



Decision

Matter of: J. Squared Inc., d/b/a University Loft Company

File: B-408388

Date: August 27, 2013

Kevin Leslie, Esq., J. Squared Inc., d/b/a University Loft Company, for the protester.
C. Clay Weisenberger, Esq., Department of the Army, Corps of Engineers, for the agency.

Robert T. Wu, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester is an interested party where its economic interests are prejudiced by the agency's decision to restrict procurement to oak constructed furniture, as the firm could compete more effectively if permitted to offer furniture constructed of another type of wood.
 2. Protest arguing the agency unduly restricted competition by requiring oak material for furniture procurement is denied where the agency adequately justified its need to restrict specification to that material.
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DECISION

J. Squared Inc., d/b/a University Loft Company (Uloft) protests the terms of request for quotations (RFQ) No. W912DY-13-T-0173, issued by the Department of the Army, Corps of Engineers, for the purchase of furniture items for delivery to Schofield Barracks, Hawaii. Uloft argues that the RFQ's specification requiring that only oak furniture be provided is unduly restrictive of competition.

We deny the protest.

BACKGROUND

The agency issued the RFQ on May 17, 2013, for the purchase of various furniture items through the Huntsville Center Centrally Managed Furnishings Program for

delivery to Schofield Barracks, Hawaii.¹ RFQ at 2. The RFQ states that award is to be made on a lowest price, technically acceptable basis with consideration of conformance with the specifications, past performance and price. Id. at 7. As part of the evaluation, each offeror is required to verify that the manufactured furniture and equipment submitted for consideration is on its current General Services Administration (GSA) Federal Supply Schedule contract or modification, or is pending approval by GSA at the time of quote submission. Id.

The RFQ requires that all quoted items meet the specifications defined in the UPH Furnishings Program - Furniture Item Description (FID), included with the solicitation. Id. Further, the RFQ instructs offerors, “[i]tems that do not comply with the UPH specifications version Huntsville Amendment 99, are not to be quoted.” Id. at 5.² Finally, the RFQ requires offerors to submit technical data sheets addressing all salient features of items specified on the FID, as well as submission of “the most current GSA documentation to demonstrate that all case goods, beds, and/or under-bed chests are approved and have passed GSA testing requirements.” Id. at 5.

As relevant to this protest, the UPH specifications give customers the option to purchase case goods³ utilizing three construction methods: (1) “Type A” or “Oak Veneer on minimum of Hardwood Veneer-core Plywood”, (2) “Type B” or “Solid Oak”, or (3) “Type C” or “Dry Construction”.⁴ AR, Exh. 3, UPH Specifications at 2. The UPH specifications allow for three types of finishes, namely, natural oak, light oak or medium oak. Id. Additionally, while framing materials are permitted to be solid hardwood, the UPH specifications require all exterior surfaces and exposed interior surfaces to be solid oak or oak veneer. Id.

¹ Since the mid-1990s the Army has centrally managed and funded the procurement of furnishings for various activities, including the Unaccompanied Personnel Housing (UPH) Program at issue in this procurement. Agency Report (AR), Exh. G at 4-19. Procurement and contracting authority for the program has been delegated to a Corps of Engineers component. Id.

² Huntsville Amendment 99 is the standard specification for the agency’s furniture procurements, which is incorporated into the RFQ by reference. The UPH-FID is specific to this procurement and serves to modify the standard specification to meet the needs of the customer.

³ The UPH Specification is divided into four sections: (1) general, (2) case goods, (3) tables, and (4) side/desk chairs. The case goods section includes detailed specifications for 20 different types of furniture, including a nightstand, desks, a study carrel, and a platform bed, to name a few.

⁴ “Type C” construction is further segmented into “Type C1” or “Oak Veneer on Hardwood Veneer-core Plywood with metal to metal connectors,” and “Type C2” or “Solid Oak with screws.” Id. The UPH Specification states that Types A and C1 are the standard construction types. Id.

The UPH-FID limits the required wood finish for furniture items to manufacturer's standard natural oak, providing that "[n]atural oak would not be stained, but instead be the natural color of the wood." RFQ, Attachment 2 at 1. The UPH-FID limits the construction type to "Type B" or totally wet construction⁵ using solid oak. Id.

Uloft is a furniture supplier with experience providing military-style barracks furniture to the federal government. Protest at 2. The firm holds a GSA Schedule 71 contract and is an approved vendor under the UPH Furniture Program for construction Type A. While Uloft offers oak construction furniture, and has delivered oak-constructed furniture under two federal contracts in the past five years, it prefers to use environmentally friendly timber (EFT) in its furniture construction.⁶ Protest at 3.

DISCUSSION

Uloft argues that the RFQ's requirement that quoted furniture be constructed of oak is unduly restrictive of competition. Uloft contends that the agency has not demonstrated why only oak furniture meets the agency's needs, and for this reason, excluding EFT material is unreasonable and unduly prejudices the firm. Protest at 4. The protester asserts that its EFT-constructed furniture otherwise meets the solicitation's requirements, and is on its GSA schedule. Id. In support of this proposition, the protester submits that testing has shown that EFT outperforms oak construction and has a similar wood grain pattern and coloring. Protest at 3.

The agency asserts that Uloft is not an interested party, as it is capable of meeting the requirements of the RFQ and has previously delivered oak-constructed furniture under federal contracts. In the alternative, the agency argues that the solicitation's restrictions are reasonable, as oak is a salient characteristic that meets the agency's minimum requirements for availability, durability, cost and appearance. Contracting Officer's Statement at 3; Agency Supp. Report at 1-4. The agency argues that restricting the specification to require similar construction and appearance of furniture serves two important goals that are central to its mission:

⁵ Wet construction is specified as "all joints screwed and glued using traditional furniture construction methods." Id.

⁶ According to the protester, EFT is a hardwood harvested from *Hevea Brasiliensis*, commonly known as the rubber wood tree. Rubber wood is the source of natural latex, and is commercially farmed in many areas of the world. EFT is obtained from harvesting rubber wood after its useful life for latex production has ended. Uloft states that it prefers using EFT since it "has minimal environmental impact unlike oak harvesting." Protest at 3. Further, Uloft states that the cost of its oak products are approximately 40 percent higher than its EFT products. Supp. Comments at 2.

(1) to provide the flexibility of interchangeable furniture; and (2) to give soldiers a feeling of familiarity and comfort as they are moved from base to base. Agency Supp. Report at 1.

Interested Party

We first turn to the question whether Uloft is an interested party to maintain its protest. The agency argues that the firm is able, but simply unwilling, to meet the requirements of the solicitation. In support of its position, the agency submitted portions of Uloft's GSA Schedule catalog evidencing the firm's oak-constructed furniture offerings, and asserts that the Corps of Engineers has awarded several contracts to Uloft for the delivery of oak-constructed furniture over the past few years. Motion to Dismiss at 2.

A contractor is an interested party if it is "an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract." Bid Protest Regulations, 4 C.F.R. § 21.0(a)(1) (2013). We have held that a prospective offeror lacks standing to challenge a specification as unduly restrictive in cases where it can meet the requirement set forth in the solicitation, as such a challenge would be, in essence, on behalf of other potential suppliers who are economically affected by the specification's allegedly restrictive nature. Westinghouse Elec. Corp., B-224449, Oct. 27, 1986, 86-2 CPD ¶ 479 at 3; see also American Sterilizer Company, B-223493, Oct. 31, 1986, 86-2 CPD ¶ 503. On the other hand, we have held a prospective offeror to be an interested party where, despite being able to meet the solicitation's terms, the firm is an established manufacturer of an item excluded by a restrictive specification. Gould, Inc., B-224365, Oct. 17, 1986, 86-2 CPD ¶ 464.

For its part, Uloft does not contest that it offers oak-constructed furniture on its GSA Schedule contract, nor does it contest that it has made delivery of such furniture in the past. Instead, Uloft argues that it is an interested party because its "direct economic interests have been adversely and prejudicially affected by the agency's restriction on the use of EFT in this RFQ." Protest at 2. In this regard, Uloft proffers that the cost of procuring oak construction material is prohibitive to the firm, as it is 40 percent higher than the cost for the EFT product. The firm states that it is precluded from competing because it does not have an oak source that is cost competitive to EFT. Supp. Comments at 2. Finally, Uloft asserts that, while it has performed only two federal contracts for delivery of oak furniture in the past five years, it has secured nearly 40 such contracts for delivery of EFT-constructed barracks furniture. Id.

We conclude that Uloft's economic interests are prejudiced by the agency's decision to restrict this procurement to oak-constructed furniture, as the firm could compete more effectively if permitted to offer EFT-constructed furniture. Consequently, we

believe that Uloft is an interested party to challenge the restrictive specification at issue here.

Requirement for Oak

Uloft challenges the agency's solicitation on the grounds that it has not justified limiting the procurement to oak furniture and that the decision of the agency to do so unduly restricts competition. As discussed below, we find that the agency's decision in this regard was reasonable.

Where a protester challenges a specification as unduly restrictive, that is, challenges both the restrictive nature of the specification and the agency's need for the restriction, the agency has the responsibility of establishing that the restrictive specification is reasonably necessary to meet its legitimate needs. GlobaFone, Inc., B-405238, Sept. 12, 2011, 2011 CPD ¶ 178 at 1. 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. Id. Once the agency establishes support for the challenged solicitation term, the burden shifts to the protester to show that it is clearly unreasonable. Id.

We have recognized that an agency may use detailed specifications where the record demonstrates that particular size, strength, or material requirements are necessary to ensure adequate performance, or that a particular design is reasonably related to maintaining an aesthetic appearance. Dixon Pest Control, Inc., B-248725, Aug. 27, 1992, 92-2 CPD ¶ 132 at 2. Specifications for the use of particular materials may be justified when they are necessary to ensure adequate performance or that a particular design is reasonably related to the agency's aesthetic needs. Abescon Mills, Inc., B-251685, Apr. 19, 1993, 93-1 CPD ¶ 332 at 2; ACH Food Cos., Inc., B-286794, Feb. 12, 2001, 2001 CPD ¶ 47 at 3. Such consideration of aesthetics and suitability is a subjective exercise. Abescon Mills, supra, at 2. For example, agencies may use specifications requiring a particular color where the agency reasonably establishes that the color restriction is necessary to match an established color scheme. Craigrick's, Inc., B-261356, Jul. 5, 1995, 95-2 CPD ¶ 2 at 2; Diverstech Co., B-257395, July 27, 1994, 94-2 CPD ¶ 61. Similarly, uniformity of appearance can lead to a specification which assures consistency with the agency's previous acquisitions. Fry Communications, Inc., B-220451, March 18, 1986, 86-1 CPD ¶ 265 at 2-3.

The agency explains that, in 1997, the UPH Furniture Program undertook a comprehensive effort to determine the needs for wooden barracks furniture, and, with the assistance of the installations, GSA, and the furniture industry, developed a specification that remains the standard for the UPH program. Agency Supp. Report at 1. According to the agency, two important goals of this initiative were standardization across the Army and durability.

With respect to standardization, the then-Technical Lead of the UPH Furniture Program explained that standardization was desirable for several reasons. First, the effect of Base Realignment and Closures, and frequently changing strategic needs led to a need for furniture to be interchangeable between barracks buildings and installations. Second, the Army wanted all barracks to look similar so that when a soldier changes locations, familiarity with the furniture helps them feel at home. Id. Additionally, the agency's Interior Design Manual identifies similarity of furnishings across barracks as a policy underlying the transition to a centrally procured and funded furniture program. Id. at Exh. D.

The agency argues that, while oak was originally specified because of its availability, appearance, cost, and durability, as well as industry standards, the agency's subsequent efforts to further standardize barracks furniture now means that red oak is the best material to provide a "uniform appearance and interchangeability" with its existing furniture supply and inventory. Agency Supp. Report at 4. Therefore, the agency concludes, "[t]he exclusive procurement of red oak in the UPH program for over 15 years has had the effect of making it a salient feature of the specification." Id. In other words, "[r]ed oak, through repeated procurements over the years, has become the standard."⁷ Id.

With respect to durability, the agency argues that it has a legitimate reason for requiring oak as it is more suitable for barracks due to its superior durability as compared with the product offered by Uloft. Contracting Officer's Statement at 3. The agency explains that barracks furniture goes through much use and abuse, and needs to be as durable as possible to avoid repurchasing furniture more often than necessary. Id. According to the agency, it has a legitimate reason to purchase durable furniture that resists denting, resists screws pulling out (fastener withdraw), and maintains structural integrity over time.⁸ Id.

With respect to aesthetics, a representative of GSA observed, "the appearance of the rubber wood is significantly different from the oak. The wood grain on the rubber wood does not contain as much grain pattern, nor is the grain pattern as well defined as on oak. Oak is a ring porous species that has excellent grain definition, while rubber wood does not have clearly defined growth rings and therefore has

⁷ It is not clear why the agency refers to "red oak" in its pleadings here, as the specifications do not set forth a preference for red oak over other types of oak. The reference does not, however, impact the ultimate outcome of this decision.

⁸ The agency proffered a letter from a professor of sustainable biomaterials in support of its position. AR, Exh. 7. In this letter, the professor compares various characteristics of rubber wood to both northern red oak and white oak. His analysis concludes, "it is my opinion that oak is superior in regards to resisting denting and fastener withdraw; and would be considered superior in overall durability provided the furniture will be used in climate controlled facilities." AR, Exh. 7 at 4.

little grain definition.” AR, Exh. 5 at 2. Other evidence submitted by the agency notes that rubber wood lacks a distinct grain pattern and is less aesthetically pleasing when used in residential-style furniture. Agency Supp. Report at Exh. A. Also, the agency notes while “[r]ed oak provides a warm, inviting look and contains a noticeable grain pattern that is attractive. . . [r]ubber wood has no discernable grain pattern, and the method of construction gives it a butcher block appearance.” Id. at Exh. B. Finally, the agency submitted photographs of typical oak barracks furniture along with pictures of Uloft’s EFT furniture obtained from a tour of a local college dormitory. While we rely more on the observations made by experts in the field, the submitted photographs show a marked difference in appearance between the oak furniture and Uloft’s EFT furniture. Agency Supp. Report at 5-8.

After considering the agency’s arguments and supporting evidence, we cannot find its justifications for requiring oak for barracks furniture unreasonable. Most compelling is its stated goal of ensuring standardized furniture procurements across the agency, which have historically been oak furniture procurements, and the need for future procurements to be consistent with the existing furniture for both aesthetic and practical reasons.⁹ While Uloft asserts that EFT “shares the look and color of oak,” Protest at 3, we cannot so conclude from the record.

Having considered the agency’s rationale for the restrictive oak specification, and found its rationale to be supported, we now turn to Uloft’s arguments to determine if it has met its burden to show the agency’s restrictive specification is clearly unreasonable. We find that Uloft has not met its burden.

Uloft first argues that furniture made with EFT has been tested and approved for purchasing by the GSA for over a decade and that EFT-constructed furniture is also purchased by the Air Force, Navy and Marine Corps. Comments at 2. Uloft asserts that the agency could have consulted with other federal agencies to assess EFT furniture construction. Id. at 4. The firm concludes, “[d]ue to the fact that multiple United States Government agencies purchase [EFT] bedroom furniture, it is difficult to ascertain why the agency in the present matter does not.” Id. However, as our office has held, agencies have broad discretion to determine their needs and the best way to meet them. URS Federal Support Servs., Inc., B-407573, Jan. 14, 2013, 2013 CPD ¶ 31. Here, the agency has identified a need for standardization of its furniture procurements. As discussed, we view this identified need as reasonable and within the agency’s broad discretion. The fact that other services

⁹ While the agency’s evidence in support of oak’s durability over EFT cannot be discounted, it is not particularly compelling given the differing types of oak permitted by the specification and their varying characteristics (including durability), as well as the fact that the standard specification permits, in certain instances, use of other hardwood and plywood with oak veneer.

and agencies view EFT furniture as acceptable is a function of those agencies' needs, and does not render the Army's rationale any less reasonable.

Second, Uloft argues that EFT furniture has been tested and passed rigorous GSA testing standards as well as those of independent testing facilities. Id. In this regard, Uloft cites to furniture testing it commissioned at the Federal Testing Laboratories comparing its EFT furniture versus oak furniture of a competitor, the results of which Uloft submits "clearly evidence the durability of [EFT] wood in furniture construction." Id. at 7-8. Uloft also submitted its own material comparison, comparing EFT to northern red oak, which it asserts shows the comparable hardness of each wood. Id. at Exh. E. Finally, Uloft references a certain "hardness" test used to evaluate wood's resistance to denting and impact. Uloft argues that the test results, which shows EFT is 10-14 percent softer than red oak, evidences the relative comparability of the two woods.

As noted previously, we do not find the agency's argument and evidence that oak is more durable than EFT particularly compelling. Nor has the agency clearly shown that oak, and not EFT, meets its minimum needs for durable furniture. In a similar vein, we are not convinced that Uloft's evidence to the contrary clearly shows that oak and EFT are equivalent with respect to durability. This position is buttressed by the fact that, even after raising this concern to the parties, neither party materially advanced their position on this issue when submitting supplemental pleadings. However, on this record we need not conclude whether either party has met its burden as we decide this matter based on the agency's justification with respect to standardization and appearance.

In response to the agency's arguments pertaining to standardization, Uloft submitted an affidavit from its Plant Manager along with photographs of its current government line of furniture, which the firm asserts depicts its oak finish that gives EFT the appearance of oak. Our review of the four photographs submitted by Uloft leaves us unconvinced that its EFT furniture is aesthetically equivalent to oak, and unconvinced that the agency was unreasonable in concluding the material did not meet its requirement for standardization. Consequently, we cannot conclude that the agency's specification is unduly restrictive.

The protest is denied.

Susan A. Poling
General Counsel