

DECISION

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

FILE:

B-219056

DATE:

August 7, 1985

MATTER OF:

Castle/Division of Sybron Corporation

DIGEST:

1. To be timely, a protest against the propriety of the salient characteristics of a brand name or equal solicitation should have been filed prior to the closing date for the receipt of quotations.
2. Where a solicitation sets forth salient characteristics of the brand name product under a brand name or equal solicitation, those features are presumed to be material to the needs of the government and thus conformance is mandatory.
3. GAO does not accept the contention that a brand name or equal solicitation describing various aspects of a particular firm's design approach as salient characteristics should be interpreted as expressing a performance requirement that can be satisfied by other design approaches which perform the same function.

Castle/Division of Sybron Corporation (Castle) protests award under request for quotations (RFQ) DABT11-85-Q-1318, issued by the Department of the Army, Fort Gordon, Georgia, for a steam sterilizer. Castle contends that the solicitation improperly included certain requirements and that its proposed sterilizer was improperly rejected as being nonresponsive. The protest is dismissed in part and denied in part.

The RFQ, with a closing date of March 25, 1985, contained a brand name or equal clause and listed one page of salient characteristics. The brand name item was the Eagle 2000 sterilizer manufactured by the American Sterilizer Company (AMSCO). Quotations were received from

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several companies but the contracting officer determined the proposed sterilizers offered under the low and second lowest (Castle's) quotations to be nonresponsive. An award was made to AMSCO, which had the next lowest quotation.

Castle states that two design features which were listed in the specifications were not essential or salient characteristics. The design features in question were:

"Vertically arranged controls located on side of sterilizer.

"Radial holding arms to seal door. Door may be tightened but not opened during cycle."

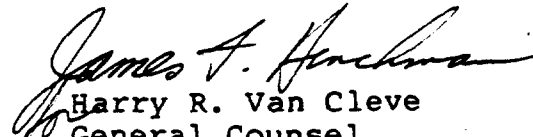
Castle argues that these requirements are merely features provided by AMSCO which are unnecessary for the proper operation of a sterilizer and that Castle's sterilizer, which does not incorporate the above two features, works as well or better than AMSCO's sterilizer. Castle construes the solicitation's provision for brand name or equal to mean that competitive equipment of the same high quality standards would be evaluated and the offering firm awarded a contract if its price was lower than that of a firm offering the item specified. Castle therefore argues that it is unnecessary for a sterilizer to have vertically arranged controls or radial holding arms as long as the sterilizer offered performs as well as the one listed in the solicitation.

A protest against the propriety of the salient characteristics of a brand name or equal solicitation should be filed prior to the closing date for the receipt of quotations. MII Lundia, Inc., B-214715, Jan. 3, 1985, 85-1 C.P.D. ¶ 14. Since Castle's first basis of protest is that the two above-quoted salient features are unnecessary, its protest on that aspect is untimely as it was filed on June 5, 1985, well after the March 25 closing date.

Castle also contends that its quotation based on its sterilizer should not have been rejected. We have held that where a solicitation sets forth salient characteristics of the brand name product under a brand name or equal solicitation, we presume those features to be material to the needs of the government and thus conformance is mandatory. MII Lundia, B-214715, supra. Consequently, the Army's rejection of Castle's quotation as unacceptable was proper because it did not conform to the listed salient characteristics. We have specifically denied the contention that a brand name or equal solicitation describing various

aspects of a particular firm's design approach as salient characteristics should be interpreted as expressing a performance requirement that can be satisfied by other design approaches which perform the same function. MII Lundia, B-214715, supra.

The protest is dismissed in part and denied in part.


Harry R. Van Cleve
General Counsel