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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-189370

DATE: November 28, 1977

MATTER OF: Mainline Carpet Specialists, Inc.

DIGEST:

1. Protest of rejection of proposal is denied where record shows proposal did not meet specification requirements and was otherwise regarded as undesirable when evaluated in accordance with award criteria.
2. Although solicitation specifications were ambiguous and it appears procurement should have been formally advertised rather than negotiated, award will not be disturbed since protester was not materially prejudiced by deficiencies in procurement.

Mainline Carpet Specialists, Inc. protests the award of a contract under request for proposals (RFP) No. DAKF27-77-R-0041 issued by Fort George G. Meade, Maryland (Fort Meade). The RFP called for the furnishing and installation of wall-to-wall carpeting and padding, and removal of the old carpeting at the Officers' Club at Fort Meade. The procurement is funded by both appropriated and nonappropriated funds.

The RFP utilized a brand name or equal purchase description and listed several "salient features" which Fort Meade deemed essential to its minimum needs. Mainline submitted the low offer, on an "or equal" product, but its proposal was rejected because the carpet it proposed to furnish was determined not to meet the specifications (salient characteristics).

Mainline states that page 14 of the RFP called for wall-to-wall nylon tufted carpet, and that is what was offered to furnish. However, page 14 also identified the carpet as to be "Alexander Smith or equal" and "in accordance with salient features as indicated in Section F." The contracting officer found that the carpet offered by Mainline did not meet the salient features because, inter alia, Mainline's

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carpet contained 9,216 tufts per square foot whereas one of the salient features was "a minimum of 10,000 tufts" per square foot. The Army also found that Mainline's carpet did not satisfy other specification requirements and was undesirable when considered pursuant to the RFP's evaluation and award factors (such as "Matching and blending with existing club decor scheme" and "Ease and economy of maintenance"). The record affords us no bases for objecting to these findings or to the rejection of Mainline's proposal.

The record indicates, however, that the procurement is not free of deficiencies. For example, the solicitation's description of what was required as "tufted" was inconsistent with the brand name product, which is a woven carpet, and with the listed salient features, which reportedly describe a construction process related to woven and not to tufted carpet. The Army recognizes that there may have been "some ambiguity" in this respect, but states that it is the opinion of a General Services Administration carpet specialist that it should have been "readily apparent" from the salient features description that only a woven carpet was being described and that a person familiar with carpets therefore should have known from that description and the brand name designation that only woven carpet was desired.

Another defect concerns Item E-1(h), the carpeting for the Officers' Cocktail Lounge. The RFP for this item called for Alexander Smith "Premier IX" or equal, which was the carpet offered by the awardee and accepted by the Army. However, "Premier IX" contains only 7,776 tufts per square foot while, as indicated above, one of the specified salient features required a minimum of 10,000 tufts per square foot. Fort Meade labels this conflict in specifications an "innocent error" and has determined that the lower tuft density for the Cocktail lounge carpet would meet its minimum needs. The Army also admits that once this determination was made, the procurement activity should have amended the RFP to indicate the lesser requirement for this item.

Additionally, we question the necessity for the use of negotiation in this case. The procurement was negotiated pursuant to 10 U.S.C. 2304(a)(10) (1970), as implemented by § 3-210.2(xiii) of the Armed Services

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Procurement Regulation (ASPR) (1976 ed.), because, in the words of the contracting officer's "Determination and Findings", it was impossible to draft adequate specifications to permit formal advertising, which also was impractical in that "the Government requires the flexibility to negotiate--the matching and blending of decor, quality of material, and the economies of maintenance." The Army explains that while some procurement activities may have been able to utilize formal advertising, the Fort Meade procurement activity "did not have the technical expertise to do so." The Army cites our decision in Aul Instruments, Inc.; Boonton Electronics Corp., B-186554, June 29, 1977, 77-[CPD 46] as support for the use of negotiation in such circumstances.

We do not understand what particular "technical expertise" was considered necessary here. It appears that the use of a formally advertised brand name or equal purchase description with a properly drafted bid sample requirement would have enabled the procuring activity to satisfy its requirements regarding the decor, quality of material, and economies of maintenance. With regard to the Aul Instruments case, we point out that it involved a procurement for high-complex electronic systems which would have required "detailed performance and environmental tests in order to determine minimum specifications * * *," while here Fort Meade was purchasing standard carpeting which other procuring activities regularly purchase through formal advertising, thus belying the determination that it is impossible to draft specifications adequate for a formally advertised procurement.

Despite these deficiencies, we are not inclined to disturb the award. Although Mainline chose to read the RFP as permitting offers on tufted carpet, it has not rebutted the Army's position that all offerors should have known that the brand name designation and salient features listing effectively identified only woven carpet. Also, since Mainline's carpet was unacceptable to the Army for several reasons, it does not appear that the protester was materially prejudiced either by the RFP's tufted/woven discrepancy or by the Army's willingness to accept the "Premier IX" carpet for the Cocktail Lounge, which represented only some 5 percent of the total purchase.

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We are bringing this matter to the attention of
the Secretary of the Army.

Deputy

R. F. K. 11/12
Comptroller General
of the United States



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

O. Harwood
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IN REPLY REFER TO: B-189370

November 28, 1977

The Honorable
The Secretary of the Army

Dear Mr. Secretary:

Enclosed is a copy of our decision in response to the protest of Mainline Carpet Specialists, Inc. regarding rejection of its proposal by Fort Meade, Maryland under request for proposals (RFP) No. DAKF27-77-R-0041.

As pointed out in the decision and as recognized by the Judge Advocate General, the procurement was deficient in certain respects. Although under the circumstances we do not believe that disturbing the award would be warranted, we bring this matter to your attention for whatever action you deem appropriate.

Sincerely yours,

R. F. Keller

Deputy Comptroller General
of the United States

Enclosure