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**DECISION**



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

**FILE:** B-214715 **DATE:** January 3, 1985  
**MATTER OF:** MII Lundia, Inc.

**DIGEST:**

Contention that a brand name or equal solicitation describing various aspects of a particular firm's design approach as salient characteristics should be interpreted as expressing a performance requirement that can be satisfied by other design approaches which perform the same function is denied, since such interpretation is inconsistent with the plain meaning of the solicitation provisions.

MII Lundia, Inc. protests award under requests for quotations Nos. D84035 -38, -44 and 45 issued by the contracting activity at Fort Rucker, Alabama for mobile storage shelving systems to be installed at various locations in the Lyster Army Community Hospital. Lundia contends that the design features of the brand name equipment described in the solicitation as salient features were performance requirements and that the Army should have determined whether the features of Lundia's equipment satisfied those performance requirements during evaluation. We deny the protest.

The Army sought four groups of high-density mobile storage shelving systems<sup>1/</sup> for installation in a new wing of the hospital. The solicitation, issued February 22, 1984 to firms holding federal supply schedule contracts for mobile storage systems, described different storage facilities within the wing, such as clean linen storage;

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<sup>1/</sup> That is, parallel rows of adjacent shelving which can be moved on tracks to create an aisle for gaining access to the materials stored on the shelves.

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described the dimensions, number and layout of the storage shelves in each facility; contained a brand name or equal clause; and listed four pages of salient features which, in many instances, describe design features of the mobile storage system manufactured by Spacesaver Corp.

Quotations were received on each of the four solicitations from Lundia, Spacesaver and White Power by the March 7 closing date, with those submitted by Lundia and White Power lower than Spacesaver's in each case. However, because the Army's evaluators found that the shelving Lundia and White Power proposed deviated from the solicitations' salient features in a number of significant aspects, the contracting officer determined that only Spacesaver's quotations were acceptable and made award on that basis on March 15.

Lundia protested within 10 days of award, requesting that installation of the shelving be withheld pending resolution of its protest. Due to the need to conform to the tight construction schedule for the new wing of the hospital, the Army did not comply with this request and Spacesaver has completed installation of all shelving.

Lundia contends that the Army's evaluation was improper in view of the brand name or equal provision in the solicitation which states that brand name identification is intended to be descriptive, not restrictive, and that bids offering equal products will be considered. Consequently, Lundia argues, a company such as itself which offers some slight deviation from the described manufacturing mode but manufactures a product that will perform the same function should be considered acceptable. Lundia further argues that the Army should not have simply determined whether Lundia offered shelving that complied with the salient features described in the solicitation; rather the Army should have determined whether the methods Lundia uses to construct its shelving satisfies the same functions as those salient features.

In way of explanation, Lundia states that procuring officers frequently have a difficult time writing true performance specifications and, as a result, use one manufacturer's specification, and then consider equivalent performance based on a technical review. Consequently, Lundia contends, in order to avoid repetitive protests where contracting officers fail to follow the exact letter of the regulations, requests for quotations specifying the features of a particular manufacturer's product should be

viewed as expressing a performance requirement and competing products should be evaluated on whether they satisfy that performance requirement.

The Army replies that items on federal multiple-award schedule contracts should not be solicited on a brand name or equal basis; instead, the Army argues, this procurement should be analyzed under the portion of the Federal Property Management Regulations governing awards under schedule contracts. Following this analysis, the Army contends that the salient features described in the solicitation insure a longer life cycle and lower maintenance costs, so that award to Spacesaver is economically justified despite its higher initial cost under FPMR Subsections 101-26.408.3(b)(i) and (iii).

We believe that Lundia's protest should be denied under any analysis. Since the solicitation contained a brand name provision and the descriptive materials in question were labeled salient features, we believe it appropriate to view the procurement as conducted on a brand name or equal basis. In that event, Lundia's proposed shelving simply does not conform with a number of the salient features described in the solicitation. For example, paragraph 1.c.(1) of the salient features requires that all wheels on one side of each carriage be driven by a common steel shaft. Lundia's descriptive literature shows a single drive wheel per carriage. Again, paragraph 1.c.(2) of the salient features requires four roller type guide bearings per track assembly, two at the leading edge of each carriage wheel. Lundia's descriptive literature, on the other hand, indicates that it provides guide bearings for only a single track assembly on each carriage.

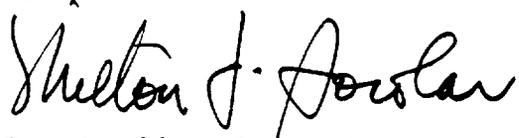
Where, as in this case, a solicitation sets forth salient features of the brand name product under a brand name or equal solicitation, we presume those features to be material to the needs of the government and thus conformance is mandatory. See Security Assistance Forces & Equipment Export Corporation, B-204936, Mar. 4, 1982, 82-1 CPD ¶ 195. Consequently, the Army's rejection of Lundia's quotation as unacceptable can be justified on the basis that it did not conform to the salient features. Any protest against the propriety of the salient features themselves should have been filed prior to the closing date for the receipt of quotations and is now untimely. Squibb Vitatek, B-208153, March 29, 1983, 83-1 CPD ¶ 320.

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Alternatively, as the Army argues, the procurement may be viewed simply as a request for quotations issued under a multiple award schedule, without regard to its brand name or equal provisions. In that case, the list of salient features amounts to a determination as to the minimum needs of the agency and which products on the federal supply schedule meet those needs. Such determinations are primarily within the jurisdiction of the procuring agency and with which we will not interfere unless they clearly involve bad faith or are not based on substantial evidence. American Sterilizer Company, B-212933, Jan. 26, 1984, 84-1 CPD ¶ 122. Since this determination of minimum needs was apparent upon the face of the request for quotations, any protest of it would now be untimely. Id.

In reaching this conclusion, we recognize that specifications occasionally fail to reflect the procuring agency's actual requirements, as Lundia suggests. Nevertheless, we do not agree that this possibility dictates that all specifications should be read in a manner inconsistent with their plain meaning; such an interpretation would render all specifications virtually meaningless, since offerors would have no way of knowing just what unstated intent the agency wished to convey. The more appropriate approach, in those cases where specifications do not reflect actual needs, is to correct the specifications.

The protest is denied.

*for*   
 Comptroller General  
 of the United States