

DECISION



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

FILE: B-213504

DATE: June 25, 1984

MATTER OF: Bai Lar of California

DIGEST:

"Equal" bid in response to brand name or equal invitation for bids was properly rejected as nonresponsive where no descriptive material was submitted to establish that offered item met all salient characteristics of brand name item.

Bai Lar of California (Bai Lar) protests the rejection of its bid as nonresponsive to invitation for bids (IFB) No. N00604-83-R-0126 to furnish and install drapes at the Naval Submarine Base, Pearl Harbor, Hawaii. The IFB was issued by the Naval Supply Center (Navy) at Pearl Harbor.

We deny the protest.

The IFB contained both a brand name or equal clause and a descriptive literature clause. The clauses essentially required bidders offering an equal product to identify it and to provide descriptive material with their bids that was sufficient to permit the government to determine if the product meets the salient characteristics of the brand name product. The clauses also state that the government may use information reasonably available to it to determine if the equal product meets the salient characteristics. Failure of the literature submitted with the bid to establish conformance required rejection of the bid.

The solicitation listed drapery fabric as a brand name or equal item. The brand name was Lensol Corporation's "Fairhurst" fabric. The salient characteristic listed was the fabric content of 36 percent verel, 32 percent saran, 18 percent rayon, 6 percent polyester, and 8 percent flax.

The solicitation also required bidders submitting an equal fabric to provide a sample of the fabric with their bid. The fabric sample was to be compared with the brand name fabric for "feel," weight, and weave.

029253

Bai Lar bid an equal fabric called "Princess" and listed itself as the manufacturer. Bai Lar stated that the fabric content was "32% SFM, 36% SEF, 18% Rayon, 8% flax, and 6% polyester." Bai Lar included no descriptive literature, nor did the protester state what the initials SFM and SEF stood for. Bai Lar did include a bid sample of the fabric.

The Navy rejected Bai Lar's bid as nonresponsive because it was unable to determine whether the equal fabric met the listed content requirements. The contracting officer submitted an affidavit to the effect that he had no information pertaining to the "Princess" fabric, and that he did not know to what SFM and SEF referred. Also, the Navy states that it could not determine from the bid sample whether the equal fabric met the required content.

Bai Lar contends that SFM and SEF are registered trademarks of Monsanto, Inc., and that SFM and SEF are the same as verel and saran, the required fabrics. The protester claims that this is commonly known in the industry, and that the contracting officer should have known the information. Also, according to Bai Lar, even a non-professional could compare the sample of "Princess" fabric with the "Fairhurst" fabric and conclude that they are equal.

To be responsive to a brand name or equal solicitation, a bid offering an allegedly equal product must contain sufficient descriptive material to permit the contracting officer to assess whether the offered alternative possesses each salient characteristic of the brand name product. The Library Store, Ltd., B-213258, February 9, 1984, 84-1 CPD 162. If the descriptive literature, or other information reasonably available to the contracting officer, does not show compliance with all salient characteristics, the bid must be rejected. See, e.g., Le Prix Electrical Distributors, Ltd., B-212518, December 27, 1983, 84-1 CPD 26.

Here, the protester submitted no descriptive data, and its own bid statement of the fabric content did not clearly indicate compliance with the salient characteristics of the brand name. It is the bidder's responsibility to establish compliance. Bai Lar should have included material establishing that SEF and SFM were the equivalents of verel and saran. The bid samples were not intended to demonstrate

fabric content, and we do not think that the contracting officer's inability to discern from the sample that the "Princess" fabric had the same content as the "Fairhurst" fabric was unreasonable.

Protest denied.

Milton J. Aoulan
for Comptroller General
of the United States