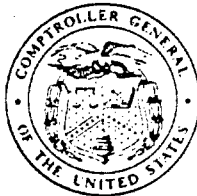


**DECISION**



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

60695

FILE: B-185170

DATE: March 31, 1976

MATTER OF: Vista Scientific Corporation

098430

**DIGEST:**

Use of "brand name or equal" specification erroneously incorporating salient performance characteristics more stringent than that offered by brand name manufacturer and in excess of the Government's minimum needs requires rejection of all bids and readvertisement of the procurement.

Vista Scientific Corporation (Vista) alleges that it submitted the only responsive bid under IFB No. 5711 issued by the Geological Survey, Department of Interior, because the incubator offered by the only other bidder does not satisfy two of the salient characteristics set forth in the IFB's brand name or equal purchase description. The other bidder, Millipore Corporation (Millipore), is the brand name manufacturer listed in the solicitation.

We are advised by the agency that in 1973, Millipore offered for inspection and testing two non-water-bath incubators. The Geological Survey, in cooperation with the National Aeronautics and Space Administration, had the incubators tested by an independent contractor. Based upon the test results, the Government's technical personnel made a determination that the incubator would meet the Government's requirements.

A "brand name or equal" purchase description was then prepared for the Millipore Model No. XX 63 004 00 Portable MF Petri Dish Incubator. Among the "salient characteristics" listed for the incubator were:

- "2. Capacity: The unit shall accommodate a minimum of 30 covered petri dishes 50 mm diameter and 12 mm thickness.
- \* \* \* \* \*
- 5. Environment: The unit shall perform as specified over the temperature range from -30°C to +35°C and over a humidity range from 0 to 95%."

In 1974, a procurement of incubators was made using this brand name or equal purchase description. Award was made to

Millipore, the only bidder. Two bids were received in response to the instant IFB, issued in 1975: that of Millipore at \$786.25 per unit and that of Vista at \$788 per unit.

Vista maintains that award should not be made to Millipore because that company's product does not meet the salient characteristics quoted above. Vista points out that Millipore's product literature states its incubator will hold 30 standard 47 mm (not 50 mm) diameter petri dishes and that the required stability in temperature is promised only under "stable ambients above 10°C", rather than over the complete environmental range of -30°C to +35°C. The anomalous result is that the brand name product does not meet the salient characteristics which are intended to describe it.

We are advised by the Geological Survey that the Millipore Model XX 63 004 00 incubator does in fact meet the Government's minimum needs and that the salient characteristics quoted above were the result of error which was not discovered until Vista's protest. The agency explains that at the time the purchase description was prepared:

"\* \* \* technical personnel inadvertently inserted the test parameters in the specifications instead of the minimum requirements that were derived as a result of this test. One other salient characteristic which was inserted at this time was the size of the petri dishes used in the incubator. The standard Millipore petri dish used in the incubator was referenced by Millipore literature as being 47 mm diameter by 12 mm high. The disposable petri-dish, and in fact the only petri dish Millipore offers for use with Model MF XX6300400 incubator, is their catalog number PD 10-047-00; the dimensions being, outside: 54 mm diameter by 12 mm high; inside: 48 mm diameter by 8.5 mm high. The incubator readily accepts 30 of these petri dishes. Therefore, a 50 mm diameter was felt to be the minimum actual diameter petri dish required by the Government, and thus 50 mm was used in the specifications in lieu of the 47 mm size.\* \* \*"  
(Emphasis added.)

Since two of the salient characteristics listed in the brand name or equal purchase description do not accurately describe the brand name product or the Government's minimum needs, the Geological Survey proposes to cancel the instant IFB and readvertise under a corrected purchase description. Vista maintains that award should be made to it, as the only responsive bidder under the present IFB.


Federal Procurement Regulations (FPR) § 1-2.404-1 (b)(1) (1964 ed. amend. 121) states that invitations for bids may be

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anceled after opening but prior to award if, among other reasons, "inadequate, ambiguous, or otherwise deficient specifications were cited \* \* \*." We agree with the Geological Survey that there are elements of prejudice in the instant case which warrant a resolicitation.

If an award were to be made under the present solicitation, the Government would be compelled to reject as nonresponsive the low bid of the manufacturer of the brand name item which meets the Government's minimum needs. This result is unfair to Millipore. On the other hand, to make award to Millipore would be improper as Millipore would not have been bidding to the same salient characteristics as Vista. Moreover, other firms might be able to meet the Government's minimum needs. In order to place all potential bidders on an equal footing, we believe the requirement should be resolicited as proposed by the agency.

Therefore, we concur in the Geological Survey's recommendation to cancel the invitation for bids and resolicit.

  
Deputy Comptroller General  
of the United States