



## Decision

**Matter of:** Knoll North America, Inc.

**File:** B-259112; B-259113

**Date:** March 8, 1995

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Charles F. Gaul for the protester.  
Colonel Riggs L. Wilks, Jr., and Major Elizabeth DiVecchio Berrigan, Department of the Army, for the agency.  
Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest is sustained where contracting office furnished request for quotations (RFQ) for furniture system to only 2 of the 13 Federal Supply Schedule (FSS) contractors for which it had brochures on hand, since the applicable FSS calls for the purchasing office to furnish copies of the RFQ to all contractors for whom brochures are on hand, and Federal Acquisition Regulation § 8.405-1(a), in effect at the time the procurement was conducted, directed agencies ordering from FSS contracts to review the schedule price lists that were reasonably available at the ordering office.

2. Request for quotations for furniture system, which listed part numbers and dimensions for one manufacturer's product line, was unduly restrictive of competition since it requested quotations on a brand name or equal basis, but did not otherwise describe required characteristics of the furniture system sought.

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### DECISION

Knoll North America, Inc. protests the award of a purchase order for furniture to be used to configure workstations to American Seating c/o Interior Resolutions<sup>1</sup> under request for quotations (RFQ) No. DABT63-94-T-1112, issued by the Department of the Army, Fort Huachuca, Arizona. The protester complains that the agency failed to furnish it with a copy of the RFQ, thereby depriving it of the opportunity to compete, and that American Seating had an

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<sup>1</sup>Interior Resolutions is a dealer for American Seating products.

unfair competitive advantage over other competitors, and should therefore have been excluded from the competition. Knoll also objects to the solicitation format, which listed American Seating part numbers and requested quotations on a brand name or equal basis.

We sustain the protest.

Prior to issuing RFQ No. DABT63-94-T-1112, the agency issued RFQ No. DABT63-94-T-0522, which requested quotations for the preparation of ordering information for the furniture to be purchased under RFQ -1112. Quotations were received from three vendors, including the protester.<sup>2</sup> On August 14, 1994, a purchase order in the amount of \$50 was awarded to Interior Resolutions, which had quoted the lowest price for the services. The services provided by Interior Resolutions consisted of developing specific configurations using American Seating part numbers and quantities based on general specifications furnished by the agency.

On September 14, using the configurations developed by Interior Resolutions under RFQ -0522, the Fort Huachuca contracting office issued RFQ -1112, which listed American Seating part numbers and dimensions for 70 items used in workstation configurations (such as panels, work surfaces, task lights, shelves, drawers, and cabinets) and requested quotations on a brand name or equal basis. The RFQ did not specify the salient characteristics of the brand name or otherwise identify the components sought except by the brand name part number and dimensions.

The agency states that there are 40 vendors on the applicable FSS and that the contracting office had brochures and price lists on hand from 13 of them; however, the contracting office furnished copies of the RFQ to only three vendors: Interior Resolutions (as noted above, a dealer for the brand name manufacturer, American Seating), Haworth, and Interior Elements. The agency explains that when purchasing off the FSS, of which it is a nonmandatory user, it is its practice to solicit quotations from only three vendors since this eases the administrative burden on contracting personnel. The agency further notes that the

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<sup>2</sup>All three vendors had been awarded contracts for design/layout services under the General Services Administration's multiple award Federal Supply Schedule (FSS) for furniture systems.

<sup>3</sup>The protester complains that Interior Resolutions' quotation, which was received after the due date noted in the RFQ, was late, but concedes that any protest of the late quotation would now be untimely.

firms to which solicitations are distributed are informally rotated in an effort to give all vendors an opportunity to compete for some of the installation's requirements.

Here, two of the vendors solicited, Interior Resolutions and Haworth, held FSS contracts for furniture systems, while the third vendor, Interior Elements, did not. The agency explains that a non-schedule vendor was inadvertently solicited as a result of a miscommunication between the primary buyer, who was ill and out of the office at the time the procurement was conducted, and a substitute buyer. According to the agency, the primary buyer instructed the substitute buyer, by telephone, that "Interior, American Seating, and Haworth (and perhaps a fourth firm) were the next in line to receive RFQs, since they hadn't been included on recent RFQs." The substitute buyer, who was working from both the FSS and a list of vendor facsimile numbers, found two vendors on the facsimile list with "Interior" as part of their names--Interior Elements and Interior Resolutions--and sent each a copy of the RFQ to ensure that the "right" Interior received the RFQ. The contracting office further explains that Knoll was not selected to receive a copy of the RFQ since it had received other recent orders from the same office--and was thus "out of rotation"; in addition, the substitute buyer was unaware that Knoll had expressed an interest in this requirement.

Both Interior Resolutions and Haworth submitted quotations in response to the RFQ; Interior Elements did not. The agency issued an order in the amount of \$297,399.80 to Interior Resolutions on September 28. Knoll learned of the award on October 18 and protested to our Office on October 25.

The protester contends that it was improper for the Fort Huachuca contracting office to solicit quotations from only three vendors when it had pricing information available from more than three. In this regard, Knoll cites Federal Acquisition Regulation (FAR) § 8.405-1(a), which provided as follows with regard to ordering from multiple award schedules:

"Orders should be placed with the schedule contractor offering the lowest delivered price available. The ordering office shall review the schedule price lists that are reasonably available at the ordering office. Where the ordering office has available fewer than three price lists from current schedule contractors that offer the required items, the ordering activity shall

obtain additional price lists from schedule contractors listed in the GSA schedule for the required items. . . ."<sup>4</sup>

The contracting office argues in response that the solicitation of three vendors promotes efficiency and is all that the FSS for furniture systems requires. According to the agency, the schedule, which instructs purchasing offices to furnish copies of RFQs "to all contractors for whom brochures are on hand, or a minimum of three, for the [category of item] being procured," gives it the discretion to solicit either all of the contractors for whom it has brochures on hand--or only three of those contractors.

We do not think that the agency's interpretation is reasonable. On the contrary, the language in the FSS is clear: purchasing offices are to provide copies of RFQs to all schedule vendors for whom brochures are in hand, but in no case to fewer than three schedule vendors. Moreover, the language from the schedule must be interpreted in a manner consistent with FAR § 8.405-1(a), the relevant provision in effect at the time the procurement was conducted. That provision required that an ordering office review all of the price lists that were reasonably available to it. In order to review the price lists of schedule vendors for items such as workstation furniture for which different vendors offer differing configurations, an ordering office must first allow each of those vendors to identify suitable equipment listed on the schedule. Thus, we think that the ordering office had a responsibility to furnish a copy of the RFQ (or, at least, a pre-solicitation notification informing

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<sup>4</sup>Section 8.405-1 has been deleted from the FAR by Federal Acquisition Circular (FAC) No. 90-21 (October 25, 1994).

<sup>5</sup>The current version of FAR § 8.404(b)(2)(i)(B) provides that an ordering activity should review at least three price lists (if automated pricing information is not available) to ensure that a selection represents the best value and meets the agency's needs at the lowest cost. As with the deletion of FAR § 8.405-1, this provision was added by FAC 90-21, dated October 25, 1994, and therefore does not apply to the procurement at issue in the protest. In any event, even if this revised provision is interpreted to mean that a review of three price lists is sufficient regardless of the number of price lists actually on hand, the agency did not meet that standard in this procurement since, as noted above, only two of the three vendors to whom the RFQ was sent were schedule vendors; thus, the agency did not review "at least three price lists" even within the meaning of the revised FAR provision.

vendors of the forthcoming RFQ and giving them the opportunity to request a copy, see FAR § 14.205-4(c) to every schedule vendor for which it had a price list.

The protester also objects to the format of the RFQ, which listed American Seating part numbers and dimensions and requested quotations on a brand name or equal basis, but did not otherwise describe required characteristics (such as layout and square footage) of the workstations sought. Knoll contends that the use of only a brand name or equal description is unduly restrictive of competition and contrary to GSA guidance in the FSS for furniture systems.

The agency argues in response that use of a brand name or equal format enhances, rather than reduces, competition by "providing a common product for comparison." According to the contracting officer,

"it is typical in the furniture industry for a distributor to have several manufacturers' catalogues which they can use to compare and cross-walk part numbers from one manufacturer to another; use of part numbers therefore facilitates a distributor's comparison between manufacturers, thereby enhancing competition."

We agree with the protester that providing vendors with American Seating part numbers and dimensions and requesting quotations on a brand name or equal basis without specifying the agency's underlying requirements for layout and square footage was unduly restrictive of competition. The purpose of issuing an RFQ to vendors listed on an FSS is to allow them to identify suitable equipment listed on the schedule. Datum Filing Sys., Inc., B-230886.2, July 28, 1988, 88-2 CPD ¶ 97. To this end, an RFQ must furnish vendors with sufficient information to allow them to determine which of their products will meet the agency's needs. This means that the RFQ should include a purchase description setting forth the essential physical and functional characteristics of the items required, see FAR § 10.004(b)(1); an RFQ which fails to specify these characteristics improperly restricts competition by precluding potential offerors of equal

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<sup>6</sup>As noted above, the Fort Huachuca contracting office reports that it has on hand brochures for 13 schedule vendors. Thus, this is not a case where the number of schedule contractors for which pricing information was available is excessive relative to the value of the acquisition, such that rotation of the list of vendors might be appropriate. See FAR § 14.205-4(b).

products from determining what characteristics are considered essential for its items to be accepted. Listo Int'l Corp., 63 Comp. Gen. 447 (1984), 84-1 CPD ¶ 665; T-L-C Sys., B-227470, Sept. 21, 1987, 87-2 CPD ¶ 283.

The RFQ here did not furnish this information. Rather than specifying the agency's requirements for layout and square footage and allowing vendors to propose solutions for satisfying those requirements, the RFQ furnished vendors with American Seating's proposed solution to meeting its workstation needs and asked them for prices for comparable solutions. The flaw in this approach is that it precluded other vendors from proposing significantly different--but equally satisfactory--solutions to meeting the agency's needs. Rather than specifying American Seating's part numbers and dimensions and requesting quotations on a brand name or equal basis, the contracting office should have furnished all interested vendors a package containing prototypical workstations and quantities, design/layout requirements, and any specifications over and above the base specification included in the schedule--which is precisely the approach recommended by the GSA in the FSS for furniture systems.

Finally, the protester argues that American Seating enjoyed an unfair competitive advantage over other schedule vendors as a result of the services performed by its dealer, Interior Resolutions, under RFQ -0522; Knoll argues that, as a result, American Seating should not have been permitted to submit a quotation under RFQ -1112. In this regard, the protester cites FAR § 9.505-2, which bars a contractor that has prepared specifications or a work statement to be used in a competitive acquisition from competing for the goods or services to be acquired.

We agree with the protester that American Seating gained an unfair advantage over other potential competitors here. The advantage did not result from American Seating's or its dealer's participation in the drafting of specifications or a work statement; however, rather, the advantage accrued from Interior Resolutions' status as the only firm to which the agency's workstation specifications and layout requirements had been furnished. Where one firm enjoys a competitive advantage over others because it has been given access to material information not furnished to others, the appropriate course of action is to equalize the competition by furnishing all competitors with the same information. Foley Co., B-253408, Sept. 14, 1993, 93-2 CPD ¶ 165. Here, as previously noted, the specifications and layout requirements should have been furnished to other schedule vendors as part of RFQ -1112.

Since the furniture ordered from American Seating has already been delivered and installed, cancellation of the order and resolicitation of the agency's requirements is not practicable. For purposes of future acquisitions of furniture systems, we recommend that the contracting office revise its RFQ format consistent with our decision. Finally, we find that the protester is entitled to the costs of filing and pursuing its protest. 4 C.F.R. § 21.6(d)(1) (1994). In accordance with 4 C.F.R. § 21.6(f), Knoll's certified claim for such costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after receipt of this decision.

The protest is sustained.

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

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<sup>7</sup>While continuing to defend the correctness of its interpretation that it was required to solicit quotations from only three vendors, the contracting office has proposed to revise its procedures "in an effort to resolve this protest." The contracting office proposes that in the future it will "announce furniture purchases from [the FSS for systems furniture] through Electronic Data Interchange (EDI) or presolicitation notices, offering prototypes, typicals, and layouts upon request from schedule holders." Further, it will permit every schedule holder to compete on each quote, and will cease sending RFQs to dealers not identified in the schedule.