



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: American Body Armor & Equipment, Inc.

File: B-238860

Date: July 3, 1990

W. Howard Johnson, for the protester.
J.J. Gallagher, Department of the Treasury, for the agency.
Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

1. Procuring agency properly awarded a purchase order for personal body armor (protective vests) to a higher priced, mandatory federal supply schedule contractor where the agency reasonably determined that the protester's low quote would not meet the agency's minimum needs.
2. Allegation that agency improperly awarded a purchase order to a federal supply schedule contractor at a price higher than the awardee's schedule price is denied where the record shows that the awardee's purchase order price to provide protective vests and extra carriers is the same as its schedule price, and that the difference between the awardee's purchase order price and schedule price is solely attributable to its price to stencil the agency's logo on each vest, an item not provided for in the federal supply schedule contract.

DECISION

American Body Armor & Equipment, Inc. (ABA) protests the award of purchase order No. ATF-90-013079 to Protective Apparel Corporation of America (PACA), by the Bureau of Alcohol, Tobacco and Firearms (BATF), Department of the Treasury, for personal body armor (protective vests) under PACA's General Services Administration mandatory federal supply schedule (FSS) contract. ABA, which submitted the lowest quote, contends that its quoted vests meet BATF's needs and that BATF improperly made award to PACA.

We deny the protest.

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BATF orally requested quotes from FSS contractors to determine what equipment the contractors would propose to meet the agency's needs for level IIA protective vests. Specifically BATF sought quotations for 125 vests, with extra carriers, and stenciled with the agency's logo. The agency received the following quotations:

<u>Vendor</u>	<u>Unit</u>	<u>Total</u>
APA	\$188.60	\$23,575
PACA	\$195.00	\$24,375
Point Blank Body Armor	\$207.00	\$25,875
Progressive Apparel	\$369.00	\$46,125

BATF states that it reviewed literature available about the products suggested by the vendors and concluded that ABA's quoted vest would not meet the agency's minimum needs. Accordingly, on January 18, 1990, the agency awarded a \$24,375 purchase order to PACA, the lowest priced vendor meeting the agency's needs.

ABA argues that BATF's evaluation was incorrect, that its quoted vests do meet the agency's minimum needs, and that it was entitled to award as the low offeror. We conclude, for the reasons stated below, that BATF reasonably determined that ABA's vest would not meet its minimum needs and thus need not be considered.

Quotations solicited from FSS contractors are informational responses, indicating the products the vendors would propose to meet the government's needs and the prices of those products and related services, which the government may use as the basis for issuing a purchase order to an FSS contractor. Herman Miller, Inc., B-232839, Jan. 26, 1989, 89-1 CPD ¶ 79. The procuring agency is required to place orders with the schedule contractor offering the lowest delivered price for products meeting the needs of the government. Federal Acquisition Regulation § 8.405-1. The determination of the agency's minimum needs and which products on the FSS meet those needs is properly the agency's responsibility, and thus we will only examine the agency's assessment of technical acceptability to insure that it had a reasonable basis. Herman Miller, Inc., B-230627, June 9, 1988, 88-1 CPD ¶ 549.

BATF states that it reviewed ABA's catalog and determined that ABA's quoted vest did not provide sufficient ballistic coverage to meet BATF's minimum needs. Specifically, the agency found that ABA's vest did not provide for overlap of the side panels and its coverage at the armholes was considerably less than that offered by PACA. ABA responds

that its vest, if correctly sized, would provide coverage equal to that of the other vendors.

While ABA disagrees with the agency's technical assessment, it has not shown that the agency acted unreasonably in concluding that ABA's vest would not meet its minimum needs. In this regard, we have reviewed ABA's and PACA's submitted catalog literature and see no basis on which to question BATF's determination that ABA's vest provided less coverage than PACA's vest. In view of the discretion afforded the agency in determining whether a product meets its needs, we find that the BATF's evaluation, based upon the material it reviewed, was reasonable. See Microdyne Co., B-224216, Dec. 18, 1986, 86-2 CPD ¶ 680.

BATF also states that it was concerned that ABA's vests, which are coated with a formaldehyde based resin, posed safety risks to its agents.^{1/} ABA contends that its use of a formaldehyde based resin posed no safety risk to wearers because the vests are constructed of multiple layers of kevlar, which are not permeable. In support of its argument, ABA has submitted the test report of an independent laboratory and copies of letters from a competitor and from a local police journal, apologizing to ABA for repeating the claim that ABA's vest posed safety hazards due to the formaldehyde coating.

However, at the time BATF found that ABA's vest might pose a safety risk, the information in BATF's possession indicated that ABA's vests were coated with formaldehyde, a "probable human carcinogen." Under the circumstances, given the small dollar value of this acquisition, BATF could reasonably determine, without consulting ABA, that its quoted vest might pose a safety risk to its agents and therefore would not meet its minimum needs.^{2/} Accordingly, BATF properly considered PACA, the next lowest priced vendor, for award.

ABA also contends that PACA's quoted price is higher than PACA's multiple-award schedule price. BATF responds that PACA's quoted price for the vest and extra carrier is the same as its FSS contract price. BATF explains that the difference between PACA's purchase order price and its FSS contract price is attributable to PACA's price to stencil

^{1/} The United States Environmental Protection Agency has found formaldehyde to be a "probable human carcinogen."

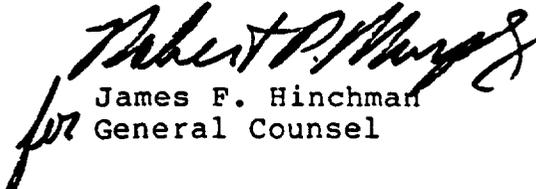
^{2/} Obviously, BATF should consider ABA's documentation responding to the safety concerns in future acquisitions.

the agency's logo on each vest, as requested by the agency. The stenciling of the vests, which PACA offered to perform at a price of \$5.74 per vest, is not provided for in the FSS contract.^{3/} ABA, on the other hand, had offered to stencil the logo on each vest at no additional charge. ABA also contends that logo stenciling alters the vest such that the stenciled vest is not on the FSS contract and could not be considered.

An agency may procure mandatory FSS items and non-FSS items that are incidental to the FSS items under a single procurement, so long as they meet the needs of the agency and offer the lowest aggregate price, and if the cost of the non-FSS items is small compared to the total cost of the procurement. See Amray, Inc., B-238682, B-238682.2, May 16, 1990, 90-1 CPD ¶ _____. Thus, given the relatively minimal stenciling cost, the award to PACA for stenciled vests is not objectionable, even though stenciling was not provided for in its FSS contract.

ABA finally protests that BATF failed to notify ABA of an imminent award of a small business set-aside contract. However, since this procurement was not set-aside for small business, this argument is without merit.

The protest is denied.


for James F. Hinchman
General Counsel

^{3/} PACA's multiple-award schedule price, and the price it quoted in the procurement, for the vest and extra carrier is \$189.26.