



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Kitco Defense, Inc.

File: B-405510

Date: October 4, 2011

J. Brent Wood, Kitco Defense, Inc., for the protester.
Thomas Dougherty, Esq., Defense Logistics Agency, for the agency.
Linda C. Glass, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest challenging solicitation requirements as unduly restrictive of competition is denied where agency demonstrates that the challenged requirements are reasonably related to the agency's current minimum needs.

DECISION

Kitco Defense, Inc., of Springville, Utah, protests the terms of Request for Quotations (RFQ) No. SPM5M2-11-Q-0913, issued by the Defense Logistics Agency (DLA) for 7,500 O-rings used in the C-130 aircraft. Kitco argues that the RFQ is unduly restrictive of competition in violation of the Competition in Contracting Act (CICA) of 1984.

We deny the protest.

BACKGROUND

On March 14, 2011, in consideration for Kitco's withdrawal of two protests filed with our Office (B-404746 and B-404804), the agency agreed to submit Kitco's Source Approval Request (SAR) package, which was previously determined to be unacceptable, to the Engineering Support Activity (ESA) for reevaluation. Contracting Officer's Statement at 1. The agency also agreed to withhold any award decision under solicitation No. SPM5M2-11-T-2368, which was the solicitation at issue in B-404746, pending completion of the reevaluation. *Id.* Kitco's SAR package was reevaluated by the ESA and determined to be technically unacceptable due to a dimensional nonconformance. *Id.* at 2. Kitco was notified of the rejection of its SAR package on July 13. Agency Report (AR), Tab 4, SAR Rejection. On July 14, the

agency cancelled solicitation No. SPM5M2-11-T-2368 due to changes to the agency's supply requirements. AR, Tab 5, Notice of Cancellation.

This RFQ was issued on July 20, 2011, using simplified acquisition procedures pursuant to the authority of Federal Acquisition Regulation (FAR) subpart 13.5, "Test Program for Certain Commercial Items."¹ RFQ at 2. The RFQ anticipated the award of a fixed-price delivery order under a basic ordering agreement. *Id.* The RFQ sought quotations for 7,500 O-rings, which were described by National Stock Number 5331-00-079-9759 (NSN 9759) and by Meggitt Aircraft Braking Systems Corporation's Part Number 9522828. RFQ at 3-4. Meggitt is the only approved manufacturing source for this item. Contracting Officer's Statement at 2. The RFQ included DLA Directive (DLAD) § 52.217-9002, which required that vendors offer either the product cited in the item description or a product physically, mechanically, electrically, and functionally interchangeable with that product. RFQ at 8. This provision also described the procedures for the submission and evaluation of alternate products. RFQ at 10.

On August 5, Kitco submitted a quotation in response to the subject RFQ. The quotation offered Kitco's alternate part and requested approval of its revised SAR package which was also submitted on August 5. AR, Tab 8, Kitco's Revised SAR Cover Letter. On August 10, prior to the closing time, Kitco filed this protest with our Office.

The RFQ closed on August 10 and on August 11, the agency sent Kitco's revised SAR package to the ESA for evaluation. AR, Tab 9, E-mail Forwarding Kitco's SAR. Kitco's revised SAR package is still being evaluated and the agency has not conducted an evaluation of the quotations submitted or made an award under the RFQ. Contracting Officer's Statement at 2.

DISCUSSION

Kitco essentially protests that the quantity of 7,500 O-rings being purchased exceeds the agency's minimum needs, unduly restricts competition and precludes Kitco from competing. Protest at 1.

The agency states that the quantity solicited was based upon its need to fill priority backorders, to prevent the grounding of military aircraft, and to address the increase in demand for the item. AR, Tab 6, Supply Planning Memo.² Specifically, the

¹ FAR subpart 13.5 authorizes the use of simplified procedures for the acquisition of commercial supplies and services in amounts greater than the simplified acquisition threshold but not exceeding \$5.5 million.

² Because the Supply Planning Memo contains procurement sensitive information and because the protester was not represented by counsel who could be admitted to
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requirement for 7,500 O-rings was based on the agency's calculation of the daily average demand and the quantities necessary to satisfy backorders. Id.

It is well established that the expression of the government's requirements in a solicitation must reflect the actual and legitimate needs of the government. Sentinel Elect., Inc., B-212770, Dec. 20, 1983, 84-1 CPD ¶ 5 at 2, Kings Point Mfg. Co., Inc., B-220224, Dec. 17, 1985, 85-2 CPD ¶ 680 at 2. We have held that this principle applies to the quantity of an item which an agency determines to be necessary to perform its mission. Sentinel Elect., Inc., B-212770, supra. In this regard, the determination of a contracting agency's needs and the best method of accommodating them are matters primarily within the agency's discretion and we will not question its determination absent a clear showing that it is unreasonable. Systems Application & Techs., Inc., B-270672, Apr. 8, 1996, 96-1 CPD ¶ 182 at 3. Further, where a requirement relates to national defense or human safety, an agency has the discretion to define solicitation requirements to achieve not just reasonable results, but highest possible reliability and/or effectiveness. Atlantic Coast Contracting, Inc., B-270491, B-270590, Mar. 13, 1996, 96-1 CPD ¶ 147 at 3. A mere difference of opinion between the protester and the agency concerning the agency's needs does not show that the agency judgment is unreasonable. Dynamic Access Sys., B-295356, Feb. 8, 2005, 2005 CPD ¶ 34 at 4.

The protester argues that the agency has purchased significantly fewer than the 7,500 O-rings and questions why the agency needs more now. Protest at 1. As explained above, the record contains the agency's statements regarding its determination of its minimum requirements which was based on its backorders and its increase in demand for the item. On the record presented, we have no basis to question the agency's representations.

The protester further argues that, once the agency knew that the protester was submitting a revised SAR package, the agency should have reduced the quantity to reflect its "urgent" minimum needs. Comments at 5-6. As stated above, the agency has determined that it has a current need for 7,500 O-rings, and we have no basis to conclude that this quantity is not necessary to satisfy the agency's needs.

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a protective order, the memo was not provided to the protester as part of the agency report; we have reviewed the document in camera.

Moreover, the record shows that the protester submitted a quote for the total quantity along with its revised SAR package which is currently being evaluated by the agency.³

The protest is denied.

Lynn H. Gibson
General Counsel

³ The protester alleges that the agency violated the terms of corrective action letters with respect to the earlier protests. Such an allegation is not a valid basis of protest. Our bid protest jurisdiction is limited to deciding protests “concerning an alleged violation of a procurement statute or regulation.” 31 U.S.C. § 3552 (2006). Thus, we will not consider an argument concerning compliance with a corrective action letter except to the extent the protester asserts that an agency’s deviation from its intended corrective action resulted in a prejudicial violation of procurement laws or regulations. See American Mktg. Assocs., Inc.-Recon., B-274454.4, May 14, 1997, 97-1 CPD ¶ 183 at 2-3. There has been no such allegation here.