



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Morgan Lumber Sales

**File:** B-234997

**Date:** April 28, 1989

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## DIGEST

A bid on a total small business set-aside, which fails to indicate that all end items to be furnished would be manufactured or produced by small business concerns, is nonresponsive because the bidder is not obligated to furnish supplies from a small business.

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## DECISION

Morgan Lumber Sales protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DLA400-89-B-0890, a total small business set-aside issued by the Defense Logistics Agency (DLA) for wooden pallets.

Morgan's bid was rejected as nonresponsive due to its failure to certify in its bid that all end items to be furnished would be manufactured or produced by a small business concern in the United States or its possessions as required by the IFB provision found at Federal Acquisition Regulation (FAR) § 52.219-1 (FAC 84-28).

The protester argues that its failure to certify that all end items be furnished by small business concerns should have been treated as a minor informality, analogous to a clerical error. The protester notes that a bidder's inadvertent failure to properly certify its status as a small business can be corrected after bid opening and that the end item certification should also be subject to this procedure. We do not agree.

The end item certification involves a performance obligation of the bidder, should it become the contractor, enforceable by the government. It reflects the view that the socio-economic aims of the set-aside program are served only if the supplies are manufactured by small business concerns and reflects the Small Business Administration's requirement that a small business set-aside contractor furnish the

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product of a small business concern. See 13 C.F.R. § 121.5(b)(2)(i) (1988). A bidder's failure to make such a commitment in its bid renders the bid nonresponsive because the government, upon acceptance of the bid, would not be able to require the bidder to supply items manufactured by small business concerns. See Jimmy's Appliance, 61 Comp. Gen. 444 (1982), 82-1 CPD ¶ 542.

Concerning the protester's request that the agency treat its failure to certify as a minor informality correctable after bid opening, FAR § 14.405 (FAC 84-12) does permit correction of certain deficiencies in a bid after bid opening. However, a deficiency involving a performance obligation of a bidder is material and cannot be corrected after bid opening. See e.g., East Wind Industries, Inc., B-208170, Dec. 29, 1982, 82-2 CPD ¶ 587. Therefore, we do not view the failure to certify that the end item would be furnished by small business concerns as a minor informality. See Rocco Industries, Inc., B-227636, July 24, 1987, 87-2 CPD ¶ 87. Thus, we have no basis upon which to object to the agency's rejection of Morgan's bid.

Accordingly, the protest is dismissed.

  
for Ronald Berger  
Associate General Counsel