



Comptroller General
of the United States

900118

Washington, D.C. 20548

Decision

Matter of: McNamara-Lunz Vans & Warehouses, Inc.

File: B-256848

Date: August 3, 1994

Bill Salter for the protester.

Michelle Harrell, Esq., and Emily C. Hewitt, Esq., General Services Administration, for the agency.

John L. Formica, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Requirement in a solicitation for office relocation services that the successful contractor or contractors carry and maintain workers' compensation insurance is unobjectionable where the agency reasonably determined that the requirement is necessary to protect the government's interests.

DECISION

McNamara-Lunz Vans & Warehouses, Inc. protests the terms of request for proposals (RFP) No. 7FXI-W7-94-5001-N, issued by the General Services Administration (GSA) for office relocation services. McNamara-Lunz argues that the RFP's requirement that the successful contractor or contractors carry and maintain workers' compensation insurance is unreasonable.

We deny the protest.

The RFP contemplates the award of up to 24 contracts for federal agency office relocation services at 24 service areas.¹ The successful contractor or contractors under the RFP will be required to perform all services necessary to move office furniture, equipment, and related supplies from their present location to new locations as designated by the agency. Twelve of the service areas identified in the RFP involve cities in Texas, with three of these service areas

¹The service areas are identified in the solicitation as cities, such as Little Rock, Arkansas, and, with limited exception, any point within 50 miles of the cities' limits.

(Houston, Dallas, and Fort Worth) set aside exclusively for small businesses.

The RFP requires that the successful contractor or contractors "carry and maintain workers' compensation insurance," specifically noting that such insurance is required "even though the laws of a state (such as Texas) might allow a contractor to be a non-subscriber to workers' compensation [insurance]."

McNamara-Lunz, a Texas firm, contends that the RFP's requirement that contractors carry and maintain workers' compensation insurance "discriminates against small businesses who cannot afford the financial burden of participating in the workers' compensation program." The protester argues that because Texas does not require contractors to carry workers' compensation insurance, the solicitation should be amended to permit McNamara-Lunz to provide its employees with "job injury protection" through its current "accident policy," which it has forwarded to our Office in support of its protest.

The agency responds that performance of the office relocation services contract will require the successful contractor's or contractors' employees to move heavy and/or bulky items, at times using forklifts, scissor lifts, and portable lifts. The agency states that there is a high risk of personal injury in performing these services and that the RFP requires contractors to maintain workers' compensation insurance to ensure adequate compensation for workers on federal government contracts in the event of injury or death and to provide "a buffer from liability due to a contractor's employee being injured on government property" during the performance of the contract.

The agency, and the U.S. Department of Labor (whose views were solicited by GSA), contend that, as a matter of federal policy, workers' compensation insurance is the preferred method of providing benefits to injured workers and lessening both the likelihood of litigation and the government's potential liability. See Federal Acquisition Regulation (FAR) §§ 28.301(b), 47.207-7(c) (generally requiring contractors (and more specifically contractors providing transportation-related services) "to provide insurance for certain types of perils (e.g., workers'

²The protester states that it would cost \$177,000 per year to maintain workers' compensation insurance, as opposed to the \$50,000 per year it currently pays for its "accident policy."

compensation)"; see also Defense Base Act, 42 U.S.C. §§ 1651-1654 (1988) (requiring government contractors working on military bases overseas to obtain workers' compensation for their employees); Federal Employees' Compensation Act, 5 U.S.C. §§ 8101-8151 (1988 & Supp. V 1993) (providing compensation for the disability or death of federal employees injured while in the performance of their duties).

The agency also contends that workers' compensation insurance generally provides greater benefits to injured workers than private accident insurance, such as that maintained by McNamara-Lunz. For example, workers' compensation insurance provides an injured employee with full medical benefits for life with no monetary limitations in appropriate circumstances, Tex. Labor Code Ann. § 408.021 (West 1994), as opposed to the insurance offered by the protester which limits coverage for medical expenses to \$300,000 over a benefit period of 2 years. Also, workers' compensation insurance covers occupational diseases, Tex. Labor Code Ann. §§ 401.011, 406.031 (West 1994), while the insurance offered by McNamara-Lunz does not. The agency reasons that given the greater benefits available to injured contractors' employees under workers' compensation insurance, it is less likely that the agency will become involved in litigation because it is more likely that the greater coverage of workers' compensation will be adequate to effectively compensate an injured employee.

The agency notes that a contractor, such as McNamara-Lunz, which has other than workers' compensation insurance, can be sued in tort by its injured employees, whereas the recovery of workers' compensation benefits is the exclusive remedy of an employee covered by workers' compensation insurance. Tex. Labor Code Ann. § 408.001 (West 1994). This distinction is significant, in the agency's view, because the requirement for workers' compensation insurance alleviates the risk that a nonsubscribing contractor will be unable to complete contract performance in the event that the contractor is unable to pay tort claims brought by its injured employees that exceed the employer's insurance coverage.

In preparing a solicitation for supplies or services, a contracting agency must specify its needs and solicit offers in a manner designed to achieve full and open competition, 41 U.S.C. § 253a(a)(1)(A) (1988), and may include restrictive provisions or conditions only to the extent

³With limited exception, contractors are required by FAR § 28.307-2(a) to provide insurance against occupational diseases for their employees.

necessary to satisfy the agency's needs. 41 U.S.C. § 253a(a)(2)(B). A solicitation requirement for insurance is not unduly restrictive of competition, where an agency reasonably determines that such insurance is necessary to protect the government's interests. John Short & Assoc., Inc.; Comprehensive Health Serv., Inc., B-236266; B-236266.4, Nov. 9, 1989, 89-2 CPD ¶ 448.

Here, we find reasonable the agency's determination that the requirement for workers' compensation insurance was necessary to protect the government's interest. Specifically, we find the agency reasonably determined that performance of the office relocation services contract presented a high risk of personal injury. Also, given the more extensive benefits available under workers' compensation insurance, and the fact that recovery of workers' compensation benefits is the exclusive remedy of an employee covered by workers' compensation insurance, we find that the agency reasonably determined that requiring that workers' compensation insurance be maintained would further the government's policy of ensuring adequate compensation in the event of the disability or death of a worker injured while working on a federal government contract, and will lessen both the likelihood of litigation and the government's potential liability should litigation occur. We therefore do not agree with the protester that the agency abused its discretion in establishing its insurance needs. Id.

The protester's claim that the cost of workers' compensation insurance may restrict the field of competitors does not demonstrate that the workers' compensation insurance requirement is unreasonable where, as here, the agency reasonably determined that the requirement is necessary to protect the government's interests. SMC Information Sys., B-225815, June 1, 1987, 87-1 CPD ¶ 552. In any event, contrary to the protester's allegation that no small business concern would compete for this requirement if workers' compensation insurance were required, the agency has received a number of offers from small business concerns to perform the required services in Texas.

The protest is denied.

/s/ James A. Spangenberg
for Robert P. Murphy
Acting General Counsel