



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Contech Construction Company

File: B-241185

Date: October 1, 1990

Dewey E. Barlow for the protester.
Guy R. Pietrovito, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Procuring agency properly rejected protester's bid as nonresponsive where the protester's statement in its bid that the solicitation's required performance schedule was "impossible" created uncertainty as to whether the bidder intended to comply with the solicitation's completion schedule.
2. Protest allegation that the solicitation's required performance schedule is impossible concerns an apparent solicitation impropriety which was untimely protested after bid opening.

DECISION

Contech Construction Company protests the rejection as nonresponsive of its bid under invitation for bids (IFB) No. JFJMD-90-B-0056, issued by the Department of Justice (DOJ) for the installation of vinyl wall covering.

We dismiss the protest.

The IFB sought the installation of vinyl wall covering, including the preparation and repair of walls and movement of office furniture, to be completed within 75 calendar days of the agency's notice to proceed. The solicitation also required that the IFB work be accomplished between 7 a.m. and 5 p.m., Monday through Friday and that "each office must be started and completed within the same calendar day."

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Amendment No. 0001 amended the IFB's wall covering specifications and included replacement pages to the IFB. Contech acknowledged the amendment and included with its bid the replacement pages with the notations "impossible," next to the requirement that each office be started and completed on the same calendar day, and "impossible-submittals + lead time on wall covering" under the specification requiring performance completion within 75 calendar days.

DOJ rejected Contech's bid as nonresponsive. Contech protests that the notations on the replacement specification pages were made by its estimator and Contech did not intend to qualify its bid. Contech also argues that the replacement pages were only returned with its bid as a "courtesy to verify acknowledgement of the amendment."

To be responsive, a bid, as submitted, must represent an unequivocal offer to perform without exception the exact specifications called for in the IFB so that the contractor will be bound to perform in accordance with all the material terms and conditions. Northwest Pesticide Enters., Inc., B-235982, Sept. 28, 1989, 89-2 CPD ¶ 284. A bidder's post-bid opening statement of its actual intention to meet the IFB's material terms, which includes the delivery or performance schedule, cannot render a bid acceptable, which on its face modifies or qualifies the bidder's obligation. Ferguson Elec. & Plumbing, Inc. and Delta Elec. Constr. Co., B-213001, Nov. 28, 1983, 83-2 CPD ¶ 620.

Contech's intention to perform must be determined at bid opening from the bid itself, including the replacement pages. See Northwest Ground Covers and Nursery, B-201609, Feb. 9, 1981, 81-1 CPD ¶ 81. Here, Contech's written notations reflect an exception to the IFB's delivery schedule or, at the least, made it unclear whether Contech agreed to the required performance terms. Since Contech also argues in its protest that the required services cannot be performed within the IFB performance period, it is apparent that the notation reflected Contech's actual position on the IFB specifications. Accordingly, Contech's bid was not an unequivocal offer to perform in accordance with the IFB's material terms and was properly rejected as nonresponsive.

Contech also protests that the amount of time required for "review and approval of submittals by the government will not allow the IFB performance period to be met." This aspect of Contech's protest concerns an apparent

solicitation impropriety, which Contech was required to protest prior to bid opening under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1990). Contech's post-bid opening protest of the IFB performance schedule is untimely and will not be considered.

The protest is dismissed.

James A. Spangenberg

James A. Spangenberg
Assistant General Counsel