

Proc II

DECISION



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

9321

FILE: B-193613

DATE: March 5, 1979

MATTER OF: S. Livingston & Son, Inc.

DLG 010576

DIGEST:

1. Protest of agency's failure to list salient characteristics for specified fabric is denied where only reasonable interpretation of specification is that brand name or equal provision applied only to fabric color which is essentially subjective criterion not subject to narrative description.
2. Although invitation should have specifically advised bidders of location and availability of color swatches for use in matching specified brand name color, invitation deficiency did not prejudice protester as swatches were available, were furnished to other bidders and would have been furnished to protester if it had requested information concerning swatches from procurement office in accordance with solicitation instructions to direct requests for information to that office.

S. Livingston & Son, Inc. (Livingston) protests any contract award under invitation for bids No. BO/TC-M-00066, issued by the General Services Administration (GSA), Boston, Massachusetts. As its bases for protest, Livingston alleges that it was precluded from submitting a bid because the specifications purportedly required materials which were unavailable; that a "brand name or equal" provision failed to list the salient characteristics to permit bidders to determine what qualities were required in an alternative to the brand name that would establish it as an "equal"; and that samples which would permit bidders to determine the exact nature of that which was required to be furnished were unavailable. Livingston requests that the specifications be revised and that the procurement be resolicited.

[ALLEGATION THAT Bid Specifications ~~003910~~ REQUIRED Unavailable Materials]

The invitation contemplated a requirements contract for uniforms for Bureau of Prisons personnel, and was divided into three groups of items. The protest concerns all five items in Group I, and two items in Group II. However, with regard to Group II, GSA advises it is in agreement with the protester that the material specification for the two contested items was defective, and since no bids were received for those items, a new solicitation for these items will be issued under revised specifications. Accordingly, we consider this aspect of the protest moot.

Group I, items 1 through 5, set out requirements for components of men's and women's clothing in accordance with various Bureau of Prisons specifications. For each of these items, the specification set forth various requirements for material, color, styling, etc. For example, Group I, item 1, is a requirement for men's uniform blazers in various sizes to be manufactured in accordance with Bureau of Prisons Specification No. BP-1000. That specification states in part as follows:

"Material. 100% Dacron Texturized Polyester, 56 gauge raschel knit twill, 10 3/4 ounces average per linear yard 59-60" width, with a soil release finish similar and equal to brand names, VISA, Zelcon or Scotchguard.

"Color. Deering Milliken #8670-1576 Royal Blue, or equal. (Emphasis added.)

"Style. Single breasted, two button, points rounded at bottom. * * *"

Thereafter the specification sets forth the requirements for pockets (upper and lower), collars and lapels, construction, etc. Each item in Group I was to be manufactured in accordance with a similar specification.

Livingston claims that the "or equal" portion of the specifications relate to material (fabric) and colors as the specified Deering numbers covered both. In this respect, Livingston states that Deering Milliken personnel advised it that the Deering Milliken material listed under each item in Group I was sold out until the summer of 1979.

The protester states that prior solicitations for these items have either included a swatch of material in each specified color or have specified that a uniform sample was on file in the Bureau of Prisons, Washington, D.C.; and since the instant solicitation provided for neither, the protester was further precluded from bidding in an intelligent manner. Livingston contends that a meeting with Bureau of Prisons personnel prior to bid opening, to discuss the unavailability of Deering Milliken goods and to determine precisely what would constitute an equal, was unproductive, and that Bureau of Prisons personnel did not volunteer to furnish Livingston with sample swatches.

We find Livingston's arguments unpersuasive. The gist of Livingston's complaint centers on what it perceives to be the IFB's requirement to furnish brand name or equal fabrics, a result which in our view can only be achieved by reading the brand name portion of the various specifications out of context. Although the Deering Milliken code numbers may reference both fabric and color, we find no reasonable basis for Livingston's interpretation that Deering Milliken fabric or equal was required. The fabric specifications appear to us to be sufficiently detailed to inform bidders of the type, quality and characteristics of the various fabrics required by the agency; the color requirements as well as other portions of the specifications were set out separately from the fabric specification. Under such circumstances, we believe the only reasonable interpretation of the Deering Milliken brand name and numbers is that bidders were required to furnish specified fabrics in either the Deering Milliken color specified, or any equivalent color. To hold otherwise would do violence to the plain language of the specification as no meaningful purpose would be served by the detailed fabric specification or the distinction drawn by the specification between fabric and color.

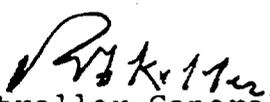
Also, while it is true that the IFB failed to list the "salient characteristics" of the referenced Deering Milliken colors, we are at a loss to determine how the salient characteristics of an essentially subjective criterion such as color could be definitized in any

narrative form that would be intelligible. GSA asserts that it was incumbent upon prospective bidders to request a color swatch for match-up, which GSA claims was available upon request and which was furnished to those bidders making request of the contracting officer.

We think the IFB should have explicitly advised prospective bidders of the availability and source of the color swatches. However, the mere existence of a technical deficiency in the solicitation is not, absent a showing of prejudice, a compelling reason to cancel an invitation and readvertise, see Tri-Com, Inc., B-186429, November 10, 1976, 76-2 CPD 398, and we do not find such prejudice to exist in this case.

The invitation set forth the source of any information that was desired for the solicitation, i.e., the procurement office in this case. Other bidders had no difficulty in relying on the IFB provision. GSA reports that the contracting officer received requests from other prospective bidders for this information and color swatches were furnished them. Livingston, however, did not request this information from GSA. Instead it chose to pursue the question of the availability of the Deering Milliken fabrics (not color) directly with the Bureau of Prisons. Presumably, because of its belief that Deering Milliken fabrics (or equal) were required by the specifications, Livingston did not request material color swatches, as the Bureau asserts that these swatches were available and would have been furnished to the protester if requested. Thus, while the Bureau did not volunteer to furnish the samples, Livingston could have readily obtained swatches by following the directions specified in the solicitation to communicate with the GSA procurement office.

The protest is denied.


Deputy Comptroller General
of the United States