

CALHOUN



Comptroller General
of the United States

34367

Washington, D.C. 20548

Decision

Matter of: Craigrick's, Inc.
File: B-261356
Date: July 5, 1995

J. B. Carnahan for the protester.
Elyce K. D. Santerre, Esq., Capt. Bryant S. Banes, and
Col. Riggs L. Wilks, Department of the Army, for the agency.
Tania L. Calhoun, Esq., and Ralph O. White, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

In brand name or equal procurement, requirements that napery offered must match the colors of the specified brand name item and comply with either of two fabric content specifications are not unduly restrictive of competition where the napery, to be utilized in a nonappropriated fund club's dining room, is intended to augment existing napery stock of the specified colors and fabric content and the agency reasonably decided that only these colors and fabric contents will fit in with the established scheme of the dining room and meet the aesthetic needs of the users.

DECISION

Craigrick's, Inc. protests the terms of invitation for bids (IFB) No. DAHC76-95-B-0015, issued by the Department of the Army for the procurement of tablecloths and napkins for the dining facilities of The Last Frontier Club at Fort Wainwright, Alaska. Craigrick's argues that the solicitation's requirements are unduly restrictive of competition.

We deny the protest.

The IFB, issued April 10, 1995, requested bids on various colors and sizes of tablecloths and napkins on a brand name or equal basis. As amended, each contract line item listed the model number of the brand name manufacturer, Reigel, and included the following salient characteristics: 50-percent cotton/50-percent polyester or 60-percent cotton/40-percent polyester; no iron; and "fabric treated with soil release." Each line item also listed the color of the required napery, for example, french vanilla, ballerina pink, and dove gray.

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The IFB required bidders offering equal items to include, along with their bids, fabric and color samples and descriptive literature to show that the fabric content of the linen offered complied with that specified and was equal in quality as to the color, soil resistance, and no-iron features of the Reigel product. The IFB required the colors of the offered napery to match the specified Reigel colors so that the linen could be acceptably interchanged with existing stock, and stated that samples of the specified colors were available upon request. Bids offering equal items and submitted without samples and descriptive literature would be rejected as nonresponsive, as would bids offering products with non-matching colors or products that did not meet the salient features.

By letter dated April 27, Craigrick's filed an agency-level protest of the IFB's specifications, challenging the color-matching and fabric content requirements as unduly restrictive of competition. After the protest was denied, Craigrick's filed an identical protest in this Office on May 10, prior to bid opening. The agency received 10 bids, and opened them as scheduled. Craigrick's did not submit a bid.

Craigrick's argues that the color-matching requirement is unduly restrictive of competition primarily because the Reigel colors are proprietary and no other supplier can "truly match" them. Craigrick's also argues that the fabric content requirement is unduly restrictive of competition because, in the protester's view, neither of the listed fabric content specifications is the industry standard, which the protester asserts is 35-percent cotton/65-percent polyester.

In preparing for the procurement of supplies or services, the procuring agency must specify its needs and solicit offers in a manner designed to achieve full and open competition. 10 U.S.C. § 2305(a)(1)(A) (1994). A solicitation may include restrictive provisions only to the extent necessary to satisfy the needs of the agency or as otherwise authorized by law. 10 U.S.C. § 2305(a)(1)(B)(ii). Where an IFB provision is challenged as overly restrictive, the procuring agency must provide support for its belief that the provision is necessary to satisfy its needs. The adequacy of the agency's justification is ascertained through examining whether the agency's explanation is reasonable. See Absecon Mills, Inc., B-251685, Apr. 19, 1993, 93-1 CPD ¶ 332.

The Army reports that its existing stock of napery, which will serve only one-half to three-quarters of the club's dining room, consists of the Reigel brand name items in the colors specified here and with a fabric content of

50-percent cotton/50-percent polyester. The contracting officer states that, in writing this solicitation, the Army attempted to match its current stock while maintaining minimal restrictions on competition. Indeed, the record shows that the initial solicitation specified a 50-percent cotton/50-percent polyester fabric content, but was revised to allow a 60-percent cotton/40-percent polyester fabric content based on the inquiry of another manufacturer and a determination that this latter fabric content was acceptable as long as the colors matched. The agency's market survey showed that the majority of manufacturers offered table linens with a 50-percent cotton/50-percent polyester or 100 percent polyester fabric content, not the fabric content cited by the protester. The Army states that it included these requirements because the club's dining facility hosts various functions involving formal dining and is dependent on continued patronage for its existence. The Army also contends that matching the existing napery is necessary to ensure continued patronage of the club.

We think that the Army's justifications for these requirements are reasonable. The color and fabric content scheme in the dining room has already been established, and in the agency's opinion, only "acceptably interchangeable" colors and fabrics will fit the established scheme and be aesthetically pleasing to patrons. An agency may properly use detailed specifications where the record demonstrates that a particular requirement is reasonably related to the agency's aesthetic needs. Diverstech Co., B-257395, July 27, 1994, 94-2 CPD ¶ 61; see also Dixon Pest Control, Inc., B-248725, Aug. 27, 1992, 92-2 CPD ¶ 132. Further, we have specifically upheld an agency's use of a specification requiring a particular color where the agency reasonably established that the color restriction was necessary to maintain an established color scheme on federal property. Diverstech Co., supra; Westinghouse Elec. Corp., B-224449, Oct. 27, 1986, 86-2 CPD ¶ 479; see also A.J. Fowler Corp., B-227955, B-227955.2, Nov. 13, 1987, 87-2 CPD ¶ 482. Finally, while it is possible for a color to be trademarked, see Qualitex Co. v. Jacobson Prods. Co., Inc., 115 S.Ct. 1300 (1995), there is no evidence that the Reigel colors are

proprietary; indeed, the agency provided prospective bidders with samples so that they could dye napery to match these colors.¹

The protest is denied.

Mustine S. Melody
for Robert P. Murphy
General Counsel

¹We are not persuaded by the protester's claim that even Reigel could not match these colors because they change as a result of laundering.