

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Encompass Group, LLC

File: B-410726

Date: February 2, 2015

H. K. Tyler, Jr., Encompass Group, LLC, for the protester.
Bridget E. Grant, Esq., Department of Veterans Affairs, for the agency.
Peter D. Verchinski, Esq., and Nora K. Adkins, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's decision to set aside a solicitation for small business federal supply schedule holders is denied where the agency's market research demonstrated that multiple small businesses could provide the items and expressed interest in competing for the requirement.
2. Protest alleging improper bundling under the Small Business Act is denied where the requirement was set aside for award to a small business and there was expression of interest by small businesses.

DECISION

Encompass Group, LLC, of McDonough, Georgia, protests the terms of request for quotations (RFQ) No. VA119-14-Q-0221, issued by the Department of Veterans Affairs (VA) to both General Services Administration (GSA) and VA Federal Supply Schedule (FSS) holders, for bed linens.¹ Encompass contends that the VA's decision to set the procurement aside for small businesses was unreasonable. The protester also argues that the agency improperly bundled the requirements.

We deny the protest.

¹ The FSS provisions of Federal Acquisition Regulation (FAR) subpart 8.4 state that both GSA and VA (through a delegation of authority by GSA) may direct and manage multiple award schedules. FAR §§ 8.401, 8.402(a). References to the FSS herein are to both GSA and VA schedule programs, unless otherwise noted.

BACKGROUND

Prior to issuing the RFQ, the VA Veterans Health Administration, Textile Integrated Product Team, concluded that bed linens were suitable for standardization. Contracting Officer (CO) Statement at 1. The agency sought to reduce costs by standardizing products and sources of supply, while balancing the needs of medical professionals. Id. The RFQ was intended to establish a blanket purchase agreement (BPA) that would be available for all VA medical center facilities to use when ordering bed linens.² Id.; see RFQ at 4.

On August 13, 2013, the VA issued a request for information (RFI) on GSA's e-Buy website and on the federal government's FedBizOpps (Federal Business Opportunities) website, seeking information from vendors regarding the agency's bed linens requirements.³ CO Statement at 2. 17 vendors responded to the RFI, stating that they could provide the bed linens. AR, exh. 6, RFI Results. Of the 17 vendors, 16 were small businesses, and 5 hold FSS contracts. Id. In addition to this market research, the VA also reviewed GSA/VA Advantage and GSA's e-library, and identified 10 small business firms that could supply the required products. AR, exh. 8, Market Research Memo., at 3-4. The agency then emailed these firms, and 8 confirmed that they had the capability to meet VA's needs. Agency Legal Memo. at 8; see AR, exh.8, Market Research Memo., at 3-4. All 8 of these companies are small businesses who supply the items, and 4 of them manufacture the items themselves. AR, exh. 8, Market Research Memorandum at 3-4. Based on this market research, the VA concluded that there were at least seven small businesses manufacturers (or small businesses that could provide the manufactured products of other small businesses in the U.S.) who held FSS contracts that could meet the requirements for bed linens. Agency Legal Memo. at 8-9.

On October 10, 2014, the VA posted the RFQ on GSA e-Buy. The solicitation provided that the BPA would be issued to a vendor holding GSA FSS contract

² The bed lines being procured here are white flat sheets, white fitted sheets, white pillowcases, operating room sheets, and operating room pillowcases. CO Statement at 1; RFQ 14-18.

³ The VA's integrated product team examined a number of different items at the same time, publishing one RFI for multiple items. Agency Report (AR), exh. 5, RFI. Encompass previously protested the agency's actions with regard to operating room towels (B-409975) and warm-up jackets for hospital personnel (B-410148). We denied both of the protester's prior protests. Encompass Group, LLC, B-409975, Sept. 30, 2014, 2014 CPD ¶ 296; Encompass Group, LLC, B-410148, Oct. 28, 2014, 2014 CPD ¶ 314.

No. 65IIA, or VA FSS contract No. 73, special item No. 852-7. CO Statement at 3; RFQ at 1. The RFQ was issued as a total small business set-aside, and anticipated the establishment of a single fixed-price BPA, for a base year and four 1-year options. RFQ at 1; Agency Legal Memo. at 2. The selection decision was to be based on two evaluation factors: price and technical acceptability. RFQ at 21.

DISCUSSION

Encompass primarily challenges two aspects of the agency's procurement. First, the protester alleges that the agency's decision to set aside the procurement was improper because no small business vendor has all the required items on its FSS contract. Encompass also contends that the agency improperly bundled the requirements. For the reasons discussed below, we find no basis to sustain the protest.⁴

The FSS programs directed and managed by GSA and the VA give federal agencies a simplified process for obtaining commonly used commercial supplies and services. FAR § 8.402(a). In FSS buys, as in other procurements, the determination of what the agency needs, and which products or services meet those needs is within the agency's discretion; we will not sustain a protest in this area unless the determination lacks a reasonable basis. Draeger Safety, Inc., B-285366, B-285366.2, Aug. 23, 2000, 2000 CPD ¶ 139 at 4. Agencies may only place orders with a vendor whose schedule contract contains the goods or services required to meet the agency's need under a solicitation. See Lockmasters Sec. Institute, Inc., B-299456, May 21, 2007, 2007 CPD ¶ 105 at 4.

When establishing a competitive BPA for supplies under the FSS that will exceed the simplified acquisition threshold, and where there is no requirement for a statement of work, the FAR requires an agency to: (1) issue an RFQ that includes a description of the supplies and the basis upon which the selection will be made; and (2) either (i) post the RFQ on the e-Buy website to afford all schedule contractors offering the required supplies or services an opportunity to submit a quote, or (ii) provide the RFQ to as many schedule contractors as practicable, consistent with market research appropriate to the circumstances, to reasonably ensure that quotes will be received from at least three contractors that can fulfill the requirements. See FAR § 8.405-3 (b)(1)(ii)(A), (B); see also FAR § 8.405-5. In addition, while the

⁴ The protester also provides several general challenges to the RFQ, including a supplemental challenge to an amendment issued during the course of the protest. We have considered all of the protester's various allegations and find that none provides a basis to sustain the protest. For example, with respect to the agency's assignment of NAICS codes, challenges to the selected standard industrial classification are heard solely by the Small Business Administration, and not reviewed by GAO. 4 C.F.R. § 21.5(b)(1) (2014).

preference programs of FAR Part 19 are generally not applicable to procurements under the FSS procedures of FAR Subpart 8.4, an agency may, in its discretion, set aside orders for any of the small business concerns identified in FAR § 19.000(a)(3). FAR § 8.405-5(a); Swank Healthcare, B-407367, Dec. 12, 2012, 2013 CPD ¶ 7 at 3.

Encompass first argues that the set aside is improper because there are no small business vendors who can meet the RFQ requirements. Encompass alleges that its review of existing FSS schedules indicates that “there are 3 vendors who can meet the sheet requirement, only one vendor who can meet the fitted/contour sheet requirement, and no vendors who can meet the [s]urgical/OR sheet and pillow case requirements.” Comments at 2.

The record demonstrates that VA complied with the applicable FAR provisions to solicit this requirement through the FSS program, including conducting market research, and reasonably concluded that multiple small business vendors could satisfy the requirement. As noted above, the VA issued an RFI, which led to the receipt of statements from numerous vendors. The agency also contacted several small business FSS contract holders. Based on this research, the agency identified multiple small businesses with FSS contracts that could meet the agency’s requirements. AR, exh. 6, RFI Results; exh. 8, Market Research Memo. The record also reflects that the RFQ was posted on e-Buy, and included a description of the bed linens and the basis for the selection decision. See CO Statement at 3; RFQ at 21. 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 demonstrate that the agency’s market research, or its discretionary set-aside determination, were unreasonable.⁵

Next, Encompass appears to argue that the agency impermissibly bundled the acquisition without first conducting market research to justify the necessity for combining the requirements, in contravention of the Small Business Act, 15 U.S.C. § 631(j) (2006), and the FAR. The protester contends that it is virtually impossible for any small business to meet the solicitation requirements.

The protester’s allegations in this regard are misplaced. The Small Business Act, as amended, requires that “to the maximum extent practicable,” each agency shall “avoid unnecessary and unjustified bundling of contract requirements that precludes

⁵ We also reviewed the SBA’s regulations (found at 13 C.F.R. § 125.2) implementing section 1331 of the Small Business Jobs Act (15 U.S.C. § 644(r)). In our view, the agency’s decision to set aside this procurement does not violate SBA’s regulations or the Jobs Act. For a more general discussion of these regulations, see Edmond Scientific Co., B-410179, B-410179.2, Nov. 12, 2014, 2014 CPD ¶ 336 at 5-8.

small business participation in procurements as prime contractors.” 15 U.S.C. § 631(j)(3); see also 2B Brokers et al., B-298651, Nov. 27, 2006, 2006 CPD ¶ 178 at 9. Bundling, for purposes of the Small Business Act, as amended, is defined as “consolidating 2 or more procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small-business concern.” 15 U.S.C. § 632(o)(2); see FAR § 2.10. Thus, a necessary predicate for the application of the Small Business Act’s anti-bundling provisions is the issuance of a solicitation that effectively “precludes small business participation” or one that is unsuitable for award to small businesses. Here, however, the record shows that the agency reserved its requirement for small businesses, and there was an expression of interest in the requirement by legitimate small businesses. As a result, there is no basis to conclude that the consolidated requirement is unsuitable for award to a small business within the meaning of the Small Business Act.⁶ Health & Human Services Group, B-294703, Dec. 15, 2004, 2005 CPD ¶ 6 at 2; Phoenix Scientific Corp., B-286817, Feb. 22, 2001, 2001 CPD ¶ 24 at 5, 6.

The protest is denied.⁷

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General Counsel

⁶ The protester does not specifically assert that the alleged bundling here is inconsistent with the requirements of the Competition in Contracting Act, 41 U.S.C. § 3306(a)(2)(B) (formally codified at 41 U.S.C. § 253(a)(2)(B)). Nonetheless, we have reviewed the record and find that the agency reasonably concluded that its standardization approach to bed linens was necessary to meet its needs as this approach would provide cost savings and operational efficiencies; the protester has not shown that the approach is either unreasonable or will not provide the benefits claimed.

⁷ In its initial protest, Encompass challenged additional aspects of the RFQ--such as an assertion that the RFQ should include a past performance evaluation factor--that Encompass failed to pursue in its comments after receipt of the agency report. We therefore deem these issues abandoned. See Israel Aircraft Indus., Ltd.-TAMAM Div., B-297691, Mar. 13, 2006, 2006 CPD ¶ 62 at 6-7.