



Decision

Matter of: Haworth, Inc.; Knoll North America, Inc.

File: B-256702.2; B-256702.3

Date: September 9, 1994

Timothy McGee for Haworth, Inc., and Bay Chamberlain for Knoll North America, Inc., the protesters.
Matt Hinueber for Herman Miller, Inc., an interested party.
Alden F. Abbott, Esq., and Kenneth A. Lechter, Esq.,
Department of Commerce, for the agency.
Charles W. Morrow, Esq., and Guy R. Pietrovito, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Protests are sustained where the agency overstates its actual requirements in a request for quotations (RFQ) issued to mandatory Federal Supply Schedule vendors and makes award to a vendor whose products do not comply with the RFQ's stated requirements.

DECISION

Haworth, Inc. and Knoll North America, Inc. protest the issuance of a purchase order to Herman Miller, Inc. under request for quotations (RFQ) No. EASC-94-076, issued by the National Oceanic and Atmospheric Administration, Department of Commerce, to General Services Administration (GSA) mandatory Federal Supply Schedule (FSS) contractors for single system furniture workstations. Both Haworth and Knoll contend that Commerce improperly waived certain mandatory technical specifications in determining that Herman Miller's quoted furniture satisfied the agency's minimum needs, and that they would have offered less expensive products had they known of the agency's actual requirements. Knoll also contends that Haworth is not eligible to receive an award.

We sustain the protests.

Commerce determined its need for the system furniture based upon the design and layout work performed by a Haworth dealer. On August 4, 1993, Commerce initially requested quotations from five vendors, including Haworth, Knoll, and Herman Miller, whose system furniture was listed on the FSS.

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On September 23, Commerce issued a purchase order to Haworth. Haworth declined the purchase order because it believed that acceptance of the order would violate FSS contract pricing requirements.

On December 16, Commerce issued the current RFQ for 154 workstations to four vendors, including Haworth, Knoll, and Herman Miller. The RFQ listed detailed specifications that vendors' workstations were required to meet in order to be considered technically acceptable, and informed vendors that the technical "evaluation [would] be based only on products proposed (bid). Enhancements or additional inventory, at an additional cost to the [g]overnment, to allow the proposed product to meet these specifications will not be considered in the technical evaluation." These specifications covered the workstations' required electrical system, panels, worksurfaces, pedestals, overhead storage/shelving, flexibility/reconfiguration/new technologies, tasklights/keyboard pads, trim/filler pieces/special keying, and warranty. With respect to the panels, the RFQ stated that the panels were required to be equipped with top, bottom and vertical raceways to allow for separation of communication and power lines, and that top and vertical raceways were to be located in the interior of the panel and not be visible on the exterior.² Further, the RFQ required that the panel side rails allow for connection at any angle using a built-in, top to bottom connector and that panels connecting only at various points along the panel spine would be considered unacceptable. The RFQ required vendors to provide narrative descriptions and specifications demonstrating the acceptability of their proposed products.

Commerce received quotes from Herman Miller, Knoll, and Haworth in response to the RFQ. The evaluated prices of these quotes were as follows:

Herman Miller	\$456,627
Haworth	\$494,179
Knoll	\$568,899

The quotes were evaluated by a technical evaluation committee (TEC) that determined that only Haworth's and Knoll's quoted products satisfied the stated specifications.

¹Herman Miller's quote was rejected as late, and Knoll's quote was determined to be technically unacceptable.

²The raceways are channels through which communications and power lines run.

Herman Miller's quoted product was determined to be technically unacceptable because it did not satisfy the RFQ's specifications for the workstations' panels, worksurfaces, and flexibility/reconfiguration. Specifically, the TEC found that the panel-to-panel connection on Herman Miller's workstations utilized a draw-rod and connector system that, contrary to the RFQ's requirements, connected only at the top and bottom of the panels and which would require additional parts to allow the panels to connect at various angles. Also, Herman Miller's proposed panel system included only top and bottom raceways, and did not include the vertical raceway required by the RFQ. The TEC noted that a "vertical cable management panel (non-powered)" was available³ from Herman Miller but at a substantial additional cost. The TEC also questioned the weight limitations of Herman Miller's proposed worksurfaces, and noted that reconfiguration of Herman Miller's workstations would require the purchase of additional parts that would have to be stored.

On March 3, Commerce issued a purchase order to Haworth, as the vendor with the lowest-priced, acceptable quote. On March 11, Herman Miller protested Commerce's evaluation of its workstation and the propriety of the issuance of a purchase order to Haworth.

In response to Herman Miller's protest, the contracting officer reviewed Herman Miller's proposed product and independently determined that the TEC's evaluation was flawed because it was based upon two criteria that the contracting officer asserted were either nonfunctional in nature or were not set forth in the RFQ. Specifically, the contracting officer disagreed with the TEC's assessment that Herman Miller's quote was unacceptable regarding its need for additional parts to allow the future reconfiguration of its system and regarding the weight bearing limits of its proposed panel worksurfaces; the contracting officer determined that storing additional parts was merely a matter of inconvenience and that the RFQ did not contain a weight load requirement.⁴ Without considering any of the other

³The TEC found that Herman Miller's optional vertical cable management panel would cost an additional \$469 per 68-inch panel, \$419 per 54-inch panel, and \$378 per 40-inch panel.

⁴The technical specifications stated that "no additional inventory (parts, pieces, tools) are to be required during reconfiguration" and that "stability and connectability of different height panels without the need for additional inventory is required." With respect to the worksurfaces,
(continued...)

deficiencies the TEC identified in Herman Miller's quoted workstation, the contracting officer determined that Herman Miller's product was technically acceptable. On May 2, Commerce canceled the order with Haworth and issued a \$439,488 purchase order to Herman Miller, as the vendor with the lowest-priced, acceptable quote.⁵ These protests followed.

Both Haworth and Knoll assert that Herman Miller's workstation panels do not meet all of the RFQ's mandatory specifications.⁶ Specifically, the protesters assert that Herman Miller's offered workstation panels lack an internal vertical cable raceway and have panel side rails that only connect at the top and bottom, which only allow for connection at fixed angles. The protesters assert that they have a variety of workstation systems, incorporating various features and functions, on their respective FSS contracts and would have quoted much less expensive systems if the agency's actual minimum requirements had been made known.⁷

As an initial matter, Commerce argues that Haworth's protest is untimely because Haworth knew at least as early as April 18, 1994, that the agency was considering, in response to Herman Miller's protest, the cancellation of Haworth's purchase order and issuance of an order to Herman Miller. Commerce asserts that Haworth thus knew the basis of its protest on April 18, and its May 3 protest to our Office is untimely. We disagree. A protester need not file a

⁴(...continued)

the specifications did not contain a minimum weight load restriction.

⁵The lower purchase order price reflects Commerce's reduction of Herman Miller's quoted price to account for the work already completed by Haworth under that firm's purchase order.

⁶Knoll also protests that Haworth is ineligible to receive the award because its dealer performed the original design and layout work. Commerce determined that Haworth was eligible to compete based on the GSA's advice that Haworth could compete if it did not use the services of the same dealer that performed the original design and layout work. Based on this record, we cannot find that this advice was erroneous.

⁷After the agency, in its report, asserted that Herman Miller's product did not have to adhere to the nonfunctional RFQ requirements, the protesters timely asserted that if this was the case the agency overstated its actual requirements to their prejudice.

"defensive protest" where an agency has not made a final determination since a protester may presume that the agency will act properly. See Dock Express Contractors, Inc., B-227865.3, Jan. 13, 1988, 88-1 CPD ¶ 23. Since Haworth protested within 10 working days of the date it learned that Commerce had decided to cancel Haworth's purchase order and issue one to Herman Miller, its protest is timely. See 4 C.F.R. § 21.2(a)(2).

With regard to the merits of the protests, Commerce concedes that Herman Miller's workstations do not meet the specified internal vertical raceway requirement, but argues that the contracting officer reasonably determined that the internal vertical raceway requirement was "nonfunctional" in nature.⁸ Commerce similarly contends that Herman Miller's panel system satisfies the panel-to-panel connection requirements, notwithstanding that additional parts are required to meet the requirement that the panels connect at various angles.⁹ Commerce argues that in a mandatory FSS purchase the agency is required to evaluate quotes only using the functional specifications stated in the RFQ, and that other, nonfunctional specifications contained in the RFQ may not be enforced. Thus, the agency concludes that the contracting officer was reasonable in finding Herman Miller's workstation "technically compliant." The protesters assert in response, however, that they should have been given an opportunity to respond to the agency's actual minimum needs.

The determination of the agency's minimum needs and which products on the FSS meet those needs is properly the agency's responsibility, thus requiring that the agency need only have a reasonable basis in determining the technical acceptability of an FSS product. See American Body Armor & Equip., Inc., B-238860, July 3, 1990, 90-2 CPD ¶ 4. Nevertheless, where, as here, an agency's request for quotations invites competition, vendors must be given sufficient detail to allow them to compete intelligently and on a relatively equal basis; the agency's description of its needs must be free from ambiguity and describe the agency's minimum needs accurately. See Nautica Int'l, Inc., B-254428, Dec. 15, 1993, 93-2 CPD ¶ 321. This means that the agency has an obligation to describe its needs accurately, so that all vendors may compete on a common

⁸Although Herman Miller's quote indicated that there was an optional vertical cable management panel on the FSS contract, its quote did not reflect this option.

⁹As noted above, according to the RFQ specifications, the panel-to-panel connections must connect at various angles without using additional parts or pieces.

basis, since the agency must treat vendors consistent with the concern for a fair and equitable competition that is inherent in any procurement, e.g., where an RFQ does not accurately reflect the agency's needs, it should be amended so that all offerors can compete on a fair and equal basis. Dictaphone Corp., B-254920.2, Feb. 7, 1994, 94-1 CPD ¶ 75.

We find from our review of the record that Herman Miller's quoted workstations do not satisfy the stated requirements of the RFQ for the provision of a vertical raceway and flexible panel connections. Although the agency now asserts that Herman Miller's workstations could be modified to satisfy these requirements through the availability of an optional vertical cable management panel¹⁰ and of additional parts to allow for connection of its panels at fixed angles, Herman Miller's quote did not include these items, as required by the RFQ.

We also note that because Herman Miller's quoted workstations do not include the vertical cable management panel or the parts necessary to allow for all the required panel connections, Commerce would be required to purchase additional inventory if these stated requirements were to be met. The record shows that if Commerce had evaluated the price of these items in Herman Miller's quote, so as to make Herman Miller's workstation equivalent to that quoted by Haworth and Knoll, the evaluated price of Herman Miller's quote would have been higher than that of both Haworth and Knoll.

Notwithstanding the fact that Herman Miller's quoted product did not meet the stated RFQ specifications, the agency asserts that it could place the order with that firm, inasmuch as the vertical raceway and panel connection requirements were assertedly nonfunctional in nature and should not have been included in the RFQ. In this regard, Commerce states that generally only nonrestrictive specifications and requirements of a nonfunctional nature should be used in purchases from mandatory FSS contracts. We agree that agencies should state restrictive specifications only to the extent required to satisfy the agency's minimum needs. Nevertheless, as noted above, the agency is required to accurately describe its needs, so that all vendors may compete on a common basis in a fair and equitable competition. Dictaphone Corp., supra. This did not happen here. Rather, the agency's arguments concerning the waiver of these requirements for Herman Miller

¹⁰We have found that an external vertical cable management panel is not technically equivalent to an internal vertical raceway. See The Knoll Group, B-252385, June 23, 1993, 93-1 CPD ¶ 485.

demonstrate that the RFQ overstated what the agency now asserts are its minimum needs. Thus, Commerce's failure to unambiguously state what it now asserts are its minimum needs prevented Haworth and Knoll from submitting competitive quotes for the agency's actual requirements¹¹ and we sustain their protests on this basis. See Nautica Int'l, Inc., supra.

Where, as here, an agency determines that it is in the best interest of the government to proceed with contract performance in the face of a protest in our Office, and we sustain the protest, we are required by the Competition in Contracting Act of 1984, 31 U.S.C. § 3554(b)(2), to make our recommendation for corrective action without regard to any cost or disruption from termination, recompeting or reawarding the contract. Since the furniture has not been delivered, we recommend that Commerce revise the RFQ to set forth the agency's actual minimum needs and solicit new quotes to ensure that all firms are afforded an equal opportunity to compete based upon the same set of requirements. See Dictaphone Corp., supra. In addition, the protesters are entitled to recover the costs of filing and pursuing their protest, including reasonable attorneys' fees. 4 C.F.R. § 21.6(d). The protesters should submit their detailed and certified claims for such costs directly to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.6(f).

The protests are sustained.

/s/ James F. Hinchman
for Comptroller General
of the United States

¹¹For example, Knoll states, without rebuttal, that its quoted workstation under the agency's initial request for quotations was found unacceptable in part because of these same requirements that Commerce has now waived for Herman Miller; this led Knoll to quote a more expensive furniture system in response to this RFQ.