



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Robertson Leasing Corporation

File: B-279756; B-279756.2

Date: July 17, 1998

Donald O. Ferguson, Esq., for the protester.

John C. D. Drolla, Jr., Esq., and Richard J. Wieland, Esq., for Gaston & Sheehan Auctioneers, Inc., an intervenor.

Joni M. Gibson, Esq., Department of Justice, U.S. Marshals Service, for the agency. Peter A. Iannicelli, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Award of a contract to the offeror of the higher technically rated, higher-priced proposal was permissible where the request for proposals (RFP) stated that technical evaluation factors were considered more important than price, the awardee's proposal received the greatest number of combined price/technical evaluation points under the RFP's price/technical tradeoff formula, and the contracting officer reasonably determined that the superior technical merit of the awardee's proposal warranted its higher price.

DECISION

Robertson Leasing Corporation (RLC) protests the United States Marshals Service's award of a contract to Gaston & Sheehan Auctioneers, Inc. (G&S), pursuant to request for proposals (RFP) No. MS-96-R-0017, for services involving vehicles seized by the government. The protester contends it should have been awarded the contract based upon its many years of successful performance of such contracts and because its proposed price was less than the awardee's. Initial Protest at 2; Supplemental Protest at 1. The protester also contends that the agency failed to follow the RFP's evaluation scheme since it could not justify paying a significantly higher price to have the work performed by G&S. Initial Protest at 2, 4.

We deny the protests.

Issued on April 30, 1996, the RFP solicited offers for towing, storing and disposing of seized/forfeited vehicles in the Southern District, Texas; initial proposals were due by July 5.¹ RFP amend. A001 at 1. The RFP contemplated award of a 1-year indefinite-delivery, indefinite-quantity contract and included options for 4 additional years. RFP section B; RFP § L-8. The contractor would be required to tow the vehicles from the point of seizure to a storage facility operated by the contractor. The contractor would also be required to perform maintenance, make repairs, prepare the vehicles for disposal, and dispose of the vehicles by auction or sale to salvage dealers. RFP section C. Tasks would be performed in response to delivery orders, and payment would be made on a fixed-price basis (except for repairs, for which the contractor would be reimbursed costs). RFP §§ I-54, L-8.

The RFP stated that the contract would be awarded to the offeror whose proposal was determined to be in the best interests of the government, price and other factors considered, and reserved to the government the right to select other than the lowest cost proposal. RFP § M-1. The RFP stated that technical factors would be given a weight of 60 percent in the evaluation, while cost would be given a weight of 40 percent. RFP §§ M-2, M-4. The equally weighted technical evaluation factors (each worth 15 evaluation points) were: towing, storage, sales, and work capability. RFP § M-3. The RFP further stated, at § M-5:

Notwithstanding this [40/60] price/technical ratio, for determining whether a premium is warranted, the Government will only award a contract to other than the low acceptable offeror if specific technical advantages can be identified and the Contracting Officer determines that those specific technical advantages are worth the amount of any premium in price. The Contracting Officer has the right to determine whether any differences in technical weighing are "significant" for purposes of evaluating the overall merit of proposals.

Seven timely offers were received. After initial proposals were evaluated by the technical evaluation board, and a preliminary price analysis was conducted by the contracting officer, four offers (including RLC's) were included in the competitive range. Agency Report at 3. Discussions were held with all competitive range offerors. Id. at 4. After discussions were concluded and best and final offers (BAFO) evaluated, the contracting officer initially recommended that the contract be awarded to RLC. Id. at 5. However, before a contract was awarded, the

¹The Southern District, Texas, is comprised of two areas: McAllen and Laredo. RFP at §§ C-1, C-4. Offerors were allowed to propose for either requirement, or both, and two separate contracts were to be awarded. RFP Cover Sheet; RFP section B. The protests concern only the McAllen area award; therefore, the remainder of this decision will discuss only the McAllen area award and contract actions relating to it.

contracting officer learned that, due to a recent Border Patrol initiative, the number of vehicles being seized per day had greatly increased; the RFP was amended to increase the estimated quantities and offerors were requested to submit second BAFOs responding to the revised requirement. Id.; RFP, amend. A004 at 1.

In response to the increased estimates, three offerors increased their proposed prices; G&S, however, significantly decreased its proposed price. Contracting Officer Statement at 4-5. After second BAFOs were evaluated, RLC's BAFO was the lowest-priced of the four offers and ranked third on technical merit, while G&S's BAFO was second lowest-priced and ranked first on technical merit. Negotiation Memorandum at 5; Contracting Officer Statement at 5. G&S's and RLC's BAFOs were evaluated as follows:

OFFEROR	PROPOSED PRICE	TECHNICAL SCORE	PRICE SCORE	TOTAL SCORE
G&S	[deleted]	[deleted]	[deleted]	[deleted]
RLC	[deleted]	[deleted]	[deleted]	[deleted]

Contracting Officer Statement at 5; Agency Report at 5.

Based upon a comparison of G&S's price with the prices proposed by the other offerors, the agency determined that G&S's proposed prices were fair and reasonable. Determination of Price Reasonableness at 2. The contracting officer noted that G&S's total proposed price was roughly \$[deleted] more than RLC's over the base period and 4 option years; RLC's prices were highest for the base period and would decline with each option period.²

The contracting officer believed that RLC's prices were mathematically unbalanced and suggested that they might be materially unbalanced as well. Negotiation Memorandum at 5; Determination of Price Reasonableness at 2. The contracting officer reports that the government would not reap the roughly \$[deleted] benefit of RLC's pricing unless all four options were exercised, and that at the completion of 3 years of the contract (i.e., after the basic period plus two option periods had been performed) RLC's proposal would represent a savings of only about \$[deleted]. Contracting Officer Statement at 6-7. The contracting officer determined that it was not in the government's interest to have to exercise several

²For example, RLC proposed a price of \$[deleted] for the basic contract period, but only \$[deleted] for the fourth option period. On the other hand, G&S's prices were very even throughout the entire term of the contract (\$[deleted] for the basic contract period and \$[deleted] for each of the option periods). Determination of Price Reasonableness at 1.

options in order to obtain the benefit of lower-priced later years. Negotiation Memorandum at 5. Nonetheless, the contracting officer did not reject RLC's proposal due to its pricing structure, and it is not clear from the record that the concern about unbalanced pricing actually had an impact on the source selection.

After comparing the evaluations of RLC and G&S, and noting that G&S's BAFO was rated as technically superior in all areas of the evaluation, the contracting officer concluded that G&S's BAFO offered significant advantages in spite of its greater proposed price. Contracting Officer Statement at 6-7. Accordingly, the contracting officer awarded the contract to G&S on April 1, 1998, and RLC was debriefed on April 7. Agency Report at 5. Shortly thereafter, RLC filed its initial protest in our Office; after receiving the agency's report on its initial protest, RLC filed a supplemental protest on May 20. Contract performance has been stayed pending our decision on the protests. Id. at 1.

The protester contends that the award to G&S is inconsistent with the RFP's evaluation scheme.³ RLC states that it is an experienced contractor with many years of successful experience in performing these types of contracts. In view of RLC's significant past performance experience, and because its proposed price is roughly \$[deleted], or [deleted] percent, lower than G&S's proposed price, the protester argues that the agency could not, consistent with the RFP evaluation scheme, justify paying such a substantial premium to have G&S perform the work. Initial Protest at 4.

In a negotiated procurement, a procuring agency has the discretion to select a more highly rated technical proposal if doing so is reasonable and is consistent with the RFP's evaluation scheme. Stone & Webster Eng'g Corp., B-255286.2, Apr. 12, 1994, 94-1 CPD ¶ 306 at 8. An agency may properly award a contract to the offeror of a higher-rated technical proposal with a significantly higher proposed cost, where the agency determined that the cost premium was justified considering the significant technical superiority of the selected offeror's proposal. Id.

As detailed above, G&S's BAFO received a total evaluation score, including both technical and price points, of [deleted] points, while RLC's BAFO received a total evaluation score of [deleted] points. As G&S's BAFO received the highest cost/technical point total under the RFP's cost/technical tradeoff scheme, the selection of G&S for contract award was plainly consistent with that scheme. Moreover, the contracting officer examined the key technical advantages of G&S's

³In its initial protest, RLC also alleged that the agency failed to hold meaningful discussions with it. The agency report on the initial protest included a detailed response to this allegation, but RLC did not reply to the agency's response. We therefore consider the issue abandoned. Trijicon, Inc., B-244546, Oct. 25, 1991, 91-2 CPD ¶ 375 at 4 n.3.

proposal and reasonably determined that the extra technical merit associated with G&S's proposal was worth its higher price. Specifically, the contracting officer compared the technical evaluations of the G&S and RLC proposals and observed that, while G&S's proposal was technically superior to RLC's in every area evaluated, G&S's proposal's significantly higher technical rating was primarily due to technical advantages that G&S's proposal had over RLC's proposal in the evaluation of sales and work capability. The contracting officer determined that G&S's proposal had a more efficient sales plan, previous auction sales attracting large numbers of people and resulting in proceeds that were greater than appraised values; the contracting officer also noted G&S's commitment to provide the staffing to handle the auctions. Negotiation Memorandum at 6; Final Evaluation Report at 1, 5; Contracting Officer Statement at 6.

In terms of points, the evaluation record shows that G&S's proposal received [deleted] points (out of 15.0 available points) for a "superior" rating on sales, while RLC's proposal received only [deleted] points for a "poor" rating. Final Evaluation Report at 1, 5; Technical Evaluation, Attach. 2. In the work capability evaluation, G&S's proposal received [deleted] (out of 15.0 available points) for a "good" rating, while RLC's received only [deleted] points for a "weak" rating. Id.

In view of the much higher ratings achieved by G&S's proposal on these two evaluation factors, we have no basis to find unreasonable the contracting officer's determination that G&S's technical advantages in the sales and work capability areas were worth G&S's additional cost. Furthermore, the record shows that G&S's proposal was rated as technically superior to RLC's on every evaluation factor. Overall, G&S's proposal was rated approximately [deleted] percent higher than RLC's on technical merit and was only approximately [deleted] percent more expensive. Since the RFP's evaluation scheme indicated that technical merit was more important than price, we believe that the contracting officer's selection of G&S was both reasonable and consistent with the RFP's evaluation scheme.

In its supplemental protest, RLC complains that, while the Marshals Service considered G&S's proposal to be technically superior to RLC's in part because G&S offered a superior sales plan, the agency did not require G&S to provide documentary proof to support claims made in G&S's proposal that G&S's gross sales receipts from previous auctions exceeded pre-sale estimates. We note, first, that G&S's proposal's high rating in the sales evaluation was not based solely upon its claim that the proceeds of two previous auctions exceeded pre-sale estimates, but was also based upon the other aspects of its proposal discussed above. Moreover, while the RFP, at § L-2c.iii, required offerors to describe their sales methods and past experience, the RFP did not require documentary proof to support each statement made in a proposal. In fact, though, G&S's proposal's description of its sales methodology and past experience was supported by a list of 19 auctions it conducted for government agencies in just the last 3 years, complete with agency contacts, telephone numbers, and approximate receipts. As there was

no reason for the agency to believe that G&S had misrepresented its claims of prior auction successes--and RLC has provided no reason in its protests--we think that the Marshals Service reasonably relied upon the information contained in the proposal rather than requiring any additional supporting documentation.

In its supplemental protest, RLC also complains that the Marshals Service incorrectly determined that G&S's prices were fair and reasonable without conducting a comprehensive comparison of G&S's year-by-year prices with those proposed by RLC. However, the agency determined that adequate price competition had been obtained and that G&S's prices were fair and reasonable based upon a comparison to the other offers received in this procurement and to a contract for similar services in the Laredo area. Determination of Price Reasonableness at 2; Contracting Officer Statement at 5. The prices received in the current procurement ranged from a low price of \$[deleted] to a high price of \$[deleted]. Determination of Price Reasonableness at 1. G&S's price was near the low end of the range and was only about [deleted] percent higher than RLC's. In these circumstances, the agency reasonably determined that G&S's proposed prices were fair and reasonable, and there was no need to perform a year-by-year analysis. Federal Acquisition Regulation § 15.805-2(a) (June 1997); Pearl Properties; DNL Properties, Inc., B-253614.6, B-253614.7, May 23, 1994, 94-1 CPD ¶ 357 at 11-12.

In its supplemental protest, the protester also asserts that the contracting officer improperly did not consider the lower prices that RLC proposed for the option years (and even beyond the fourth option year, if the contract were extended, as was apparently done in a prior contract) contrary to the RFP's express statement, at § M-4a, that an offer's total price, including option year prices, would be considered in the evaluation.⁴ However, consistent with the RFP, option year prices were, in fact, considered as part of each offer's total price when offers were awarded price points under the RFP price/technical formula. As noted above, RLC's proposal received a perfect score of 40 price points based upon its lowest proposed price,

⁴In its supplemental protest, RLC also complains about the contracting officer stating that RLC's pricing was mathematically unbalanced and very likely materially unbalanced as well. This complaint provides no basis for overturning the award decision because the contracting officer did not reject RLC's proposal as unbalanced. To the extent that RLC's apparently front-loaded pricing caused the agency to discount the value to the government of the firm's overall lower price, we see no basis to find such a consideration improper in the context of a cost/technical tradeoff.

and RLC's price was only lowest when all option years were considered. Nothing in the RFP required the agency to consider pricing in the event of the contract being extended beyond its term, and the agency acted properly in not doing so.

The protests are denied.

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