



Comptroller General  
of the United States  
Washington, D.C. 20548

REDACTED VERSION

## Decision

**Matter of:** Kendall Auto Auction, Inc.  
**File:** B-252474.3  
**Date:** June 10, 1994

Alex D. Tomaszczuk, Esq., and John E. Jensen, Esq., Shaw, Pittman, Potts & Trowbridge, for the protester.  
Richard D. Lieberman, Esq., Sullivan & Worcester, for DGS Contract Services, an interested party.  
Joan M. Gibson, Esq., Sam W. McCahon, Esq., and Gerald E. Elston, Esq., United States 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

1. In a procurement for vehicle towing and related services, where awardee's proposal did not take exception to solicitation requirement for a 3-hour response time and, in fact, awardee's proposal affirmatively stated that the response-time requirement would be met, the contracting agency reasonably concluded that the awardee's proposal was technically acceptable.

2. Contract was properly awarded to the lowest-priced, lower technically rated awardee rather than to the higher-priced, higher technically rated protester where: (1) the request for proposals stated that technical factors and price were equally important, but that the contract would be awarded to other than the low acceptable offeror only if the contracting officer determined that it was worth paying a premium to obtain specific, identifiable technical advantages of a higher-priced offer; (2) the contracting officer reasonably determined that the technical advantages of the protester's higher-priced proposal were not worth paying the protester's premium price; and (3) the awardee's proposal received the highest total of combined technical and price points.

The decision issued June 10, 1994, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions in text are indicated by "[DELETED]."

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**DECISION**

Kendall Auto Auction, Inc. protests the United States Marshals Service's award of a contract to DGS Contract Services (DGS) pursuant to request for proposals (RFP) No. MS-92-R-0074. The protester alleges that DGS's proposal is technically unacceptable because it does not meet the RFP's 3-hour response time for towing services, and that the agency improperly failed to consider this deficiency in DGS's proposal during the evaluation of technical proposals. Kendall also contends that the agency improperly awarded the contract to DGS solely on the basis of its low price. We deny the protest.

Issued on January 19, 1993, the RFP solicited offers for towing, storage, maintenance, and disposal (by auction, salvage, or scrap sale) of vehicles seized in the eastern district of North Carolina<sup>1</sup> and contemplated award of a requirements contract with firm, fixed unit prices for a 1-year basic period with options for 4 additional years. The RFP stated that technical merit was worth a total of 50 points and that the technical evaluation criteria and their respective weights were: towing (10 points), storage (15 points), sales (10 points), and work capability/business factors (15 points). The RFP stated that cost would also be worth 50 points and that proposals would be evaluated by adding the prices for the basic and all option years of the contract.

Six offerors submitted cost and technical proposals by the February 26 closing date for receipt of initial proposals. After evaluation by the technical evaluation board, two offers were rejected as not having a reasonable chance for contract award, leaving four offers in the competitive range. Discussions were held with all competitive range offerors and best and final offers (BAFO) were twice requested. After evaluation of second BAFOs, DGS's and Kendall's proposals were ranked first and second as follows:

<u>Offeror</u>	<u>Price</u>	<u>Technical Score</u>	<u>Price Score</u>	<u>Overall Score</u>
DGS	\$436,010	[DELETED]	[DELETED]	[DELETED]
Kendall	\$643,500	[DELETED]	[DELETED]	[DELETED]

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<sup>1</sup>The eastern district includes 44 North Carolina counties listed in the solicitation.

Based upon DGS's highest overall total score and its lowest proposed price, the contracting officer awarded DGS the contract on December 1. Kendall, the incumbent contractor, filed its protest with our Office shortly thereafter. Performance by DGS has been held in abeyance pending our decision on the protest.

The protester contends that DGS's proposal does not show compliance with the RFP's 3-hour towing response-time requirement and, therefore, should have been rejected as technically unacceptable. Alternatively, Kendall contends that the agency's evaluation was deficient because the Marshals Service did not evaluate DGS's proposal on the towing response-time requirement and downgrade DGS's evaluation score on this factor.

The RFP required each offer to include a storage facility located within 75 miles of the Marshals Service's office in Raleigh, North Carolina. Regarding roadside tows, the RFP stated: "[t]he contractor shall be required to pick-up a vehicle within three (3) hours of notification by the Government."

DGS proposed the use of its storage facility in Erwin, North Carolina, approximately 38 miles from the Marshals Service's Raleigh office. Kendall asserts that parts of 10 counties in the eastern district are more than 160 miles from DGS's Erwin facility. Kendall argues that a DGS's tow truck traveling at the maximum legal speed cannot get from the DGS storage facility to a seized vehicle within 3 hours if the seized vehicle is more than 160 miles from the Erwin facility.

In a negotiated procurement, the procuring agency has primary responsibility for evaluating technical information supplied by an offeror and determining the acceptability of the offeror's proposal, and our Office will not disturb the agency's finding of technical acceptability unless it is shown to be unreasonable. See Alpha Technical Servs., Inc., B-250878; B-250878.2, Feb. 4, 1993, 93-1 CPD ¶ 104 and cases cited. Evaluating the relative merits of competing proposals is a matter within the discretion of the contracting agency since the agency is responsible for defining its needs and the best method of accommodating them. Simms Indus., Inc., B-252827.2, Oct. 4, 1993, 93-2 CPD ¶ 206. In reviewing an agency's evaluation, we will not reevaluate proposals but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria. Id.

Examination of DGS's proposal shows that DGS did not take exception to the 3-hour towing response-time requirement. In fact, DGS's BAFO specifically acknowledged the

requirement and affirmatively stated: "[a]ll roadside tows shall be towed within 3 hours of notification." Among other things, DGS described how it would comply with the requirement by (DELETED).

In addition, the contracting officer reports that the vast majority of required towing is along Interstate Highway 95 and that no vehicles have been towed from the outlying counties named by the protester during the last 2 years. Kendall disputes the contracting officer's statement, asserting that, as the incumbent contractor, it did in fact tow one vehicle from an outlying county in 1992. Regardless of which statement is true, it is clear that the contractor will rarely be expected to travel more than 160 miles to tow a vehicle. Furthermore, just because DGS's storage facility may be a considerable distance from a particular vehicle to be towed does not mean that the 3-hour response time cannot be met. For example, if it turns out that there are a number of tows in the outlying counties, DGS could establish an office in that part of the eastern district in order to meet the response-time requirement. Moreover, the RFP specifically allows use of subcontractors with the contracting officer's concurrence; this would be an obvious solution to possible response-time problems. Accordingly, we see no reason for finding unreasonable the Marshals Service's determination that DGS's proposal was technically acceptable. See Alpha Technical Servs., Inc., supra.

Regarding the technical evaluation, while response time was one of many performance requirements set forth in the RFP's statement of work, it was not a separate evaluation criterion that was required to be evaluated by the technical evaluation board. As noted above, the RFP's technical evaluation criteria were towing, storage, sales, and work capability/business factors. The evaluation documents, including the individual evaluators' score sheets, show that each proposal was evaluated on each of the technical evaluation factors set out in the RFP. The individual evaluators' score sheets and the consensus evaluation reports also contain numerous comments showing the evaluators' concerns regarding each proposal. None of the evaluation documents contains any negative comments regarding DGS's ability to meet the response-time requirement; the agency reports that this was because the evaluators simply did not think it was a problem. In fact, one evaluator not only considered DGS's compliance with the response-time requirement, but his narrative comments show that he believed towing response time to be one of the strengths of DGS's proposal. Thus, the protester's argument provides no basis for finding the agency's evaluation unreasonable or inconsistent with the RFP's evaluation scheme.

Kendall also contends that the agency improperly awarded the contract to DGS solely on the basis of its proposed low price. Kendall asserts that the contracting officer improperly did not conduct a meaningful cost/technical tradeoff, which would have required award to Kendall on the basis of its BAFO's greater technical merit.

In a negotiated procurement, an agency may award to a lower-priced, lower technically rated offeror if it determines that the price premium involved in awarding to a higher technically rated, higher-priced offeror is not justified given the acceptable level of technical competence obtainable at the lower price. See PHP Healthcare Corp.; Sisters of Charity of the Incarnate Word, B-251799 et al., May 4, 1993, 93-1 CPD ¶ 366 (contract award to lower technically rated, lower-priced offeror was proper even though RFP stated that technical factors were considered significantly more important than price). Even where a source selection official does not specifically discuss the technical/cost tradeoff in the selection decision document, we will not object if the tradeoff is supported by the record. See Management Sys. Designers, Inc., B-244383.3, Sept. 30, 1991, 91-2 CPD ¶ 310. The use of the points achieved as the result of a cost/technical formula specified in a solicitation is a proper way to perform a cost/technical tradeoff. Id.

Here, regarding contract award, the RFP stated:

"Between acceptable proposals with a significant difference in technical weighing (and/or merit), a determination will be made as to whether the difference in technical merit reflected by a proposal from other than the low acceptable offeror warrants payment of a premium in price. . . . In determining whether a premium is warranted, the importance or weight given to price will represent 50 percent of the total score, and the importance or weight given to technical factors for which a comparative evaluation will be conducted will represent 50 percent of the total score.

"Notwithstanding this 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." [Emphasis added.]

In our opinion, the contracting officer's decision to award the contract to DGS was reasonable and consistent with the evaluation scheme. As noted above, Kendall's BAFO received the highest technical rating with a total of [DELETED] points while DGS's BAFO received just [DELETED] technical points. Kendall's total price was \$643,500 while DGS's total price was only \$436,010. Thus, DGS's offer represented a savings of \$207,490 to the government. Using the 50/50 (technical/price) weighting scheme set forth in the RFP, the agency awarded DGS's [DELETED] combined technical/price points while it awarded Kendall just [DELETED] combined technical/price points.

After examining the evaluators' reports and both offerors' BAFOs, the contracting officer decided to award the contract to DGS based upon its proposal's lowest-cost technical acceptability, and highest total combined technical/price points. The contracting officer further states that she thoroughly reviewed both offerors' BAFOs and found that Kendall's technical superiority was primarily due to two factors, superior facilities and more experience in auctions. The contracting officer specifically considered that DGS offered to adapt its structures to meet the agency's storage needs and to comply with the contract terms for advertising auctions. The contracting officer also conducted a price analysis and determined that DGS's prices were fair and reasonable. Based upon all of these factors, the contracting officer decided to award the contract to DGS stating, "(t)he Contracting Officer has determined that Kendall Auto Auction with the highest technical score does not offer technical advantages worth paying a premium for." [Emphasis in the original contracting officer's statement.] Consequently, contrary to Kendall's contention, the record clearly shows that the contracting officer conducted a well-reasoned cost/technical tradeoff consistent with the RFP's selection scheme. See PHP Healthcare Corp.; Sisters of Charity of the Incarnate Word, supra.

The protest is denied.

Robert P. Murphy  
Acting General Counsel