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**DECISION**



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

N. Boman  
Proc II

**FILE:** B-187546

**DATE:** December 15, 1976

**MATTER OF:** Brand-Rex Company, Teltronics Division

**DIGEST:**

1. Contract award to company offering "or equal" product which satisfies salient characteristics under "brand name or equal" description is proper, notwithstanding brand name manufacturer's contention that unique features of brand name item be considered in evaluating bids.
2. Allegation that contractor is unable to meet contract delivery requirements will not be considered because GAO will not review contracting officer's affirmative responsibility determination except for circumstances not prevailing in present case.

Brand-Rex Company, Teltronics Division (Brand-Rex) protests the award of a telecommunications equipment contract to San Angelo Communications & Electronics, Inc. (SACE), contending that the awardee was nonresponsive to the brand name or equal requirement of the solicitation and not able to meet the contract delivery schedule.

Section E of invitation for bids No. DABT58-76-B-0042 requested bids on three Teltronics products (identified by brand name) or their equals. Section F of the solicitation enumerated the salient characteristics of "equal" products. SACE submitted bids on three products which, in the Army's opinion, meet these salient characteristics. Brand-Rex does not contradict the Army's finding, but argues that the items proposed by the awardee are not, in all respects, equal to the brand name products offered by Brand-Rex. It argues that additional features which are unique to the brand name item should be considered in evaluating the bids.

Clause 29 of the solicitation incorporated the "Brand Name or Equal" clause of Armed Services Procurement Regulation (ASPR) § 7-2003.10 (1976 ed.), which is required by ASPR § 1-1206.3(b) (1976 ed.). That clause states in pertinent part:

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"Bids offering 'equal' products \* \* \* will be considered for award if such products are clearly identified in the bids and are determined by the Government to meet fully the salient characteristics requirements referenced in the Invitation for Bids."

Generally, when the Government's requirements are for items which are available from more than one source, full and free competition must be permitted. 10 U.S.C. § 2305 (1970). If, as here, the Government desires to purchase privately developed items but does not have necessary data for use in a specification for competitive procurement, the procurement must be competitive using, when practical, performance or other specifications, including purchase descriptions such as "brand name or equal" descriptions. Procurement on this basis normally will not provide items of identical design. Armed Services Procurement Regulation (ASPR) § 1-304.2(b)(1) (1976 ed.). In addition, purchase descriptions must not be written so as to specify a product, or a particular feature of a product, peculiar to one manufacturer and thereby preclude consideration of a product manufactured by another company, unless it is determined that the particular feature is essential to the Government's requirements, and that similar products of other companies lacking the particular feature would not meet the minimum requirements for the item. ASPR § 1-1206.1(a) (1976 ed.). Where a "brand name or equal" purchase description is used, prospective contractors must be given the opportunity to offer products which will meet the Government's needs in essentially the same manner as set forth in the generic identification and salient physical, functional, or other characteristics set out in the purchase description as being essential. ASPR § 1-1206.2 (1976 ed.). If a product offered differs from the brand name product it must be considered for award where it is determined to be equal in all material respects to the brand name product. ASPR § 1-1206.4(a) (1976 ed.) and B-172497, June 14, 1971.

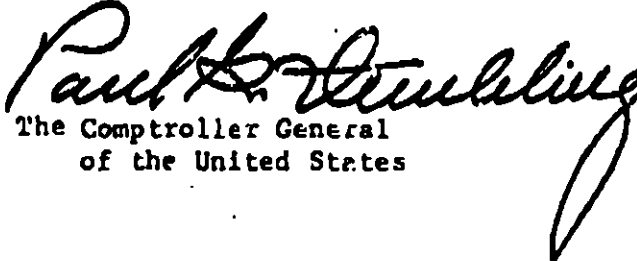
In this case the record shows that the successful bidder submitted with its bid descriptive literature which describes in detail the performance parameters of its equipment. As indicated above the equal item need not meet the unique features of the brand name so long as the salient characteristics are met. We are satisfied that the successful bidder's equipment meets the salient characteristics listed in the solicitation.

The protester's contention that the awardee cannot meet the Government's delivery requirements involves a review of the contracting officer's affirmative determination of responsibility

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which will not be reviewed by our Office, except for actions by procurement officials which are tantamount to fraud. Aerial Machine & Tool Corporation B-186283, April 23, 1976, 76-1 CPD 277. Since the protester does not allege and show fraud, we must decline to consider this question.

Accordingly, the protest is denied.

  
For The Comptroller General  
of the United States