



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Herman Miller, Inc.
File: B-230627
Date: June 9, 1988

DIGEST

1. Agency properly found protester's quote to be technically unacceptable under Federal Supply Schedule re-quote procedures where protester admitted deviating from technical specifications and agency's technical assessment had a reasonable basis.
2. Protest that technical specifications were unduly restrictive of competition is untimely where this alleged impropriety is apparent but not filed prior to the closing date for receipt of quotes.
3. An untimely protest alleging unduly restrictive specifications will not be considered under the significant issue exception to the bid protest timeliness rules because the issue raised is not of widespread interest to the procurement community.

DECISION

Herman Miller, Inc. protests the award of a delivery order to Rosemount Office Systems, Inc. for systems furniture under request for quotations (RFQ) No. DAAH03-87-Q-F224, issued by the U.S. Army Missile Command (MICOM), Redstone Arsenal, Alabama. Miller protests that the RFQ was unduly restrictive of competition and that MICOM erred in finding its low quote to be technically unacceptable.

We deny the protest in part and dismiss it in part.

The RFQ was issued September 21, 1987, to 24 prospective bidders on the multiple award Federal Supply Schedule (FSS), Group 71, Part II, Section E. Because the estimated amount

042411

of award exceeded the maximum order limitation of the schedule, the RFQ was issued pursuant to the FSS re-quote procedures which provide for the use of Standard Form 18, "Request for Quotations." Under re-quote procedures, quotes received are evaluated for technical compliance with RFQ requirements. The RFQ set forth the technical specifications for the workstations and indicated that an order would be placed with the vendor quoting the lowest total weighted price.

MICOM received seven quotes but found only Rosemount's quote to be technically acceptable. Miller's quote was found technically unacceptable because it failed to meet four technical specifications: (1) the minimum required thickness of the worktop; (2) recession of the flipper door under the top of the cabinet; (3) six electrical outlets per workstation; and (4) pencil drawer with ball bearing glide/rollers.

Miller admits that its quoted workstation deviates from the technical requirements of the RFQ but argues that the "discrepancies" in its workstation are minor, do not affect use and should have been waived by MICOM.

In reviewing an agency's assessment of technical acceptability, we will not substitute our evaluation for the agency's but will only examine the agency's assessment to insure that it had a reasonable basis. PacOrd, Inc., B-224249, Jan. 5, 1987, 87-1 CPD ¶ 7. In this regard, the protester has the burden of showing that the agency's determination was unreasonable, and mere disagreement with the agency's assessment on this issue does not satisfy that burden. Ridge, Inc., 65 Comp. Gen. 663 (1986), 86-1 CPD ¶ 583.

MICOM contends that each of the disputed requirements is necessary to meet its minimum needs. Miller argues generally that its admitted deviations do not affect the use of the workstation and thus are technically acceptable. Miller, however, does not address MICOM's specific contentions that Miller's quoted workstation does not meet the agency's minimum needs regarding electrical outlets and the flipper door.

The RFQ required workstations to have a minimum of six electrical outlets. MICOM states that six outlets are necessary to support the lights, computer, printer and calculator to be placed at each workstation. Miller's quoted workstation provided only five usable electrical outlets.

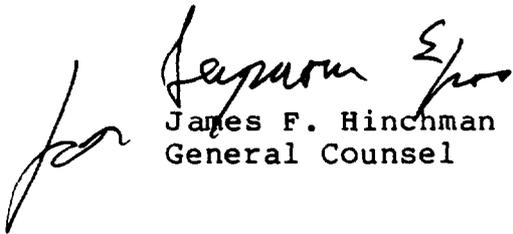
The RFQ also required the flipper door to recess under the top of the cabinet. MICOM states that the required flipper door design was necessary to allow the top of the cabinet to be utilized for storage. Miller's flipper door extends above the top of the cabinet and, MICOM contends, affects the use of the top of the cabinet for storage.

Because Miller admits deviating from the specifications and does not rebut the agency's statement regarding the electrical outlets and flipper door design, we have no basis to question MICOM's finding that Miller was technically unacceptable. On this issue, we deny Miller's protest.

Miller also argues that the RFQ's specific technical requirements were unduly restrictive of competition. These alleged improprieties were apparent on the face of the RFQ. Our Bid Protest Regulations require protests of alleged improprieties in a solicitation which are apparent prior to bid opening or the closing date for receipt of proposals to be filed before that time. 4 C.F.R. § 21.2(a)(1) (1988). Since Miller's protest on this issue was filed well after the date for receipt of quotations, it is untimely and will not be considered here.

Miller argues that its protest that the RFQ specifications are unduly restrictive should be considered under the significant issue exception to our timeliness rules. See Singapore Aircraft Industries, B-229751, Dec. 30, 1987, 87-2 CPD ¶ 647. However, we apply this exception sparingly, usually in cases where the protest raises an issue of widespread significance to the procurement community. See Microeconomic Applications, Inc.--Reconsideration, B-229749.3, Apr. 26, 1988, 88-1 CPD ¶ 404. We do not view the restrictiveness of the RFQ specifications as meeting this standard.

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel