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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Encompass Group, LLC

File: B-299092

Date: December 22, 2006

H. K. Tyler, Jr. for the protester.

Melbourne A. Noel, Jr., Esq., and Phillipa L. Anderson, Esq., Department of Veterans Affairs, for the agency.

Kenneth Kilgour, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably determined that protester's quotation was unacceptable where the record supports the agency's conclusion that the protester's sample garments failed to comply with multiple solicitation requirements.

DECISION

Encompass Group, LLC protests the rejection of its quotation under request for quotations (RFQ) No. VA-797-06-RQ-0104, issued by the Department of Veterans Affairs (VA) for reusable operating room scrubs. Encompass contends that any nonconformity of their samples to the solicitation requirements was minor and that it properly indicated in a letter and product literature accompanying the samples its intent to deliver scrubs that conformed to the terms of the RFQ.

We deny the protest.

As part of its efforts to standardize its procurement of medical items, on September 13, 2006, the VA issued an RFQ to holders of Federal Supply Schedule (FSS) contracts for the required garments. The RFQ, which contained a deadline of October 5 for submitting quotations, contemplated establishment of a single national blanket purchase agreement (BPA) with a 5-year performance period. The RFQ informed interested FSS contract holders that a BPA would be established with "the offeror whose quotation provides the best overall price to the VA upon determining all offered products Technically Acceptable in accordance with the requirements shown in Attachment A." RFQ at 2. The product requirements for line item 3, the unisex scrub top, included the following:

1. Scrub top must be a pullover, reversible, with expandable neck.
2. Scrub top must have one left chest pocket on both sides and one right bottom pocket on both sides.
14. Size label must be looped over center back neck and secured with bartack.
15. Size must be visible on both sides of label.

Id. at 18-19. The agency notes that scrubs conforming to these requirements can be pulled on quickly after laundering without the need to first reverse them.

The RFQ required offerors to submit samples for all line items requiring sample garments, which included line item 3, and noted that the “[f]ailure of these samples to conform to the required requirements will require rejection of the offer.” Id. at 41. The RFQ advised offerors that “[i]f your commercial line of Garments have different common commercial styles than described above, your quote must include detailed explanations relating to similarities that will satisfy the above requirements in writing only. Please provide detailed explanations by line item.” Id. at 42.

Five offerors, including Encompass, submitted quotations and samples; Encompass submitted a quote that included product literature, samples of garments, and a cover letter. In the letter, the protester took issue with several of the RFQ specifications, but noted that “we have yet to protest this situation.” Agency Report (AR), exh. 4, Letter from the Protester to the Agency, Oct. 4, 2006, at 1.

The agency found the samples submitted by Encompass for line item 3, the unisex scrub top, to be unacceptable and advised the protester that its quotation had been rejected as a result. The contracting officer identified the following deficiencies in the sample, corresponding to the requirements in the RFQ quoted above:

2. NO -- One chest pocket on one side only and two bottom pockets on the other side
14. NO -- Label sewn on one side and not looped over
15. NO -- [Size] not on both sides of label

AR, exh. 6, Letter from Agency to Protester, Oct. 27, 2006, at 1. This protest followed.

Encompass asserts that its quotation was unreasonably rejected based on minor deficiencies in one of nine product categories, and that, in any event, a provision in the RFQ (set out above) allowed offerors to quote “different common commercial

styles” than those described in the RFQ if “detailed explanations are provided,” which Encompass claims it did. Protest at 1.

It is the agency’s role to define both its underlying needs and the best method of accommodating those needs, and it is within the agency’s discretion to reject as unacceptable products not meeting the requirements that it defines. Dwight Teller Church Organs, Inc., B-292825, Dec. 9, 2003, 2003 CPD ¶ 226 at 3. Here, the protester concedes that its samples for line item 3 contained the three deficiencies identified by the contracting officer; as a result, the agency properly rejected the protester’s quotation based on the non-conforming samples. American Gov’t Mktg., Inc., B-294895, Nov. 22, 2004, 2005 CPD ¶ 109 at 2. In this regard, while Encompass characterizes the deficiencies in its samples as minor, the record does not support that position. On the contrary, the noted deficiencies clearly relate to whether the scrubs can be pulled on after laundering without the need to first reverse them, a need described in the first of the listed requirements for line item 3 (stating that the scrub top must be “reversible”).

The protester argues that its cover letter contained detailed descriptions of how the protester’s similar, common commercial garments would satisfy the agency’s requirements, in accordance with the provision in the RFQ allowing such explanations. See RFQ at 42. We disagree. Nothing in the quotation (or, for that matter, in the protest filings) attempts to explain in detail how the protester’s non-conforming samples would nevertheless satisfy the agency’s needs; rather, the protester’s cover letter simply states that the products it would deliver—unlike its samples—would conform to the RFQ’s specifications. Indeed, given that the agency’s intent was to procure scrubs that could be used quickly without first being reversed, the deficiencies in the protester’s samples—the lack of pockets on both sides and the lack of a size tag visible from both sides—appear to make them unsusceptible to being made conforming through any explanation.

Encompass raised several other issues in its protest. To the extent that the protester alleged solicitation improprieties—for example, that the requirements for one garment make it technically impossible to produce—such allegations are untimely. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2006) (a protest based upon alleged improprieties in a solicitation that are apparent prior to the quotation closing time must be filed before that time). To the extent that the protester alleges other protest grounds—that the awardee’s garments are from a non-approved country and that some of the awardee’s garments are not on its FSS schedule—these arguments, raised for the first time in comments on the agency report, are untimely. See 4 C.F.R. § 21.2(a)(2). In any event, the protester is not an interested party to raise these issues because it was properly found to have offered a non-conforming product and because there are other offerors that furnished conforming products; thus, the protester would not be in line for award even if its protest were sustained on these grounds. American Gov’t Mktg., Inc., supra. Finally, the protester speculates that the agency must have held discussions with other offerors, but not the protester, and engaged in technical leveling. Because these allegations have no support in the

record and are based on mere speculation, we will not consider them. See Fabritech, Inc., B-298247, July 27, 2006, 2006 CPD ¶ 112 at 7.

The protest is denied.

Gary L. Kepplinger
General Counsel