

# DECISION



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

FILE: B-214829

DATE: June 26, 1984

MATTER OF: Brandhurst Incorporated

## DIGEST:

1. Protest that Buy American Act was improperly applied to bid is untimely since it was not filed with GAO within 10 working days after protester was notified that act would be applied to its bid.
2. Commercial item description in solicitation covering Federal Supply Schedule requirement for exit signs does not have to have a catalog number for each arrow direction indicated on sign since activity ordering sign from schedule need only indicate the direction of the arrow, if any, on its order.
3. GAO will not review an affirmative determination of responsibility except in limited circumstances not present here.

Brandhurst Incorporated (Brandhurst) protests the action taken by the General Services Administration (GSA) in connection with solicitation No. 7PF-52476/T4/7SB, issued by GSA, to cover Federal Supply Schedule (FSS) requirements for exit signs.

Brandhurst was the apparent low bidder for items Nos. 66, 67 and 68. However, Brandhurst indicated in its bid that its product was assembled in the United Kingdom from components of United States and United Kingdom origin. The Buy American Act, 41 U.S.C. §§ 10a-d (1982), was applied to Brandhurst's bid. A 12-percent factor was added to Brandhurst's bid since, in accordance with section 1-6.104-4(b) of the Federal Procurement Regulations, 41 C.F.R. § 1-6.104-4(b) (1983), the low domestic bidder, Safety Light Corporation (Safety Light), was both a small business firm and a labor surplus area concern. Safety Light displaced Brandhurst as the low bidder and award was made to Safety Light on March 26, 1984.

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Brandhurst protests on the bases that (1) the Buy American Act was improperly applied to its bid and (2) the product selected for award does not meet the commercial item description (CID) in the solicitation and Safety Light will not be able to furnish the product called for in the solicitation.

The protest is dismissed in part and denied in part.

In regard to Brandhurst's first contention, the record indicates that Brandhurst was notified on February 15, 1984, and again on February 21, 1984, that the Buy American Act would be applied to its bid. Brandhurst's protest was not filed with our Office until April 23, 1984. Under our Bid Protest Procedures, 4 C.F.R. § 21 (1983), a protest of this nature must be filed not later than 10 working days after the basis for the protest is known or should have been known. Accordingly, this aspect of Brandhurst's protest is dismissed as untimely.

Brandhurst contends that the product offered by Safety Light does not meet CID A-A-2085, applicable to the items in question. Brandhurst argues that since the CID requires that the arrow design of the signs be selected at the time of installation, a single sign, ordered under the catalog numbers shown for the items, should have the flexibility of providing arrow left, arrow right, arrows both ways, or no arrows at the time the arrow is installed. Brandhurst further argues that since each line item has only a single catalog number and the line items differ only in regard to the background color of the legend and whether the signs are single or double-face units, it is obvious that the solicitation does not allow for a catalog number for each arrow direction.

No mention is made in the CID of any requirement that the exit sign have a universal arrow capability. All that is mentioned in connection with the arrows is that the arrow design shall be selected at the time of installation. Brandhurst argues that the clear meaning of this statement is that each sign, ordered under the catalog numbers shown for the line items, shall have a universal arrow capability. We believe, as does GSA, that a more reasonable view is that each sign ordered under the catalog number for these items shall be either left, right, both ways, or have no arrow, depending on the requirements of the location where the sign is to be placed. We do not find that the lack of a catalog number for each arrow direction is a matter of

serious consequence since the activity ordering the product from the FSS need only indicate the arrow direction desired by stating left, right, both ways, or no arrow on its order.

Finally, to the extent that Brandhurst questions Safety Light's ability to produce the signs, this is a challenge to the contracting officer's affirmative determination of responsibility of Safety Light as evidenced by award of the contract. Our Office does not review a contracting officer's affirmative determination of responsibility absent a showing that the contracting officer acted fraudulently or in bad faith or that definitive responsibility criteria in the solicitation have not been met. See Zytron, B-213576, December 28, 1983, 84-1 CPD 34. Neither exception applies here.

The protest is denied in part and dismissed in part.

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