



GAO

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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Encompass Group, LLC

File: B-411428

Date: July 8, 2015

H. K. Tyler Jr., Encompass Group, LLC, for the protester.
Bridget E. Grant, Esq., Department of Veterans Affairs, for the agency.
Heather Weiner, Esq. and Jonathan L. Kang, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

1. Protest that a solicitation for warm-up jackets failed to include the estimated number of each combination of style, color, and size of jackets in a procurement to establish multiple blanket purchase agreements for the jackets, is denied where the agency provided its best estimate of the total number of jackets required, and the agency did not have historical information or any other reasonable way to estimate the number of jackets it may need in each combination.
2. Protest that the agency failed to conduct adequate market research for conducting the procurement under the Federal Supply Schedule is denied where the agency reasonably concluded from its market research that quotations would be received from at least three contractors that can fulfill the requirements of the RFQ.

DECISION

Encompass LLC, of McDonough, Georgia, a small business, protests the terms of request for quotations (RFQ) No. VA119-15-Q-0110, issued by the Department of Veterans Affairs (VA) for warm-up jackets. Encompass argues that the solicitation fails to include details concerning the estimated number of each type of jacket required. The protester also asserts that the agency failed to conduct adequate market research, and that there are not any vendors that can provide the warm-up jackets in accordance with the RFQ.

We deny the protest.

BACKGROUND

The RFQ for this requirement was originally issued through the General Services Administration's (GSA) e-Buy system, on June 21, 2014, under a different solicitation number. Agency Report (AR) at 1. The RFQ was issued pursuant to Federal Acquisition Regulation (FAR) subpart 8.4 to vendors holding contracts under VA Federal Supply Schedule (FSS) 65 II A, Medical Equipment & Supplies. The solicitation sought quotations to provide warm-up jackets to be worn by hospital personnel over scrubs. Specifically, the RFQ provided that vendors be required to provide warm-up jackets that are available in two styles (v-neck and round neck), three colors (jade green, misty green and ceil blue), and in sizes ranging from extra small to five extra large. AR, Tab 3, Original RFQ, at 6. The RFQ included 54 contract line item numbers (CLINs) of the different combinations of the required styles, colors, and sizes of the warm-up jackets.¹ Id. at 11-15.

Under the original RFQ, vendors were to be selected for establishment of a blanket purchase agreement (BPA) on a lowest-priced, technically-acceptable basis. Id. at 22. Although the RFQ included an overall estimate of 11,306 jackets each year, it did not include quantity estimates for each item (combination of style, color, and size). Id. at 4. The RFQ stated that the price evaluation was to be based on the unit prices for one of each line item. Id. at 11-15.

In deciding to use the VA FSS for this procurement, the agency reviewed prior VA contract vehicles for this requirement, and issued a request for information which led to the receipt of statements from 22 vendors indicating they could meet the requirements. AR, Tab 5, Market Research Memo (Apr. 7, 2014), at 1-5. In addition, the agency hosted a virtual vendor day, and called VA FSS Schedule II contract holders to ensure all required items were on the VA FSS. Id., 5, 7; AR at 13-14. Based on the market research, the VA concluded that at least seven vendors appeared able to meet the VA's requirements, and confirmed that its requirements could be met through the VA FSS by at least three vendors. AR at 13; Tab 5, Market Research Memo (Apr. 7, 2014), at 26-29; Tab 4, CO Statement from Prior Protest (July 14, 2014), at 3, 6.

On July 7, Encompass filed a protest with our Office challenging the terms of the VA's original RFQ. Specifically, Encompass argued that the RFQ did not accurately describe the agency's needs because it did not provide the estimated quantities of each combination of style, color, and size required. AR, Tab 1, Encompass Protest of Original Solicitation (July 7, 2014), at 1-2. Encompass also asserted that there were not any vendors that could meet the RFQ's requirements. Id. at 3. On

¹ For example, line item 1 was for a round neck, extra small, jade green jacket. AR, Tab 3, Original RFQ, at 11.

October 28, our Office issued a decision denying Encompass' protest. Encompass Grp., LLC, B-410148, Oct. 28, 2014, 2014 CPD ¶ 314.

Notwithstanding our Office's denial of Encompass' protest, the VA subsequently determined that there were inconsistencies within the minimum technical requirements listed in the original RFQ for the jackets. CO Statement at 1-2. Based on this determination, the agency revised some of the minimum technical requirements to be more in line with industry standards, and re-issued the solicitation on March 31, 2015. Id. Other than a few minor changes to the minimum technical requirements for the warm-up jackets and some slight formatting changes, the new RFQ is virtually identical to the original RFQ. Compare AR, Tab 3, Original RFQ, with RFQ.

In this regard, the RFQ, issued pursuant to FAR § 8.405-3, contemplates the establishment of multiple BPAs under the VA FSS 65 II A, with ordering periods of 60 months, under which the agency will issue orders on a fixed-price basis. RFQ at 28. The RFQ seeks warm-up jackets to be worn by hospital personnel over scrubs, and states that vendors will be required to provide warm-up jackets that are available in two styles (v-neck and round neck), three colors (jade green, misty green and ceil blue), and in sizes ranging from extra small to five extra large. RFQ at 6. The RFQ includes 54 CLINs of the different combinations of the required styles, colors, and sizes of the warm-up jackets. Id. at 11-15.

The solicitation provides for the establishment of the BPAs on a lowest-priced, technically-acceptable basis. RFQ at 28. As relevant here, although the RFQ includes an overall estimate of 11,306 jackets each year, it does not include quantity estimates for the CLINs (combination of style, color, and size of jackets). Id. at 4, 5. With regard to price, the solicitation advises that the price evaluation is to be based on the unit prices for one of each CLIN item. Id. at 28. In addition, the RFQ requires that a vendor hold the FSS contract by the time quotations are due, and that all items required by the solicitation be available on the vendor's FSS contract at the time of award. Id. at 24, 26.

On April 14, Encompass filed a protest with our Office challenging the terms of the RFQ. Thereafter, the agency received quotations from five vendors, including Encompass, by the RFQ's closing date. AR, Tab 14, Agency Email (Apr. 30, 2015), at 1.

DISCUSSION

Encompass asserts that the solicitation fails to accurately describe the VA's needs because it does not specify estimated quantities for each combination of the style, color, and size required for the warm-up jackets. The protester also argues that the agency failed to conduct adequate market research for conducting this procurement under the FSS. For the reasons discussed below, we find no merit to the protester's arguments.

Encompass first argues that, although the RFQ provides an estimate of 11,306 jackets per year, the solicitation fails to provide an estimated quantity for each combination of jacket (style, color, and size) required for the warm-up jackets. Encompass contends that, without this information, it cannot provide its best pricing because it cannot know how much material and labor will be required to manufacture each jacket.

Encompass' assertions are the same as those previously addressed and denied by GAO in our prior decision regarding the original RFQ. In our prior decision addressing this issue, we noted that the VA stated that it "has no further information available regarding the estimated number of jackets it will need in different styles, sizes, and colors." Encompass Grp., LLC, supra, at 2. We also noted that the agency specifically stated that "its historical information regarding orders for these items 'doesn't go to that level of detail.'" Id. Because Encompass could not show that the agency had any historical information or any other reasonable way to estimate the number of jackets it may need in each style, size and color combination, this protest issue was denied. See id. (explaining that an agency's obligation with regard to estimated quantities when establishing BPAs under FSS contracts to fill repetitive needs for supplies or services is to base its estimate on the best information available).

In the instant protest, although the solicitation number has changed, the requirements and terms of the solicitation are essentially the same as the original RFQ. As before, the VA asserts that, beyond the overall estimate of 11,306 jackets a year, it has no information available regarding the estimated number of jackets it will need in different styles, sizes and colors. AR at 8. Encompass, in response, does not contend, or otherwise demonstrate, that the VA has any additional historical information or any other reasonable way to estimate the number of jackets it may need in each style, size and color combination. Rather, the protester raises general concerns regarding the risk to industry of bidding on such a solicitation when the government bears no responsibility for ordering the quantities estimated.² Protester's Comments at 2. On this record, we find no basis to sustain the protest.

² As our Office has held, the mere presence of risk in a solicitation does not make the solicitation inappropriate or improper. Supreme Foodservice GmbH, B-405400, B-405400.2, Oct. 31, 2011, 2011 CPD ¶ 244 at 10. It is within an agency's discretion to offer for competition a proposed contract that imposes maximum risks on the contractor and minimum burdens on the agency, and an offeror should account for this in formulating its proposal. JRS Mgmt., B-402650.2, June 25, 2010, 2010 CPD ¶ 147 at 5. There is no requirement that a competition be based on specifications drafted in such detail as to eliminate all risk or remove every uncertainty from the mind of every prospective offeror. Abba Int'l, Inc. et al., B-311225.4, Feb. 2, 2009, 2009 CPD ¶ 28 at 7; Supreme Foodservice GmbH, supra. Risk is inherent in most type of contracts, and firms must use their professional expertise and business judgment in anticipating a variety of influences (continued...)

Next, Encompass argues that the VA failed to conduct adequate market research and that, had it done so, the agency would have discovered that there are not any FSS contractors that can meet the RFQ's requirements.

Under FAR § 8.405-3(a)(1), ordering activities may establish BPAs under any schedule contract to fill repetitive needs for supplies or services. As pertinent here, when establishing multiple-award BPAs for supplies not requiring a statement of work, and when the estimated value of the BPA exceeds the simplified acquisition threshold, the contracting officer is required to either: (1) post the RFQ on e-Buy to afford all schedule contractors offering the required supplies under the appropriate multiple-award schedule(s) an opportunity to submit a quotation; or (2) provide the RFQ to as many schedule contractors as practicable, consistent with market research appropriate to the circumstances, to reasonably ensure that quotations will be received from at least three contractors that can fulfill the requirements. Id. § 8.405-3(b)(1)(ii)(B)(1)-(2).

Here, the record reflects that the VA complied with the applicable FAR provisions to solicit this requirement through the FSS program. The VA posted the RFQ on e-Buy, which allowed all vendors under the relevant schedule contract (VA FSS 65 II A) to submit quotations. AR at 15. In addition, in response to the RFQ, the agency received five quotations, including a quotation submitted by Encompass. AR, Tab 14, Agency Email (Apr. 30, 2015), at 1. The agency also provided information detailing its market research, which included: reviewing prior VA contract vehicles for this requirement, issuing a request for information which led to the receipt of statements from 22 vendors indicating they could meet the requirements, hosting a virtual vendor day, and calling VA FSS Schedule II contract holders. AR at 13-14; Tab 5, Market Research Memo (Apr. 7, 2014), at 2-3, 5, 7. Based on the market research, the VA concluded that at least seven vendors appeared able to meet the VA's requirements, and confirmed that its requirements could be met through the VA FSS by at least three vendors. AR at 13; Tab 5, Market Research Memo (Apr. 7, 2014), at 26-29; Tab 4, CO Statement from Prior Protest (July 14, 2014), at 3, 6.

Encompass responds that, "in [its] opinion there has been no adequate market research made," but the protester fails to put forth any specific arguments as to why the agency's prior market research is insufficient. Protester's Comments at 2. On this record, we find no basis to sustain the protest; the protester's allegations provide nothing more than disagreement with the agency's conclusions and do not

(...continued)
affecting performance costs. JRS Mgmt., supra; Supreme Foodservice GmbH, supra.

demonstrate that the agency's market research, or its decision to solicit this requirement through the FSS program, were unreasonable.³

The protest is denied.

Susan A. Poling
General Counsel

³ Although Encompass claims that there are not any FSS contractors that can meet the RFQ's requirements, Encompass is one of the five vendors that submitted a quotation in response to the RFQ. AR, Tab 14, Agency Email (Apr. 30, 2015), at 1.