



FILE: B-219376

DATE: September 24, 1985

MATTER OF: C.M. &amp; W.O. Sheppard

## DIGEST:

In brand name or equal procurement, a contracting agency may not award a contract to a bidder that offered an "equal" item identified by model number where the agency knows the offered model does not meet the brand name item's salient characteristics listed in the invitation for bids.

C.M. & W.O. Sheppard (Sheppard) protests the award of a contract to Hood River Irrigation and Landscaping (Hood River) under invitation for bids (IFB) No. R6-3-85-58s. The Department of Agriculture, Forest Service, issued the IFB to acquire irrigation plumbing hardware in conjunction with the expansion of Wind River Nursery, Carson, Washington. Sheppard, the next low bidder, alleged that Hood River's bid failed to comply with the IFB's requirement for couplers. During the pendency of the protest, the Forest Service decided to continue performance by the contractor based on a determination that the supplies were urgently needed.

We sustain the protest.

The IFB contained a "brand name or equal" clause stating that bids offering products equal to the specified brand models would be considered if such products were identified clearly in the bids and were determined by the government to meet fully the salient characteristics of the specified model listed in the IFB. The clause further explained that to reach this determination, the government would rely on information supplied by the bidder as well as other information reasonably available to the purchasing activity.

The IFB's specifications regarding "IRRIGATION ALUMINUM TUBING AND FITTINGS" basically required that the couplers be Wade Rain model 1-2-1P or equal equipment. The specifications further expressly required couplers

of equally durable casting material as Wade Rain's and that there be a ".5 degree taper" on the coupler's press-neck.

Sheppard alleges that Hood River's "equal" model did not meet the salient characteristics regarding the casting material or the .5-degree taper.

Hood River's bid offered a coupler purportedly equal to the Wade Rain coupler and specifically identified the coupler as a Ravit model No. 2-06-1. Although the bid represented that the offered coupler had a .5-degree taper, there is no dispute that the offered coupler actually lacked the required taper. Before award, the Forest Service examined the coupler and determined that it had only a .1-degree taper. The Forest Service nevertheless decided that the deviation was not critical since, in the agency's view, the RAVIT couplers would perform substantially the same as, and would be completely interchangeable with, the Wade Rain couplers.

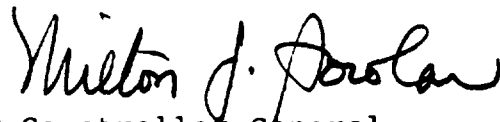
The protester argues that the taper is a critical feature of an aluminum coupler, allowing the tubing to expand under pressure around the coupler's neck and to form a tight fit. The protester asserts that without the taper, the aluminum tubing expands on the coupler neck and causes a loose connection that is susceptible to blowing out under pressure.

Where a solicitation sets forth particular characteristics of the specified brand model, those features are considered to be salient. Scanray Corp., B-215275, Sept. 17, 1984, 84-2 CPD ¶ 299. Salient characteristics presumably are material to the government's needs and, therefore, conformance with the features is mandatory. Castle/Division of Sybron Corp., B-219056, Aug. 7, 1985, 85-2 CPD \_\_\_\_\_; MII Lundia, Inc., B-214715, Jan. 3, 1985, 85-1 CPD ¶ 14. Regardless of whether an offered item will meet the agency's actual minimum needs, the contracting agency does not have discretion to waive compliance with a clearly stated salient characteristic because such waiver could prejudice other bidders that assumed the requirement would be enforced. Scanray Corp., B-215275, supra.

Furthermore, where a bid identifies a purportedly equal item by model number, and, as happened here, the agency has information reasonably available (that was in existence before bid opening) to determine the model's compliance with the salient characteristics, when the agency discovers that the model number relates to a nonconforming item, the agency should reject the bid as being nonresponsive. See Champion Road Machinery International Corp., B-212860, July 23, 1984, 84-2 CPD ¶ 78.

Since Hood River's bid did not comply with the stated characteristic of the Wade River coupler, a .5-degree tapered neck, the bid should not have been accepted. We therefore need not consider whether the offered coupler met the salient characteristic regarding the material's durability.

The protest is sustained. The Forest Service has advised us that performance has been virtually completed. We therefore are recommending to the Secretary of Agriculture that his contracting officials be reminded of the principles set forth in this decision. We also find the protester is entitled to reimbursement of its bid preparation costs and the costs of filing and pursuing the protest. See 4 C.F.R. § 21.6(d) and (e) (1985).



Acting Comptroller General  
of the United States