



**G A O**

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**Comptroller General  
of the United States**

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

## Decision

**Matter of:** Evans Security Solutions, Inc.

**File:** B-311035

**Date:** March 19, 2008

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Reginald Evans for the protester.

J. Alex Ward, Esq., and Damien Specht, Esq., Jenner & Block, LLP, for General Dynamics Information Technology, Inc., an intervenor.

Roy E. Potter, Esq., and Julie K. Cannatti, Esq., Government Printing Office, for the agency.

Kenneth Kilgour, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

1. Protester is not an interested party for purposes of challenging the agency's ability to perform the requirements of the solicitation where the record shows that, even if the protest were sustained on this ground, an intervening offeror would be next in line for award.
  2. Protest that agency improperly failed to give "priority" to the protester as a small business, surplus labor area concern is denied where the agency regulations at issue contain no such requirement.
  3. Protest that the awardee's and the protester's proposals should have received comparable technical scores because they offered the same equipment is denied where the solicitation lists several factors to be considered in the technical evaluation, of which equipment offered is but one.
  4. Allegations that the agency failed to make the solicitation requirements sufficiently favorable to small businesses are untimely where made after the solicitation closing date.
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### **DECISION**

Evans Security Solutions, Inc. protests the award of a contract to General Dynamics Information Technology, Inc. (GD) by the Government Printing Office (GPO) under request for proposals (RFP) No. GPOSC2007 for the delivery of a fully operational and integrated system for the government to use to issue smart card identification credentials.

We deny the protest.

Award was to be “made on a Best Value basis to the Offeror whose offer is determined to be technically acceptable and to the Offeror who proposes the most advantageous offer to the government, price and price related factors considered.” RFP § M.2.1. The technical evaluation considered four factors in descending order of importance: timeliness of delivery; experience; technical approach; and past performance. The RFP advised that price would be evaluated to determine whether proposed prices were realistic, fair, and reasonable. Though not a heavily weighted factor, price could become a determining factor if two or more offers were determined to be technically equal.

The agency received and evaluated three proposals, including the awardee’s and the protester’s. The protester’s proposal was rated marginal for timeliness of delivery, unsatisfactory for experience, and marginal for technical approach, with one strength, five weaknesses, and two deficiencies. The protester supplied no information for past performance and was assigned “unknown risk.” The protester’s proposal received an overall technical evaluation rating of unsatisfactory. The awardee’s proposal and the third proposal were higher rated and offered lower prices than the protester’s proposal. The agency’s price reasonableness evaluation found the protester’s overall price to be “outside the competitive range,” Agency Report, Tab O, Summary of Revised Cost Proposals for Smart Card at 1, and the price realism analysis found the protester’s price to be unrealistic, with respect to contract line item numbers (CLIN) 20 and 21 for the base year and CLINs 39 and 40 for the option years. The agency made award to GD; the protester received its debriefing on January 16, 2008.

Evans alleges that it will be impossible for the awardee “to meet GPO specification of having the system fully operational within 60 days” at the offered price.<sup>1</sup> Protest at 1. Because there is an intervening offeror whose quotation was evaluated as technically acceptable, Evans is not an interested party for the purpose of raising this allegation. See Bid Protest Regulations, 4 C.F.R. § 21.0(a) (2007). Where, as here, there is an intervening offeror who would be in line for the award if the protester’s challenge to the award were sustained, the intervening offeror has a greater interest in the procurement than the protester, and we generally consider the protester’s interest to be too remote to qualify it as an interested party.<sup>2</sup> See Four Seas and Seven Winds Travel, Inc., B-244916, Nov.15, 1991, 91-2 CPD ¶ 463 at 4.

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<sup>1</sup> The protester misstates the solicitation requirement, which is to complete site acceptance training within 90 days of contract award. RFP § C.8.1.2.

<sup>2</sup> In any event, a protester’s claim that another firm submitted an unreasonably low price—or even that the price is below the cost of performance—is not a valid basis for protest. Brewer-Taylor Assocs., B-277845, Oct. 30, 1997, 97-2 CPD ¶ 124 at 4.

The protester alleges that the agency was required to give the protester, as a small business and surplus labor area concern, "priority," and failed to do so. Protest at 1. Under GPO regulations, no special consideration is given to small business and surplus labor area concerns unless the agency receives equal low bids, which was not the case here, and thus this ground of protest is without merit. See Materials Management Acquisition Regulations (MMAR) § 19.202-3.

Evans argues that because its proposal and the awardee's proposal offered the same equipment, the proposals should have received comparable technical scores, when in fact the protester's proposal was rated inferior to the awardee's. As noted above, the RFP's technical evaluation included four factors, not simply the equipment offered. The protester's allegation that, because it and the awardee offered the same equipment they should have received comparable technical evaluation scores, is based on an erroneous interpretation of the solicitation requirements and is without merit. F2M, Inc./SCI, B-257920, Nov. 22, 1994, 94-2 CPD ¶ 198 at 3.

The protester alleges that the GPO violated various statutes and regulations, including the Anti-Deficiency Act, certain sections of the MMAR, and provisions of the Small Business Act, as well as Executive Order No. 13170. We have reviewed each of these allegations, and inasmuch as they assert that the agency in some way failed to make the solicitation language sufficiently favorable to certain types of businesses, these allegations, in order to be timely, should have been filed prior to the solicitation closing time. See 4 C.F.R. § 21.2(a)(1). Moreover, each of these allegations is without merit, even if timely; for example, the GPO is a legislative branch agency not subject to the provisions of the Small Business Act.<sup>3</sup> Fry Commc'ns, Inc., B-207605, Feb. 1, 1983, 83-1 CPD ¶ 109.

The protest is denied.

Gary L. Kepplinger  
General Counsel

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<sup>3</sup> The protester's allegation that the contracting officer failed to give the firm the appropriate post-award notice of the award is of a procedural nature, unrelated to the validity of the award, and not an allegation our Office reviews. Al Hamra Kuwait Co., B-288970, Dec. 26, 2001, 2001 CPD ¶ 208 at 3 n.2.