

Findings of Fact

1. On April 4, 1984, DGS issued Request for Quotation (RFQ) No. P30414 for the purchase of 235 student desks, bookcases, wardrobes, beds and chairs.¹

2. The RFQ describes the student desk to be provided as follows:

Student Desks, single pedestal left, consisting of 3 box drawers, with necessary hardware for attachment of below book cases [sic]. Top size approx. 48" x 24" x 30" high. Equivalent to design of period [sic] Model No. 1683.

(See Attached Specifications).

3. The Period Model No. 1683 desk is not a stock piece of furniture. Period Model 1683 is a custom desk which previously was constructed for another customer. When the shop drawings for this custom desk were prepared, the model number was assigned for identification purposes.

4. The specifications for the Model No. 1683 desk provide, in part, that all exposed surfaces are to be #1 oak veneer and solid #1 oak. Core materials are to be a minimum 45 lbs. density flakeboard. The top of the desk is to be one inch thick with a 3-ply high pressure melamine laminate face. The desk is to have #1 solid oak lumber strips two inches wide on the front and back and two ends. Drawer bottoms over 24 inches are to be reinforced with two, one inch by three inch hardwood strips. The finish of the desk is to be a multi-coat formulation with the last coat of lacquer catalyzed to protect the surface from damage by common agents.

5. The RFQ describes the wardrobe as follows:

Wardrobes/Storage Units, Approx. overall size 40" x 24" x 82" high. Interior to consist of fixed shelf overtop of hanging rod, full width of wardrobe. Left side for hanging garments. Right side to have one fixed shelf positioned overtop of three 9" deep drawers. Drawers to be approx. 18" wide, full depth. Bottom of wardrobe to contain two full width drawers (one 9" high and one 6" high). Positioned [sic] 10" above drawers is to be one shelf running the full width of left side. Wardrobe to be divided from top of bottom drawers with a vertical panel, full depth running to top of wardrobe.

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(See Attached Specifications).

6. The attached design specifications for the wardrobe also were prepared by Period, Inc. and provide, in part, that all exposed surfaces shall be white oak veneer and solid Appalachian white oak. Core material is required to be a minimum 45 lbs. density flakeboard. The finish of the wardrobe is to be a multi-coat formulation with the last coat of lacquer catalyzed to protect the surface from damage by common agents. Hinges for the wardrobe doors are to be of fixed pin design, allowing a 270 degree

¹The RFQ provided that a single award was to be made for the desks, bookcases, wardrobes and beds. A separate award was to be made for the chairs.

rotation. Drawer heights for the wardrobe are to be six inches and nine inches as shown in the specifications. Drawer bottoms are to be reinforced with one inch by three inch hardwood strips. In addition, the wardrobe is to have a top, back support rail finished out of #1 white oak lumber and a mid, back support rail and a base, back support rail finished out of poplar.

7. The RFQ further provides that:

Period Inc. has been specified to identify material design and construction only. Manufacturers' standard construction or similar design will be considered if equivalent to the specifications.

8. The RFQ requires bidders offering furniture equivalent to the Period furniture to provide cuts, sketches, descriptive literature and/or complete specifications with their bids. The RFQ also requires bidders to explain in detail the reasons why proposed equivalent furniture would meet the specifications and not be considered an exception.

9. Bids were received and opened on May 7, 1984 and publicly recorded as follows:

Inter-Royal Corp.	\$191,398.10
Ebenreiter Woodworking Co., Inc.	199,961.50*
Modern Contract Furniture, Inc.	215,898.05
Joerns Furniture Co., Inc.	215,976.75
Appellant	216,435.00
State Use Industries	219,445.00
State Use Industries	223,205.00*
Joerns Furniture Co., Inc.	230,398.70*
Period, Inc.	240,522.50*
Period, Inc.	240,757.50
Ebenreiter Woodworking Co., Inc.	311,628.80

* Alternate Bids

10. Of the bids received, only the two highest were determined to be responsive. Appellant's bid was determined to be nonresponsive because the desk and the wardrobe it offered to provide did not conform to the material and design requirements of the specifications. Appellant's desk and wardrobe were to be made of three-fourths inch solid hard rock maple instead of oak lumber and one inch thick, 5-ply construction flakeboard. Appellant's drawer bottoms for the desk and wardrobe were not to be reinforced as required. The fabrication of Appellant's desk and wardrobe also would have differed from that specified in the RFQ.

Appellant's bid for the desk was unclear as to whether it offered to provide a desk top of natural wood or high-pressure laminate finish. Further, Appellant's bid neither offered to provide a wardrobe with top, middle and base support rails, nor the required 270 degree hinges for the wardrobe doors.

11. On September 24, 1984 Appellant filed a protest with the DGS procurement officer objecting to the proposed contract award to Period, Inc., alleging that it had submitted a lower bid and that its products either were functionally equivalent to the furniture specified in the RFQ or superior thereto.

12. In a final decision issued on October 2, 1984, the DGS procurement officer denied Appellant's protest since the offered desk and wardrobe did not conform to the RFQ's specifications.

13. Appellant submitted a timely appeal of the DGS procurement officer's final decision to this Board on October 22, 1984.

Decision

The primary issue in this appeal is whether Appellant's desk and wardrobe, as described in its bid, conformed to the RFQ design specifications, thus constituting a responsive bid. [The factual determination as to whether any product conforms to design specifications and thus is responsive to a solicitation primarily is a matter within the jurisdiction of the procuring activity. Compare 49 Comp. Gen. 196, 198 (1969). We will not substitute our judgment for that of the procuring agency in the absence of a clear showing that it acted unreasonably or otherwise abused its discretion in determining that a product did not comply with specifications. Id. Where there is a difference of expert technical opinion, we will accept the technical judgment of the procuring agency unless clearly erroneous. Id. Compare Solon Automated Services, Inc., MSBCA 1046 (January 20, 1982).]

By providing design specifications for the desk and wardrobe, DGS sought to purchase custom-made furniture rather than production line models. In this regard, the RFQ's design specifications were detailed sufficiently with regard to both material and construction that experienced furniture manufacturers could use them to produce the identical desk and wardrobe described.

Appellant offered to provide a desk and wardrobe that varied from the RFQ's design specifications in both material and design. (Findings of Fact No. 7). Under such circumstances, the DGS procurement officer properly declared Appellant's bid to be nonresponsive as it did not conform in all material respects to the requirements of the RFQ. See COMAR 21.05.02.13; compare J. T. Systems, Inc., Comp. Gen. Dec. B-213308, March 7, 1984, 84-1 CPD ¶277; 43 Comp. Gen. 209 (1963); 50 Comp. Gen. 691 (1971).

While Appellant concedes that its desk and wardrobe did not meet the exact requirements of the specifications, its witness testified that the maple desk and wardrobe offered were equivalent or superior in both material quality and construction design to the oak desk and wardrobe specified. What we have, therefore, is a dispute involving the technical judgment of the parties as to the adequacy of Appellant's furniture. Since we may not interpose our subjective judgment on a matter that falls solely within the DGS procurement officer's technical expertise, we find that the DGS procurement officer's rejection of Appellant's bid for failure to comply with the specifications was proper. Compare Douron, Inc., MSBCA 1189 (August 29, 1984).

For the foregoing reasons, therefore, the appeal is denied.