

Brown



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Barrett Carpet Mills, Inc.

File: B-228507

Date: January 12, 1988

DIGEST

Where solicitation for brand-name or equal carpet required successful low bidder to provide a sample which conforms to the requirements listed in the solicitation, protester's bid was properly rejected where bid sample did not conform to the listed specifications.

DECISION

Barrett Carpet Mills, Inc. protests the rejection of its bid as nonresponsive and the award of a contract to Burlington Industries for carpet under invitation for bids (IFB) No. 3-74-47, issued by the National Park Service (NPS), Department of the Interior. Barrett's bid was rejected because its carpet sample did not conform to the IFB requirements.

We deny the protest.

On August 10, 1987, the NPS issued the IFB as a small business set-aside for 18,940 square yards of Lee's Antron Nylon Eupora, red wine carpet, "or equal," for the John F. Kennedy Center for the Performing Arts. This brand name or equal requirement was issued after the NPS obtained a waiver from the General Services Administration to conduct an open market purchase for the carpeting. On September 10 bids were due and received from 17 companies. Barrett was third of the four lowest bidders, all offering an "or equal" product. On September 11, in accordance with an IFB requirement, they were asked to provide by September 14 samples of the carpet they proposed to use. The three low

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bidders submitted samples which were evaluated. The low bidder Tomi, Inc. submitted a sample which did not meet a nylon content requirement. The second low bidder submitted the agency's own sample which had been provided with the bid package. The agency found that the sample of Barrett, the next low bidder, showed streaking and did not meet texture, finishing and color requirements. The fourth low bidder, Commercial Carpet, failed to provide a sample. The agency rejected as nonresponsive these bids and award was made to Burlington, the fifth lowest bidder on September 30. Burlington bid the brand name product rather than an "or equal" product. This protest followed on October 13.

Barrett does not dispute that its bid sample showed streaking, was deficient in color and texture and did not have backing which was unfinished. Barrett instead claims that its sample would have had the appropriate finishing and backing if sufficient time had been given for the production of the sample. NPS responds by referring to the IFB which provided that:

"[The] successful low bidder shall immediately after bid opening be prepared to furnish a sample, specifications and installation instructions, of the carpet they propose to furnish."

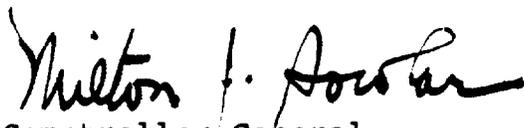
NPS argues that under this provision it properly could require immediate submission of a bid sample after bid opening. NPS asserts it properly rejected Barrett's nonconforming sample in accordance with the solicitation terms.

In our view, Barrett was on notice that if it was in line for award it could be asked immediately after bid opening to supply a sample which met all IFB requirements. Given this IFB provision, Barrett knew or should have known that it could be required to submit a sample promptly after bid opening and we find no merit to its contention that the agency acted improperly or that it should have been given more time to provide a sample. To the extent Barrett now objects to this requirement, its protest is untimely since alleged improprieties apparent from the face of the solicitation, such as this one, must be filed with the contracting activity or our Office prior to bid opening. 4 C.F.R. § 21.2(a)(1) (1987).

We note, however, that the NPS requirement for a bid sample after bid opening is inconsistent with the Federal Acquisition Regulation (FAR) 48 C.F.R. § 14.202-4 (1986), concerning the use of bid samples. The FAR provides that where required by the solicitation, a bid sample must be furnished

as part of the bid and must be received before the time set for bid opening. See FAR, 48 C.F.R. § 52.214-20.

By letter of today, we are directing the agency's attention to the FAR provisions regarding bid samples and recommend that in the future where bid samples are required for evaluation, the contracting activity follow the FAR.

for 
Comptroller General
of the United States