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# Decision

**Matter of:** CareFusion Solutions, LLC

**File:** B-418736.2

**Date:** October 22, 2020

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William A. Shook, Esq., The Law Offices of William A. Shook PLLC, for the protester.  
Julie M. Nichols, Esq., Roeder, Cochran, Phillips, PLLC, for Omnicell, Inc., the intervenor.

C. Clay Weisenberger, Esq., Department of the Army, for the agency.

Sarah T. Zaffina, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protester that does not have a Federal Supply Schedule (FSS) contract is not an interested party to challenge the agency's issuance of a delivery order under the FSS contract.

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## DECISION

CareFusion Solutions, LLC (CareFusion), of San Diego, California, protests the issuance of a delivery order to Omnicell, Inc., of Mountain View, California, under request for quotations (RFQ) No. 1424443, issued by the Department of the Army, Corps of Engineers, to supply and install medical supply and pharmaceutical point of use (POU) cabinets and management system. CareFusion challenges the agency's issuance of the delivery order.

We dismiss the protest.

## BACKGROUND

On April 20, 2020, the Army issued RFQ No. 1424443 through the General Services Administration (GSA) e-Buy portal, which Federal Acquisition Regulation (FAR) subpart 8.4 has designated as GSA's electronic RFQ system where ordering activities post requirements. FAR 8.402(d); Agency Report (AR), Tab 1, GSA e-Buy RFQ Posting

(RFQ Posting) at 1.<sup>1</sup> The RFQ was limited to holders of GSA FSS contract 65 II A, Medical Equipment & Supplies, pursuant to the procedures of FAR subpart 8.4. *Id.*; Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 1. The RFQ sought an estimated 262 medical supply and pharmaceutical POU automated distribution cabinets, as well as services to configure and test the medication and supply management system in the William Beaumont Army Medical Center's new replacement hospital at Fort Bliss, Texas, to be delivered 365 days after award. *Id.*, RFQ Posting at 1. The delivery order would be issued to the vendor that submitted the lowest-priced, technically acceptable quotation. AR, Tab 2, Conformed RFQ at 2-3.<sup>2</sup>

The agency received quotations from two vendors, CareFusion and Omnicell, through the e-Buy portal by the closing date of June 8. AR, Tab 4, Competitive Range Determination at 1. The agency determined discussions were necessary and issued amendment 8 directly to CareFusion and Omnicell, requiring quotations to be submitted via email directly to the agency.<sup>3</sup> *Id.* at 2; RFQ amend. 8 at 4; COS/MOL at 2. CareFusion and Omnicell submitted revised quotations by the revised deadline, June 17, and the agency determined both quotations were acceptable. AR, Tab 7, Combined Pre-Negotiation Objective Memo. & Price-Negotiation Memo. (Price-Negotiation Memo.) at 2. Omnicell's quoted price was \$5,349,360, while CareFusion's quotation was lower at \$4,892,171; therefore, following the evaluation, the Army issued the delivery order to CareFusion on July 2. Price-Negotiation Memo. at 5-6; AR, Tab 8, CareFusion Delivery Order at 1.

At the time the Army issued the delivery order to CareFusion, CareFusion no longer had an FSS contract because it had been cancelled effective July 1. AR, Tab 9, Emails from CareFusion at 1; see AR, Tab 10, Cancellation of CareFusion FSS Contract 65 II A at 1. After learning from CareFusion that it was no longer an FSS contract holder, the Army determined that CareFusion's quotation was non-responsive and not eligible for award. Price-Negotiation Memo. at 8-10. The Army issued an order to Omnicell which had submitted the next lowest-priced, technically acceptable quotation. *Id.* at 9-10; AR, Tab 11, Omnicell Delivery Order at 1. On July 8, the Army notified CareFusion of its decision to issue the delivery order to Omnicell and this protest followed. AR, Tab 12, Unsuccessful Offeror Notice at 1.

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<sup>1</sup> Citations to the record are to the document .pdf page number where the document does not include page numbers.

<sup>2</sup> During the course of this procurement, the RFQ was amended nine times; however, only amendments 8 and 9 are relevant to this protest. Protest at 3; COS/MOL at 1; Comments at 2-3. Unless otherwise noted, all references to the solicitation relate to the conformed RFQ through amendment 7. See *generally* AR, Tab 2, Conformed RFQ.

<sup>3</sup> Amendment 8 revised the RFQ to correct the quotation page limit and request revised quotations. AR, Tab 5, RFQ amend. 8 at 1. Amendment 9 extended the deadline for quotations to June 17, 2020. AR Tab 6, RFQ amend. 9 at 4.

## DISCUSSION

The protester objects to issuance of the delivery order to Omnicell, arguing that CareFusion's quotation is technically acceptable and lower in price. In its initial protest, CareFusion asserted that by requiring that quotations be submitted by email, amendment 8 "eliminated the requirement that quotes be submitted based on a GSA federal supply schedule contract." Protest at 3. In its comments on the agency report, the protester further argues that as the RFQ closed on June 8, and the e-Buy website warned vendors not to submit a quotation for a closed RFQ, amendment 9 here was, in essence, a new RFQ, which did not include a requirement that quoted items be on an FSS contract.<sup>4</sup> Comments at 2-4.

We disagree with CareFusion's argument that amendment 8 (as updated by amendment 9) was a new RFQ distinct from RFQ No. 1424443. The protester has offered no support, either factual or legal, for its interpretation. The record demonstrates that amendment 8 refers to itself as an amendment and includes RFQ 1424443 attachments. There is nothing in the amendment that suggests, either directly or indirectly, that the Army intended to change the requirement that quoted items be on an FSS contract. See COS/MOL at 5. In this regard, it is well-settled that an agency may issue an RFQ through the e-Buy portal and require vendors to submit quotations via email in accordance with solicitation instructions rather than through the e-Buy portal. See *Advanced Decisions Vectors, Inc.*, B-412307, Jan. 11, 2016, 2016 CPD ¶ 18 at 5 (denying protest when agency did not consider quotation submitted through the e-Buy portal instead of via email as instructed in the solicitation); *Team Housing Sols.*, B- 414105, Feb. 10, 2017, 2017 CPD ¶ 55 at 3 (same).

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3557, only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective supplier whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a). Determining whether a party is interested involves consideration of a variety of factors, including the nature of issues raised, the benefit or relief sought by the protester, and the party's status in relation to the procurement. *FitNet Purchasing Alliance*, B-309911, Nov. 2, 2007, 2007 CPD ¶ 201 at 2.

Here, the Army issued an RFQ seeking competition among holders of FSS contract 65 II A--an approach which meets the statutory requirements for using full and open competition. 41 U.S.C. § 259(b)(3); FAR 6.102(d)(3); *Tarheel Specialties, Inc.*, B-298197, B-298197.2, July 17, 2006, 2006 CPD ¶ 140 at 3. Given that the Army decided to procure its requirement through the FSS contract, and it is undisputed that CareFusion is not an FSS contract-holder, CareFusion is not an interested party to

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<sup>4</sup> While CareFusion's initial protest challenged amendment 8, in its comments CareFusion referenced amendment 9, which merely extended the deadline for the submission of quotations. See footnote 4, *supra*.

protest the delivery order issued to Omnicell. *Technical Assocs., Inc.*, B-406524,  
June 15, 2012, 2012 CPD ¶ 185 at 2.

The protest is dismissed.

Thomas H. Armstrong  
General Counsel