



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Nupla Corporation

File: B-225545

Date: March 6, 1987

DIGEST

General Services Administration (GSA) can restrict requirements contract for soft-face hammers to one piece compo-cast type hammers, where the majority of the user agencies who responded to GSA's user survey have established that this restriction is necessary, even though other users may be satisfied with other hammers not meeting this specification.

DECISION

Nupla Corporation (Nupla) protests invitation for bids (IFB) No. FCEN-SY-A7022-S-12-18-86, issued by the Federal Supply Service, General Services Administration (GSA) for a requirements contract for five types of soft-face hand hammers. We deny the protest.

The IFB requests bids on a "brand name or equal" basis and designates Stanley Tool Division or Snap-On Tool Company hammers as the brand name products. The IFB lists the applicable part numbers and salient characteristics.

Nupla contends that all five hammers are proprietary to Stanley, even the Snap-On Tool hammers which Stanley manufactures for Snap-On, and that no source can supply these hammers without violating Stanley's patent rights. In this regard, Nupla asserts that all bids received on the IFB were from Stanley suppliers. Nupla further contends that its prices are less than the Stanley suppliers' bid prices. GSA has not rebutted these contentions.

Nupla contends that this is an unreasonable restriction on competition, inasmuch as Nupla's soft-face hammers are as good as, if not better, than Stanley's hammers. The Stanley

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soft-face (also called dead blow) hammers are compo-cast, that is constructed with urethane in one piece (both handle and head) with a reinforced steel rod in the handle. Nupla's soft-face hammers are plastic dead blow hammers with fiberglass handles.

Where, as here, a protester challenges specifications as being unduly restrictive of competition and submits some support for the contention, the procuring agency must establish prima facie support for its position that the restrictions it imposes are reasonably related to its needs. Libby Corp., et al., B-220392, et al., Mar. 7, 1986, 86-1 C.P.D. ¶ 227; Military Services Inc. of Georgia, B-221384, Apr. 30, 1986, 86-2 C.P.D. ¶ 423. This requirement reflects the agency obligation to write specifications that permit full and open competition consistent with the agency's actual needs. 41 U.S.C. § 253 (Supp. III 1985). However, contracting officials are most familiar with the conditions under which products have been used in the past and are in the best position to know the government's actual needs. Therefore, if the agency provides the necessary support for the specifications, the burden shifts back to the protester to show that the specifications are unreasonable. Libby Corp., et al., B-220392, supra.

In response to a previous Nupla protest of this restriction, GSA canceled the solicitation and conducted a survey of its user agencies to ascertain whether the Nupla soft-face hammers could also satisfy user requirements. A number of the user agencies found that the Nupla soft-face hammers were acceptable. However, several users found that soft-face hammers with fiberglass handles were not acceptable. For example, Travis Air Force Base indicated that it preferred the compo-cast hammer because it does not mar anything and the handle will not split while fiberglass handles will split.

GSA's single largest user, the Naval Construction Battalion, Port Hueneme, California (Seabees), states that for safety reasons it will not accept fiberglass handled hammers. The Seabees found that the grip separates from fiberglass handles, heads will become loose from the handles and handles shatter immediately behind the head such that splinters from the handles are dangerous to the user. Thus, in 1979-1980, the Seabees removed fiberglass handle hammers from its job sites. In response to GSA's query about the acceptability of Nupla's hammers, the Seabees conducted a shop test on Nupla's hammer and determined that while the Nupla hammer is functionally satisfactory, the fiberglass handle did fracture behind the head in an "overstrike test." An "overstrike test" is performed by a man impacting the hammer handle

immediately to the rear of the hammer head against a horizontal surface for a designated number of blows.

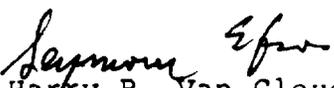
Additionally, GSA's technical staff found that the compo-cast hammer is required because (1) the compo-cast hammer will not splinter or break while fiberglass handles can break; (2) bent compo-cast hammers can be reshaped and reused; and (3) the urethane head on compo-cast hammers will outlast other materials such as the nylon derivative on Nupla hammer heads.

Nupla disputes GSA's technical conclusions and has submitted photographs purportedly of Stanley compo-cast hammers that have split or separated from the head or where the urethane striking face has separated from the tool. However, Nupla makes no representations as to how the purported Stanley tools were used to so damage them.

Nupla challenges the undescribed Seabee "overstrike test" and maintains that its hammer handles have never failed any required tests. In this regard, the record indicates that the United States Army Ordnance Center, Aberdeen Proving Grounds, Maryland, also performed an "overstrike test" which found that the Nupla hammer was functionally equivalent to the Stanley hammer and showed no evidence of splintering or other fracturing of the hammer handle. However, Nupla has not produced any evidence beyond its bare allegations that Nupla's hammer did not fail the Seabees' "overstrike test" or that the test lacked validity.

Under the circumstances, we find the record supports GSA's conclusion that, on balance, its users need compo-cast soft-face hammers. Of the using activities who responded to GSA's survey, the users of the greater number of soft-face hammers said that they required compo-cast hammers. We have recognized that GSA can base specification restrictions for its Federal Supply Schedule contracts on the needs of the majority of its users, even though other users may be satisfied with products not meeting those specifications. See Abel Converting, Inc., B-224223, Feb. 6, 1987, 87-1 C.P.D. ¶ ____; Swintec Corp. v. Canon U.S.A., Inc., B-216106, B-216106.2, Jan. 17, 1985, 85-1 C.P.D. ¶ 48. Thus, in light of the user response to GSA here, we believe GSA's specification approach is not subject to legal objection.

The protest is denied.

for 
Harry R. Van Cleve
General Counsel