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**Comptroller General
of the United States**

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

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Decision

Matter of: Quantico Arms & Tactical Supply, Inc.

File: B-400391

Date: September 19, 2008

Lars E. Anderson, Esq., and Peter A. Riesen, Esq., Venable LLP, for the protester.
Eugene Kim, Esq., United States Marine Corps, for the agency.
Paul N. Wengert, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest arguing that a request for quotations issued to Federal Supply Schedule contract holders for flame-resistant long-sleeved base garments improperly fails to include detailed size measurements is denied where the record shows that the lack of size specifications will not prevent vendors from preparing quotations and competing on a common basis.

DECISION

Quantico Arms & Tactical Supply, Inc., a small business, protests the terms of a solicitation for long-sleeved flame-resistant shirts by the United States Marine Corps under request for quotations (RFQ) No. M67854-08-Q-3039. Quantico objects that the solicitation is ambiguous, and thus will not provide for a fair competition.

We deny the protest.

BACKGROUND

This procurement involves long-sleeved shirts that are part of the Marine Corps's flame-resistant organizational gear (FROG). The Marine Corps posted the RFQ electronically as a small business set-aside using the General Services Administration (GSA) e-Buy system on July 2, 2008. The RFQ sought quotations from Federal Supply Schedule (FSS) vendors to supply an initial quantity of 120,000

long-sleeved mock-neck shirts made of a flame-resistant¹ modacrylic fiber blend.² The RFQ specified that the shirt fabric was required to pass a vertical flame test in accordance with a commercial testing standard (ASTM 6413-99).³ RFQ at 3. The RFQ also divided the 120,000 shirts into specific quantities of sizes small, medium, large, extra large and “XX large,” and included an option for an additional lot of 120,000 shirts. RFQ at 4.

Among other things, the RFQ required each vendor to submit laboratory testing information to show that the shirts would meet a flame-resistance test, and submit two samples of its FROG shirt (both in size large). RFQ at 14. The RFQ provided that “[a]ward will be made to the responsible quoter offering the lowest price technically acceptable proposal.” RFQ at 15.

The Marine Corps answered several questions about the sizes of the shirts, including the following:

Q5. Why are no standards provided for the dimension of the shirts, especially in light of the potential for abuse of these subjective descriptions?

A5. The Government does not expect any quoters to abuse the dimensions of the shirts that are to be provided. Each quoter is required to quote only products that are currently available on each quoter’s respective GSA Federal Supply Schedules. Each quoter is also required to provide a sample of two “large” shirts which would expect to provide a sense of the dimensions in connection with the quoter’s other sizes to be submitted on contract relative to the “large” size. The Government also expects that standard commercial practices for shirt sizing will be utilized when each quoter prepares and submits their quote. The Government has not experienced problems in the past with respect to reliance on such commercial standards for shirt sizing on various procurements of like items and believes such commercial

¹ In one case the RFQ also refers to the shirts as “Fire Resistant (FR).” Since the RFQ also defines “FR” as “Flame Resistance,” we infer that the terms are interchangeable for purposes of this protest. See RFQ at 3.

² In addition to their use by the Marines, it appears that similar flame-resistant shirts are also sold in the commercial market as a base-layer garment for use by other professions, such as firefighters.

³ ASTM refers to testing protocols established by ASTM International (formerly the American Society for Testing and Materials), which describes itself as “one of the largest voluntary standards development organizations in the world.” ASTM International webpage (located at astm.org/ABOUT/index.html).

standards provide reasonable expectations between any prospective quoter and the Government.

RFQ amend. 2.

This protest was filed before the due date for receipt of quotations. Shortly thereafter, the Marine Corps received quotations from several vendors, including Quantico.⁴ To date, no award has been made.

DISCUSSION

Quantico's protest essentially raises one issue⁵--that the RFQ improperly fails to specify with precision what is meant by the size designations of small, medium, large, extra large, and XX large. In this regard, Quantico contends that there is no single industry standard for shirt sizes, and that a sample of only two large-sized shirts will not allow the Marine Corps to determine whether vendors are offering comparably-sized products.

In response, the Marine Corps argues that it has adequately stated its needs in the context of a purchase of commercial items. While the agency acknowledges that it uses size specifications for short- and long-sleeved T-shirts, it contends it is not required to do so here. The Marine Corps explains that in the case of short- and long-sleeved T-shirts, those shirts are part of the visible uniform, making a high degree of consistency important. The agency explained that it decided not to specify sizes in this procurement because it places a higher priority on the flame-resistant function, than on uniformity of sizes.

The Marine Corps also points out that T-shirts intended for Marines to wear during physical fitness activities and under their daily uniforms might be sized differently

⁴ The Marine Corps first argued that Quantico is not an interested party because other vendors submitted acceptable quotations at lower prices, and therefore Quantico is not likely to receive the order. In our view, Quantico is an interested party to challenge the terms of the RFQ since Quantico's argument is that the RFQ must be amended in a way that reasonably could materially affect the resulting competition.

⁵ In its protest, Quantico also argued that the RFQ allows vendors to submit flame-resistance test results that conflict with the manufacturer's specifications, but does not describe how the Marine Corps will reconcile the conflict. We note that the Marine Corps also received a question on this topic, and answered that, if that happened, "the Government reserves the right to question the validity of any such information." RFQ amend. 2. We view the protester's concerns as hypothetical and premature, and therefore we will not address them in this pre-award protest.

than a flame-resistant base-layer garment, like long-sleeved FROG shirts. That is, T-shirts are expected to be looser-fitting, while flame-resistant FROG shirts are intended to be worn under the layers of a combat uniform, and thus, may be closer-fitting. Agency Report at 2. The Marine Corps rejects any connection between using size measurements in procuring T-shirts, while not doing so in procuring FROG shirts, and rejects Quantico's claim that one competitor's large shirt is sized smaller than the T-shirt size standards used by the Marine Corps.⁶ Agency Report at 7.

Finally, the Marine Corps explains that in all three of its recent purchases of FROG shirts (of which two were the brand that Quantico challenges as undersized), the solicitation left the sizes undefined, and the Marine Corps is satisfied with the results of those procurements.⁷ Agency Report at 9. The Marine Corps summarizes its judgment as follows:

In order to receive the best product available [the Marine Corps] in its best technical judgment, determined that inserting numeric size dimensions . . . would unnecessarily limit a prospective offeror's ability to offer the best product to meet the Marine Corps requirement.

Agency Report at 2-3.

In reply, Quantico argues that the Marine Corps will not obtain sufficient information from vendors to allow the agency to compare quotations, and notes that even retail stores resort to setting size standards for their products. Protester's Comments at 6-8. Quantico also argues that even if the large-sized sample shirts show similar sizing among vendors, the Marine Corps will not know whether other sizes are consistent with previous purchases of long-sleeved FROG shirts. Protester's Comments at 10. For the reasons set forth below, we conclude that the agency was not required to include detailed size specifications in this solicitation.

⁶ During this protest Quantico submitted measurements for one of its competitors' large-sized shirts that are significantly smaller in some dimensions than the size standards used by the Department of Defense for long-sleeved crew-neck T-shirts in another procurement. Response to Request for Dismissal at 16; and exh. 5. Quantico explains that the high cost of flame-resistant fabric could provide vendors an incentive to undersize the shirts to lower their prices. Without definitions of the sizes, Quantico argues that the RFQ could result in an unequal competition.

⁷ The Marine Corps measured all dimensions of both samples of the large size shirts submitted by each of the 10 vendors in one of the previous FROG shirt procurements, and found "no dramatic differences." Agency Report at 3; and exh. 7 (measurements of sample shirts).

The FSS program, directed and managed by the General Services Administration, gives federal agencies a simplified process for obtaining commonly used commercial supplies and services. Federal Acquisition Regulation (FAR) § 8.402(a). In preparing specifications for commercial item procurements, contracting officers are encouraged to “describe the type of product . . . and explain how the agency intends to use the product . . . in terms of function to be performed, performance requirement or essential physical characteristics.” FAR § 12.202(b). A key element of efforts to increase purchases of commercial products is stating requirements in broad functional or performance terms, rather than using detailed military specifications. Wincor Mgmt. Group, Inc., B-278925, Apr. 10, 1998, 98-1 CPD ¶ 106 at 2-3. While we will consider a protest that a solicitation lacks sufficient detail for vendors to compete intelligently, and on a common basis, for an order, the level of detail needed in a commercial item specification is a matter left largely to the judgment of agency contracting officials. Adventure Tech, Inc., B-253520, Sept. 29, 1993, 93-2 CPD ¶ 202 at 5 (denying protest that IFB for rain jackets in sizes “large, medium, and small” was defective because sizes were not defined); see also Adventure Tech, Inc.—Recons. & Entitlement to Costs, B-253520.2, B-253520.3, Feb. 9, 1994, 94-1 CPD ¶ 105 at 3.

We recognize that the approach taken by the Marine Corps here generates some risk. By not specifying what it means by each of the stated sizes in this solicitation, the agency risks that some vendors might attempt to cut corners on shirt sizes to save money on fabric costs, and thus undercut their competition. There is also some risk that the agency might receive shirt sizes that do not meet its (unstated) expectations. On the other hand, we also recognize that this procurement is limited to companies that already hold FSS contracts, so that the Marine Corps might reasonably expect that it will receive quotations for products that are acceptable in the commercial marketplace.

In our view, the risk here is consistent with—and appropriate in light of—longstanding Congressional direction that agencies should take advantage of the commercial marketplace, and avoid creating detailed specifications for commercial goods. 10 U.S.C. § 2377 (2000); see also S. Rep. No. 103-258, at 5 (1994), as reprinted in 1994 U.S.C.C.A.N. 2561, 2566 (“The purchase of proven products such as commercial . . . items can . . . reduce the need for detailed design specifications or expensive product testing”). Here, there is an existing commercial market for these shirts, and the Marine Corps has experience in purchasing (directly or indirectly) almost 250,000 such shirts in the recent past without incident.

In short, we cannot conclude that the agency was required to impose size specifications on the vendors of these flame resistant shirts. We also think that Quantico has not established that the lack of size specifications in the RFQ impairs

vendors from competing intelligently, and on a common basis, for this Marine Corps requirement. See Adventure Tech, Inc.–Recons. & Entitlement to Costs, supra.

The protest is denied.

Gary L. Kepplinger
General Counsel