to "[replace] SF 1442 in original bid package with attached SF 1442," required the use of the revised form and precluded its incorporation by acknowledging the amendment. We see no meaningful difference between "substituting" the clarified form for the outdated form and "replacing" the outdated form with the clarified form. In either case, a bidder that acknowledges an amendment transmitting the clarified form binds itself to the provisions of the clarified form and acknowledges

that any contradictory terms established by the government on the outdated form are no longer valid, even if its bid is inadvertently submitted on that form.

Accordingly, we find that Roads's bid was responsive.

The protest is dismissed.

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of the United States