



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Design Contempo, Inc.

File: B-270483

Date: March 12, 1996

Robert E. Gregg, Esq., Hazel & Thomas, for the protester.

Robert E. Young, Esq., Department of the Navy, for the agency.

Paul E. Jordan, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Under Federal Supply Schedule (FSS) purchase, agency met its responsibility to select the best value item at the lowest overall cost by issuing a request for quotations to gather additional information on competing products, comparing features of protester's offered items with those of another FSS vendor, and selecting that vendor after reasonably determining that protester's items did not possess certain required special features.

DECISION

Design Contempo, Inc. (DCI) protests the issuance of a Federal Supply Schedule (FSS) delivery order to Furniture by Thurston based upon its response to request for quotations (RFQ) No. N62604-95-T-D943, issued by the Department of the Navy for dormitory furniture. DCI contends that the agency improperly determined that DCI's proposed items were not equal to Thurston's.

We deny the protest.

The Navy requires various items of bedroom furniture for bachelor enlisted quarters (BEQ) at the Norfolk Naval Shipyard, Portsmouth, Virginia. Prior to issuing any RFQ, the Navy contracted with an interior design firm, Hanbury, Evans, Newhill, Vlattas & Company (HENV), to develop an interior design for the BEQ rooms based on Navy requirements. These requirements included items with extensive detailing, generally found on higher-priced furniture, to improve the quality of life in the BEQs. In selecting furniture, HENV initially compared furniture and pricing for six FSS vendors, including Thurston and DCI. HENV sent all six an RFQ with written specifications at the end of May. After reviewing the vendors' submissions, HENV concluded that Thurston's furniture represented the best value, since its furniture met the most agency requirements at the lowest cost under the FSS. Based upon HENV's recommendation, the contracting officer prepared to issue a delivery order

to Thurston. Before the delivery order was issued, DCI requested an opportunity to submit another quote for the requirement. The contracting officer then issued a new RFQ, which referenced Thurston part numbers "or equal" and listed some, but not all, of the features of the Thurston furniture items.

Thurston and DCI submitted their initial quotes in August, and after the agency requested clarification on some matters, their final quotes in September. Thurston offered its FSS products for most of the items and provided "open market" quotes for four items (totaling less than \$24,000), for a combined price of \$300,609.60. DCI's quote, with a price of \$295,771, identified all of its items as FSS catalog products, but indicated that it had modified its standard products to match the specified Thurston part numbers. Both HENV and the contracting officer's representative evaluated the vendors' submissions and compared the offered features. Based upon this review, they determined that only Thurston's products met the Navy's requirements including function, maintenance, durability, and comfort. Accordingly, on September 27, the agency issued delivery orders to Thurston. DCI protested to the Navy on October 11. After the Navy denied its protest, DCI filed a protest with our Office.

DCI contends that the Navy erroneously determined that its products were not equal to the Thurston products. In DCI's view, its furniture equals or exceeds Thurston's furniture in all areas and costs less. The Navy argues that it reasonably determined that only the Thurston furniture met its minimum needs. We agree with the Navy.

The Competition in Contracting Act specifically provides that GSA's multiple award schedule program, of which the FSS is a part, is considered to be a competitive procedure, and purchasing from the schedule requires no further competition. 10 U.S.C. § 2302(2)(c) (1994); Federal Acquisition Regulation (FAR) § 6.102(d)(3). When agency requirements are satisfied through the use of the FSS, ordering activities need not seek further competition, synopsise the requirement, make a separate determination of fair and reasonable pricing, or consider small business set-asides. FAR § 8.404 (FAC 90-29). See generally Mohawk Data Science Corp., 69 Comp. Gen. 13 (1989).

Where, as here, the bulk of the items at issue are contained in a non-mandatory schedule, the decision whether to purchase an item from a vendor included on the schedule or to proceed with a new solicitation is a business judgment committed to the discretion of the contracting officer. Mohawk Data Science Corp., *supra*; AMRAY, Inc., B-210490, Feb. 7, 1983, 83-1 CPD ¶ 135. To reasonably ensure that a selection represents the best value and meets the agency's needs at the lowest overall cost, ordering activities should consider GSA's automated multiple award schedule information system or at least three price lists. FAR § 8.404(b)(2)(i). In selecting the best value items at the lowest overall cost, the activity may consider

such factors as special features of one item not provided by comparable items which are required in effective program performance, probable life of the item compared with that of a comparable item, and warranty conditions. FAR § 8.404(b)(2)(iii). Further, the determination of the agency's minimum needs and which products on the FSS meet those needs is properly the agency's responsibility. Herman Miller, Inc., B-230627, June 9, 1988, 88-1 CPD ¶ 549. Thus, our Office will only examine the agency's assessment of its needs to ensure that it had a reasonable basis. National Mailing Sys., Inc., B-252578, July 13, 1993, 93-2 CPD ¶ 17.

In view of the discretion afforded the agency in determining whether products meet its needs, we find the Navy's evaluation unobjectionable. For example, the evaluators found Thurston's drawers to be superior in their construction and materials. The Thurston drawer is constructed of six pieces (two sides, front, back, bottom, and separate decorative front), while DCI's are constructed of only five with the decorative front as an integral part of the drawer. The separate front on the Thurston drawer allows simpler replacement of damaged fronts. A comparably damaged DCI drawer front would require replacement of the entire drawer. The Thurston drawer front also features a plunge design handle (made by routing a groove into the drawer front) which the Navy found superior to DCI's. DCI had customized its quoted items to feature plunge pulls and furnished a sample, but the evaluators found that the sample showed a thinned area where too much wood had been routed out.

The evaluators also found superior Thurston's water-based finish, applied to all components, prior to assembly, by a computer controlled machine. DCI applies its finish by hand once the furniture item is assembled. The Navy concluded that the pre-assembly finishing was more advantageous because it ensured that swelling, shrinking, or shifting during shipment would not produce cracks in the finish. The Navy believed that DCI's method could allow gaps in the finish as the product shifts in handling or swells due to humidity levels. The evaluators also noted that when asked about warranties, Thurston had confirmed a 5-year warranty. While DCI offered to match any competitor's warranty, it only confirmed its standard 2-year warranty.

DCI argues that its drawer construction and finish are equal or superior to Thurston's. DCI contends that its five-piece drawer construction is stronger than Thurston's, that it could correct any problems with the plunge drawer pulls, and that there is nothing wrong with its finishing process. However, it has not submitted any evidence to establish that the agency's evaluations and conclusions were unreasonable. DCI's arguments to the contrary simply represent its disagreement, which does not itself render the evaluation unreasonable. Litton Sys., Inc., B-237596.3, Aug. 8, 1990, 90-2 CPD ¶ 115.

DCI also contends that the features upon which the Navy rejected its furniture were not listed as "salient characteristics" in the RFQ. In the protester's view, it is unfair to eliminate it from consideration based on unstated requirements. In this regard, DCI argues that it could have provided sufficient information to establish the equality or superiority of its products or otherwise sought to meet the requirements of the Navy. We find nothing objectionable in the Navy's actions.

Quotations in response to an RFQ are not offers that can be accepted by the government; rather, they are informational responses, indicating the products the vendors would propose to meet the agency's requirements and the prices of those products and related services that the government may use as the basis for issuing a delivery order to an FSS contractor. Crown Furniture Mfg. Inc., B-225575, May 1, 1987, 87-1 CPD ¶ 456. Thus, vendors responding to an agency's request for quotations for products on an FSS do not submit offers that define exactly what the vendor would supply at what price; that already is defined by their FSS contracts. Since such requests are merely intended to identify suitable products available on the FSS, evaluation of the products is not limited to consideration of the requirements mentioned in a request for quotations. Hugo Heyn Co., B-255329, Feb. 15, 1994, 94-1 CPD ¶ 113; Datum Filing Sys., Inc., B-230886.2, July 28, 1988, 88-2 CPD ¶ 97.

Here, the agency identified the Thurston FSS products meeting its minimum requirements and offered DCI the opportunity to establish that its FSS products were equal. To this end, DCI used FSS product options and non-FSS custom adjustments to attempt to match Thurston's products as much as possible. However, the products and any optional features placed on a vendor's schedule are intended to serve as essentially a catalogue of commercial products which can be chosen and ordered by the government, not starting points from which vendors may customize in order to match other vendors' products.

Since the Navy reasonably found that Thurston's furniture offered features which it sought and which were not available on DCI's FSS contract furniture, it properly issued a delivery order to Thurston.

The protest is denied.

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