



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Midmark Corporation

File: B-278298

Date: January 14, 1998

Dick Moorman, Jerry Stahl, and Olive Tumbusch for the protester.
Charles D. Kellam for Enochs Manufacturing, Inc., an intervenor.
Col. Nicholas P. Retson, Maj. Michael J. O'Farrell, Jr., and Fredrick M. Lewis, Esq.,
Department of the Army, for the agency.
Linda C. Glass, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Agency properly placed an order with Federal Supply Schedule vendor offering the lowest price for equipment meeting the agency's needs.

DECISION

Midmark Corporation protests the issuance of delivery order No. DAKF23-97-F-0524 to Enochs Manufacturing, Inc. by the Department of the Army for medical examination tables for the Blanchfield Army Community Hospital (BACH) at Fort Campbell, Kentucky. The delivery order was placed under Enochs's Federal Supply Schedule (FSS) contract.

We deny the protest.

After receiving a purchase request from BACH for 119 medical examination tables, the contracting officer decided to purchase the requirement under the FSS program. The FSS program, directed and managed by the General Services Administration (GSA), provides federal agencies with a simplified process for obtaining commonly used commercial supplies and services at prices associated with volume buying. Federal Acquisition Regulation (FAR) § 8.401(a). When placing an order under an FSS, an agency is not required to seek further competition, synopsize the solicitation or award, or determine fair and reasonable pricing, since the planning, solicitation, and award phases of the FSS satisfy these FAR requirements. FAR § 8.404(a); Design Contempo, Inc., B-270483, Mar. 12, 1996, 96-1 CPD ¶ 146 at 2.

The BACH purchase request was for an examination table with a pelvic tilt and listed the Midmark Model No. 405 as a compliant model. The contract specialist checked the FSS catalog to assess whether there were other examination tables that

satisfied the hospital's needs, and, after reviewing the schedule information, determined that two listed tables met the government's needs. The tables were the Enochs Power 4000, listed at \$3,483.78 per unit, and the Midmark Model No. 405, listed at \$3,385.85 per unit. Because of the substantial quantity to be ordered, in accordance with FAR § 8.404(b)(3), the contracting officer contacted both vendors about the possibility of a price reduction.

Enochs submitted quotes for its Power 4000 of \$3,100.56 per unit for a total of \$368,966.64 with a 4-year parts and labor warranty, and \$2,900 per unit for a total of \$345,100, for the same model with a 1-year parts and labor warranty and an additional 3-year parts-only warranty.

Midmark submitted a quote for its Model No. 405 of \$3,419.02 per unit for a total of \$406,863.38 with a 1-year parts and labor warranty (the quote was slightly higher than the FSS price due to the addition of a bracket). Midmark also submitted quotes for the Ritter Model 105 at \$3,240.14 per unit for a total of \$385,576.66 and the Ritter Model 107 at \$2,440.16 per unit for a total of \$290,379.04--both with the same 1-year warranties. In addition, Midmark offered a \$250 trade-in credit for each Midmark or Ritter power examination table and \$50 for each Midmark or Ritter non-power box style examination table (for up to 119 trade-ins).¹

BACH technical representatives reviewed the quotes and evaluated the tables to determine if they met BACH requirements. After the evaluation, the agency determined that the Enochs 4000 table (with a 1-year parts and labor warranty and additional 3-year parts-only warranty) best met the government's needs at the lowest price. The technical evaluators considered Midmark's quote for the Ritter 105 and 107 examination tables, but determined that these tables did not meet the agency's needs. The Ritter models were considered unacceptable because no extended warranties were offered and because the models lacked required safety features. The most significant feature which these models did not provide was an operator-resettable, externally mounted circuit breaker, which permits the operator to re-set the breaker without calling for additional maintenance support, and which was considered an essential patient safety requirement. A delivery order was issued to Enochs on September 18. Delivery of the tables has been suspended pending resolution of the protest.

In its protest, Midmark asserted that its Model 405 was the specified brand name and had certain unique features not found in the Enochs 4000. Midmark also argued that if award was based on price, then its Ritter Model 107 met the specifications and was cheaper than the Enochs 4000. The agency pointed out in its protest report that this acquisition was not conducted as a brand name or equal

¹The agency reports that the trade-in offer was not considered because BACH did not desire to trade in any examination tables.

procurement and that the unique features of the Model 405 referenced by Midmark were neither requested nor required by the user activity. In its comments on the agency report, Midmark abandoned its argument concerning its Model 405 and essentially asserted that it should have been issued the delivery order because its Ritter 107 meets the specifications at the lowest price. Midmark maintains that an external circuit breaker was not specified by the agency, but if one was necessary, Midmark could provide it at no extra cost, and that Midmark could also provide an extended warranty.

When ordering from the FSS, the procuring agency should place orders with the schedule contractor whose product represents the best value and meets the agency's needs at the lowest overall cost. FAR § 8.404(b)(2) (June 1997). The determination of the agency's needs and which product on the FSS meets those needs is properly the agency's responsibility, and we will only examine the agency's assessment of technical acceptability to ensure that it has a reasonable basis. Design Contempo, Inc., supra at 3.

Here, the agency evaluated the available technical information and concluded that the Midmark 405 and the Enochs 4000 met its requirements. When it contacted the appropriate vendors about the possibility of a price reduction, Enochs reduced the price for its warranted product. Midmark quoted a higher price for its Model 405 and, while Midmark also quoted its Ritter 107 model at the lowest price, the protester did not offer an extended warranty with this model, and the table lacked safety features which the agency considered essential to meet its needs. Consequently, the agency issued the delivery order to Enochs because it offered the table that best met agency requirements at the lowest price.

The agency explains that, while it does have some older Ritter 107 tables in use, because of the types of procedures they anticipate performing, this model lacks the safety features and the extended warranty necessary to meet the agency's current needs. In this regard, FAR § 8.404(b)(2)(ii)(A), (D) (June 1997) provided that the ordering activity may take into consideration warranty conditions and special features of an item not provided by comparable items, which are required for effective program performance. Here, based on these considerations, the agency reasonably determined that the Enochs 4000 table met agency requirements and that the Ritter 107 table did not. Midmark's assertion in its protest submissions that it could provide the Ritter 107 with an external circuit breaker at no extra cost and

offer the same warranty as did Enochs, at an unspecified price, does not establish that this model will meet the requirements of the agency at the lowest price.² Accordingly, we have no basis to question the agency's decision to issue the delivery order to Enochs.

The protest is denied.

Comptroller General
of the United States

²To the extent that the protester argues that the agency did not specifically advise it of the requirement for an external circuit breaker or extended warranty, there is no requirement under the regulations governing the use of the FSS that firms holding FSS contracts be provided with an exact statement of agency needs or that agencies negotiate special terms or conditions with FSS contractors for individual purchases. FAR Subpart 8.4. Such a requirement would be inconsistent with the catalog-type approach of the FSS program.