

**DECISION**

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

FILE: B-206401; B-206401.2      DATE: June 2, 1982

MATTER OF: Ebsco Industries, Inc.;  
American of Martinsville

**DIGEST:**

1. In brand name or equal procurement, where solicitation specifies precise furniture dimensions as salient characteristics, contracting officer improperly accepted a bid deviating from the dimensions.
2. Solicitation should have been canceled where a large segment of bidders deviated from specified dimensional salient characteristics where agency indicates that size variations were acceptable.
3. Allegation concerning fairness of use of brand name or equal specifications in the future is dismissed as premature.

Ebsco Industries, Inc. (Ebsco), and American of Martinsville (A.M.) protest the award of a contract to Stanley Furniture Company (Stanley) for dormitory furniture under invitation for bids (IFB) No. F08651-81-B-0116 issued by Eglin Air Force Base, Florida. Both protesters assert that Stanley's bid was non-responsive for failure to comply with the dimensional salient characteristics of the brand name (A.M.) or equal specifications.

As a preliminary matter, we note that the Stanley argument that A.M.'s protest is untimely is of no consequence since Ebsco's timely protest raised the same issue.

We sustain the protests.

The Air Force concedes the merit of the protests and we concur. The Air Force cites our decision, Cohu, Inc., B-199551, March 18, 1981, 81-1 CPD 207, in which we held:

"When a specified salient characteristic is a precise performance feature such as operating ranges, speed, sensitivity, etc., the 'equal' product must meet that precise requirement. \* \* \* Similarly, when a design feature, such as a maximum size or weight is specified, the 'equal' product must also meet that requirement precisely. \* \* \*"

Accordingly, the Air Force states that, since specific dimensions were indicated on this IFB as salient characteristics, Stanley's bid and Ebsco's bid were nonresponsive for deviating from the required dimensions. The Air Force also indicates that the exact A.M. furniture dimensions did not reflect the Government's minimum needs because size variations were acceptable.

Because of this and the fact that a significant number of bidders were nonresponsive for deviating from the unnecessary required dimensions, the solicitation should have been canceled. However, as the Air Force report indicates, termination of the contract is not feasible since it has been substantially performed.

Stanley asserts that the use of brand name or equal specifications for furniture purchases in general is unwarranted. Our Bid Protest Procedures are reserved for considering whether an award or proposed award of a contract complies with statutory, regulatory or other legal requirements. This argument has no bearing on the award at issue here and concerns Government procurement policy with respect to the use of the brand name or equal clause in future procurements. Under these circumstances, the issue is prematurely raised and not for consideration on the merits. Arndt & Arndt, B-202349, March 23, 1981, 81-1 CPD 217; General Mills, Inc., B-199359, September 5, 1980, 80-2 CPD 179.

The Air Force has advised our Office that it has issued a policy letter to all of its contracting activities to clarify the proper use of brand name or equal specifications to prevent recurrence of the deficiencies which occurred in this case.

*for* *Milton J. Douglas*  
Comptroller General  
of the United States