



## Decision

**Matter of:** Warrior Service Company

**File:** B-417612

**Date:** August 16, 2019

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Frank V. Reilly, Esq., for the protester.  
Tyler W. Brown, Esq., Department of Veterans Affairs, for the agency.  
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participated in the preparation of the decision.

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### DIGEST

Protest challenging the terms of the 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 submission of quotations in accordance with applicable procurement law and regulation.

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### DECISION

Warrior Service Company (Warrior), a small business of Valley Stream, New York, protests the terms of request for quotations (RFQ) No. 36C25719Q0769, which was issued by the Department of Veteran Affairs (VA) for the supply and installation of 200 mattresses and the removal of the existing mattresses. 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 21, 2019, the VA issued the RFQ as a combined synopsis/solicitation, which was set aside for small businesses in accordance with the commercial item procedures of Federal Acquisition Regulation (FAR) part 12. The RFQ contemplated the award of a fixed-price contract for the supply and installation of 200 mattresses and the removal of the existing mattresses at the VA South Texas Health Care System. RFQ Statement of

Work (SOW) at 1. The solicitation stated that award would be made to the lowest-priced technically acceptable vendor.<sup>1</sup> Id. at 15.

Quotations were due on May 28, 2019, at midnight, thus allowing potential vendors approximately seven days to respond to the solicitation. RFQ Combined Synopsis/Solicitation at 1. On the date the quotations were due, prior to the 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.<sup>2</sup> Protest at 1. The RFQ was classified as a solicitation for supplies under code 65, “Medical, dental & veterinary equipment & supplies.”<sup>3</sup> See posting for RFQ No. 36C25719Q0769, available at [fbo.gov](http://fbo.gov) (last visited August 14, 2019). Warrior argues that the procurement is “to supply and install 200 mattresses and remove the old ones, not to manufacture the mattresses.” 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 presumably because of the installation and removal component.<sup>4</sup> Id. at 1-2.

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<sup>1</sup> The solicitation states that “[t]echnical and past performance, when combined, are equal.” RFQ SOW at 15. 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.

<sup>2</sup> Section 5.207(e) of the FAR specifies that contracting officers must use one of the classification codes found on [fbo.gov](http://fbo.gov) to identify services or supplies in synopses.

<sup>3</sup> The RFQ was further classified under North American Industry Classification System (NAICS) codes 337 “Furniture and Related Product Manufacturing” and 337910 “Mattress Manufacturing.”

<sup>4</sup> 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 primary purpose of the procurement is to procure equipment--mattresses--and the remaining services are incidental to the procurement of the product. Agency Legal Memorandum at 2.

The responsibility for determining the appropriate classification 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 overturn 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 are installation and removal components associated with the procurement of the mattresses, we agree with the agency that they are incidental to the procurement of the mattresses and are not the primary component of the procurement. As a result, we find that the agency reasonably classified this RFQ as a procurement of supplies and deny this protest ground.

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 seven 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, as here, the agency is acquiring commercial items. 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 respond to each proposed contract action for the acquisition of commercial items or acquisitions under the simplified acquisition threshold. GIBBCO LLC, B-401890, Dec. 14, 2009, 2009 CPD ¶ 255 at 5.

The agency responds that the RFQ is for the procurement of a commercial item and as such, it may allow for fewer than 30 days for potential vendors to respond to the solicitation. Supp. Memorandum of Law (MOL) at 1-2. 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, the procurement is for the installation and removal of 200 mattresses, and does not require the submission of lengthy technical quotations. Moreover, the procurement is for a “readily available, off-the-shelf product with little to no complexity.”<sup>5</sup> Supp. MOL at 2. While the protester argues that more time could be provided to maximize competition, it has not shown that the agency’s provision of seven days to respond to the solicitation is unreasonable. This protest ground is denied.

Thomas H. Armstrong  
General Counsel

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<sup>5</sup> The agency further notes that it received more than 10 quotations in response to the RFQ, which further demonstrated the reasonableness of the time period for vendors to submit quotations. COS at 1.