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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-405688

Date: December 9, 2011

Ken Tyler, Encompass Group, LLC, for the protester.
P. Russell Wong, Esq., Department of Health and Human Services, for the agency.
Mary G. Curcio, Esq., and David. A. Ashen, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest that combination of two requirements under single solicitation constituted improper bundling under Small Business Act is denied where the requirement was set aside for award to a small business, there was expression of interest by small businesses, and the agency in fact received offers from two small businesses.

DECISION

Encompass Group LLC, of Chicago, Illinois, protests the terms of solicitation No. NIHCL2011-096, issued by the Department of Health and Human Services for items needed for patient care at the Clinical Center, Edmund Safra Family Inn, and the Children's Inn at the National Institutes of Health Clinical Center in Bethesda, Maryland. Encompass asserts that the solicitation impermissibly bundles the linen requirement in a manner that precludes performance of the work by a small business in contravention of the requirements of the Small Business Act. Encompass further argues that the agency is improperly using a reverse auction to conduct the procurement.

We deny the protest.

The solicitation, a 100-percent small business set-aside, seeks proposals to provide under a fixed-price, requirements contract, numerous items required for patient care, including sheets, pillow cases, towels, bathrobes, scrubs, and bath mats. Solicitation, Att. 1. Encompass asserts that the agency is improperly bundling the requirement for linens, in contravention of the Small Business Act, 15 U.S.C. § 631(j) (2006), because many small businesses manufacture only one of the required items.

Encompass has not shown that the agency's procurement approach here amounts to improper bundling. Where there is a consolidation of two or more agency requirements, the Small Business Act, as amended, requires that agencies avoid bundling them together where the result would be a single contract that is likely to be unsuitable for award to a small business concern. 15 U.S.C. § 632(o)(2). However, where the record shows that the agency has reserved its requirement for small businesses, and there is an expression of interest in the requirement by legitimate small businesses, 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. Phoenix Scientific Corp., B-286817, Feb. 22, 2001, 2001 CPD ¶ 24 at 5, 6.

Here, prior to issuing the solicitation the agency issued a sources sought announcement for small business concerns and received expressions of interest from 14 firms. Contracting Officer's Statement (COS) at 2. From these responses the agency determined that there were at least 5 small businesses capable of meeting its needs. Id. The agency then issued the procurement as a small business set-aside and received responses from two small business concerns. Id. at 3. Under these circumstances, we have no basis to conclude that the agency's consolidation of these requirements into a single contract was improper or inconsistent with the Small Business Act. Health & Human Services Group, B-294703, Dec. 15, 2004, 2005 CPD ¶ 6 at 2.

Encompass also asserts that the agency is improperly using a reverse auction to conduct this procurement. Encompass, however, has not explained how the agency is violating any procurement laws or regulations in using a reverse auction. In this regard, we have previously determined that agencies may conduct procurements using a reverse auction when, as here, they are using simplified acquisition procedures contained in part 13 of the Federal Acquisition Regulation. MTB Group, Inc., B-295463, Feb. 23, 2005, 2005 CPD ¶ 40 at 2. Accordingly, we have no basis to question the agency's decision to use a reverse auction.

The protest is denied.

Lynn H. Gibson
General Counsel