



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Herman Miller, Inc.

File: B-237866

Date: March 19, 1990

Else V. Friberg, for the protester.
Herbert F. Kelley, Jr., Esq., Department of the Army, for
the agency.
Amy M. Shimamura, Esq., and Christine S. Melody, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Protest that agency improperly rejected protester's
quotation as nonresponsive to request for quotations is
dismissed where protester is not an interested party since
another firm that was rejected on the same basis had a
lower evaluated price and protester therefore would not be
in line for award even if its protest were sustained.

DECISION

Herman Miller, Inc., protests the rejection of its quotation
by the Department of the Air Force, Arizona Air National
Guard, and the issuance of delivery order Nos. DAHA02-90-
F-2086 and DAHA02-90-F-2074 to Haworth, Inc., a contractor
for systems furniture workstations purchased under General
Services Administration (GSA), Federal Supply Schedule (FSS)
contract No. GS-00F-07010. Herman Miller, also an FSS
contractor, contends that the Air Force's rejection of its
furniture systems' eight-wire electrical system as unaccept-
able was improper and that its firm should have been issued
the delivery orders under the GSA FSS contract based on its
low responsive quotation.

We dismiss the protest.

The agency issued request for quotations (RFQ) No. DAHA02-
89-Q-0241, for the purchase of systems furniture work-
stations, including design and installation services, on
September 1, 1989. The RFQ, as amended, specified that the
furniture systems' powered panels must have the capacity to

provide not less than three circuits, all of which can be dedicated and have accessibility to an isolated ground.

Four vendors responded to the RFQ by the October 13 closing date for quotations. Westinghouse, Inc., submitted the lowest price quotation; Herman Miller was the second-low bidder. However, both Westinghouse and Herman Miller were found technically unacceptable because each had offered to provide workstations with eight-wire electrical systems which, the agency determined, could not meet the specification requirement for three dedicated circuits. On November 9, a letter of award was sent to Haworth based upon the agency's determination that the firm was the lowest responsive and responsible offeror.

Herman Miller contends that its eight-wire electrical system meets the specification requirement for three dedicated circuits and that its firm, therefore, should have been awarded the orders under the FSS contract.

The record indicates that both Westinghouse and Herman Miller offered eight-wire electrical systems which are essentially the same. As a result, the agency maintains that Herman Miller is not an interested party and that its protest should be dismissed because Westinghouse, rather than Herman Miller, had the lower evaluated price and thus would be in line for award if the agency were to determine that the offered eight-wire electrical system is responsive to the RFQ's specifications.

Herman Miller disagrees, contending that Westinghouse's quotation could not be accepted since that firm's eight-wire electrical system was not yet approved by GSA as of September 1, the RFQ issuance date, contrary to the limitation in section 16 of the FSS that contractors may only offer items that are on their FSS contract's approved schedules as of the RFQ issuance date.^{1/} According to the protester, Westinghouse's eight-wire electrical system was not approved by GSA until November 3, 2 months after the RFQ's issuance date.

The agency concedes that Westinghouse's electrical system was not on the firm's GSA contract schedule as of September 1. However, the agency argues that section 16 of the FSS does not require the rejection of such an item because that section specifically states that the offering of items that are not on a supplier's contract schedule may

^{1/} FSC Group 71, Part II, Section E, FSC Class 7110 for the period Oct. 1, 1988, through Sept. 30, 1991.

result in the rejection of a proposal. The agency maintains that the permissive word "may" gives the contracting officer discretion to accept "open market" items that are not listed on approved schedules.

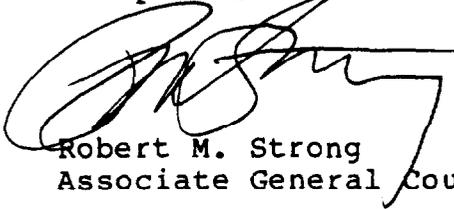
Where, as here, there is a mandatory FSS contract in effect, agencies designated as mandatory users are required to purchase their requirements from the schedule if their minimum needs will be met by the items listed on the schedule. See Insinger Mach. Co., B-235320, Aug. 3, 1989, 89-2 CPD ¶ 104. In this case, however, section 7 of the FSS specifically states that the Department of Defense (DOD), and therefore the Air Force, is not a mandatory user of the schedule. Further, all contracts issued under the FSS state that although DOD must consider use of FSS sources, DOD contracting officers may use other procedures to obtain items from nonscheduled sources if, in the contracting officer's judgment, it would be in the government's best interest in terms of quality, responsiveness, or costs. Thus, under the circumstances here, if the eight-wire electrical system were determined to be responsive to the RFQ's specifications, the contracting officer would have the discretion to select the lower-priced Westinghouse furniture systems notwithstanding the fact that the firm's eight-wire electrical system was not approved by GSA as of the RFQ issuance date.

Under the Competition in Contracting Act of 1984, 31 U.S.C. § 3551(2) (Supp. IV 1986), and our Bid Protest Regulations, 4 C.F.R. §§ 21.0(a) and 21.1(a) (1989), a protest may be brought only by an interested party defined as an actual or prospective bidder or offeror whose direct economic interest would be affected by the award or failure to award a contract. In general, a party will not be considered interested where it would not be in line for award even if its protest were sustained. JC Constr. Co., B-229486, Dec. 29, 1987, 87-2 CPD ¶ 640.

Here, if Herman Miller's protest were sustained, the agency states that Westinghouse, rather than Herman Miller, would be in line for award because Westinghouse offered the same eight-wire electrical system but had a lower evaluated price. In these circumstances, since Herman Miller would

not be in line for the award of orders even if its protest were sustained, the protester is not an interested party to challenge the award to Haworth. 4 C.F.R. § 21.1(a).

The protest is dismissed.

A handwritten signature in black ink, appearing to read 'R. M. Strong', is written over the typed name and title.

Robert M. Strong
Associate General Counsel