

154565



Comptroller General
of the United States
Washington, D.C. 20548

1111315

Decision

Matter of: Charter of Lynchburg, Inc.
File: B-260017
Date: May 22, 1995

Richard L. Ramsey for the protester.
Col. Thomas F. Brown and Maj. Larry T. McRell, Department of the Air Force, for the agency.
Tania L. Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly purchased higher-priced furniture on Federal Supply Schedule (FSS) instead of protester's less expensive, non-FSS furniture where the agency reasonably determined that the protester's non-FSS furniture neither met its minimum needs nor represented the best value to the government.

DECISION

Charter of Lynchburg, Inc. protests the issuance of delivery order Nos. F1461495FA185 and F1461495FA186 to American of Martinsville by the Department of the Air Force for dormitory furniture to be used at McConnell Air Force Base, Kansas. The delivery orders were placed under American of Martinsville's Federal Supply Schedule (FSS) contract Nos. GS-00F-5330A and GS-27F-2001B. Lynchburg, an FSS contractor offering prices on non-FSS furniture, argues that the agency improperly rejected its "low bid."

We deny the protest.

After obtaining clearance from Federal Prison Industries (FPI) to acquire this furniture from another source, the contracting officer determined to acquire the furniture from

¹Agencies must purchase required supplies of the classes listed in the Schedule of Products made in Federal Penal and Correctional Institutions, such as here, and must obtain clearance from FPI before supplies on the Schedule are acquired from other sources. Federal Acquisition Regulation (FAR) §§ 8.602(a), 8.605(a).

an FSS source due to cost, schedule, and lead-time considerations. The FSS program, directed and managed by the General Services Administration (GSA), provides federal agencies with a simplified process for obtaining commonly used supplies and services at prices associated with volume buying. FAR § 8.401(a). When placing an order under an FSS, an agency is not required to seek further competition, synopsise the solicitation or award, or determine fair and reasonable pricing, since the planning, solicitation, and award phases of the FSS comply with FAR requirements. FAR § 8.404(a); Comspec Corp., B-245561, Jan. 15, 1992, 92-1 CPD ¶ 74. While the Air Force, as part of the Department of Defense (DOD), is a nonmandatory user of the FSS, see Defense FAR Supplement (DFARS) § 208.404-1, DOD agencies are encouraged to "[m]ake maximum use of the schedules." DFARS § 208.404-2.

To solicit FSS vendors, the contract specialist researched the available schedules and, on September 1, 1994, sent a list and description of the required furniture to several FSS vendors, including Lynchburg, asking them to "bid" on the requirements. While this request did not indicate that FSS pricing was sought, as discussed below, the contract specialist states that she discussed this requirement with each vendor by telephone.

On September 8, Lynchburg sent the contract specialist a quotation based on the Taylor-Ramsey furniture collection, which is available under an FSS. Lynchburg informed the agency that it had already built furniture like that requested, and, with only a minor modification to its existing product, would build what was requested. In response to the agency's September 26 request to "rebid," based on slightly different quantities and items, Lynchburg provided a second price quotation. The Air Force received five price quotations in response to its requests. Lynchburg's quotation, \$371,756, was fourth-low, and American of Martinsville submitted the highest-priced quotation, \$410,410.² The three lower-priced quotations were all rejected because they did not meet the agency's minimum specifications.

Lynchburg states that the contract specialist informed the firm on November 14 that it had submitted the lowest-priced quotation, and the record shows that the contract specialist subsequently asked the protester to provide various additional specifications to the agency. However, on December 8, the contracting officer reviewed the procurement

²These prices are exclusive of those offered for bed spring units, as those units were subsequently excluded from these delivery orders.

record and realized that, since Lynchburg was offering a modified version of its FSS furniture, the actual furniture it proposed to provide was not on an FSS--a fact which Lynchburg does not dispute. Moreover, designers at the requiring activity had informed the contracting officer that Lynchburg's furniture was inferior to that of American of Martinsville. As a result, on December 15, the Air Force issued these delivery orders to American of Martinsville. Prior to receiving a response to its December 27 agency-level protest, Lynchburg filed this protest in our Office.

As an initial matter, contrary to Lynchburg's apparent understanding, the Air Force's request for prices on this furniture did not constitute a formal invitation for bids. 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. Haworth, Inc., B-252826; 252831, July 29, 1993, 93-2 CPD ¶ 61. There was, therefore, nothing improper in the agency's decision to order its needs from the FSS, without issuing a formal solicitation. See Comspec Corp., SUPRA.

While Lynchburg argues that it did not know the Air Force was seeking FSS pricing, the contract specialist states that she orally informed each vendor of this requirement at the time the requests were issued. In addition, the contract specialist states that in November 1994 she asked Lynchburg's representative if the firm's quotation was for furniture "on GSA contract" and was told that its furniture was an "approved GSA line." In response, Lynchburg merely asserts that if it had known the agency wanted FSS pricing, it would not have offered non-FSS furniture, and points to the agency's continued negotiations with the firm as evidence that it was not seeking FSS pricing. However, the agency reports that Lynchburg's assertion that it would make "minor modifications" to its FSS furniture did not indicate that it was offering non-FSS furniture because many FSS vendors allow for variations or options which give customers more flexibility. Only when the contracting officer reviewed the procurement file and saw that Lynchburg had agreed, in a November 15 submission, to build to the exact specifications of American of Martinsville, did it become clear that Lynchburg was not offering FSS furniture, since such modifications were beyond any options written in Lynchburg's FSS contract. Lynchburg does not rebut the agency's contention in this regard.

However, Lynchburg argues that the Air Force should have issued the delivery orders to it because it offered to provide the requested furniture at the lowest price.

The determination of the agency's minimum needs and which products meet those needs is properly the agency's responsibility. Government procurement officials, who are familiar with the conditions under which supplies and equipment have been and will be used, are generally in the best position to know what constitutes their minimum needs. National Mailing Sys., B-250441, Jan. 28, 1993, 93-1 CPD ¶ 75. Thus, our Office will only examine the agency's assessment of its needs to ensure that it had a reasonable basis. American Body Armor & Equip., Inc., B-238860, July 3, 1990, 90-2 CPD ¶ 4.

The Air Force's primary consideration in issuing these delivery orders to American of Martinsville was the fact that the Air Mobility Command's Civil Engineering Design Center, which had provided guidance on the quality characteristics of each furniture line proposed here, determined that American of Martinsville's furniture was the best choice among these vendors due to its superior quality and its longer life. While Lynchburg "takes issue" with the agency's view that its furniture is inferior to that offered by American of Martinsville, its challenge consists only of a statement that the agency's view is just "opinion"; the protester does not specifically rebut the agency's described distinctions between the two furniture lines. We therefore have no basis to question the agency's decision to issue these delivery orders to American of Martinsville.

In any event, contracting agencies are required to satisfy their requirements for supplies from or through a list of sources in descending order of priority. FAR § 8.001(a). Purchasing from the FSS has a higher priority than purchasing through non-FSS commercial sources. FAR § 8.001(a)(1). Since Lynchburg's offered furniture was not on an FSS, and since the agency's minimum needs were satisfied by American of Martinsville's furniture, the Air Force could properly satisfy its needs through the FSS and not purchase the furniture from Lynchburg.

The protest is denied.

\s\ Ronald Berger
for Robert P. Murphy
General Counsel