



Comptroller General
of the United States

Washington, D.C. 20548

145002

Decision

Matter of: Oxbow Enterprises

File: B-244696

Date: October 1, 1991

Hank Willemsma for the protester,
James F. Trickett, Esq., Department of Health & Human
Services, for the agency,
Sylvia Schatz, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Bid that omits standard form 1442, "Solicitation, Offer and Award," which contains several material provisions including a minimum bid acceptance period, is nonresponsive where the bid does not otherwise indicate agreement to acceptance period.

DECISION

Oxbow Enterprises protests the rejection of its bid under invitation for bids (IFB) No. 161-91-0507, issued by the Department of Health & Human Services (HHS), for construction work at the White Sands School at White Sands Missile Range, New Mexico. The agency rejected Oxbow's low bid as nonresponsive because Oxbow failed to execute and return with its bid standard form (SF) 1442, "Solicitation, Offer, and Award" (the cover sheet of the IFB), which contains several material provisions, or to otherwise incorporate these material provisions in its bid.

We dismiss the protest.

The SF 1442 contained several material provisions, one of which required the bidder to hold its bid open for 60 days; the minimum bid acceptance period is a material term to which a bidder must agree in order for its bid to be responsive. M&G Serv., Inc., B-244531, June 27, 1991, 91-1 CPD ¶ 612. Consequently, where a bidder fails to return the SF 1442 with its bid, the bid must be rejected as nonresponsive unless the bid elsewhere evidences the bidder's agreement to be bound by the minimum acceptance period and the other material provisions included in the SF 1442. Control Line, Inc., B-235747, Oct. 5, 1989, 89-2 CPD ¶ 313.

Oxbow concedes that it failed to complete and submit the SF 1442, but maintains that its bid nonetheless was responsive because the material terms and conditions of the SF 1442, including agreement to the 60-day bid acceptance period, were otherwise incorporated into the bid and supporting documents. Specifically, regarding the 60-day acceptance period, Oxbow argues that its execution of a bid bond which identified the IFB by number and referenced the 60-day minimum bid acceptance period, and inclusion of the bond with its bid, were sufficient to evidence Oxbow's agreement to the provision. Oxbow concludes that its low bid should not have been rejected as nonresponsive.

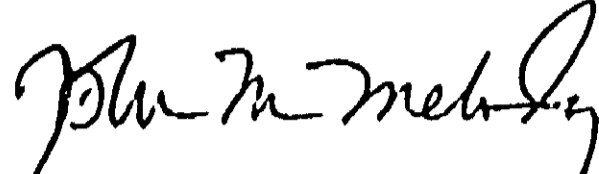
We disagree. Oxbow's bid included a bid bond, the amended bid schedule, representations and certifications, and copies of the first page of the six amendments that were issued to the IFB, all of which were executed. However, these documents did not incorporate into the bid all of the material provisions in the SF 1442. In particular, they did not include Oxbow's binding agreement to the 60-day acceptance period. Contrary to Oxbow's position, its bid bond did not serve this purpose. Although the bond references the 60-day acceptance period, the bond serves solely to commit the surety to the government; it is not part of a bidder's agreement or potential obligation. Consequently, the bond is not sufficient to evidence a bidder's agreement to hold its bid open for the period specified in the SF 1442. Weber Constr., B-233848, Mar. 27, 1989, 89-1 CPD ¶ 309. Therefore, the bid is nonresponsive and properly was rejected.

Oxbow claims that it read amendment 003, which stated that a revised bid schedule must be used (instead of the bid schedule in the IFB as originally issued), as providing that the revised bid schedule was to be substituted for the SF 1442. There is nothing in the IFB or the amendment that supports this reading. The amendment stated only that bidders were to submit revised bid schedules in lieu of the initial bid schedules; it did not state anything with regard to the SF 1442.

Oxbow argues that acceptance of its low bid would be in the government's best interest. Acceptance of a nonresponsive bid, however, would compromise the integrity of the sealed bidding system; accordingly, a nonresponsive bid may not be accepted even though it would result in monetary savings to

the government. Terra Vac, Inc., B-241643, Feb. 7, 1991, 91-1
CPD ¶ 140.

The protest is dismissed.

A handwritten signature in cursive script, appearing to read "John M. Melody".

John M. Melody
Assistant General Counsel