Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Haworth, Inc.

File: B-237558

Date: February 16, 1990

Gregory H. Stevenson, for the protester.
Marsha Goodman, Esq., for the interested party, Westinghouse Electric Corp.
David J. O'Connor, Environmental Protection Agency, for the agency.
Anne B. Perry, Esq., Paul Lieberman, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that requirements set forth in a request for quotations (RFQ), issued in conjunction with a mandatory, multiple award Federal Supply Schedule (FSS) contract, exceed the FSS specifications is denied where the RFQ merely particularized the issuing activity's minimum needs, and the stated requirements do not conflict with the FSS.

2. Protest that agency failed to provide necessary evaluation factors is denied where the solicitation clearly sets forth the formula which will be used to determine the lowest weighted price.

DECISION

Haworth, Inc. protests the terms of request for quotations (RFQ) No. 89-015 issued by the Environmental Protection Agency (EPA) for the installation and lease of furniture systems which are listed on a mandatory General Services Administration (GSA) multiple-award Federal Supply Schedule (FSS). Haworth alleges that several of the RFQ provisions violate the FSS procedures and unduly restrict competition.

We deny the protest.

The RFQ was issued, on September 25, 1989, in accordance with the requote procedures of FSS Group 71 Part II, Section E, with an amended due date for receipt of

quotations of October 25.1/ The RFQ set forth the technical specifications for the desired workstations and indicated that an order would be placed with the vendor quoting the lowest total weighted price.

Haworth contends that some of the RFQ specifications improperly exceed the FSS requirements, and unduly restrict competition. The technical requirements to which Haworth objects are that: (1) fluorescent lighting tubes, if not already included with fixtures, be added to the installation price; (2) panel inserts be constructed to allow replacement of fabric surfaces; (3) panel fabric adhere to National File Protection Association (NFPA) Standard No. 701 for flame resistance; and (4) a fire toxicity standard be met. The protester argues that fluorescent lighting tubes are not on the FSS, that mandating replaceable panel inserts is a nonfunctional requirement prohibited by the FSS, and that the flame resistance and toxicity requirements are overly restrictive and are not based on a cognizable industry standard.

Federal agencies must procure from multiple award FSS' at the lowest price consistent with their minimum needs. Dictaphone Corp., B-228241, Dec. 23, 1987, 87-2 CPD ¶ 619. The determination of the minimum needs of an agency and which products on the FSS meet these needs is properly the responsibility of the procuring activity. Herman Miller, Inc., B-232839, Jan. 26, 1989, 89-1 CPD ¶ 79. Further, since quotations from FSS vendors are not offers but merely informational responses which the government may use to issue a delivery order from an FSS contractor, there is no requirement that the quotation comply precisely with the RFQ requirements. Id.

We do not find that the technical requirements set forth in the RFQ exceed or conflict with the FSS, but rather were drafted to identify suitable equipment listed on the FSS. The general specifications in the FSS state that:

> "The requirements contained herein are the minimum required features to be accepted under this contract. The manufacturer may offer additional products which are designed to enhance the function of the furniture system. Acceptance of

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1/ FSS requote procedures are followed when an agency's requirements exceed the established Basic Order Level. Under requote procedures, quotes received are evaluated for technical compliance with RFQ requirements.

products not specified herein is at the contracting officer's option."

Therefore, contrary to the protester's argument that since the fluorescent tubes were not listed specifically on the FSS they could not be included in the RFQ, the contracting officer has discretion under the FSS to accept bulbs as part of the furniture system. Further, EPA notes that it is industry practice to include bulbs in the price of these FSS quotes and, therefore, it is not unreasonable for the agency to warn vendors that the cost of bulbs would be considered under installation costs if the bulbs were not included as part of the furniture system.

Haworth's objection to the requirement that panels be constructed so as to allow replacement of fabric is also without merit. The requirement is intended to enable the agency to replace panel fabric in the field and, despite the contractor's arguments to the contrary, this is a functional requirement permissible under the FSS, which does not unnecessarily restrict the design of the panels.

The protester's allegation that the RFQ requirement that fabric flammability meet NFPA Standard 701 exceeds the FSS requirements is clearly erroneous as the FSS requires that the panels meet this standard. Moreover, although Haworth argues that NFPA Standard 701 does not include a fire toxicity standard, the RFQ simply imposes a separate requirement that no toxic products shall be emitted when the fabric is burned. The National Institute of Occupational Health and Safety Guide to chemical hazards establishes such standards called IDLH values. EPA notes that it did not intend to suggest that toxicity was measured by NFPA Standard 701, rather it just wanted to insure that, in case of fire, the materials used would not give off highly toxic gases which can kill or incapacitate people in a fire long before the heat or smoke.

In addition to alleging that the above requirements exceed the FSS standards, Haworth alleges that they unduly restrict competition. The EPA however has provided prima facie support for its contentions that the above restrictions and specifications are needed to meet its actual minimum needs, as noted above. Since the protester has failed to rebut any of EPA's contentions in its comments on the agency report, Haworth has failed to show that the specifications are improper. A.B. Dick Co., B-228086, Dec. 15, 1987, 87-2 CPD ¶ 592.

Haworth also argues that the delivery requirements in the RFQ are unreasonable, since they were not amended to account

for the delay caused by other amendments to the RFQ. We find that the delivery schedule included in the RFQ is not unreasonable, because not only did the RFQ explicitly state that the dates indicated were tentative and would be confirmed later, but also, during the pre-bid conference EPA emphasized the tentativeness of the dates and stated that it would be flexible on setting mandatory deadlines.

Haworth's final allegation is that the RFQ fails to identify the evaluation criteria for a weighted service score and also neglects to inform vendors of the evaluation scheme for leases. The protester alleges that the FSS provides that the method for arriving at a weighted service score is entirely the responsibility of the using activity, and the EPA did not publish the criteria by which the installation and design services were to be evaluated.

Haworth is incorrect on both accounts. First, the schedule does not require the using activity to determine how to weight the service score, rather, it merely gives an activity the option of applying a service evaluation score, using its own criteria, if the RFQ provides for a service evaluation score. Here the RFQ does not so provide, rather amendment 2 sets forth the equation, in detail, that will be used to calculate the total weighted price, and the equation does not provide for application of a service evaluation score. With respect to lease evaluation, the formula is set forth clearly in the FSS, and the RFQ did not provide for any deviation from the FSS-prescribed formula.

Accordingly, the protest is denied.

James F. Hinchman
General Counsel