



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Horizon Trading Company, Inc.; Drexel  
Heritage Furnishings, Inc.

File: B-231177; B-231177.2

Date: July 26, 1988

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### DIGEST

1. A protest against agency's allegedly improper evaluation of proposals is without merit where review of the evaluation provides no basis to question the reasonableness of the determination that the awardee submitted a technically superior proposal and, based on the solicitation evaluation formula, the awardee's proposal offered the combination of technical and price most advantageous to the government.
2. Procuring officials enjoy a reasonable degree of discretion in the evaluation of proposals and their evaluations will not be disturbed unless shown to be arbitrary or in violation of procurement laws or regulations. A mere disagreement between the protester and the agency over the technical evaluation is not sufficient to show that the evaluation was unreasonable.
3. Allegations that contracting agency improperly accepted an offer that did not meet specific mandatory requirements set forth in the solicitation are dismissed as untimely, when raised over a month after award, although allegedly shortly after information concerning the basis of protest was received, since the protester failed to diligently seek information to determine whether a basis of protest existed.

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### DECISION

Horizon Trading Company, Inc. and Drexel Heritage Furnishings, Inc. protest the award of a requirements contract to the Chicago Pacific Company under request for proposals (RFP) No. 0000-620044, issued by the Department of State (DOS) for furniture and household furnishings to be delivered to U.S. ports for shipment and use overseas, in residences of U.S. foreign service officers and personnel. We deny the protest in part and dismiss it in part.

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## BACKGROUND

DOS issued the solicitation on June 26, 1987, with an amended closing date of November 5, 1987; it planned to award a fixed price indefinite quantity requirements contract for a period of 1 year, with four 1-year options. DOS sought proposals for three styles of furniture: Transitional, 18th Century English, and Contemporary. Offerors had to propose all three styles. All offerors were required to provide furniture and furnishings from their regular commercial lines and to meet detail specifications concerning construction, materials, and size of the items to be included in each packaged home. The solicitation provided that furniture must be representative in overall quality of construction, design, materials and workmanship to furniture intended for the "middle/upper bracket" of the domestic furniture industry market. In addition, all upholstered pieces had to have a "middle to upper level" quality of upholstery and be comparable to that of Ethan Allen or Drexel upholstered furniture. Under the solicitation's scheme, proposals were to be evaluated in three technical areas: packaged home aesthetics, furniture suitability, and program administration plans. These three factors were to receive equal weight in technical scoring. The solicitation provided that technical capabilities would be weighted 1-1/2 times (60 percent/40 percent) as heavily as cost in evaluation scoring of proposals. After completion of the technical evaluation, a price evaluation factor would be added to the offeror's technical evaluation score to determine a total evaluation score.

Seven offerors submitted 11 proposals by the closing date. Proposals were initially evaluated to determine their compliance with specified mandatory technical factors. Six offerors were determined to be in the competitive range and discussions were conducted with each of the six offerors. The agency allowed all acceptable offerors to revise their proposals and to submit best and final offers. After evaluation, the apparent successful offeror was the Pennsylvania House Division of Chicago Pacific. Award was made on April 20, 1988, to that firm. Horizon filed its protest with our Office on April 29, 1988 and Drexel filed on May 6, 1988.

## THE HORIZON PROTEST

Horizon, in its initial protest, argues that its failure to obtain the contract award was due to an improper evaluation of its technical proposal. Specifically, Horizon protests

the evaluation of its proposal in the two technical areas of "Furniture Suitability" and "Program Administration Plan," and the alleged downgrading of its proposal for lack of demonstrated "high volume" experience. Horizon also alleges that DOS improperly reopened negotiations with Chicago Pacific concerning its offer of a line of furniture in which certain pieces are produced with printed materials on exposed case pieces in violation of the solicitation's mandatory requirement for the use of hardwood veneers and/or solid wood.

Initially, we note that the evaluation and scoring of technical proposals is the function of the contracting agency and our review of allegedly improper evaluation is limited to the determination of whether the evaluation was fair and reasonable and consistent with the stated evaluation criteria. Delany, Siegel, Zorn & Assocs., B-224578.2, Feb. 10, 1987, 87-1 CPD ¶ 144.

With regard to DOS' evaluation of the furniture suitability factor, Horizon asserts that based on its review of the Summary of Evaluation Comments obtained from DOS at the debriefing, its proposal was evaluated on only the following four of the eight specified criteria: requirements of representational and overseas living; ease of reupholstering and repairs; durability; and requirements for storage multiple functional use. Other criteria under the furniture factor included quality of construction and materials, appropriateness of fabrics, storage, suitability of materials, and ease of "knockdown reassembly." Horizon contends that either these other evaluation criteria were overlooked completely or that the four above stated criteria were given greater or significant weight in an improper manner.

Our review of the evaluation documents show no support for the protester's assertion that its proposal did not receive the proper consideration for all criteria under the major evaluation factor, furniture suitability. Under this factor, Horizon's prime proposal received a point score of 11.8 out of a possible 20.<sup>1/</sup> The evaluation documents show that quality of construction and materials, appropriateness of fabrics, suitability of materials, and ease of knockdown reassembly were all taken into consideration during the technical evaluation of Horizon's proposal. Thus, the record shows, contrary to Horizon's assertions, that DOS did not overlook or ignore any criteria under this evaluation

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<sup>1/</sup> Horizon also submitted an alternate proposal which, although considered acceptable, received a low technical rating. Therefore, we will not consider it in this decision.

factor. For example, with respect to the transitional living room, DOS found a door chest to be unsuitable, with too much glass and too difficult to transport. Further, the furniture in the contemporary supplemental bedroom was considered to be of questionable quality in construction and materials. We therefore have no basis to find that DOS unreasonably evaluated Horizon's proposal with respect to the furniture suitability factor.

With respect to the evaluation factor, Program Administration Plan, Horizon argues that an unreasonable emphasis in the evaluation was given to its proposed approach to administration of the program with respect to consolidation, packing and liaison. Horizon also contends that the Summary of Evaluation Comments contained a significant number of inaccuracies as well as comments which contradict one another. Concerning the evaluation of Program Administration Plan, the solicitation provided that evaluation would consider the offeror's demonstrated understanding of the program, its proposed approach, including management structure, performance and production capacity, as well as its quality assurance program and reporting system. The offeror's experience with packaged home programs, including consolidation and preparation for overseas shipments, would also be considered.

Horizon's prime proposal was rated very good under this factor and scored 16.2 points out of a possible 20. A review of all evaluation documents establish that all subfactors were taken into consideration and were in fact given equal weight. Horizon's protest lists a number of comments from the evaluation comments summary which Horizon contends demonstrate the evaluation team's lack of understanding of Horizon's approach. At the outset, we note that the burden is on the offeror to submit sufficient information with its proposal so that the agency can make an intelligent evaluation. The Communications Network, B-215902, Dec. 3, 1984, 84-2 CPD ¶ 609. Our review of the alleged misstatements shows that they represented exactly what was actually proposed by Horizon and to the extent the agency did not understand Horizon's approach, the agency sought clarification. For example, DOS, after evaluating Horizon's proposal, considered the firm as having "reluctance" to establishing a consolidated shipping facility in Miami for Latin American shipments. Horizon considers this to be a misapprehension and misstatement. However, Horizon's proposal stated that "it has been difficult for Horizon management to understand why [DOS] is insisting that all deliveries under this contract be made [from] New York or Miami. Those two port areas have to be some of the most expensive in the nation." Moreover, Horizon's score for consolidation and packing was adjusted upward after the

agency received clarification from Horizon of its intent to comply with the solicitation's Miami shipping requirement. We further find that Horizon, in its protest, is merely expressing its disagreement with the agency evaluation results rather than with any actual misstatements by DOS. Mere disagreement with the agency about the technical evaluation, however, is not enough to show that the evaluation was unreasonable. Structural Analysis Technologies, Inc., B-228020, Nov. 9, 1987, 87-2 CPD ¶ 466.

Finally, concerning its evaluation, Horizon contends that its proposal was improperly downgraded for the lack of "high volume project experience" where "high volume" was not listed as a criteria for evaluation. We find nothing improper in DOS' evaluation concerning high volume project experience. The solicitation provided for review of the "offerors' experience with packaged home programs, including consolidation and preparation for overseas shipments" to include a review of that part of the technical proposal entitled "Past Performance and Sales Information." While agencies are required to identify the major evaluation factors applicable to a procurement, they need not explicitly identify the various aspects of each which might be taken into account. All that is required is that those aspects not identified be logically and reasonably related to or encompassed by the stated evaluation factors. Buffalo Organization for Social and Technological Innovation, Inc., B-196279, Feb. 7, 1980, 80-1 CPD ¶ 107. Clearly, under the terms of the solicitation, it was proper for DOS to take into consideration high volume experience. Furthermore, the record shows that DOS did not penalize Horizon for a lack of high volume experience. In fact, Horizon received a good score for past performance and sales information, with a perfect score from three of the five evaluators.

Under the circumstances, we find that DOS' evaluation of Horizon's proposal was in accordance with the stated criterion. We also note that the evaluation of "packaged homes" on the basis of "aesthetics" and "suitability" by its nature is an extremely subjective exercise. As stated previously, the fact that Horizon disagrees with DOS' judgment, does not invalidate it. See Centurion Films, Inc., B-205570, Mar. 25, 1982, 82-1 CPD ¶ 285.

Additionally, Horizon contends that Chicago Pacific proposed a line of furniture in which certain pieces are produced with printed materials, instead of wood, the use of which constitutes a failure to comply with the solicitation's mandatory requirement. (Chicago Pacific did not expressly take exception to this mandatory requirement in its proposal.) Subsequent to the filing of Horizon's protest and after the award of the contract, Chicago Pacific

transmitted a letter in response to a query by DOS confirming that a bookcase which had been offered as part of its proposal "will be manufactured in accordance with the [wood] requirements of Section C.2.B(2) of the solicitation and the contract." Horizon contends that by allowing Chicago-Pacific to clarify its proposal, DOS improperly reopened negotiations with only one offeror but failed to reopen negotiations with all offerors. Because this exchange of letters occurred after contract award and concerns whether the awardee is properly performing under the contract, it involves a matter of contract administration which our Office does not review. Bid Protest Regulations, 4 C.F.R. § 21.3(m)(1) (1988). The record also shows that the pieces of furniture in question are inconsequential and have not been shown to have affected the evaluation results.

#### THE DREXEL PROTEST

In its protest filed on May 6, 1988, Drexel objects to the award to Chicago Pacific on the grounds that DOS did not follow its stated evaluation criteria and that the furniture offered by Chicago Pacific did not meet the requirement of "middle/upper bracket of the U.S. furniture industry market" and generally did not meet the criteria set forth in the solicitation.<sup>2/</sup> Drexel also alleges that Chicago Pacific was nonresponsible and cannot perform at its offered price. DOS denies the allegations and contends that the award to Chicago Pacific was in accordance with the evaluation factors.

Our review of the record shows that the awardee's offer met all the material requirements of the solicitation and to the extent its proposal deviated from any stated requirement, deviations were granted in accordance with the solicitation's provision concerning requests for deviations. The evaluators found that Chicago Pacific's proposal was overall excellent and showed a very good understanding of the program. They recognized that Chicago Pacific did not have previous experience in handling "packaged homes," but did not consider this a serious handicap since their Washington representative did have such experience. Chicago Pacific submitted a technically superior proposal and although its price was not low, when evaluated based on the solicitation formula, Chicago Pacific's proposal offered the combination of technical and price most advantageous to the government. See Lembke Construction Co., Inc., B-228139, Nov. 23, 1987, 87-2 CPD ¶ 507.

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<sup>2/</sup> Drexel did not indicate what specific requirements Horizon failed to meet.

Additionally, Chicago-Pacific's ability to perform at its offered price is a matter of responsibility and our Office will not review protests of affirmative determinations of responsibility absent a showing of possible bad faith or fraud on the part of procuring officials or that definitive responsibility criteria set out in the solicitation may not have been met. Bid Protest Regulations, 4 C.F.R. § 21.3(m)(5) (1988); AJK Molded Products, Inc., B-229619, Feb. 1, 1988, 88-1 CPD ¶ 96. No such circumstances are present here.

#### OTHER ISSUES

Horizon and Drexel in their conference comments filed with this Office on June 24, 1988 and July 1, 1988, respectively for the first time cite specific examples of instances where Chicago Pacific deviated from the stated mandatory requirements of the solicitation concerning dimensions, material and construction. Drexel received a debriefing from DOS on May 5, 1988 and during the debriefing, Drexel was provided a copy of the contract with Chicago Pacific. A review of the Chicago Pacific contract would have revealed the model numbers of the furniture offered by Chicago Pacific from which the size, construction and material could easily have been determined. Consequently, we will not consider Drexel's arguments. A protester may not introduce a new issue in its comments that it could and should have raised in its initial submission to our Office. Our Bid Protest Regulations, 4 C.F.R. part 21, do not contemplate the unwarranted piecemeal presentation of protest issues. Atlas Trading and Supply Company, Inc., B-227164, Aug. 10, 1987, 87-2 CPD ¶ 146.

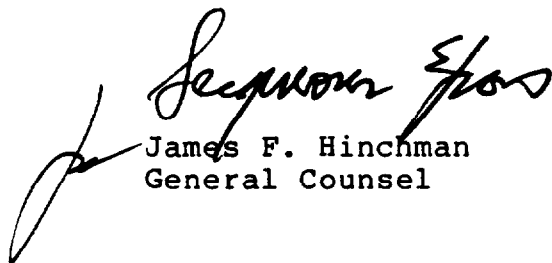
Horizon, on the other hand, received its debriefing on April 25, 1988. The agency states that it believes that Horizon was provided a copy of the Chicago Pacific contract at that time. However, Horizon contends that it did not receive a copy of the contract on April 25 from the agency, but rather, received a copy from Drexel on June 13. Even construing the facts most favorable to the protester--i.e., that it received a copy of the contract on June 13, we think that Horizon's protest concerning the alleged deviations from mandatory specifications should also be dismissed. Protesters have a duty to diligently pursue information that reasonably would be expected to reveal whether a basis for protest exists, see Rubber Crafters, Inc., B-225421, Oct. 31, 1986, 86-2 CPD ¶ 508; and if they do not do so within a reasonable time, we will dismiss the protest as untimely. Greishaber Manufacturing Co., Inc., B-222435, Apr. 4, 1986, 86-1 CPD ¶ 330. Horizon representatives have indicated to this Office that they did not receive a copy of the contract on April 25, because DOS stated that it was not

available at that time and Horizon did not subsequently request a copy of the contract from the agency. We find that the protester failed in its duty to pursue diligently the basis of its protest through its delay of more than 6 weeks before attempting to obtain information concerning the award.

Horizon requests that we consider its allegations, even if we find that they are untimely, because its protest raises a significant issue so as to invoke an exception to the timeliness requirements of our regulation, 4 C.F.R. § 21.2(b). In order to prevent the timeliness requirements from becoming meaningless, the significant issue exception is strictly construed and seldom used. The exception is therefore limited to considering untimely protests only when we believe that the subject matter is of widespread importance or interest to the procurement community and involves a matter that has not been considered on the merits in previous decisions. See Pembroke Machine Co., Inc., B-227360, June 11, 1987, 87-1 CPD ¶ 588. We do not find that the issue concerning deviations from mandatory specifications fall within the meaning of this exception since it has previously been considered by this Office. Astrophysics Research Corp., B-224532, Jan. 16, 1987, 66 Comp. Gen. \_\_\_\_\_, 87-1 CPD ¶ 65.

Moreover, contrary to Horizon's allegations, we find that the solicitation in fact did allow for deviations from mandatory specifications. Section L of the solicitation requested the identification of any deviations and provided that the government would consider them on a case-by-case basis. In any event, the alleged deviations concern, for example, whether a bookcase should be 78" or 76" in height, and concern only a few items among thousand of pieces of furniture. We consider such alleged deviations immaterial. See Astrophysics Research Corp., B-224532, supra.

The protest is denied in part and dismissed in part.



James F. Hinchman  
General Counsel