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**Comptroller General
of the United States**

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

Decision

Matter of: Coast to Coast Computer Products, Inc.

File: B-409528.33

Date: December 3, 2014

Rick Vogel, for the protester.

Christopher Murphy, Esq., and Kristen M. Nowadly, Esq., General Services Administration, for the agency.

Katherine I. Riback, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the agency abandoned the solicitation's best-value evaluation scheme is denied where the record shows that the agency's decision was consistent with solicitation's evaluation criteria, which provided for consideration of certain factors on a go/no-go basis, and others on a comparative basis.

DECISION

Coast to Coast Computer Products, Inc., of Simi Valley, California, protests the award of contracts to three firms by the General Services Administration (GSA) under request for proposals (RFP) No. GSQ02-14-R-SA0001, contract line item number (CLIN) No. 3, for toner and ink jets. Coast to Coast argues that the agency did not follow the RFP's evaluation criteria because it did not consider the technical or past performance factors in its award decision, and because the agency made awards on a lowest-priced, technically acceptable basis, rather than the best-value basis set forth in the solicitation.

We deny the protest.

BACKGROUND

GSA issued the solicitation on January 31, 2014. The RFP sought proposals for the award of multiple indefinite-delivery, indefinite-quantity (ID/IQ) contracts for GSA's Office Supplies Third Generation (OS3) program, which will be available for use by

the entire federal government for a full range of office items. RFP, Statement of Work (SOW), at 3.¹

The RFP anticipated separate awards under each of four CLINs, which are described below. The solicitation stated that for CLIN Nos. 1, 2 and 3, award would be made on a best-value basis. RFP, SOW, at 3. For CLIN No. 4, award was to be made to the offeror that submitted the lowest-priced, technically acceptable offer. Id. The solicitation anticipated the award of approximately 24 contracts with fixed-unit-prices (with economic price adjustments), for a base period of 1 year and four 1-year options. RFP at 2.² This protest concerns CLIN No. 3.

The RFP provided that technical proposals would be evaluated on a “go/no-go” basis. RFP, SOW, at 36. The evaluation process consisted of three steps: (1) a proposal compliance review³, (2) an evaluation of technical proposals, and (3) the price evaluation. Id. at 42. As relevant to CLIN Nos. 1, 2, and 3, the SOW stated that proposals would be evaluated on a go/no-go basis with regard to the following seven technical subfactors: (1) Ability One-certified contractor, (2) demonstrated ability to provide 100 percent core-items list products, (3) demonstrated capability to provide real-time order status to GSA Advantage!, (4) demonstrated capability to provide point of sale discount for all ID/IQ contract orders, (5) agency-defined reports at no additional cost, (6) demonstrated Level III transaction data at the line-item level, and (7) satisfactory past performance. Id. at 36-37. The solicitation also stated that only proposals that were found to be technically acceptable for all of the subfactors would proceed to the price evaluation stage. Id. at 36. Satisfactory past performance was a technical subfactor for each CLIN. RFP, SOW, at 36-38.

For purposes of award, the SOW provided the following:

There is a strong preference for small business participation for CLINS one, two and three. Achievement of socio-economic objectives will be designated as an evaluation factor, which is significantly more important than price and other non-price factors.

¹ Citations to the RFP and SOW are to the conformed copies provided by the agency.

² The agency advised that the estimated spending over the 5-year term of these contracts will be \$1.25 billion. Summary Dismissal Request at 1.

³ The proposal compliance review was to verify that the proposals provided all the required information and documents in the format and detail specified, and that all required forms and certifications were complete. RFP, SOW, at 42.

RFP, SOW, at 4. The solicitation did not specifically define the phrase “significant preference.”⁴ Id. The RFP also stated, however, that, “[a]chievement of socio-economic objectives will be designated as an evaluation factor, which is significantly more important than price and other non-price factors,” and that “[t]his will result in best-value proposals being those from small business contractors.” Id. at 38.

The solicitation divided the requirements, along with the associated preferences, into the following four CLINs. As stated above, this protest concerns CLIN No. 3. The RFP stated that for CLIN No. 3, toner and ink jet ink, the agency anticipated five awards. For three of the awards, there was a “significant preference” for service-disabled, veteran-owned small business (SDVOSB) firms over other small businesses and other than small businesses. Id. at 4. For the remaining two awards, all small business sub-categories would be deemed of equal value to the government. Id.

The agency advised potential offerors of its intention to use reverse auction procedures and that there was a “potential for multiple rounds of revised pricing.” RFP, SOW, at 35. The solicitation stated that at the conclusion of the reverse auction phase, the agency would evaluate the “competitive range of final prices.” Id. at 36.

Our Office received numerous protests from firms prior to the closing date of March 24, each of which argued that GSA’s procurement approach for the OS3 program had not adequately considered the effect of consolidation on small businesses. American Toner & Ink et al., B-409528.7 et al., June 9, 2014, 2014 CPD ¶ 161 at 5. Our Office denied the protests, finding that GSA reasonably considered the potential impact of its procurement approach on small businesses, and also reasonably concluded that the consolidation would result in substantial benefits to the government. Id. at 10.

GSA evaluated the technical merit of each proposal on a go/no-go basis, based on the technical sub-factors included for each CLIN. Source Selection Authority Decision at 3. Coast to Coast was advised during the evaluation process that it had passed the technical go/no-go evaluation and that its proposal had proceeded to the price evaluation phase, which was conducted using a reverse auction scenario, whereby multiple rounds of pricing competition were held. See id.

⁴ We note that the solicitation and the agency’s evaluation appear to use the phrases “strong preference,” and “significant preference,” interchangeably. See RFP, SOW, at 4.

The agency found Coast to Coast's proposal for CLIN No. 3 to be responsive and technically acceptable; however, the agency concluded that it was not among the best-value proposals, considering price and socio-economic status, as stated in the evaluation criteria.⁵ See id. at 12-13. In this regard, the agency concluded that other small business offerors proposed lower prices. See id. GSA made five awards under CLIN No. 3. Id. at 14-15. This protest to our Office followed.

DISCUSSION

Coast to Coast argues that GSA did not follow the RFP's evaluation criteria in making its award decisions. Although the solicitation stated that the agency would make award to offerors on a best-value basis, the protester contends that the agency improperly made award to the lowest-priced, technically acceptable offerors by failing to consider the technical or past performance factors in its award decision. For the reasons discussed below, we find no basis to sustain the protest.

In considering protests challenging an agency's evaluation of proposals, our Office will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the stated evaluation factors and applicable procurement laws and regulations. A protester's mere disagreement with the agency's judgment is not sufficient to establish that an agency acted unreasonably. Herman Constr. Group, Inc., B-408018.2, B-408018.3, May 31, 2013, 2013 CPD ¶ 139 at 3; Wackenhut Servs., Inc., B-400240, B-400240.2, Sept. 10, 2008, 2008 CPD ¶ 184 at 6.

Coast to Coast first argues that the agency did not evaluate offerors' technical proposals or past performance beyond a go/no-go analysis. Protest at 4. As discussed above, however, the solicitation did not provide for an evaluation of the relative merit of technical proposals or past performance. Instead, the solicitation clearly stated that these factors would be evaluated on a go/no-go basis to determine if they were technically acceptable, and that only technically acceptable proposals would then proceed to price evaluation. RFP, SOW, at 36.

Coast to Coast's argument that the solicitation should have included a qualitative, rather than a go/no-go rating scheme for technical proposals and past performance, challenges an alleged impropriety in the solicitation that should have been protested before the initial closing time for submission of proposals. Our Bid Protest Regulations specifically require that a protest based upon alleged improprieties in a

⁵ The evaluated prices for the CLIN No. 3 small business and SDVOSB awardees ranged from \$65.9 million to \$69.2 million; Coast to Coast's evaluated price was \$69.9 million. Source Selection Authority Decision at 13; GSA Debriefing Letter to Protester (Aug. 18, 2014) at 1.

solicitation that are apparent prior to the closing time for receipt of initial proposals be filed before that time. 4 C.F.R. § 21.2(a)(1) (2014).

The protester also challenges what it refers to as the “uncommon” reverse auction process. Protest at 3. Specifically, the protester argues that “[m]any of the cartridge brands being recommended as alternatives,” by the agency during the reverse auction, were “not of equal value from a warranty coverage or quality perspective.” Protester’s Comments at 3. To the extent that the protester had concerns with how the agency was conducting its reverse auction, then the time to protest this alleged apparent solicitation impropriety was before proposals were due. 4 C.F.R. § 21.2(a)(1).⁶

Next, although the solicitation stated that the agency would make award to offerors on a best-value basis, the protester contends that the agency instead made award on a lowest-priced, technically acceptable basis. The protester argues that the agency should have considered the relative merits of each offerors’ technical proposals concerning existing device warranties or product quality concerns which would affect warranties and past performance in making the best-value awards. Protest at 4.

We agree with Coast to Coast that the solicitation provided for the award of contracts on a “best-value” basis. RFP, SOW, at 3. As stated above, however, the SOW stated that “[o]nly the proposals found to be technically acceptable on all technical sub-factors will proceed to the price evaluation phase.” Id. at 36. Moreover, the RFP did not provide for the comparative evaluation of offerors’ technical proposals or past performance. Because the solicitation stated that technical proposals and past performance would be evaluated on a go/no-go basis, the only remaining factors that could be considered in the best-value award decision were price and socio-economic status. See id.

GSA contends, and we agree, that it made best-value award decisions that were based on price and socio-economic status. In this regard, the solicitation provided for “significant preference” for firms based on their socio-economic status. For example, under CLIN No. 3, the RFP stated that the agency initially contemplated five contract awards. The agency states that for three of the awards it had a “significant preference for SDVOSB concerns over other small businesses and other than small businesses,” and that for the remaining two awards all small

⁶ To the extent that the protester notes that it raised its concerns regarding the reverse auction process twice in separate emails to the agency, a protester’s extended discussion of concerns with a contracting agency does not toll our timeliness rules. See Instruments For Indus. Inc., B-250693, Feb. 16, 1993, 93-1 CPD ¶ 143 at 3.

business sub-categories would be deemed “of equal value.” RFP, SOW, at 4. The record here shows that the agency considered these enumerated socio-economic preferences, along with the offerors’ prices, in making the best-value award decisions. Source Selection Authority Decision at 14-15. On this record, we find no merit to the protester’s argument that the agency abandoned the RFP’s best-value award criteria by making award on a lowest-priced, technically acceptable basis.

Finally, Coast to Coast argues that one of the awardees, New Century Imaging, should not have been selected for award because, the protester contends, the awardee’s limited customer base, federal sales experience, and management experience reflect an inability to perform the requirements of the solicitation.⁷ Protest at 6-7; Protester’s Comments at 3. We dismiss this ground as it relates to a challenge of an agency’s determination of a firm’s affirmative responsibility. Since the determination that a bidder or offeror is capable of performing a contract is largely committed to the contracting officer’s discretion, our Office generally will not consider a protest challenging such a determination. 4 C.F.R. § 21.5(c). The exceptions are protests that allege that definitive responsibility criteria in the solicitation were not met and those that identify evidence raising serious concerns that, in reaching a particular responsibility determination, the contracting officer unreasonably failed to consider available relevant information or otherwise violated statute or regulation. Id. Neither exception applies here.⁸

The protest is denied.

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General Counsel

⁷ Coast to Coast also argued that another awardee, ABM Federal, fraudulently represented its socio-economic status as a SDVOSB. Protest at 5. The agency addressed this issue in its Summary Dismissal Request at 4-5, and Contracting Officer Statement at 1, but the protester did not respond. Thus, we find that the protester abandoned this issue. IntelliDyne, LLC, B-409107 et al., Jan. 16, 2014, 2014 CPD ¶ 34 at 3 n.3.

⁸ Coast to Coast also requests that we perform an independent review or investigation regarding whether another awardee, Access Products, Inc., violated the requirement to submit independent pricing. Protester’s Comments at 3; see Federal Acquisition Regulation (FAR) § 52.203-2. Our Office, however, does not conduct such investigations as part of our bid protest function. RMI, B-405409, Oct. 20, 2011, 2011 CPD ¶ 224 at 3 n.5.