



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** National Molded Products  
**File:** B-244884  
**Date:** October 25, 1991

Claude Halaby for the protester.  
Steven G. Holtz, Esq., and William R. Medsger, Esq.,  
Department of the Army, for the agency.  
James M. Cunningham, Esq., and Glenn G. Wolcott, Esq.,  
Office of the General Counsel, GAO, participated in the  
preparation of the decision.

### DIGEST

Protest that agency improperly rejected bid as non-responsive is rendered academic where agency properly determined that none of the offerors could meet IFB requirement that end item be manufactured or produced by a small business and canceled the solicitation.

### DECISION

National Molded Products (NMP) protests the rejection of its bid under invitation for bids (IFB) No. DAAA09-91-B-0158, issued as a 100 percent small business set-aside by the Department of the Army, Armanent Munitions & Chemical Command, for cable assemblies to be used in the M-1 tank. NMP protests that the agency improperly rejected its bid as nonresponsive.

We dismiss the protest.

The IFB was issued on March 12, 1991. Under the solicitation, offerors were required to certify that all end items to be furnished would be manufactured by a small business concern. Pursuant to IFB amendment No. 0002, issued on April 23, the cable assemblies were to be obtained from CAM-LOK Corporation as the only approved source of supply.

Twenty-seven bids were received and opened on June 6, 1991. Although NMP's bid was low, the Army rejected it as nonresponsive because, according to the Army, NMP failed to acknowledge amendment No. 0002.<sup>1</sup> On July 17, the Army awarded a contract to ATC Industries, the next low bidder determined to be eligible for award.

The Army states that on August 1, following an agency-level protest by another offeror, the agency "discovered that CAM-LOK, the required source specified in the IFB, was a large business." The agency explains that "unbeknownst to the contracting officer, CAM-LOK converted from small business status to a large business in February 1990." Accordingly, because of CAM-LOK's large business status, none of the bidders could accurately represent that the end items to be furnished would be manufactured or produced by a small business. Because none of the bidders could comply with this IFB requirement, the contracting officer decided to terminate ATC's contract and resolicit the requirement on an unrestricted basis.

NMP does not dispute the agency's statement that CAM-LOK is a large business nor does it otherwise dispute the agency's conclusion that because CAM-LOK was the only approved source for the cable assemblies, none of the offerors, including NMP, could meet the IFB requirements. Nonetheless, NMP insists that it should receive award of the contract since it was the low bidder.

The requirement in a small business set-aside procurement that a bidder certify it will furnish products manufactured or produced by a small business is a material IFB provision. Certified Slings, Inc., B-243085, May 6, 1991, 91-1 CPD ¶ 442. Therefore, a bidder's failure to accurately provide this certificate renders the bid nonresponsive. Id. Due to CAM-LOK's status as a large business concern and its designation as the sole approved source of the cable assemblies, the agency reasonably concluded that all bidders were precluded from meeting the solicitation's requirement that all end items be manufactured by a small business. Accordingly, termination of ATC's contract and cancellation of the IFB was proper. See CompuMed, B-242118, Jan. 8, 1991, 91-1 CPD ¶ 19. Since the Army properly terminated the

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<sup>1</sup>NMP asserts that it did submit a signed copy of amendment No. 0002 with its bid. For the reasons discussed below, we need not resolve this dispute.

contract and canceled the IFB, NMP's protest that its bid was improperly rejected is rendered academic. See Morey Mach., Inc.--Recon., B-233793.2, Aug. 3, 1989, 89-2 CPD ¶ 102.

The protest is dismissed.

A handwritten signature in cursive script, appearing to read "Paul Lieberman", with a long horizontal flourish extending to the right.

Paul I. Lieberman  
Assistant General Counsel