



**Comptroller General  
of the United States**

Washington, D.C. 20548

## Decision

**Matter of:** B-238423  
**File:** Infab Corporation  
**Date:** May 29, 1990

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Don Cusick, for the protester.  
Louise E. Hansen, Esq., Defense Logistics Agency, for the agency.  
James M. Cunningham, Esq., Paul I. Lieberman, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Insertion of unsolicited part number in a bid, even if included merely for a bidder's internal control purposes, qualifies bid, creating doubt whether the bidder is offering to comply with the solicitation specifications. The contracting officer properly rejected such a qualified bid where it did not contain an express statement that the designated part conforms to all solicitation requirements, and there was no data available to the contracting officer before bid opening which demonstrated that the part specified was compliant.

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### DECISION

Infab Corporation protests the rejection of its low bid as nonresponsive under invitation for bids (IFB) No. DLA120-89-B-1188, issued by the Defense Personnel Support Center of the Defense Logistics Agency (DLA) for lightweight, X-ray-protective aprons. DLA rejected Infab's bid because the bid raised doubt as to whether Infab intended to offer an apron in conformity with all the IFB's specifications. Infab contends that its bid was improperly rejected because it evidenced an intent to comply with all the IFB requirements.

We deny the protest.

Page three of the IFB described the aprons (item No. 0001 of the IFB) by National Stock Number (NSN); page four of the IFB cross-referenced the NSN with the requirements of the applicable commercial item description for the aprons.

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Immediately above the NSN listing on page 3 of its bid, Infab inserted "GBA-S4". Infab also made this same entry on page 26 of its bid on a line provided for bidders to identify the aprons by the bidders' own part number if they are not identified by NSN.

DLA's contracting officer states that because of Infab's identification by the company's own part number she asked the agency's technical division whether it had any information pertaining to Infab's referenced number. After the technical division stated by memo that it had no information on the Infab "GBA-S4" apron, the contracting officer rejected Infab's bid because she could not determine whether Infab's apron "deviated from the specifications or complied with it." Subsequently, DLA awarded a contract for the items on January 10, 1990, to Shielding, Inc., the next low bidder under the IFB.

Infab first argues that the insertion of its part number on pages 3 and 26 of the IFB should not be considered significant because the part number was not included at the "NSN description line." However, we do not consider the exact position of Infab's inserted expression to be of consequence since the entry was so close to the item description that it necessarily indicated that the expression was to be considered with item 0001 of Infab's bid. Furthermore, Infab's insertion of its part number as an identifier on page 26 of its bid evidenced a clear and deliberate intent to bid its part number rather than the applicable NSN.

Next, Infab argues that its part number was merely a "reference number and is not included in any Infab literature, catalog, or other printed material and is not a part number referencing any existing Infab product" and that DLA should not have assumed that the inserted expression referenced a noncompliant item. The insertion of an unsolicited part numbers in a bid, even where included merely for a bidder's internal control purposes, creates an ambiguity in the bid. IFR Sys., Inc., B-222533, Aug. 26, 1986, 86-2 CPD ¶ 224; Wright Tool Co., B-212343, Oct. 12, 1983, 83-2 CPD ¶ 457. The ambiguity arises because the inclusion of part numbers is not a clear indication of whether the bidder is offering to comply completely with the specifications, or is merely offering to supply equipment that may or may not conform to the specifications. Dictaphone Corp., B-204966, May 11, 1982, 82-1 CPD ¶ 452. Therefore, a contracting officer must reject such a bid as nonresponsive unless either the bid contains an express statement, or the contracting officer determines from data available on the specified part before bid opening, that the

specified equipment conforms to the specifications. Sentinel Elec., Inc., B-185681, June 24, 1976, 76-1 CPD ¶ 405. Infab's bid did not contain any express statement that its designated part conformed to the specifications.

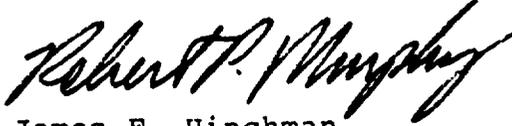
In its comments on the agency report, Infab raises three additional issues which for the reasons stated below we find to be without merit. First, Infab notes that the abstract of bids, which was signed and dated by the bid opening officer on October 11, 1989, also contains the notations "rejected" below Infab's name and "award" below Shielding's name. From this, Infab suggests that the actual award decision may have been made in mid-October, well before the contracting officer requested the advice of the technical division as well as the January 10, 1990, award date reported by the agency. In view of the fact that it is common for the ultimate results of the competition to be noted on the bid abstract at a time subsequent to when that document was initially prepared, signed and dated, and since DLA has provided us with a copy of the actual award document dated January 10, 1990, we find no support for Infab's speculation that the award decision actually was made as early as October 11, 1989.

Second, Infab complains that DLA treated it and Shielding unequally in that after bid opening, Infab was not permitted to explain its "reference number" which rendered its bid nonresponsive, whereas Shielding was given the opportunity to complete certain bidder responsibility-related certification provisions in its bid (such as its small business size status). However, it is well-established that responsibility issues--those issues concerning the capability or eligibility of a bidder to perform a contract--may generally be dealt with after bid opening unlike issues involving bid responsiveness, or the commitment of a bidder to furnish conforming items, which must be finally determined from the bid itself as of bid opening. See, for example, Jersey Maid Distributors, Inc., B-217307, Mar. 13, 1985, 85-1 CPD ¶ 307.

Finally, Infab questions why performance under the contract was not suspended as a result of Infab's January 23, 1990, protest which was received at our Office on January 26. A contracting agency is directed to inform a contractor to cease contract performance (unless, for example, the government's best interests dictate otherwise) when the contracting agency receives notice of a protest from our Office within 10 calendar days of the date of contract award. See 4 C.F.R. § 21.4(b). Since the award was made on January 10, 1990, Infab needed to have filed its protest

with our Office in sufficient time to have permitted DLA to be notified of the protest by January 20. Clearly, Infab's January 23 protest was therefore untimely insofar as obtaining cessation of contract performance.

The protest is denied.

*for*   
James F. Hinchman  
General Counsel