



**G A O**

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**Comptroller General  
of the United States**

**United States Government Accountability Office  
Washington, DC 20548**

# Decision

**Matter of:** Haworth Inc.

**File:** B-297053.4

**Date:** June 7, 2006

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David W. Burgett, Esq., and Allison D. Pugsley, Esq., Hogan & Hartson LLP, for the protester.

Robert J. Conlan, Esq., Sidley Austin LLP, for Herman Miller, Inc., an intervenor.

Cecillia Chu, Esq., GSA Public Buildings Service, for the agency.

Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## **DIGEST**

1. Protest that agency unreasonably rejected protester's quotation for failing to timely include all quoted items under its Federal Supply Schedule (FSS) contract is denied where agency advised firms that it required all quoted items to be included under FSS contract by a specific date, and protester failed to ensure that all of its quoted items were in fact included under its FSS contract by that date.

2. Protest assertion raised initially in protester's comments is dismissed as untimely where record shows that protester had all necessary information to raise argument at time initial protest was filed.

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## **DECISION**

Haworth, Inc. protests the award of a blanket purchase agreement (BPA) to Herman Miller, Inc. under its Federal Supply Schedule (FSS) contract, pursuant to request for quotations (RFQ) No. RFQ78965, issued by the General Services Administration (GSA) to acquire furniture for a new federal office building in San Francisco, California. Haworth asserts that the agency improperly rejected its quotation as unacceptable.

We deny the protest.

The agency issued the RFQ in April 2005, soliciting quotations to provide the furniture requirements of the tenant organizations that are to occupy the new San Francisco Federal Building. Vendors were required to offer both a stand-alone and a

modular line of furniture. In June 2005, GSA awarded a blanket purchase agreement (BPA) to Herman Miller. Haworth challenged the award in an agency-level protest and, subsequently, filed a protest with our Office. After reviewing the protest filed in our Office, the agency took corrective action by terminating the BPA and reevaluating the quotations; based on the reevaluation, the agency awarded a BPA to Haworth. Herman Miller challenged this award in a protest filed in our Office. After investigating the bases for protest, GSA again took corrective action, terminating Haworth's BPA and reopening the acquisition. Both of these protests were based on assertions that the awardees of the BPAs did not have all of their quoted furniture items included under their respective FSS contracts at the time contemplated by the RFQ.

Thereafter, the agency issued a series of amendments to the RFQ. Amendment No. 0004 established a revised deadline for having quoted furniture items included under vendors' FSS contracts.<sup>1</sup> After receiving new quotations, the agency determined that the vendors still did not have all of their products included under their respective FSS contracts. Accordingly, GSA issued amendment No. 0008, which provided as follows:

All products offered must be on GSA schedule contract no later than February 8, 2006. Note, it is the contractor's full responsibility to ensure that all products in their offer are entirely on the FSS Schedule by the referenced date. The Government will consider an offeror's failure to do so as non-responsive and may be grounds for default.

Agency Report (AR), exh. 17.

Haworth submitted a preliminary revised quotation, based on which the agency determined that not all of the firm's quoted items were on its FSS contract. The agency brought this to Haworth's attention in a series of correspondence; Haworth submitted various iterations of revised materials (the last of which was submitted on February 8) to demonstrate that, in fact, all of its quoted products were included under its FSS contract. On February 9, the agency engaged in discussions with Haworth, during which it noted (among other things), that it appeared that the firm still did not have all of its quoted items included under its FSS contract. Thereafter, during another series of correspondence between the agency and Haworth, GSA again pointed out (among other things) that it appeared that some of Haworth's quoted items still were not included under its FSS contract. On February 24, Haworth submitted its final revised quotation, which included information showing that, on February 16, eight days after the deadline established in the solicitation,

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<sup>1</sup> Haworth filed another protest as well (B-297053.3), complaining that the electrical specifications in the solicitation were unduly restrictive; we dismissed that protest as untimely on February 22, 2006.

Haworth had apparently finally succeeded in having all of its products included under its FSS contract. Thereafter, on May 2, the agency advised Haworth that its quotation had been rejected for failure to meet the requirement that all quoted items be included under its FSS contract by February 8. Haworth then filed this protest in our Office.

Haworth concedes that not all of its quoted items were included under its FSS contract by February 8. It asserts, however, that it nevertheless was unreasonable for the agency to reject its quotation, since, according to Haworth, only two items were omitted from its FSS contract, and even those items were included by February 16, that is, prior to the February 24 deadline for final revised quotations. The protester essentially asserts that the agency's actions elevate form over substance.

We conclude that the agency's actions were reasonable. The RFQ, in this third iteration of the acquisition, established an unequivocal deadline--February 8--for vendors to have all of their quoted items included under their FSS contracts. The RFQ was equally clear in stating that it was the vendors' responsibility to ensure that this requirement was met, and that the consequences of a failure to do so would be that the agency would find the quotation "nonresponsive" (i.e., unacceptable). Moreover, the agency repeatedly advised Haworth, both before and after the issuance of amendment No. 0008, of its continuing concern that the firm had not met the requirement.<sup>2</sup> Haworth never demonstrated that all of its quoted items had in fact been timely included under its FSS contract, nor did Haworth request that the agency extend the February 8 deadline. Under these circumstances, we conclude that the agency properly rejected Haworth's quotation.

Haworth argues that the agency should have evaluated its quotation notwithstanding its failure to timely include all of its quoted items under its FSS contract. According to the protester, even if the agency properly disregarded the items in question, it had other equivalent items under its FSS contract that the agency should have considered. The protester maintains that this was permissible, since this was a best value acquisition with technical evaluation criteria.<sup>3</sup>

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<sup>2</sup> The agency advised Haworth of its continuing concern in letters dated January 27, February 1, 10 and 21. AR, exhs. 18, 20, 23, 26.

<sup>3</sup> In its initial letter of protest, Haworth made a similar argument, namely, that the agency had erred in finding its quotation nonresponsive overall. In this regard, Haworth argued that, since the items omitted from its FSS contract were solely from its stand-alone line of furniture, and the RFQ provided for the possibility of awarding the two furniture lines separately, the agency should have evaluated its quotation for

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Protest grounds such as these must be raised no later than 10 days after the information on which they are based was known or should have been known. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (2006). Further, where, after filing a timely protest, the protester later supplements it with new protest grounds, the later-raised grounds must independently satisfy our timeliness requirements. L-3 Sys. Co. Wescam Sonoma, Inc., B-297323, Dec. 3, 2005, 2005 CPD ¶ 219 at 4-5. Here, Haworth had all of the information necessary to raise these arguments when it filed its protest on March 10. Specifically, Haworth was aware that its quotation had been rejected for failing to timely include all of its quoted items under its FSS contract, even though its quotation included what it now claims are equivalent items. Thus, to the extent Haworth believed the agency should have evaluated its equivalent items instead of rejecting the quotation, it was required to raise this argument at the time it filed its protest. Haworth did not do so; it raised this argument for the first time in its comments on the agency report. Haworth Comments, Apr. 24, 2006, at 4-6. Under these circumstances, this aspect of the protest is untimely and will not be considered.<sup>4</sup>

The protest is denied.

Anthony H. Gamboa  
General Counsel

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award of the modular furniture only. Haworth Initial Letter of Protest, Mar. 10, 2006, at 5. In its comments on the agency report, Haworth expressly withdrew this ground of protest. Haworth Comments, Apr. 24, 2006, at 5-6 n.7.

<sup>4</sup>To the extent Haworth believes this assertion constitutes a more specific argument under its more general assertion that the agency erred in rejecting its quotation overall rather than evaluate it exclusive of the items not timely included under its FSS contract, it nonetheless is untimely. Where a protester raises a broad ground of protest in its initial submission, but fails to provide details within its knowledge until later, so that a further response from the agency is needed, these latter, more specific, arguments must independently satisfy our timeliness requirements. L-3 Sys. Co. Wescam Sonoma, Inc., supra, at 5.