



## Decision

**Matter of:** SDV Furniture & Services, LLC

**File:** B-401221

**Date:** May 5, 2009

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Alan Lenowitz, SDV Furniture & Services, LLC, for the protester.  
CPT John Cho, Department of the Army, for the agency.  
Cherie J. Owen, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

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### DIGEST

1. Under brand name or equal solicitation, bid which offered similar furniture items, but with different dimensions than those listed in the solicitation, was properly rejected as nonresponsive.
  2. Protest against requirements set forth in solicitation is untimely when filed after bid opening.
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### DECISION

SDV Furniture & Services, LLC, of Atlanta, Georgia, protests the rejection of its low bid as nonresponsive under solicitation No. W45CMJ90480001, issued by the Department of the Army for office partitions and supports, task chairs, and tables to be used at training facilities for soldiers at Fort Hood.

We deny the protest.

### BACKGROUND

On March 18, 2009, the agency used the FedBid website to commence an electronic reverse auction for 20 parallel partitions, 40 T-legs to support the partitions, 85 ergonomic task-chairs, and 55 tables at a target price of \$34,095.<sup>1</sup> This posting was

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<sup>1</sup> FedBid, Inc. is a commercial online procurement services provider that runs a website at FedBid.com, which among other things, hosts reverse auctions.

set aside for service-disabled veteran owned small businesses, and listed a closing time of “15:00 EST” on March 25.

The agency described the requirements of the equipment as follows:

Item No.	Description
001	Parallel partitions must be 2” thick, 6’x5’, in color Shadow fabric with frame finish of Taupe. National Business Furniture; P/N 20876
002	T-Leg for parallel partitions; National Business Furniture; P/N 20122
003	7-way ergonomic task chair with arms overall size is 23”Wx22”Dx39”-44”H. Extra thick fire-retardant foam with protective black plastic shells [sic], stylish black base. Arms adjust 7 1/2”-10” for comfort. Fabric color pewter. National Business Furniture; P/N 56176
004	Table, 60”x24”. Solid quality, made with extra thick 1 1/4” laminate top and protective vinyl edging. Heavy steel legs, scratch resistant edging in Walnut top with Black edging. National Business Furniture; P/N 41256

Agency Report (AR), Tab 2, RFQ, at 2

On March 27, the agency conducted a technical evaluation of the quote provided by the apparent low bidder, SDV, and determined that the equipment offered did not conform to the specifications set forth in the solicitation. AR, Tab 1, Contracting Officer’s (CO) Statement, at 1. The partitions offered by the protester measured 65” high, 62” long, and 1 1/2” wide. Thus, protester’s equipment was 7 inches shorter vertically, 2 inches longer horizontally, and 1/2” thinner than the agency’s specifications. AR at 7.

Therefore, the agency made award to the second lowest bidder, Office Essentials Co., which offered equipment conforming to the requirements of the solicitation at a cost of \$24,115.35--\$11 higher than the protester’s bid. This protest followed.

## DISCUSSION

SDV argues that the decision to reject its bid as nonresponsive was unreasonable because the true salient feature of the panels that the army was trying to obtain was the creation of seated privacy, which the protester contends its panels provide. Protester’s Comments at 1. The protester argues that the exact dimensions of the partition panels are irrelevant. Id.

With regard to the width requirement, the protester acknowledges that its panels are 1/2” thinner than the specifications in the solicitation, but contends that they have a higher acoustic rating, and therefore accomplish “better internal sound baffling,” which, in the protester’s view, is the true salient feature of the specified panels. Id. at 2. Therefore, the protester argues that the agency’s rejection of its offer as nonresponsive was improper.

The test for responsiveness is whether a bid offers to perform the exact thing called for in an IFB, so that acceptance of the bid will bind a bidder to perform in accordance with all of the terms and conditions of a solicitation without exception. RR Donnelley, Inc., B-294395, Sept. 15, 2004, 2004 CPD ¶ 199 at 2. Strict compliance with the listed features of the brand name product is required. The Burgmeier Co.; Artec, a Division of Kimball Int'l, B-209710, B-209710.2, May 23, 1983, 83-1 CPD ¶ 552 at 2 (holding that under a brand name or equal solicitation, bid that offered to supply some of required furniture items with dimensions different from those listed in the solicitation was nonresponsive as to those items).

The partitions proposed by SDV did not meet the salient characteristics listed in the solicitation—they were 7 inches too short vertically, 2 inches too long horizontally, and half an inch too thin. Because SDV's partitions did not meet the solicitation's salient characteristics, the protester's bid was nonresponsive and ineligible for award.

To the extent that SDV protests that the solicitation's requirement for the dimensions listed above exceeds the agency's minimum needs, and is therefore restrictive of competition, this argument is clearly untimely. Our Bid Protest Regulations provide that protests based upon alleged improprieties in a solicitation that are apparent prior to bid opening must be filed prior to that date. 4 C.F.R. § 21.2(a)(1) (2008).

The protest is denied.

Daniel I. Gordon  
Acting General Counsel