



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Absecon Mills, Inc.

File: B-251685

Date: April 19, 1993

Ruth E. Ganister, Esq., Rosenthal and Ganister, for the protester.

Steve Lane for Concept Fabrics, Inc., and Richard F. Mayer for Mayer-Paetz, Inc., interested parties.

Hugh J. Hurwitz, Esq., Federal Bureau of Prisons, for the agency.

Christina Sklarew, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Specifications for various upholstery fabrics to be used by Federal Prison Industries to manufacture furniture for resale are not unduly restrictive of competition where the record establishes that the agency could reasonably conclude the specifications which are based on aesthetics and appeal were necessary to effectively compete in the marketplace and meet its customers' demands.

DECISION

Absecon Mills, Inc. protests the terms of request for proposals (RFP) No. IPI-0270-93, issued by Federal Prison Industries, Inc., for various upholstery fabrics. Absecon contends that the RFP's specifications for four of the fabric groups (Groups A through D) were unduly restrictive of competition and did not reflect the agency's actual minimum needs.

We deny the protest.

Federal Prison Industries operates under the trade name UNICOR and is a wholly-owned government corporation within the Department of Justice, under the federal prison system. UNICOR operates approximately 75 factories at more than 48 locations, providing employment, education, and training opportunities to inmates under federal custody. Its product lines include more than 175 separate products and services sold exclusively to federal agencies.

On October 23, 1992, UNICOR issued the RFP in question here, for upholstery fabrics for use in the manufacture of seating and systems furniture. The solicitation contemplated the award of a firm fixed price, indefinite quantity contract for seven groups of upholstery fabrics. For each of these groups, UNICOR specified the minimum construction characteristics it required (weight per yard and number of picks and ends) and the minimum performance criteria, such as tensile strength, tear strength, abrasion, seam slippage, lightfastness, etc. The RFP also specified the minimum number of color choices that must be provided for each group. The RFP advised offerors that the award for each group of fabrics was to be based on the lowest-priced, technically acceptable offer, and could be made without discussions. After the award was made, the successful offerors would be required to submit fabric samples along with certified test results from independent laboratories demonstrating compliance with the RFP's stated performance characteristics. Selection would then be made from the submitted samples.

The closing date for receipt of initial proposals was set for December 17, 1992. On December 16, Absecon filed its protest.

Absecon argues that the RFP specifications for fabric groups A through D are unduly restrictive and that for the first three of these groups the specifications describe the characteristics of fabrics from individual firms, in effect making those portions of the procurement sole-source. With regard to fabric groups A (inherently fire retardant upholstery fabric), B (100 percent Nylon Upholstery Fabric), and D (100 percent Olefin upholstery fabric), Absecon objects to the construction requirement describing the fabrics' minimum weight per yard. The protester asserts that it is able to supply fabrics meeting or exceeding each of the other requirements for these groups, such as "ends and picks" (the number of threads in the vertical and horizontal directions of the fabric) and fiber content. Absecon contends that its own fabric corresponding to these groups, which is approximately 20 to 27 percent lighter in weight, should be acceptable to the agency. With regard to the remaining fabric group, C (Wool/Nylon blend), Absecon states that it manufactures fabrics which conform to or exceed the requirements listed for this group with the exception of fiber content. The RFP requires that fabrics in this group contain 75 percent wool, while Absecon's fabric contains only 65 percent wool. The protester argues that the lower wool content "does not impair the fabric in any regard," and questions how this specification is necessary to meet the agency's actual minimum needs.

In preparing for the procurement of supplies or services, the procuring agency must specify its needs and solicit offers in a manner designed to achieve full and open competition, so that all responsible sources are permitted to compete. 41 U.S.C. § 253(a) (1988). A solicitation may include restrictive provisions only to the extent necessary to satisfy the needs of the agency or as otherwise authorized by law. 41 U.S.C. § 253(a) (2) (B). Where a solicitation provision is challenged as restrictive, the procuring agency must provide support for its belief that the challenged provision is necessary to satisfy its needs. The adequacy of the agency's justification is ascertained through examining whether the agency's explanation is reasonable; that is, whether the explanation can withstand logical scrutiny. Military Servs., Inc. of Ga., B-221384, Apr. 30, 1986, 86-1 CPD ¶ 423. Specifications for the use of particular materials may be justified, for example, where the record demonstrates that they are necessary to ensure adequate performance or that a particular design is reasonably related to the agency's aesthetic needs. See Dixon Pest Control, Inc., B-248725, Aug. 27, 1992, 92-2 CPD ¶ 132.

The agency has provided some background regarding the selection of its specifications for this procurement. When the specifications were being prepared, UNICOR's sales staff met with its customers and was told that the customers were dissatisfied with the line of fabrics UNICOR had been offering. The customers explained their preferences for certain types of fabrics and discussed their requirements with the sales staff. UNICOR's procurement officials also consulted with a number of fabric vendors, including Absecon, in an attempt to satisfy its customers' requirements and maximize competition. Many of the vendors complained that UNICOR'S specifications had, in the past, required offerors to weave specific yarns that they would not normally carry among their standard yarns. The agency determined that instead of requiring specific yarns, it would specify minimum performance and construction characteristics that could be met by a wider variety of yarns. In developing the specifications at issue here, the contracting officer's technical representative used the minimum level of quality that he believed was necessary to allow UNICOR's finished products to effectively compete in the marketplace and meet its customers' demands.

We see nothing unreasonable with UNICOR's approach. UNICOR has adopted minimum standards to satisfy its customer base. In doing so, it has established minimum weight and fiber content requirements, believing that such characteristics directly contribute to the overall appearance of the fabric,

and that a lighter-weight fabric or a fabric with a higher percentage of synthetic fibers than specified will generally appear cheaper and lower in quality and be perceived as less desirable or undesirable by its customers.

Although Absecon suggests that a fabric that does not meet the weight and fiber content requirements could be just as aesthetically pleasing as one that does,¹ consideration of aesthetics and suitability is a subjective exercise. See Southwest Decor, Inc., B-246964 et al., Apr. 20, 1992, 92-1 CPD ¶ 373. The agency reports that the specifications are based on specific complaints and advice from its customers and the experience of its sale staff and on its ultimate determination of the level of quality and aesthetic appeal necessary to successfully market its furniture. We think the agency is entitled to make this type of aesthetic judgment.

Absecon objects to the explanations offered in UNICOR's report, however, pointing out that such other variables as the weaving technique, the denier of the fibers, the weight of the yarn, the particular type of wool, the grade of the fibers, and the types of dyes and finishings that are used all contribute to the aesthetic quality of a fabric, yet they are not included in the specifications. However, the fact that the agency did not include among its specifications every conceivable variable that might be related to the aesthetic appearance of the fabrics does not establish as unreasonable the particular specifications it did include in the RFP. Moreover, we point out that procuring agencies are required to meet their needs with the least restrictive requirements. Our Office generally will not review a protest that specifications should be more, rather than less, restrictive. See Cryptek, Inc., B-240369, Nov. 1, 1990, 90-2 CPD ¶ 357.

Finally, regarding Absecon's assertion that the specifications were based upon the fabrics of individual mills and thus created an improper sole-source situation, we point out that even specifications that are based upon a

¹Although Absecon asserts that a fabric that is 65 percent wool is equal in quality to one that is 75 percent wool, we find this assertion unpersuasive. Our cursory review of newspaper and trade articles suggests that while synthetics were very marketable a decade or two ago, natural fibers are currently more popular. We recognize that there is a difference between natural and synthetic fibers and consider it reasonable for the agency to take into account the specific preferences expressed by its customers in this regard. Absecon's mere assertions to the contrary do not invalidate the agency's judgment in this matter.

particular product are not necessarily improper in and of themselves. An assertion that a specification was "written around" design features of a particular product will not provide a valid basis for protest if the record, as it does here, establishes that the specification is reasonably related to the agency's minimum needs. Bombardier, Inc., Canadair, Challenger Div., B-243977; B-244560, Aug. 30, 1991, 91-2 CPD ¶ 224. Additionally, we point out that two firms have submitted statements as interested parties to the protest, disagreeing with Absecon's assertions that the specifications are either restrictive or favor a single source.

The protest is denied.

Ronald Berger
for James F. Hinchman
General Counsel