

DECISION

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

House
28615

FILE: B-214231; B-214270 **DATE:** June 25, 1984

MATTER OF: Lista International Corporation

DIGEST:

1. In brand name or equal solicitations, the overriding consideration in determining the equality or similarity of an offered product to the named product is whether the "equal" product performs the needed function in a like manner and with the desired results, not necessarily whether certain design features of the named product are present in the "equal" product.
2. Although an agency generally enjoys broad discretion in determining its needs, when a protester challenges a particular specification as being unduly restrictive, the burden is then upon the agency to establish prima facie support for the restriction, a burden clearly not met here.

Lista International Corporation protests certain alleged improprieties in the use of brand name or equal specifications for storage cabinets under request for quotations (RFQ) Nos. N62383-84-Q-3015 and N62383-84-Q-5045, issued by the Department of the Navy, Military Sealift Command, Pacific (MSCP). Lista complains that the RFQs' product purchase descriptions, which required quotations on either specific Stanley-Vidmar model number cabinets and accessories, or products which were "equal" or "similar," unduly restricted competition. We sustain the protests.

MSCP issued the solicitations on January 20, 1984, seeking quotations from three firms--Lista, Rack Engineering, and Stanley-Vidmar--who hold multiple award, mandatory Federal Supply Schedule contracts for the types of storage cabinets being procured. Lista did not respond to the RFQs but rather protested that the incorporation of Stanley-Vidmar design features in the

descriptions unduly restricted competition. Because the cabinets were intended for use on two Navy vessels scheduled for imminent deployment to combat-ready duty stations, MSCP issued purchase orders to Stanley-Vidmar, which quoted the lowest price under both RFQs, despite the filing of Lista's protests.

Lista asserts that the product purchase descriptions were improper because, rather than stating the salient or performance characteristics of the Stanley-Vidmar cabinets desired by MSCP to fulfill its minimum needs, and which could be met by alternate manufacturers, they contained numerous features of design that were exclusive to the Stanley-Vidmar product. Lista asserts that certain design features required by the purchase descriptions were not performance characteristics which served to express the government's minimum needs, but were merely verbatim Stanley-Vidmar product specifications not reasonably related to those needs. Lista urges that the incorporation of such Stanley-Vidmar design features into the purchase descriptions unduly restricted offers to that one product source. We agree.

The Defense Acquisition Regulation, § 1-1206.2(b), reprinted in 32 C.F.R. pts. 1-39 (1983), requires that brand name or equal purchase descriptions "set forth those salient physical, functional, or other characteristics of the referenced products which are essential to the needs of the government." We have held that failure of the solicitation to list the salient characteristics of the desired item is an improper restriction on competition that requires cancellation or amendment of that solicitation. 41 Comp. Gen. 242 (1961); Lutz Superdyne, Inc., B-200928, Feb. 19, 1981, 81-1 CPD ¶ 114.

We concur with Lista's assertion that MSCP, for the most part, merely restated Stanley-Vidmar product specifications in the purchase descriptions rather than stating only salient or performance characteristics of the named product deemed necessary to meet MSCP's needs. We find nothing objectionable in those specifications that are functional in nature, such as those that required offered cabinets conform to certain exterior dimensional limits (apparently because of the obvious space restrictions

imposed by shipboard use) and that the drawers be able to support a specified load and be fully extendable. However, we agree with Lista that the purchase descriptions also contained requirements--such as that the cabinets have outer coverings welded to six interior columns, and that the drawers should have exact interior widths of 25-1/8 inches--that were purely design features peculiar to the Stanley-Vidmar product and had little or no relation to the agency's needs.

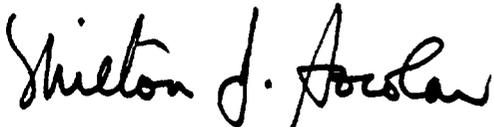
The overriding consideration in determining the equality or similarity of another commercial product to the named product for purposes of acceptability in this type of procurement is whether its performance capabilities can be reasonably equated to the brand name product referenced, that is, whether the "equal" product offered can do the same job in a like manner and with the desired results, not necessarily whether certain design features of the named product are present in the "equal" product. 45 Comp. Gen. 462 (1966). It is inappropriate for an agency to use design specifications where the agency is capable of stating its minimum needs in terms of performance specifications that could be met by alternate designs. Viereck Company, B-209215, March 22, 1983, 83-1 CPD ¶ 287. Nothing in the record demonstrates that the incorporated design features were necessary to meet MSCP's basic requirements.

In this respect, although an agency generally enjoys broad discretion in determining its needs, when a protester challenges a particular specification as being unduly restrictive of competition, it is incumbent upon the agency to establish prima facie support for the restriction. See Constantine N. Polites & Co., B-189214, Dec. 27, 1978, 78-2 CPD ¶ 437. Such support should consist of an explanation establishing a reasonable basis for the agency's determination that the restriction is needed to meet the agency's needs. B.J. Sales Inc., B-213121, Jan. 25, 1984, 84-1 CPD ¶ 118. Since MSCP has offered no such rationale in its administrative reports on Lista's protests, we can only conclude that the incorporation of the numerous Stanley-Vidmar product design features into the purchase descriptions was an undue restriction on competition that effectively limited acquisitions under both RFQs to that one product source.

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The purchases have been completed, so that no remedial action is possible. By separate letter, however, we are recommending to the Secretary of the Navy that the deficiencies noted by this decision be avoided in similar future procurements.

The protests are sustained.

for 
Comptroller General
of the United States