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## Decision

**Matter of:** Supplies Now, Inc.

**File:** B-409528.32

**Date:** December 3, 2014

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Holly A. Roth, Esq., and Elizabeth C. Johnson, Esq., Kelley Drye & Warren LLP, for Capitol Supply, Inc., the intervenor.  
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.

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### 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.

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### DECISION

Supplies Now, Inc., of Greenacres, Florida, protests the award of contracts to 23 firms by the General Services Administration (GSA) under request for proposals (RFP) No. GSQ02-14-R-SA0001, contract line item numbers (CLIN) Nos. 1, 2, and 3, for a full range of office items that will be available for order by participating agencies. Supplies Now 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. RFP, Statement of Work (SOW), at 3.<sup>1</sup>

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.<sup>2</sup> This protest concerns CLIN Nos. 1, 2, and 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 review<sup>3</sup>, (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.

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<sup>1</sup> Citations to the RFP and SOW are to the conformed copies provided by the agency.

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

<sup>3</sup> 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.”<sup>4</sup> 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 37.

The solicitation divided the requirements, along with the associated preferences, into the following four CLINs. As stated above, this protest concerns CLIN Nos. 1, 2, and 3. The RFP stated that for CLIN No. 1, general office products, the agency anticipated 15 awards, and that the agency had a “significant preference for small businesses over other than small businesses.” RFP, SOW, at 3. For 2 of these 15 awards, there was a “significant preference” for service-disabled, veteran-owned small business (SDVOSB) firms over other small businesses. Id. For one of these awards, there was a “significant preference” for a small business which partners with at least 25 other small businesses, over small businesses and other than small businesses. Id. Additionally, the RFP stated that HUBZone firms would receive a “1% price preference” that is “calculated in the form of a price reduction of the evaluated price.” Id. The RFP stated that for CLIN No. 2, office paper, the agency anticipated three awards. For this CLIN there was a “significant preference for small businesses over other than small businesses.” Id. at 4. 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 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.

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. Supplies Now was advised during the evaluation process that it had passed the technical go/no-go evaluation and that its proposal had proceeded to the

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<sup>4</sup> 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.

price evaluation phase, which was conducted using a reverse auction, whereby multiple rounds of pricing competition were held. See id.

The agency found Supplies Now's proposals for CLIN Nos. 1, 2 and 3 to be responsive and technically acceptable; however, the agency concluded that they were not among the best-value proposals, considering price and socio-economic status, as stated in the evaluation criteria.<sup>5</sup> See id. at 12-13. In this regard, the agency concluded that other small business offerors proposed lower prices. See id. GSA made 13 awards under CLIN No. 1, two awards under CLIN No. 2, five awards under CLIN No. 3 and one award under CLIN No. 4. Id. at 14-15. This protest to our Office followed.

## DISCUSSION

Supplies Now argues that GSA did not follow the RFP's evaluation criteria in making its award decision. 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 relative merits of offerors' proposals under 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.

Supplies Now first argues that its "excellent" technical proposal "should have been rated highly and compared against price and socio-economic and given a high best value consideration." Protester's Response to Request for Dismissal (Sept. 16, 2014) at 6. As discussed above, however, the solicitation did not provide for evaluation of the relative technical merit of proposals. Instead, the solicitation

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<sup>5</sup> The evaluated prices for the CLIN No. 1 small business awardees ranged from \$154.1 million to \$163.7 million; Supplies Now's evaluated price was \$164.3 million; the evaluated prices for the CLIN No. 2 small business awardees ranged from \$59.9 million to \$62.4 million; Supplies Now's evaluated price was \$65 million; the evaluated prices for the CLIN No. 3 small business awardees ranged from \$65.9 million to \$67.1 million; Supplies Now's evaluated price was \$69 million. Source Selection Authority Decision at 12-13; Protest at 6-7.

clearly stated that technical proposals would be evaluated on a number of subfactors on a go/no-go basis to determine if they were technically acceptable, and that technically acceptable proposals would then proceed to price evaluation. RFP, SOW, at 36.

Supplies Now's argument that the solicitation should have included a rating scheme for technical proposals that provided for qualitative evaluation ratings, rather than a go/no-go evaluation, 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 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).

Similarly, the protester's argument that the agency failed to consider past performance in its technical evaluation is not supported by the record. As discussed above, the solicitation clearly stated that past performance was one of the go/no-go technical subfactors for each CLIN. RFP, SOW, at 36-38. To the extent that the protester is now arguing that this subfactor should have been adjectivally rated, rather than evaluated on a go/no-go basis, this alleged apparent solicitation impropriety should have been protested before proposals were due. 4 C.F.R. § 21.2(a)(1).

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 and past performance in making the best-value awards. Protester's Response to Request for Dismissal (Sept. 16, 2014) at 3.

We agree with Supplies Now 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." RFP, SOW, 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 its award decision was a best-value decision that was based on price and socio-economic status. In this regard, the solicitation provided for "significant preferences" for firms based on their socio-economic status. For example, under CLIN No. 1, the RFP stated that the agency had a "significant preference for small businesses over other than small businesses;" a "significant preference' for SDVOSB firms over other small businesses" for 2 of the 15 awards;

a “significant preference’ for a small business which partners with at least 25 other small businesses, over small businesses and other than small businesses” [for 1 of the 15 awards]; and would apply a 1-percent price preference for HUBZone firms. RFP, SOW, at 3. 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.

The protest is denied.

Susan A. Poling  
General Counsel