



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Flexsteel Industries, Inc.

File: B-254771; B-254771.2

Date: January 18, 1994

Sterling C. Scott, Esq., and D. Joe Smith, Esq., Jenner & Block, for the protester.
Christy L. Gherlein, Esq., and Michelle Harrell, Esq., General Services Administration, for the agency.
Christina Sklarew, Esq., and Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Pre-award samples were properly rejected as technically unacceptable where record shows samples were evaluated in accordance with the solicitation's evaluation factors and that the protester's third sample still contained a high number of uncorrected deficiencies.

2. Where 1 firm submits a second pre-award sample in which it has corrected each of the deficiencies noted in its initial sample and which includes only 3 deficiencies, agency's determination to allow the offeror to certify to the correction of the remaining deficiencies does not represent unequal treatment in comparison to requiring the protester, whose second sample included 11 deficiencies (many of which repeated deficiencies noted in its initial sample), to submit a corrected sample; nor was it unequal in comparison to rejecting the protester's third sample, which included 16 deficiencies.

DECISION

Flexsteel Industries, Inc. protests the award of a contract by the General Services Administration (GSA) to Trinity Furniture Company under request for proposals (RFP) No. 3FNOM-93-M104-N. The protester contends that the agency's rejection of Flexsteel's offer as technically unacceptable was improper. We deny the protest.

The RFP was issued by GSA's National Furniture Center in February 1993, to meet the government's requirements for certain sofas and chairs, described as traditional, executive, office furniture, during the period of July 1993 through June 1995. The RFP included a detailed

specification describing the minimum quality that the government would accept. Offerors were to submit, as a pre-award sample for evaluation, a two-seat sofa with dark blue vinyl upholstery, identified by national stock number. The sofa was to be made in accordance with the purchase description and diagram that were contained in the RFP. The solicitation advised offerors that samples would be evaluated for compliance with all the characteristics listed for evaluation in the RFP, and cautioned that any failure of the pre-award samples to conform to the required characteristics listed in the solicitation would constitute a deficiency in the proposal. Samples containing deficiencies could be corrected by resubmission of a corrected pre-award sample or by submission of a letter of certification explaining the corrections to be made to the deficient sample; the extent of the deficiencies would determine whether a new pre-award sample or a correction letter would be required. The RFP cautioned, further, that "a corrected pre-award sample . . . subsequently rejected after reevaluation shall constitute final rejection of the offer."

The RFP, as amended, advised offerors that pre-award samples would be evaluated to determine compliance with the subjective characteristics "workmanship, finish, design, and comfort." Award was to be made to the "lowest priced, technically acceptable, responsible offeror."

Four firms submitted offers; however, two of these were rejected because they failed to comply with the RFP's requirement to offer all of the items covered by the solicitation. The two offers that were considered were submitted by Flexsteel and Trinity.

Pre-award samples were initially evaluated by an evaluation panel that consisted of the contract specialist, a quality assurance specialist, and the technical engineer. The panel found 14 deficiencies in Flexsteel's sample, 12 of which were identified as involving workmanship and the remaining 2 involving design. They included such items as unevenly spaced pleats on the sofa arm's end-panel; crooked welts on the seat cushions, and cushion corners unevenly filled; cushions designed in a manner that did not conform to the RFP's diagram; various welt cords not straight; bottom cover sagging; and failure of the zipper cover to overlap the zipper. The panel also evaluated Trinity's sample, and found 10 deficiencies. These deficiencies included seven problems in workmanship and four design problems, and included such items as cushions offering inadequate support or sinking excessively on one side; the inclusion of extra welt cords; excessive tapering of the arms in back; crooked welt; and unevenly spaced pleats. The contracting officer identified the deficiencies in each of the samples in a

letter to each of the respective firms, and requested that the firm submit a new pre-award sample, correcting these deficiencies.

The two firms each submitted a corrected sample, which the panel evaluated. The panel found that each of the samples still contained deficiencies. In Trinity's sample, however, the panel found that all of the deficiencies that it had identified in Trinity's first sample had been corrected, and found only three new deficiencies. The contracting officer advised Trinity of the deficiencies and requested that the firm submit a letter of certification, explaining how the firm would correct the deficiencies.

The evaluation panel found 11 deficiencies in Flexsteel's sample, at least 5 of which repeated deficiencies in Flexsteel's initial sample. The contracting officer advised Flexsteel of the deficiencies, and provided the firm another opportunity to correct the deficiencies by submitting a new sample. At Flexsteel's request, the evaluation team met with the firm's representatives to review the deficiencies.

Each firm submitted its best and final offer. Trinity submitted a letter of certification, and Flexsteel submitted its third pre-award sample, in accordance with the agency's instructions. The panel evaluated these final submissions for technical acceptability. The panel found 16 deficiencies in Flexsteel's third sample sofa, many of which repeated deficiencies that had not been corrected from the first and/or second samples. The agency determined that Flexsteel's offer was technically unacceptable, and advised the firm of its rejection. The agency determined that Trinity's certification letter adequately described how it would correct the deficiencies that had been identified in its second sample, and concluded that Trinity's offer was technically acceptable. The contract was awarded to Trinity, and this protest followed. After GSA submitted its agency report, and at the protester's request, an informal conference was held in GSA's warehouse to permit representatives from our Office, GSA, the protester, and its furniture consultant to examine Flexsteel's three pre-award samples.

Our Office will review an allegedly improper technical evaluation of samples to determine whether the evaluation was fair and reasonable and consistent with the evaluation criteria. Warrensville File & Knife, Inc., B-241805, Mar. 1, 1991, 91-1 CPD ¶ 236.

Flexsteel first challenges the evaluation by alleging that overly stringent standards were applied. The RFP advised offerors that the samples would be evaluated for workmanship, finish, design, and comfort, and provided more

than 16 pages of detailed descriptions and diagrams to convey the agency's exact requirements to the offerors. As Flexsteel points out, the RFP provided tolerances that would be permitted in the construction of the sofa, specifying a range within which the dimensions must fall in order to be acceptable. For example, it stated that the overall width, depth, and height of the sample sofa must match the given dimensions "plus or minus 1/2 inch," and that "any dimension not otherwise specified" would have a tolerance of "plus or minus 1/8 inch." Flexsteel argues that the evaluators ignored these design tolerances, and asserts that several of the noted deficiencies were in fact permissible because they were within the tolerance range established in the RFP.

We disagree with Flexsteel's interpretation of the RFP's tolerances. We think these tolerances ("component part tolerances" as stated in the RFP) are applicable to the measurement of structural component part dimensions; they do not provide latitude for crookedness or asymmetry or provide a range within which a seam may veer off course but remain acceptable. Rather, the specifications quite explicitly required careful tailoring and a high degree of craftsmanship. Under "workmanship," the RFP specified that "chairs and sofas shall have a neatly tailored, taut, stuffed appearance complying with figure 1. Loosely fitted upholstery or uneven padding is not acceptable." Under "Application of upholstering material," the specifications stated that "all welt lines shall be true." It should have been clear from these provisions that a noticeably crooked welt seam, unevenly padded back sections, and cushions that extend noticeably beyond the frame would be inconsistent with the workmanship standards in the RFP. The tolerances set forth in the specifications do not change this result.

Flexsteel also argues, generally, that the specifications were not sufficiently precise to place offerors on notice of the "preferences" or workmanship requirements that the evaluators would apply. For example, the protester contends that there was "no indication in the specification that GSA would take offense at the seam that it described as a 'dog ear' in deficiency #2 or the slight gap between the left front edge roll and the arm that caused concern in deficiency #3." We think the RFP's requirement for quality workmanship and neat tailoring provided sufficient notice of its standards. It was not necessary for the RFP to spell out every possible workmanship deficiency that could occur. Moreover, we believe the requirement for symmetrical construction is implicit in the requirement for quality workmanship; where a "dog ear" appears in the construction of one corner seam but not in the construction of the adjacent corner, the failure of the two corners to match would itself be a deficiency, regardless of whether or not a "dog ear" was acceptable.

We will not individually discuss the validity of each deficiency that was found. Although Flexsteel and its consultant argue that many were barely perceptible or easily corrected, we found upon inspecting the protester's final sample that each of the noted deficiencies was reasonably apparent to the untrained eye. Moreover, although Flexsteel argues that many of the deficiencies "could easily have been corrected," it had not managed to correct them on its third attempt, notwithstanding the fact that GSA personnel had met with Flexsteel representatives to review and discuss the deficiencies that were to be corrected in the second sample. Since the agency reasonably evaluated Flexsteel's final sample in accordance with the terms of the RFP, and that the sample contained even more deficiencies than the previous samples, a number of which repeated earlier deficiencies, we conclude that it was reasonable for the evaluators to reject Flexsteel's final sample as technically unacceptable.

Flexsteel also argues that it was improper for the agency to permit Trinity to certify to the correction of the three deficiencies in its second pre-award sample, while requiring Flexsteel to actually correct its deficiencies. The protester contends that this constituted unequal treatment of offerors.

Procuring agencies are required to treat all offerors equally. See, e.g., ITT Electron Tech. Div., B-242289, Apr. 18, 1991, 91-1 CPD ¶ 383. Here, we believe the samples were evaluated under the same standard, and that the offerors in this case were treated equally. The RFP provided that if a pre-award sample was rejected, the offeror would be allowed 15 business days from the notification date to have delivered a corrected bid sample for reevaluation or a certification letter explaining how the deficiencies would be corrected. The solicitation further explicitly provided that "the extent of the deficiencies will determine whether a new pre-award sample or a correction letter will be required." Here, the contracting officer decided to allow Trinity to correct the deficiencies in its second pre-award sample by certification because Trinity had already reduced the number of deficiencies from 10 (in its initial sample) to 3. Moreover, the firm had fully corrected all of the original deficiencies; none of the deficiencies that were noted in its first sample was repeated in the second sample, demonstrating the firm's ability to make the necessary corrections. In contrast, Flexsteel's final sample contained 16 deficiencies, many of which repeated the errors that had already been pointed out once or twice to the protester.

Flexsteel cites our decision in Design Contempo, Inc., B-252589.2, Aug. 11, 1993, 93-2 CPD ¶ 90, for the proposition that design deficiencies in pre-award furniture samples represent more serious flaws than deficiencies in workmanship. The protester points out that its own 16 deficiencies were all identified as workmanship flaws, whereas Trinity's 3 deficiencies included 1 deficiency in design. Flexsteel concludes that although Trinity had a lower number of flaws, under our reasoning in Design Contempo, the design flaw was more serious and should have required correction rather than certification.

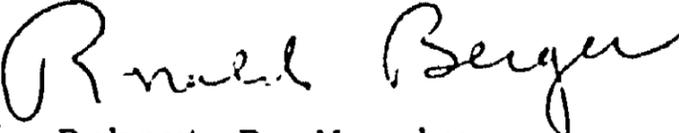
We disagree. In Design Contempo, the contracting officer viewed one offeror's deficiencies--which included a chair's level of comfort and the operation of a wall unit drop lid feature--as "more substantial, such that correction . . . was required." In contrast, he concluded that the deficiencies present in another offeror's sample--which included such flaws as a brown discoloration, a problem with glue, a gouge, a crack, and protruding staples--could reasonably be viewed as one-time problems unique to the samples furnished, not defects fundamental to the design or production of the furniture. In short, the contracting officer had found one set of deficiencies more substantial than another; the distinction between "design" and "workmanship" deficiencies, while relevant in that case, did not establish an absolute standard or a standard that would necessarily be applicable to another furniture evaluation. We think the circumstances of the present evaluation--where one offeror has a much higher number of deficiencies in its third sample, including repeat flaws, and its competitor has corrected all of its initial flaws and has a relatively low number of deficiencies in its second sample--present an entirely different basis for determining the relative acceptability of the two competing samples. Here, we think it was reasonable for the contracting officer to determine that Trinity's deficiencies could be corrected through certification.

Flexsteel also challenged the evaluation as improper because it believed the evaluation panel had only three members, whereas the RFP specified that the comfort of the samples would be evaluated by a panel with a minimum of seven members. This belief on Flexsteel's part arose when one of GSA representatives stated, at the conference/inspection that was held in connection with this protest, that the panel included three members. In response, GSA has submitted a sworn statement from the contracting specialist who was on the evaluation panel, advising us that while the panel that conducted the overall evaluation included only three members, four additional members joined the panel to evaluate the sample for acceptability of "ride," firmness, padding, pitch, and comfort, as required by the terms of the

RFP. We have no reason to doubt the accuracy of the statement, which included the names of the additional panel members, and conclude that this basis of protest, based on an erroneous comment by GSA personnel, has no merit.¹

Finally, Flexsteel protests that GSA failed to give prompt notice of its award decision. The protester contends that by failing to inform it of the award within 10 days of the award date, the agency denied it the opportunity to invoke the stay provisions of the Competition in Contracting Act of 1984, 31 U.S.C. § 3553(a) (1988). While agencies are required to provide prompt notice of contract awards, we generally view delay in notifying unsuccessful offerors as a procedural defect that does not affect the validity of the contract award. Sach Sinha and Assocs., Inc., B-241056.3, Jan. 7, 1991, 91-1 CPD ¶ 15. In any event, since we have concluded that the award decision was reasonable, Flexsteel was not harmed by this delay.

The protest is denied.


 for Robert P. Murphy
 Acting General Counsel

¹We also point out that only one of the deficiencies noted in Flexsteel's third sample related to the portion of the evaluation that was to be judged by the seven-member panel. Since our conclusions would have been the same in the absence of this deficiency, we find that the alleged impropriety would not have resulted in any prejudice to Flexsteel.