

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-206444

DATE: December 2, 1982

MATTER OF: Stanley Furniture Company

DIGEST:

1. Protest contending brand-name-or-equal solicitation which provided for award on an aggregate basis was improper is dismissed as untimely under Bid Protest Procedures because it was not filed at GAO within 10 working days after agency denied protest on same grounds.
2. Agency's rejection of bid as nonresponsive was proper because protester failed to submit with its bid sufficient information to enable agency to determine what was being offered and whether it complied with salient characteristics listed in solicitation.
3. Protest contending that solicitation should be canceled because specifications were erroneous and not met by any bidder is denied since errors were obvious, there is no evidence that any bidder including protester was confused or prejudiced, and agency's needs could be met by award under solicitation as issued.
4. Untimely protest of sole-source procurement does not present significant issue within meaning of Section 21.2(c) of Bid Protest Procedures since GAO has issued numerous decisions setting forth basic principles governing such procurements.

Stanley Furniture Company protests two procurement actions by the Air Force: (1) its rejection of Stanley's bid submitted in response to invitation for bids (IFB) No. F49642-81-B-0115 (IFB 0115) and (2) the issuance of request for proposals (RFP) No. F49642-82-R-0001

(RFP 0001) on a sole source basis to American of Martinsville. Both solicitations were issued by Andrews Air Force Base for the purchase of furniture for dormitories. For the reasons discussed below, the protest with respect to IFB 0115 is dismissed in part and denied in part and the protest with respect to RFP 0001 is dismissed.

IFB 0115

IFB 0115 called for bids on various items of furniture specified by American of Martinsville model number "or equal" and listing the salient characteristics to which each bidder's products had to conform. The solicitation, which was issued on November 20, 1981, established December 18, 1981 as the bid opening date. On December 9, 1981, Stanley protested to the Air Force alleging that the solicitation unduly restricted competition in that it included a "brand name or equal" specification which did not adequately describe the salient characteristics of the brand name items, particularly the internal construction of the furniture. Stanley further objected to an IFB provision stating that award would be made in the aggregate. This would require the awardee to deliver upholstered items, mattresses, and "case goods" even though, Stanley asserted, very few manufacturers produce all three. Stanley's position was that the solicitation should permit separate awards for each of the three kinds of items.

By letter of December 15, 1981, the contracting officer denied Stanley's protest. The contracting officer's position was that maximum possible competition was being sought through the use of a brand-name-or-equal purchase description which set forth only the minimum number of salient characteristics necessary to meet the agency's needs. For that reason, details of the furniture's internal construction were not listed among the salient characteristics, which were limited to the basic requirements of approximate size, fabric color and pattern, wood type and grade, and style. In addition, the contracting officer explained that the specifications required that the furnishings be delivered one truck load at a time with each load consisting of one or more complete groupings of furnishings for one or more rooms because the Air Force planned to move the old furnishings out of and the new furnishings into the dormitories one room at a time. In the Air Force's view, replacing an entire room's furnishings at one time was not

feasible if separate contracts were awarded for upholstered items, mattresses and case goods.

Upon receipt of the denial of its protest, Stanley requested that the bid opening date be extended. It was extended to December 22 and Stanley submitted a bid. On January 12, 1982, Stanley was advised that its bid was unacceptable for failure to meet the salient characteristics. After meetings with Air Force personnel on January 19 and February 1, 1982, Stanley protested to our Office on February 16, 1982.

To the extent that Stanley's protest to our Office is based on the same grounds as its protest to the agency which was denied on December 15, 1981, it must be dismissed as untimely under our Bid Protest Procedures, 4 C.F.R. § 21.2(a) (1982). These procedures provide that once a protest has been filed with the contracting agency, any subsequent protest to our Office must be filed within 10 working days of actual or constructive knowledge of initial adverse agency action concerning the protest. Stanley acknowledges that on December 18, 1981 it received the Air Force's denial of its protest; its subsequent protest to this Office was not filed until February 16, 1982, more than 10 days later. Our 10 day requirement is not tolled by the protester's continued pursuit of the matter with the contracting agency after its receipt of the denial of its protest. Spectrum Leasing Corporation, B-206112, February 4, 1982, 82-I CPD 94.

This leaves for resolution the propriety of the rejection of Stanley's bid as nonresponsive for failure to meet the specified salient characteristics.

The IFB provided that an "equal" product must be clearly identified in the bid and that the Government would determine the equality of the product based on information furnished by the bidder as well as other information reasonably available to the purchasing activity. It cautioned that since the agency would not be responsible for locating any information which is not identified in the bid or reasonably available, the bidder must furnish as part of its bid all descriptive material (such as cuts, illustrations, drawings or other information) necessary for the purchasing office to determine whether the product meets the salient characteristics and to establish exactly what the bidder proposes to furnish.

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Stanley's bid identified model numbers for bed headboards and footboards it offered under line items 0003 and 0004, respectively, but those numbers did not correspond with any model numbers in the catalog attached to the bid. The Air Force states it therefore was unable to identify the product being offered and to evaluate whether it was equal to the brand-name product. Although Stanley concedes that the model numbers it entered on the bid form did not appear in the catalog, it contends that the Air Force should have determined the responsiveness of its bid from pictures in the descriptive literature. Stanley does not explain, however, how this could be done by the Air Force with any certainty as to which of the several models in the catalog, all of which were identified by numbers differing from those listed in the bid, were being offered.

Stanley then contends that if its bid is subjected to such a "rigid" construction of the salient characteristics listed in the IFB, so should the bids of the other four firms which competed. If this is done, Stanley asserts, none of the bids--including that of the brand-name manufacturer--is responsive because none offers headboards and footboards exactly as described in the solicitation.

The IFB Schedule described Item 0003 as:

"Headboard, bed, dark oak finish, 42 1/2" high X 38 3/8" X 1 3/4" thick. American of Martinsville P/N 562-641 or equal."

Item 0004 was described as:

"Footboard, bed, dark oak finish, 42 1/4" X 22 1/4" X 1 3/4." American of Martinsville P/N 562-642 or equal."

Literally read, this describes a bed in which the headboard is 42-1/2 inches high, the footboard is one-quarter inch lower at 42-1/4, and in which the footboard is approximately 16 inches narrower than the headboard. Stanley argues that since no bidder offered such a bed, none of the bids is responsive.

The Air Force concedes that it erred in listing the salient characteristics in that it reversed the height and width dimensions--resulting in a nonsensical description in which the bed is substantially narrower at the foot--

and that it overstated one dimension by one-quarter of an inch. (We note that the descriptive literature submitted by American of Martinsville with its bid shows its Model 562-641 headboard as 42 1/4" wide X 38 3/8" high X 1 3/4" thick and its Model 562-642 footboard as 42 1/4" wide X 22 1/4" high X 1 3/4" thick. This, of course, is a logical description in which the headboard and footboard are of the same width and the headboard is higher than the footboard).

The Air Force maintains that this deficiency in the IFB does not constitute the kind of "compelling reason" required by Defense Acquisition Regulation § 2-404.1 as a prerequisite to canceling an IFB and resoliciting bids after bids have been opened. We agree. First, we note that this aspect of Stanley's protest was not timely filed since it was not raised by Stanley until well after bid opening when Stanley learned that the Air Force proposed to reject its bid. Second, there is no evidence in the record to suggest that Stanley, or any other bidder, was confused by the transposition of the width and height dimensions. The Air Force determined Stanley's bid to be nonresponsive as to the headboards and footboards not because they were of the wrong dimensions but because they were identified by model numbers which were not traceable to Stanley's catalog submitted with the bid.

The use of inadequate, ambiguous or otherwise deficient specifications is not a compelling reason to cancel an IFB where an award under the IFB as issued would serve the actual needs of the agency and would not prejudice the other bidders. GAF Corporation; Minnesota Mining and Manufacturing Company, 54 Comp. Gen. 586 (1974), 74-1 CPD 168. Since we find no evidence in the record that any bidder was confused by these obvious errors or was prejudiced thereby, Stanley's protest in this regard is denied. Bentley, Inc., B-200561, March 2, 1981, 81-1 CPD 156.

Stanley's bid also was rejected as nonresponsive to items 0005 and 0006. Line item 0005 called for storage units with open shelves; Stanley offered a unit containing drawers and fewer shelves than specified. We cannot agree with Stanley's contention that the specification "very definitely did not specify that only units with exclusively open storage space were required." The specification for line item 0005 which called for "STORAGE UNIT, OPEN," cannot reasonably be interpreted as permitting a storage unit with drawers in place of the shelves.

Line item 0006 was a drop-lid desk, the dimensions of which were specified as "APPROX. 30" W X 18" D X 75" H." The desk offered by Stanley was 44 inches wide. The Air Force's position is that 44 inches is not a reasonable "approximation" of 30 inches and that the difference in width is material because space in the dormitory rooms is limited. Although Stanley disputes the necessity for thus limiting the size of the furniture, we do not believe Stanley has shown the Air Force's statement of its minimum needs to be unreasonable.

Stanley also has suggested that the Air Force had an obligation to resolve the doubts it had as to whether Stanley's furniture complied with the specifications either by conducting a preaward survey of Stanley or by accepting Stanley's post-bid opening offer to provide samples for the Air Force's inspection. This contention is without merit. In making a determination of responsiveness, there is no requirement that the agency conduct a plant survey as Stanley suggests. Responsiveness must be determined from the data furnished with the bid as reasonably available to the agency. Sutron Corporation, B-205082, January 29, 1982, 82-1 CPD 69.

RFP 0001

RFP 0001 was issued on January 7, 1982 to American of Martinsville on a sole-source basis and called for a proposal by February 4, 1982 for delivery of miscellaneous furniture to replace or complete the furnishing of dormitory rooms at Andrews Air Force Base. The sole source justification was based on the fact that such rooms were already furnished or partly furnished with items manufactured by American of Martinsville and the Air Force desired that the new furniture be compatible and interchangeable with the furniture in place. At its request, Stanley was provided a copy of the solicitation on January 18 but it did not submit an offer. American's proposal was received on February 4 and Stanley protested to our Office on February 16.

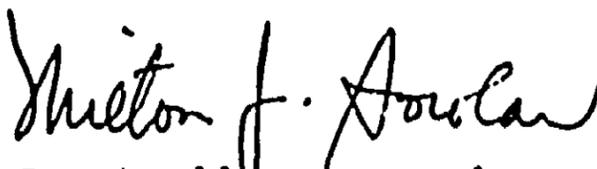
Stanley concedes its protest should have been filed prior to the closing date for receipt of proposals as required by Section 21.2(b)(1) of our Bid Protest Procedures. It contends, however, its untimely protest should be considered on its merits because it presents a significant issue within the meaning of Section 21.2(c) of our Procedures. It states the procurement of furniture on a

sole-source basis has become a common practice in the Air Force and unduly restricts competition. It submits that if the American public is satisfied with bedrooms furnished with the differing styles of various manufacturers, it is not necessary for the Air Force to have matching furniture in its dormitory rooms.

In order to invoke the significant issue exception to our timeliness rules, the subject matter of the protest must not only involve a principle of widespread interest or importance to the procurement community, see, e.g., Willamette-Western Corporation; Pacific Towboat and Salvage Co., 54 Comp. Gen. 375 (1974), 74-2 CPD 259, but must also involve a matter which has not been considered on the merits in previous decisions. CSA Reporting Corporation, 59 Comp. Gen. 338 (1980), 80-1 CPD 225; Garrison Construction Company, Inc., B-196959, February 26, 1980, 80-1 CPD 159.

We have numerous decisions setting forth the basic principles governing sole-source procurements, including the issues as to the competitive advantages such contracts give to awardees with respect to future procurements and the wisdom of centralizing all program activity in one company. See Gerber Scientific Instrument Company, B-197265, April 8, 1980, 80-1 CPD 263; Hutchison Brothers Excavation Co., Inc., B-197812, August 6, 1980, 80-2 CPD 93; Save-on Wholesale Products, B-194510, July 5, 1979, 79-2 CPD 9; The Willard Company Incorporated, B-199705, February 13, 1981, 81-1 CPD 102. The material submitted by Stanley with its protest indicates that the Air Force and the General Services Administration are aware of the problems and are attempting to reduce the number of such sole-source procurements. Also, we are not persuaded that the fact that homeowners may be satisfied with furniture from different manufacturers can logically be used to support a contention that the Air Force with its different environment, purposes and problems, including those pertaining to logistics, also should be satisfied with a lack of uniformity.

Thus, while we recognize the importance of this matter to the protester, we do not believe the propriety of this sole-source procurement should be considered a significant issue within the meaning of our Bid Protest Procedures and Stanley's protest with respect to RFP 0001 is dismissed as untimely.

for 
Comptroller General
of the United States