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# Decision

**Matter of:** Warrior Service Company

**File:** B-421364

**Date:** April 13, 2023

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## DIGEST

Protest challenging agency decision's to procure wheeled mobility repair services in a nationwide contract as impermissible bundling under the Small Business Act is denied where the record shows that the requirement is a new service, and where the protester fails to demonstrate that the solicitation bundles separate smaller contracts previously performed by small businesses.

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## DECISION

Warrior Service Company, a small business of Hialeah, Florida, protests the terms of request for proposals (RFP) No. 36C79123R0001, issued by the Department of Veterans Affairs (VA), for wheeled mobility repair services. The protester asserts that the solicitation impermissibly bundles several requirements that could be performed by small businesses, without proper justification and authorization.

We deny the protest.

## BACKGROUND

The VA is the largest provider of wheeled mobility devices (manual wheelchairs, scooters, and custom power wheelchairs) in the world. Agency Report (AR), Tab 15, Decl. of VA Clinical Nurse Program Manager at 1. The VA currently provides repairs to wheeled mobility devices in multiple ways, using multiple gatekeepers to initiate the triage, approval and procurement of repairs. The majority of repairs are procured via purchase card transactions, due to the absence of specific wheelchair repair contracts. AR, Tab 14, Decl. of VA Physical Therapist at 2. Some repairs are purchased under

local durable medical equipment (DME) contracts, with these repairs representing a small part of the comprehensive local DME contract.<sup>1</sup> *Id.* A small fraction of wheeled mobility repairs are done in VA facilities that have full-time staff trained to perform minor wheeled mobility repairs.<sup>2</sup> *Id.*

As relevant here, on March 14, 2018, the VA Office of Inspector General (OIG) concluded an investigation of wheelchair repairs and found that the VA's process for buying wheelchair repairs needed to be revised. AR, Tab 13, VA OIG Report. In this regard, the OIG report determined that there was no standard method for the procurement of wheeled mobility repairs. In addition, it concluded that there was no standard for the timeline and monitoring of such repairs. The OIG recommended that the VA create a requirement to monitor and track all repairs from request to completion. The OIG also recommended that loaner wheelchairs be provided during repair, that controls be imposed on the cost of repairs, and that improvements be made to repair times. *Id.* at 10.

The agency determined that these recommendations could best be met by the establishment of a single, indefinite-delivery, indefinite-quantity national contract. Contracting Officer Statement (COS) at 1-2. This contract would augment the VA's existing ability to provide services, and improve access to repairs through an automated system in conjunction with the agency's wheeled mobility equipment repair services. To this end, the contract would establish a customer service point of contact for veterans and VA staff for repair requests, ensure customer satisfaction and quality assurance for repairs, and leverage the VA enterprise account to establish favorable pricing for repairs and parts through the cost savings achieved by streamlining internal processes. *Id.* The repair requirement also included the provision of parts, the rental of customized power wheelchairs and manual wheelchairs, and the establishment of a 24 hours, 7 days a week (24/7) customer service center for service requests, quality assurance reports, repair trend reports, and maintenance or manufacturing recall follow-up. *Id.* at 2.

The agency conducted market research and concluded that there was no reasonable expectation that at least two responsible small businesses could perform the wheeled mobility repair service on a nationwide level. AR, Tab 11, Market Research. The agency therefore determined it would issue the solicitation on an unrestricted basis

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<sup>1</sup> Warrior Service Company LLC has such a contract (contract No. 36C24220D0092). AR, Tab 14, Decl. of VA Physical Therapist at 2.

<sup>2</sup> The agency noted that Warrior Service Company, LLC has a contract (contract No. 36C24223P0199) for temporary staff at a VA facility in New York to perform necessary wheelchair repairs in the Spinal Cord Injury Units, Nursing Home Care Unit, and Prosthetics Department. This contract was needed because the facility lacked staff with technical knowledge and skills to perform the necessary repairs. AR, Tab 14, Decl. of VA Physical Therapist at 2.

using the competitive procedures of Federal Acquisition Regulation (FAR) section 19.502-2(b).

As part of the market research, the agency published six requests for information (RFI) for the requirement. Warrior participated in the first RFI. COS at 2. Warrior was invited to participate in an industry day where small business opportunities, such as subcontracting, teaming or joint ventures could be discussed and explored, but the protester never responded. *Id.*; AR, Tab 18, Presolicitation Communication with Warrior.

The agency posted the proposed solicitation for review on August 9, 2022, and requested that prospective offerors ask questions or voice concerns by August 31.

The Small Business Administration (SBA) procurement representative concurred with the VA's proposal to compete the requirement using full and open competition. AR, Tab 12, SBA Form 2268.

The agency issued the solicitation on October 20, 2022, and it was amended five times.<sup>3</sup> AR, Tab 3, RFP, amend. 1. Amendment No. 5 included the following:

VA wanted to clarify that this solicitation is a supplement to the existing underlying contracts Network Contracting Offices have already awarded. [Veterans Integrated Service Networks] are free to continue to utilize these contracts.

AR, Tab 7, RFP, amend. 5 at 1. Proposals were due on December 23. Before the due date for proposals, the protester filed an agency-level protest, which was denied on December 22. AR, Tab 9, Agency Protest; AR, Tab 10, Agency Denial of Agency Protest. This protest to our Office followed.

## DISCUSSION

Warrior asserts that the solicitation impermissibly bundles several requirements that could be performed by small businesses, without proper justification and authorization. Protest at 3. The protester contends that this bundling violates the Small Business Act, which requires agencies, before bundling requirements, to first prepare a "bundling analysis" documenting their consideration of the impact of the bundling on small businesses, the benefits to be realized by bundling, and alternative procurement strategies, among other considerations. *Id.* at 3 (*citing* FAR 7.107-4(b)(3)). The protester further contends that the agency failed to present this bundling analysis to the

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<sup>3</sup> The original solicitation was issued in error and was not the correct version. Memorandum of Law (MOL) at 5. Amendment No. 1, issued on October 20, 2022, deleted the existing solicitation and replaced it in its entirety. All references to the solicitation will be to amendment No. 1.

SBA procurement representative as required under the FAR. Comments at 7; *see also* FAR 7.107-5(e).

The agency responds that the wheeled mobility repair service requirement is a new requirement created, on a nationwide basis, to supplement VA contracts in existence throughout the country for wheeled mobility repair services. The agency argues that because the requirement is new, it has not been previously performed by two or more small businesses. The agency contends that the requirement therefore does not amount to the bundling of two or more small business contracts and, thus, no bundling analysis was required. MOL at 7. The agency further notes that the SBA procurement representative concurred with the VA's conclusion that this requirement was not a bundled contract requiring such a bundling analysis. AR, Tab 12, SBA Form 2268 at 2.

In support of this conclusion, the VA explains that it performed market research and determined that the agency had not procured home repairs of wheeled devices in the manner that the VA was currently proceeding. COS at 5. As the agency explains, the present contract shares only some of the scope of the VA's existing repair purchase orders and local DME contracts, such as the one held by Warrior. COS at 11. Moreover, there are important differences in scope between the current purchasing vehicles and the contract being sought here, such as the fact that Warrior's contract does not cover parts and includes non-repair services not included in the instant contract.<sup>4</sup> *Id.* In addition, these contracts are not exclusive with the new contract, and indeed Warrior's contract will still be in existence after the award of the new contract. The agency emphasizes that the use of this contract is not mandatory, and facilities are still free to repair wheeled mobility devices in-house or by using their DME providers. AR, Tab 15, Decl. of VA Clinical Nurse Program Manager at 3.

The Small Business Act states that, "to the maximum extent practicable," each agency shall "avoid unnecessary and unjustified bundling of contract requirements that precludes small business participation in procurements as prime contractors." 15 U.S.C. § 631(j)(3). Bundling, for the purposes of the Small Business Act, means "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." 15 U.S.C. § 632(o)(2). The term "separate smaller contract" is defined as "a contract that has been performed by 1 or more small business concerns or was suitable for award to 1 or more small business concerns." 15 U.S.C. § 632(o)(3).

Here, the protester argues that the agency improperly bundled two or more separate smaller contracts, in violation of the Small Business Act, making the requirement

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<sup>4</sup> For example, one DME purchase order includes not only wheelchair repair but also the repair of other DME, such as stretchers and shower chairs, in addition to providing spinal cord injury assistance services. COS at 8.

unsuitable for award to small businesses.<sup>5</sup> 15 U.S.C. § 631(j); 13 C.F.R. § 125.2(d). As an initial matter, however, we note that Warrior has not in fact identified two or more specific separate smaller contracts that have been combined. Thus, we find that Warrior has failed to allege sufficient facts that would constitute impermissible bundling under the Small Business Act.<sup>6</sup> *JXM, Inc.*, B-402643, June 25, 2010, 2010 CPD ¶ 158 at 7.

To the extent the protester argues that the “VA concedes that the requirements have been procured under smaller contracts, thereby meaning that the VA admits that bundling has occurred,” Comments at 4, we do not agree with the protester’s characterization.

While the VA has represented that it has procured wheeled mobility repair services through various other procurement vehicles--as stated above, the VA currently acquires wheelchair repairs through purchase orders, some in-house repairs, and DME contracts--the contemplated contract appears to be a new requirement that contains new, not-previously-procured services. The new contract establishes, for the first time,

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<sup>5</sup> In its comments on the agency report, Warrior asserts, for the first time, that the solicitation also constitutes impermissible bundling under the Competition in Contracting Act (CICA). Comments at 7. We find this argument to be untimely. In this regard, our regulations do not contemplate the piecemeal presentation or development of protest issues through later submissions citing examples or providing alternate or more specific legal arguments missing from earlier general allegations of impropriety. *LOGMET LLC*, B-420507, May 6, 2022, 2022 CPD ¶ 112 at 3 n.5 (finding that assertion of impermissible CICA bundling raised, for the first time, in the protester’s comments was piecemeal, where the initial protest had only argued that the bundling was impermissible under the Small Business Act).

We note, at any rate, that, under CICA, bundling is permissible to meet an agency’s needs where the agency reasonably determines that consolidation will result in significant cost savings or operational efficiencies. *Teximara, Inc.*, B-293221.2, July 9, 2004, 2004 CPD ¶ 151 at 6.

Here, the agency reasonably demonstrates that consolidation of these repair services would result in time and cost efficiencies. In this regard, the agency states that the new nationwide contract for wheeled mobility repair services offers many substantial benefits, such as reducing the time for service repair from 69 days to 20 days, which, in turn, would greatly reduce veterans’ bed confinement and improve their quality of life. COS at 11. In addition, the new contract is designed to be more patient-centric, and to give veterans control over their own repairs. *Id.*; AR, Tab 15, Decl. of VA Clinical Nurse Program Manager at 3. The agency points out as well that the consolidation of services would enable the agency to establish not only more favorable timeframes for repairs, but also more favorable pricing. *Id.* at 2.

<sup>6</sup> Warrior also raises other collateral arguments. Although we do not address every argument, we have reviewed each one and find no basis to sustain the protest.

an online portal for veterans and clinicians to access repair progress, a 24/7 contact center, and a requirement that a loaner wheelchair, comparable to the veteran's wheelchair, be provided in the event the repair times exceed the established times in the contract. MOL at 4. These additional requirements significantly change the performance expectations for contractor wheel chair repairs to increase performance accountability and customer satisfaction in a manner that the agency never required before.

In sum, we find to be reasonable the agency's conclusion that the requirement is new, containing a different scope of services from those previously procured thereby obviating the need for a bundling analysis. In addition, the protester has not demonstrated that the requirement bundles separate smaller contracts previously performed by small businesses. Accordingly, we find that the solicitation does not constitute impermissible bundling under the Small Business Act.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel