

SALIENT CHARACTERISTICS IN BRAND NAME OR EQUAL PROCUREMENTS

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One popular way of soliciting for agency needs is the use of Brand Name Or Equal Purchase Descriptions. Agencies, however, sometimes run afoul of a relatively straightforward procurement method, as shown in *American Mat'l Handling, Inc.*, B-422171, Jan. 22, 2024, a recent Government Accountability Office (“GAO”) case, where the GAO sustained the protest.

FAR 11.104, Use of Brand Name or Equal Purchase Descriptions, states in its entirety:

- (a) While the use of performance specifications is preferred to encourage offerors to propose innovative solutions, the use of brand name or equal purchase descriptions may be advantageous under certain circumstances.
- (b) Brand name or equal purchase descriptions must include, in addition to the brand name, a general description of those salient physical, functional or performance characteristics of the brand name item that an “equal” item must meet to be acceptable for award. Use brand name or equal descriptions when the salient characteristics are firm requirements.

The International Boundary and Water Commission issued a solicitation under the General Services Administration e-Buy system to procure a brand name or equal Caterpillar 980 wheel loader. The solicitation stated that the wheel loader must meet the salient features of specifications of the Caterpillar 980, and included a two page specification sheet. The agency received two quotes by the submission date, one from American and one from Caterpillar. After receiving the quotes, the contracting officer added six salient characteristics to be evaluated by the agency—none of which had been expressly stated in the solicitation. American’s quote was deemed not to meet those six salient characteristics, none of which were listed in the solicitation (operating weight, horsepower, gross power, maximum speed, turning radius and fuel tank capacity).

American protested that the agency had unreasonably evaluated its quote as technically unacceptable based on unstated salient characteristics. The GAO agreed, and sustained the protest because the agency had improperly considered unstated salient characteristics during its evaluation. GAO rejected the agency’s assertion that the wheel loader was required to meet *all* of the Caterpillar 980’s characteristics, including characteristics “easily discoverable on Caterpillar’s website” but not listed as salient characteristics in the solicitation.

GAO noted that once vendors are informed of the evaluation criteria for a procurement, the agency must adhere to them. Vendors are only responsible, pursuant to FAR 11.104(b), for the salient characteristics identified by the agency in the solicitation. However, the agency failed (prior to the deadline for quotes) to identify the salient characteristics that would form the basis of its evaluation as required by FAR 11.104(b).

Takeaway. Even though use of the brand name or equal procurement method is simple, it is essential that agencies properly identify all salient characteristics in the solicitation (or its amendments) against which quotes will be evaluated. Agencies cannot add new salient characteristics after the closing date, nor may they incorporate new salient characteristics for evaluation using a company’s website.

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