



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Protective Group, Inc./Protective Materials
Company Division

File: B-236975

Date: January 11, 1990

DIGEST

Protest that agency--after terminating for convenience a contract initially awarded under a request for quotations (RFQ) to another firm based on determination that awardee did not satisfy all RFQ requirements--should have awarded contract to only other quoter, protester, is denied where agency reasonably found all quotes, including protester's, technically unacceptable and concluded that RFQ failed to reflect its minimum needs.

DECISION

Protective Group, Inc./Protective Materials Company Division (PMCo), protests the cancellation of request for quotations (RFQ) No. N0464A-89-Q-0047, issued by the Department of the Navy for explosive ordnance disposal (EOD) suits. PMCo asserts that, after terminating for convenience the delivery order initially issued under the RFQ to American Body Armor (ABA), the Navy should have issued a new delivery order under the RFQ to the protester based on its low, technically acceptable quote.

We deny the protest.

BACKGROUND

The RFQ was issued in July 1989 to the four existing vendors, including ABA and PMCo, on the Federal Supply Schedule (FSS) for EOD suits; the purpose was to obtain the protective suits centrally for use by disposal teams around the world. The Maximum Order Limitation (MOL) set by the General Services Administration for this particular FSS item was \$100,000 per vendor; because the Navy needed suits in quantities in excess of that limitation, it used requote procedures, under which existing vendors on the schedule are asked to quote prices for quantities of the scheduled item

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that exceed the MOL. Under those procedures, once vendors quote on the suits in quantities exceeding the MOL, the Navy may issue a delivery order to any of the vendors whose suits the agency determines are acceptable. The basis for award was the lowest overall price for the item satisfying the requirements of the ordering activity.

The RFQ included a list of salient characteristics for the suits that were required by the agency; the list was derived from an Army Letter Requirement for protective suits that was drafted in 1978, as revised and updated by the Navy to reflect its current needs. Salient characteristic No. 7 stated that suits shall be produced "in the minimum number of sizes to accommodate the 5th through the 95th percentile for full protection of, and efficient utilization by, U.S. Navy EOD personnel (male and female)." (Emphasis added.) In evaluating ABA's and PMCo's technical submissions, the Navy found that ABA's offer of a "one-size-fits-all" suit complied with this requirement, but that the specification was not satisfied by PMCo's offer of a suit that required a total of five sizes (extra-small through extra-large) to fit the designated population. With regard to cost, moreover, although PMCo's quoted price was lower than ABA's, the Navy determined that the cost of distributing PMCo's five-size suit to match the needs of constantly changing personnel around the world would be greater than the comparable administrative cost related to ABA's one-size suit, and would offset PMCo's apparent price advantage. Thus, the agency concluded that ABA could meet its requirements at the lowest overall price, and issued a delivery order to the firm.

Subsequently, after PMCo protested the award to the agency, the Navy terminated for convenience the delivery order it had issued to ABA; the Navy concluded that ABA, while fully acceptable on the sizing issue, did not comply with certain other requirements of the RFQ (ABA's suit failed to satisfy the salient characteristics concerning overall weight and the time required to put on the suit and remove it). Further, based on its review of the quotes received, the Navy concluded that the RFQ did not adequately state the agency's actual needs or reflect what was available in the marketplace, since no manufacturer's quote complied fully with its specifications. Consequently, the Navy determined that no delivery order should be issued under the RFQ and that a request for proposals should be issued instead, with specifications that would more accurately reflect the agency's requirements.

ANALYSIS

PMCo asserts that the Navy's determination that its offer did not meet the agency's requirements was incorrect and that, since PMCo's product was fully compliant with the RFQ, the Navy was required to issue a delivery order to PMCo after determining that ABA's quote was deficient. We disagree.

As a general matter, when quotations are requested from FSS vendors, the quotations, unlike bids, are not offers that can be accepted by the government; rather, they are informational responses, indicating the type and price of the equipment the vendors would provide to meet the agency's requirements. The government may use the information as the basis for issuing a delivery order to an FSS contractor, but it is not required to place a delivery order where the vendor has not offered to provide precisely the item determined necessary to meet the minimum needs of the agency. See Herman Miller, Inc., B-234704, July 10, 1989, 89-2 CPD ¶ 25. In determining whether an item meets the agency's needs, we will not substitute our evaluation for the agency's assessment of technical acceptability, but will only examine the agency's assessment to insure that it had a reasonable basis. Id.

Here, we find that the Navy had a reasonable basis for concluding that the protester's offer did not meet its actual needs and that a delivery order therefore should not be issued to that firm. The Navy has explained that it intended to send only one or two EOD suits to each of numerous locations around the world; the agency considered it essential, therefore, that suits be purchased in the absolute minimum number of sizes that would fit 90 percent of EOD personnel, whose assignments and locations would be constantly changing. According to the Navy, aside from the regular 2-year rotations undergone by military personnel generally, EOD personnel move more frequently to meet changing military needs, including emergencies such as terrorist bomb threats. To insure that an EOD specialist would always have a suit available that would fit, regardless of where he or she was sent, or how short the advance notice, the ideal "minimum number of sizes" was one. Consequently, the Navy concluded that PMCo's suit, provided in five sizes, would not meet its needs.

PMCo disputes the agency's rationale. For example, the protester refers to a technical report on its suits which, it asserts, states that five sizes were unnecessary to fit the 5th through the 95th percentile of personnel, and that

only three sizes would be required. The protester suggests that the Navy should have known that, at most, only three sizes of the PMCo suit would have to be ordered. Since, according to PMCo, ABA's "one-size-fits-all" suit would in fact have required two sizes, the difference between PMCo's and ABA's product actually amounted to only one additional size, and was therefore negligible; if the Navy made any reasonable effort to identify the actual needs of its EOD personnel and to order and transfer suits according to actual needs, then the lower cost of PMCo's suit would outweigh any disadvantages resulting from the requirement for one additional size. Thus, the administrative and economic burden of matching suits to personnel would not be significantly greater with PMCo's product than with ABA's.

We find these arguments unpersuasive. Initially, we note that what PMCo actually offered in its technical submission was not three sizes, but five. In addition, since that technical submission did not include a copy of the referenced report concerning PMCo's suits that might have put the Navy on notice of the three-size option, and the Navy reports that its agency evaluators were not aware of the report, we find that the agency had no reason to believe that PMCo was offering anything other than a five-sized suit. In any event, the Navy reports that it considered the possibility of obtaining suits in three sizes but determined that its needs still would best be met by fewer sizes; in this regard, the Navy states that its own technical report, based on fittings in training exercises, indicated that, contrary to PMCo's assertion, ABA's suit would in fact accommodate 90 percent of EOD personnel in one self-adjusting size. Moreover, even if PMCo, were correct that the ABA suit really required two sizes, and that the PMCo suit required only three, the former would still better satisfy the RFQ's requirement for the minimum number of sizes.

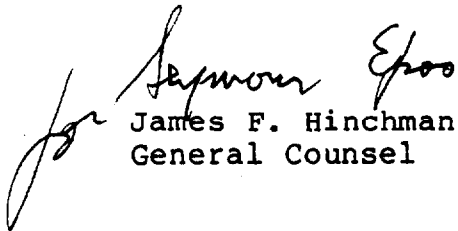
PMCo further asserts that it is unreasonable to read salient characteristic No. 7 to mean that one size was required; according to the protester, both the RFQ and the Army Letter Requirement on which it is based clearly contemplate five sizes. In support of this argument, PMCo cites a product description that was prepared in accordance with the letter requirement that specifies five sizes of suit, extra-small through extra-large. Although we agree with PMCo that salient characteristic No. 7 does not require a "one-size-fits-all" suit, we do not agree that, conversely, the RFQ contemplated acceptance of a quote based on five sizes. Rather, we understand the word "minimum," when used in connection with sizes, simply to mean the fewest number possible. Thus, while three to five sizes may not have been

unacceptable per se, compared to the one or two sizes the agency contemplated, five sizes clearly would not satisfy the requirement as the agency intended it.

Under these circumstances, we believe it was reasonable for the agency to determine that PMCo's quote would not meet its needs, and instead to review those needs and possibly issue a solicitation containing revised requirements. See Commercial Office Env't., B-220191, Oct. 24, 1985, 85-2 CPD ¶ 458.

Finally, PMCo suggests that the Navy's actions in this procurement were motivated by a desire to steer the award to ABA. According to PMCo, it protested an earlier RFQ for the same item on the ground that the specifications had been tailored to ABA's product; although the Navy canceled that RFQ, the protester states that the present solicitation reflects a similar predisposition towards making an award to ABA. When a protester contends that contracting officials are motivated by bias or bad faith, it must provide convincing proof, since contracting officials are presumed to act in good faith. Milcare, Inc., B-230876, July 8, 1988, 88-2 CPD ¶ 29. PMCo merely notes the successive RFQs and concludes, with no further proof, that favoritism motivated the Navy to resolicit twice. In light of the rationale for the agency's actions in the present procurement, which we have found reasonable, we find that PMCo's unsupported allegations do not constitute the proof required. Id.

The protest is denied.


James F. Hinchman
General Counsel