

01456

Richard Alesan  
Proc. II



**DECISION**

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

**FILE: B-187439**

**DATE: January 18, 1977**

**MATTER OF: Acme Paper & Supply Co., Inc.;  
Van Brode Milling Company, Inc.**

**DIGEST:**

1. Where IFB soliciting "brand name or equal" product goes beyond make or model of brand name and specifies particular features, such features must be presumed to have been regarded as material and essential to the needs of the Government. Products offered which do not meet particular features specified in IFB are ineligible for contract award.
2. Fact that one or more improper awards may have been made in the past under specifications similar to those in immediate IFB would not justify repetition of same error.

The District of Columbia Government (District) issued invitation for bid (IFB) 0460-AA-73-1-6-KM for a term contract to furnish food service disposals to various District departments and agencies. Bids were opened on July 19, 1976. Five bids and bid samples (required for evaluation to determine compliance with all characteristics listed in the IFB) were received on aggregate group items 31 through 36. The net total of the bids received were as follows:

Thrifty Paper Co., Inc.	\$187,146.50
Kahn Paper Co., Inc.	180,204.09
Nationwide Papers	160,418.65
Crown Supply Inc.	170,124.32
Alternate bid Item 36	155,669.32
Acme Paper & Supply Co., Inc.	141,654.21

Acme Paper & Supply Co., Inc. (Acme), the low bidder, has protested the award of the contract to Crown Supply Inc. (Crown). Van Brode Milling Company, Inc. (Van Brode), also protests the award to Crown. Acme submitted a bid on aggregate award items 31-36 to supply Van Brode products. Thus, Van Brode is an interested party.

Acme's low bid was rejected because a sample knife included with other Acme samples was not the knife specified in Acme's bid.

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The instant protest revolves around item 36 of the IFB. The specifications for item 36 are as follows:

"KNIFE, PLASTIC, 7" WHITE CLEAR SHIELD,  
'HALLMARK' OR EQUAL, 16 POUNDS PER CASE,  
1 M/CASE.

"STATE MAKE, MODEL NO. & PKG.: \_\_\_\_\_

"WEIGHT PER THOUSAND: \_\_\_\_\_"

The Hallmark knife is manufactured by the Clear Shield Plastics Corporation. It is 6 7/8" long and weighs 13 pounds per 1,000-unit case. The Van Brode knife which Acme bid on item 36 was the Diplomat, a 7" white plastic knife weighing 13.25 pounds per 1,000-unit case.

When the box containing Acme's samples for items 31-36 was opened, all samples were marked with a label giving Acme's name, the item number and bid number, except a knife sample for item 36. The unmarked knife sample found with Acme's samples was a champagne-colored Sweetheart knife and not a white Van Brode Diplomat.

After reviewing the samples submitted, the contracting officer rejected Acme's bid because the Sweetheart sample was not the item specified in Acme's bid, and, consequently, the contracting officer did not know what Acme intended to supply for item 36.

The contract was awarded to Crown at an aggregate price of \$170,124.32. For item 36, Crown bid a Gourmet White knife weighing 17 pounds per 1,000 unit case.

Crown's alternate aggregate bid of \$155,669.32, the second low bid, and Nationwide Papers' aggregate bid of \$160,418.65, the third low bid, were rejected as being nonresponsive because the knives offered for item 36 weighed only 12.3 pounds and 12.1 pounds, respectively, per 1,000-unit case, instead of the minimum 16 pounds per 1,000 units as called for by the specifications.

The protesters here contended, inter alia, that:

- (1) There should have been no doubt that Acme intended to bid the Diplomat knife.

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- (2) If there was any doubt, the contracting officer should have sought clarification from Acme.
- (3) The Diplomat knife is equal to the Hallmark knife called for in the IFB for item 36.
- (4) Consequently, the District should have awarded the contract to Acme, the low bidder.

We have held that where, as here, the procuring activity in a "brand name or equal" solicitation goes beyond the make and model and specifies particular features, such features must be presumed to have been regarded as material and essential to the needs of the Government. S. Livingston & Son, Inc., B-183820, September 24, 1975, 75-2, p. 179.

Crown was the only bidder which offered a knife which satisfied the basic features specified by item 36, features which were regarded as material and essential to the needs of the Government. With the exception of Acme, the other vendors bid knives which weighed between 12.1 and 13 pounds per 1,000-unit case. These bids were nonresponsive. S. Livingston & Son, Inc., *supra*. In this regard, the District has stated that:

"The \* \* \* primary user of Item 36 is the Department of Corrections. The Department of Corrections has had problems in the past in their penal institutions with the lighter weight knife, namely the Hallmark, therefore that Department would have recommended rejection of a product weighing less than 16 pounds per 1000 per case."

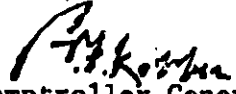
Acme stated in its bid that the Diplomat knife weighed 16 pounds per 1,000 units. In point of fact, it weighed only 13.25 pounds per 1,000 units. Consequently, even if, for example, Acme's sample Diplomat knife had been found properly identified along with its other samples, a contract could not have been awarded to Acme. S. Livingston & Son, Inc., *supra*. Cf. Prestex, Inc. v. United States, 162 Ct. Cl. 620, 320 F.2d 367 (1963). Moreover, the fact that one or more improper awards may have been made in the past under similar specifications would not justify a repetition of the same error. 36 Comp. Gen. 535, 540 (1957).

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Further, Acme has suggested that the contracting officer should have amended the specifications for item 36 as a result of Crown's inquiry as to whether it could bid a knife which did not weigh 16 pounds per 1,000-unit case. However, since only one of the bidders queried the contracting officer and the advice provided comported with regular "brand name or equal" precepts, it was not unreasonable for the contracting officer to suppose that other bidders who did not inquire had the same understanding of the requirements as the contracting officer and that the specifications, therefore, were not misleading.

For the reasons stated above, the protest is denied.

While we find no grounds for a legal objection to the award to Crown, we suggest that in future procurements the District should consider referencing a brand name item which contains the salient characteristics set forth in the solicitation.

  
Deputy Comptroller General  
of the United States