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

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## Decision

**Matter of:** Defense Product Solutions

**File:** B-405941

**Date:** January 10, 2012

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Theodore P. Watson, Esq., and Idris S. Keith, Esq., Watson & Associates, LLC, for the protester.

Marcia G. Madsen, Esq., Cameron S. Hamrick, Esq., Polly Myers, Esq., and Kristina M. Portner, Esq., Mayer Brown LLP, for Polaris Sales, Inc., an intervenor.

Travis P. Sommer, Esq., and Francis O. Wey, Esq., Department of the Army, 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.

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### DIGEST

Protest that agency unreasonably determined that awardee offered a superior delivery schedule is denied where agency reasonably evaluated protester's schedule as offering only the required schedule and awardee's as offering an accelerated schedule.

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### DECISION

Defense Product Solutions (DPS), of Century City, California, protests the Department of the Army's award of a contract to Polaris Sales, Inc., of Medina, Minnesota, under solicitation No. W56HZV-11-R-G210, for all terrain vehicles (ATVs), trailers, and spare parts. DPS asserts that the agency unreasonably evaluated its proposal under the delivery and small business participation factors.

We deny the protest.

The solicitation provided for a two-step evaluation process. First, the agency evaluated technical proposals on a pass/fail basis. Those proposals that were evaluated as acceptable were then considered for award on a best value basis considering the following evaluation factors: delivery, small business subcontracting (with subfactors for small business and small disadvantaged business), and price. Following the evaluation of initial proposals and discussions the agency requested final proposal revisions (FPR). DPS's revised proposal, with an evaluated price of \$53,411,384, was evaluated as meeting the solicitation delivery schedule, marginal

for small business (SB) participation, and poor for small disadvantaged business (SDB) participation. In contrast, Polaris's proposal, with an evaluated price of \$59,442,322, was evaluated as exceeding the solicitation delivery schedule, and excellent for SB and SDB participation. The agency performed a best value analysis and concluded that Polaris's superiority with respect to delivery schedule and small business participation was worth the **[DELETED]** price premium. When the agency then selected Polaris for award, DPS filed this protest.

DPS asserts that the agency unreasonably determined that Polaris offered a superior delivery schedule to that proposed by DPS. In this regard, offerors were required to complete Schedule F for both the ATV's and the trailers by indicating how many days after receipt of the order (DARO) it would begin delivery, how many items it would deliver per month, and when delivery would be completed. RFP § L.2.2.1. Offerors were required to meet the agency's objective schedule, which required ATV deliveries to begin 90 DARO, with 194 ATVs delivered every 30 days (except for the 86 ATVs in the last delivery), and for delivery to be completed 420 DARO. RFP at 50, Item for Discussion (IFD) at 1. For trailers, the government's objective delivery schedule was for delivery to begin 90 DARO, with 12 trailers delivered per month (2 in the last month), and delivery completed 300 DARO. Id. The solicitation further provided that the agency would favorably consider a credible, expedited schedule. RFP § L.2.2.1.3. In this regard, offerors were required to submit information to substantiate that the proposed delivery schedule could be achieved. RFP § L.2.2.1.2.

Polaris proposed a delivery schedule for **[DELETED]** under which delivery was to begin **[DELETED]** DARO, and end **[DELETED ]** DARO, and a schedule for trailers with delivery beginning **[DELETED ]** DARO and ending **[DELETED ]** DARO. Contracting Officer's Statement (COS) at 4, 5. In contrast, DPS was evaluated as proposing a delivery schedule for ATVs that mirrored the agency's objective schedule; it began **[DELETED ]** DARO and was completed **[DELETED ]** DARO. See DPS FPR at 5. For **[DELETED ]**, DPS offered a schedule that started **[DELETED ]** DARO and was completed **[DELETED ]** DARO. Id. The agency considered Polaris's accelerated delivery schedule for **[DELETED]** to be substantially superior to DPS's proposal of the required schedule. While the Army recognized that DPS offered a better delivery schedule for trailers, the agency found this was offset by Polaris's superior delivery schedule for ATV's. Source Selection Decision at 12.

DPS asserts that the agency failed to consider that its proposed delivery schedule for **[DELETED]** in fact was more advantageous than the schedule proposed by Polaris. DPS bases this argument on a letter from its subcontractor that was included with its proposal. As noted above, in addition to providing a delivery schedule, offerors were required to provide documentation that their proposed delivery schedule was credible. To this end, DPS included a letter in its proposal from its subcontractor stating that it "confirms [the subcontractor's] ability to start

delivery of the ATVs [DELETED] DARO at a rate of [DELETED] every [DELETED] days to continue through [390] DARO. With the final [DELETED] . . . to be delivered at [DELETED] DARO.” DPS Subcontractor Letter, Aug. 16, 2011. The subcontractor further indicated in the letter that it had the potential to exceed these minimum requirements, including the ability to begin delivery [DELETED] DARO with delivery completed by [DELETED] DARO. Id.

Notwithstanding the subcontractor’s statement that it could do better, the fact remains that DPS clearly proposed only a delivery schedule that mirrored the agency’s objective schedule and this is what the subcontractor confirmed it could do. That is, while the subcontractor indicated that it could exceed the delivery schedule, that is not the schedule that DPS proposed. DPS FPR at 5. Accordingly, we have no basis to question the agency’s determination that Polaris’s proposed delivery schedule for ATVs, which [DELETED] the agency’s objective schedule, was superior to the schedule proposed by DPS, which simply offered the agency’s required schedule.<sup>1</sup>

DPS also asserts that the agency unreasonably evaluated its proposal under the small business participation factor. Pursuant to the solicitation, large business offerors were required to submit a small business subcontracting plan. Small businesses were not required to submit a small business subcontracting plan, but were required to complete a chart which listed the dollar amount and percentage of subcontracting dollars that SB’s and SDB’s would perform. RFP § L.2.3. The solicitation provided that the agency goal was 31.7% for SB subcontracting and 5% for SDB subcontracting. RFP at § M.2.2.2.2(a). DPS proposed [DELETED]% for SB subcontracting and [DELETED]% for SDB subcontracting; based on these percentages DPS was rated marginal for SB participation and poor for SDB participation. COS at 8, Response to Item for Discussion at 1. (Polaris was rated

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<sup>1</sup>With respect to delivery the solicitation also provided that the agency would evaluate the risk of the offeror meeting its proposed schedule. In this regard, offerors were required to provide information on any AISAP (Afghanistan Iraq Supplemental Acquisition Program) supply contracts performed in the past three years. RFP § L.2.2.1.2. Both offerors were evaluated as low risk for delivery, but the agency found that Polaris’s proposal was slightly stronger because it had positive past performance on AISAP contracts, while DPS had none. DPS complains that the agency did not consider its subcontractors experience with commercial and government contracts. DPS, however, has not asserted that its subcontractor had AISAP experience, which is the only experience the solicitation stated would be considered. In any case, both offerors were considered low risk and Polaris had a significantly better delivery schedule. Thus, even if the offerors were considered equivalent for risk, the outcome of the competition would not change.

excellent for both SB and SDB participation based on its proposal of **[DELETED]**% SB and **[DELETED]**% SDB participation.) According to DPS, as a small business it should not have been required to submit a small business subcontracting plan.

As an initial matter, we note that the protester was not required to submit a small business subcontracting plan; rather, it was required to submit information which demonstrated what percentage of subcontracting dollars it intended to subcontract to SB and SDB's. In so far as DPS believes it should not have been evaluated on this information, under our Bid Protest Regulations a protest that involves a solicitation impropriety must be filed prior to the closing date for the receipt of proposals. 4 C.F.R. § 21.2(a) (2011). Here, it was clear from the face of the solicitation that the agency intended to evaluate the proposed SB and SDB subcontracting participation of every offeror, including those that were small businesses themselves.

Specifically, the solicitation provided that "[t]he following small business participation proposal submission instructions apply to every offeror... regardless of size status." RFP § L.2.3. All offerors, including those that were themselves small businesses were instructed to complete the small business participation table, and identify the extent to which U.S. SB concerns and SDB firms will be utilized as first-tier subcontractors in performing the contract. RFP § L.2.3.3.1.<sup>2</sup> Similarly, section M advised that the small business participation factor would be applied to every offeror, regardless of size, and further explained that the agency would evaluate the extent to which the proposal identifies participation by SB concerns and SDB concerns. RFP § M.2.2.2.2. Thus, if DPS believed that as a small business its proposed subcontracting participation should not have been evaluated, it was required to protest before the July 18 closing date for the receipt of proposals. Since DPS did not submit its protest until after award, any challenge to the solicitation terms in this regard is untimely and will not be considered.

The protest is denied.

Lynn H. Gibson  
General Counsel

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<sup>2</sup> If the offeror was a small business concern its participation was also included based on the amount of the contract that it performed. RFP § L.2.3.2.