Decision

Matter of: Warrior Service Company

File: B-417572

Date: August 16, 2019

Frank V. Reilly, Esq., for the protester.
Tyler W. Brown, Esq., Department of Veterans Affairs, for the agency.
Alicia D. Martinez, and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the terms of a solicitation is denied where the agency reasonably classified the procurement in accordance with the terms of the solicitation and allowed a reasonable amount of time for the submissions of quotations in accordance with applicable procurement law and regulation.

DECISION

Warrior Service Company (Warrior), a small business of Valley Stream, New York protests the terms of request for quotations (RFQ) No. 36C24419Q0573, which was issued by the Department of Veteran Affairs (VA) for the procurement of two battery-operated sit-to-stand patient lifts and two battery-operated mobile passive patient lifts. Warrior argues that the VA misclassified the procurement and provided vendors with an unreasonable amount of time to respond to the RFQ, which together prevented it from finding the RFQ and submitting a timely quotation.

We deny the protest.

BACKGROUND

On May 9, 2019, the VA issued the RFQ as a combined synopsis/solicitation, which was set aside for service-disabled veteran-owned small businesses in accordance with the commercial item and simplified acquisition procedures of Federal Acquisition Regulation (FAR) parts 12 and 13. RFQ at 1. The RFQ contemplated the issuance of a fixed-price purchase order for two battery-operated sit-to-stand patient lifts, two battery-operated mobile passive patient lifts, and two batteries and a wall charger, for the Philadelphia
VA Medical Center. Id. at 1, 5. The solicitation stated that award would be made to the lowest-priced technically acceptable vendor.\textsuperscript{1} RFQ at 20.

Quotations were due on May 14, 2019, at 3 p.m., thus allowing potential vendors approximately five days to respond to the solicitation. RFQ at 1. On the date the quotations were due, prior to the 3 p.m. closing time, Warrior filed this protest with our Office.

DISCUSSION

Warrior challenges the terms of the solicitation, arguing that the VA misclassified the solicitation as a procurement for the manufacture of goods instead of a procurement of services, and that the VA did not give potential vendors a reasonable amount of time to prepare a quotation. Protest at 1.

Warrior first alleges that it was unable to find the solicitation on the Federal Business Opportunities (FBO) website because the agency improperly classified the procurement.\textsuperscript{2} Protest at 1. The RFQ was classified as a solicitation for supplies under code 65, “Medical, dental & veterinary equipment & supplies.”\textsuperscript{3} See posting for RFQ No. 36C24419Q0573, available at fbo.gov (last visited July 23, 2019). Warrior argues that the procurement is “for the furnishing of products and related training, which are services.” Protest at 2. While the protester does not specify under what classification code the agency should have classified the solicitation, it argues that the agency should have classified this procurement as a service rather than a supply because of the inclusion of the training component.\textsuperscript{4} Id. at 1-2.

\textsuperscript{1} The solicitation states that “[t]echnical and past performance, when combined, are less important than price.” RFQ at 20. However, while the solicitation includes required specifications for the products being solicited, it does not include any information regarding the evaluation of the proposed products or submission or evaluation requirements for past performance.

\textsuperscript{2} Section 5.207(e) of the FAR specifies that contracting officers must use one of the classification codes found on fbo.gov to identify services or supplies in synopses.

\textsuperscript{3} The RFQ was further classified under North American Industry Classification System (NAICS) codes 339 “Miscellaneous Manufacturing” and 339112 “Surgical and Medical Instrument Manufacturing.”

\textsuperscript{4} To the extent that the protester challenges the agency’s designation of the NAICS code as a manufacturing NAICS code, we dismiss this protest ground. A challenge to a NAICS code determination is a matter for resolution by the Small Business Administration, which has exclusive authority over NAICS code determination appeals and is not a matter for consideration by our Office. 4 C.F.R. § 21.5(b)(1).
In response, the VA contends that the solicitation was properly classified as a procurement of supplies because the training is incidental to the procurement of the product and is built into the manufacturer’s cost. Contracting Officer’s Statement (COS) at 2. In this regard, the VA asserts that any training associated with the procurement is “incidental to the supply of the equipment.” Memorandum of Law (MOL) at 3. The agency argues that the solicitation “did not have a cost factor for training because the training was an incidental cost included in the manufacturer’s price.” COS at 2.

The responsibility for determining the appropriate classification code rests with the contracting officer, and classification determinations necessarily involve some degree of judgment on the part of the contracting officer. Kendall Healthcare Prods. Co., B-289381, Feb. 19, 2002, 2002 CPD ¶ 42 at 4. Our Office will not object to such a determination unless it is shown to be unreasonable. Price Waterhouse, B-239525, Aug. 31, 1990, 90-2 CPD ¶ 192 at 4.

Here, we find reasonable the agency’s classification of the solicitation as a procurement of supplies. While there is a training component associated with the procurement of the patient lifts, we agree with the agency that training is incidental to the procurement of the lifts and is not the primary component of the procurement. In this regard, the solicitation states that “if deemed necessary,” vendors will provide up to five days of training to ensure all shifts receive competency training for the item. RFQ at 6. Since this training does not have any standalone costs and is not a recurring service provided to the agency, but instead is an upfront service in order for employees to use the lift, we find that the agency reasonably classified this RFQ as a procurement of supplies. This protest ground is denied.

Warrior next alleges that it was unable to submit a quotation because the agency did not allow a reasonable amount of time for vendors to respond to the solicitation. Protest at 1. The protester argues that the record does not support the agency’s decision to provide five days to respond to the solicitation because the time allowed by the VA did not reasonably take into account the complexity, commerciality, availability, and urgency of this particular procurement. Supp. Comments at 2.

The Competition in Contracting Act of 1984 generally requires contracting agencies to obtain full and open competition through the use of competitive procedures, the dual purpose of which is to ensure that a procurement is open to all responsible sources and to provide the government with the opportunity to receive fair and reasonable prices. 41 U.S.C. § 3301(a). Agencies generally must allow at least 30 days from the date of issuance of the RFQ for the receipt of quotations. FAR § 5.203(c). However, an agency may allow fewer than 30 days to respond to a solicitation where the agency is acquiring commercial items or the procurement is below the simplified acquisition threshold, both of which apply here. Id.; FAR § 5.203(b). In these instances, the contracting officer should afford potential vendors a reasonable opportunity to respond considering the circumstances of the acquisition, such as the complexity, commerciality, availability, and urgency of the individual acquisition. Id. Agencies need only establish a solicitation response time that will afford potential offerors a reasonable opportunity to

The agency responds that the RFQ is for the procurement of a commercial item below the simplified acquisition threshold and as such, it may allow for fewer than 30 days for potential vendors to respond to the solicitation. COS at 2; Supp. MOL at 1. The agency further contends, and we agree, that the time allotted to submit quotations was reasonable considering the complexity, commerciality, availability, and urgency of the individual acquisition. Id. Here, as the agency argues, the procurement is for only two line items that do not require the submission of “lengthy technical [quotations].” Supp. MOL at 2. Moreover, the procurement is for a “commercially available off the shelf item” of “extremely low complexity based upon the low dollar value.” Supp. COS at 1. While the protester argues that more time could be provided to maximize competition, it has not shown that the agency’s provision of five days to respond to the solicitation is unreasonable. This protest ground is denied.

The protest is denied.

Thomas H. Armstrong
General Counsel

5 The agency further notes that it received four quotations in response to the RFQ, which further demonstrated the reasonableness of the time period for vendors to submit quotations.