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Comptroller General
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United States Government Accountability Office
Washington, DC 20548



# Decision

**Matter of:** Liquidity Services, Inc.

**File:** B-294053

**Date:** August 18, 2004

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## DIGEST

Price evaluation was unreasonable where comparison of offerors' "discount rates" for transportation and warehousing did not reflect actual proposed prices or the cost to the government for these services.

## DECISION

Liquidity Services, Inc. protests the General Services Administration's (GSA) award of a contract to Maximus, Inc., under request for proposals (RFP) No. FAS-PP-03-0004, for the sale of federal surplus property. Liquidity challenges the evaluation of proposals.

We sustain the protest.

BACKGROUND

The Federal Asset Sales (FAS) program seeks to improve and optimize how agencies dispose of billions of dollars of unwanted assets. GSA, the "lead partner" on the FAS initiative, is responsible for developing, implementing, and operating a successful solution in accordance with the FAS program's "high-level" objectives, including: (1) making it easier for citizens and businesses to find and buy government assets, (2) increasing net proceeds from asset sales, (3) decreasing agencies' expenses related to asset sales, (4) reducing asset disposal time, and (5) improving the personal property sales process. RFP §§ A.5.1, A.5.2, C.2.

The RFP contemplated award of a fixed-price indefinite-delivery/indefinite-quantity contract to a single "service aggregator" whose proposal best met the FAS program objectives. Specific categories of services to be provided under the contract were marketplace services (including providing online and offline auction venues for selling assets), pre- and post-sale value added services (such as providing appraisals, packaging, and shipping services), marketing, government system integration and security, and administration and oversight services. Id. §§ A.6, C.2. The RFP provided for a maximum 10-year contract period (2-year base period, with one 2-year option, followed by two 3-year option periods), with a minimum guarantee of $2,500 and a maximum contract ceiling of $500,000,000 in total revenue to the service aggregator. Id. at i. and § A.1.

The RFP stated that award would be made on a "best value" basis considering the following factors and subfactors:[1]

| | | Weight |
|---|---|---|
| Technical Approach | | 45% |
| Related Experience | | 20% |
| | Marketplace (5%) | |
| | Value Added Services (5%) | |
| | Administration and Oversight (5%) | |
| | Marketing (2.5%) | |
| | Performance Management (2.5%) | |
| Past Performance | | 10% |
| | Quality of the Services (2.5%) | |
| | Timeliness of Performance (2.5%) | |
| | Business Relations/Customer Service (2.5%) | |
| | Cost Control (2.5%) | |
| Price | | 25% |

Offerors were required to propose pricing for at least one of two pricing models described in the RFP: a fee-for-service price model (Model 1) and an incentive-

[1] Although the RFP did not specify the weighted percentages applied to the factors and subfactors (this information was included in the source selection plan), the solicitation did state that technical approach was more important than related experience, which was more important than past performance; and combined, these factors were "significantly more important than price." The RFP also stated that the related experience subfactors were listed in descending order of importance, with the first three and last two of equal importance, and the past performance subfactors were of equal importance. RFP § F.8.2.

aligned price model (Model 2).[2] Under the fee-for-service model (Model 1), the agency will select the services to be performed from a menu of services offered by the contractor, including online and offline marketplace services, value added services, and payment collection services. The contractor will be paid a fee based on a percentage of gross proceeds obtained for each of the services selected under the contract. In addition, the contractor will be reimbursed on a fixed unit-cost basis for transportation, warehousing, and refurbishing services expended. Offerors were required to specify both their proposed fee and fixed unit prices in "Model 1 bid forms" submitted with their proposals for the base and option years, and for different volumes of gross proceeds specified in the RFP. RFP amend. 2, § B.

Under the incentive-aligned model (Model 2), which is a performance-based model, the offerors choose the services to be provided when selling property. Under this model, the contractor will receive a fee based on the percentage of net proceeds, that is, the difference between gross proceeds realized from the sale of property and all direct costs of managing, transporting, protecting, improving, and marketing property. Transportation, warehousing, and refurbishing services are not reimbursable under Model 2, but are considered an element of the fee paid to the contractor. Therefore, offerors were to specify only their fees in "Model 2 bid forms" for the base and option years, for differing volumes of net proceeds specified in the RFP. Id.

The RFP provided that in conducting the price evaluation, GSA would use "standard financial and business analytical techniques and methodologies" to evaluate pricing approaches under nine equally weighted issue areas: maximizing net proceeds, the risks to the government, best practices/proven model, agency acceptance (that is, increasing the likelihood individual agencies will provide assets for sale), administrative costs, business viability, reasonableness of proposed pricing, minimizing up-front investment, and time to implement. The RFP stated that, in performing this analysis, GSA would make an "integrated assessment" of all the required components of the written price proposal--including completed "bid forms" for the pricing models proposed, narrative descriptions of the nine issue areas to be evaluated under the RFP, and the offeror's "operational/financial business model"[3]--and information provided in oral presentations or during discussions. The RFP provided that the narrative and business model would be used "only to assess the extent to which the [offeror's] proposed pricing approach reflects a consistent and

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[2] In addition, offerors were permitted to submit alternative pricing models that could better meet the RFP's objectives, including specifically the agency's desire to maximize net proceeds. RFP amend. 2, § C.9.1.

[3] Offerors' operational/financial business models were presented in the form of spreadsheets that projected gross proceeds, net proceeds, and direct costs to the government based on the offerors' expectations as to how they would perform.

well-structured approach to the contract; the specific assumptions regarding data elements included (e.g., property volume, services provided, etc.) in the Operational/Financial Business Model will not be part of the evaluation."
RFP amend. 2, § F.8.2.4.

Maximus and Liquidity were among three offerors whose proposals were found to be in the competitive range. The agency held several rounds of discussions with offerors, and each offeror made an oral presentation to the agency. Final proposal ratings for Maximus and Liquidity were as follows:

| | | Weight | Maximus | Liquidity |
|---|---|---|---|---|
| Technical Approach | | 45% | 3.00[4] | 3.00 |
| Related Experience | | 20% | 2.38 | 2.63 |
| | Marketplace (5%) | | 2.00 | 1.00 |
| | Value Added Services (5%) | | 2.00 | 3.00 |
| | Administration and Oversight (5%) | | 3.00 | 3.00 |
| | Marketing (2.5%) | | 2.00 | 4.00 |
| | Performance Management (2.5%) | | 3.00 | 3.00 |
| Past Performance | | 10% | 3.00 | 4.00 |
| | Quality of the Services (2.5%) | | 3.00 | 4.00 |
| | Timeliness of Performance (2.5%) | | 3.00 | 4.00 |
| | Business Relations/Customer Service (2.5%) | | 3.00 | 4.00 |
| | Cost Control (2.5%) | | 3.00 | 4.00 |
| Price Score | | 25% | 4.00 | 4.00 |
| Weighted Average Score | | | 3.13 | 3.28 |
| Overall Adjectival Rating | | | Acceptable | Acceptable |

Revised Final Consensus Summary Report (Revised FCSR), at 69.

As indicated by the weighted average score, Liquidity's proposal received a higher overall numerical rating. However, GSA nevertheless found Maximus's proposal overall to be more advantageous to the government. This is because the agency found Maximus's approach to be superior under the technical approach and price factors notwithstanding the equal ratings under those factors. For example, GSA determined that Maximus's proposal was stronger in several of the nine issue areas evaluated under the price factor--including maximizing net proceeds, risks to the government, and agency acceptance--because it provided more attractive pricing (particularly in the option periods) over various scenarios considered by the agency, and offered very successful sales channel options. Id. at 72-73.

[4] Proposals received scored ratings from one to four, which equated to ratings of unacceptable, marginal, acceptable and exceptional.

GSA determined that Maximus's proposal superiority under the two highest weighted factors (technical approach and price) was more significant to the agency than Liquidity's superiority under the lesser weighted related experience and past performance factors. Given Maximus's proposal strengths under the technical approach and price factors, the agency determined that the firm had a "greater likelihood of performing the FAS contract successfully, with the least degree of risk to the Government," and thus presented the best value to the government. Id. at 73. Upon learning of the resulting award to Maximus, Liquidity filed this protest.

DISCUSSION

Liquidity challenges GSA's evaluation of its and Maximus's proposals under the price evaluation factor. Specifically, it contends that it proposed less expensive transportation and warehousing services than Maximus, and that GSA improperly diminished this price advantage in its evaluation.

Where an evaluation is challenged, our Office will not reevaluate proposals, but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with stated evaluation criteria and applicable statutes and regulations. Sam Facility Mgmt., Inc., B-292237, July 22, 2003, 2003 CPD ¶ 147 at 3. Agencies have considerable discretion in determining the particular method used in evaluating cost or price; however, the method used should, to the extent possible, accurately measure the cost to be incurred under competing proposals. Eurest Supp. Servs., B-285813.3 et al., July 3, 2001, 2003 CPD ¶ 139 at 7. Where a source selection decision is based on figures that do not reasonably represent the differences in costs to be incurred under competing proposals, this source selection is not reasonably based. Preferred Sys. Solutions, Inc., B-292322 et al., Aug. 25, 2003, 2003 CPD ¶ 166 at 9. Based on our review of the record, we find that the agency's price evaluation was unreasonable because it did not reflect the actual cost to the government of the offerors' approaches.

As an initial matter, we note, and GSA confirms, that this was a "close" competition between "two very strong offerors" who submitted "two exceptional pricing proposals" in response to a complex solicitation. Tr., Vol. 1, at 156-57, 226, 257; Tr., Vol. 3, at 90. The offerors' price proposals were evaluated using a complicated analytical scheme, further described below, where the agency made certain assumptions that we view to be unreasonable. Because the outcome of the price analysis turned on the evaluation of transportation and warehousing costs, we focus on that aspect of the analysis. In this regard, the record shows that Liquidity's transportation and warehousing prices were significantly lower than Maximus's. However, as we find below, GSA's approach to evaluating the proposed pricing for these services effectively eliminated much of Liquidity's price advantage. Although the agency asserts that only a small portion of the contract will involve transportation and warehousing, nevertheless, because this was a close competition, the errors with respect to the evaluation of transportation and warehousing pricing could affect the outcome of the competition.

Although not disclosed in the RFP, the agency's "integrated" price evaluation included three components: a "qualitative" evaluation of each offeror's proposal assessing strengths and weaknesses under the nine issue areas, a "quantitative" analysis of offerors' proposed pricing under various scenarios developed by the agency, and a "comparative" analysis of offerors' price proposals based on the qualitative and quantitative assessments. Price Evaluation Methodology at 1-2.

In its quantitative analysis, the agency compared the offerors' proposed pricing percentages, or fees, under approximately 128 complex scenarios[5] reflecting an array of service volumes expected for the FAS program.[6] As noted above, these fees were based on gross proceeds under Model 1, and net proceeds under Model 2. Also for Model 1, the agency compared offerors' fixed unit prices for transportation and warehouse costs, as these were cost-reimbursable items under the RFP for this model only. This comparison of transportation and warehousing was done using "discount rates" that were calculated by the agency. However, the "discount rates" did not reflect discounts in the literal sense, but instead reflected the relationship between the two offerors' pricing, as further described below.

As the agency explained during a hearing conducted by our Office, it calculated "discount rates" for transportation and warehouse costs based on the percentage that Liquidity's proposed fixed unit prices were lower than Maximus's. For example, if Maximus proposed (hypothetically) a unit price of $1,000 and Liquidity proposed $250, the discount rate would be 75 percent. Narrative of GSA's Price Analyst, July 23, 2004, at 1. The agency adjusted these discount rates based on certain agency assumptions, and then averaged the two discount rates (one for transportation and one for warehousing) to obtain an overall discount rate to use in the quantitative evaluation. Id. at 3; Hearing Transcript (Tr.), Vol. 3, at 34, 63. This is further illustrated below.

For transportation, Liquidity proposed fixed prices for "short hauls" (less than or equal to 200 miles) and "long hauls" (greater than 200 miles), with different prices for full truckloads and less-than-full truckloads. Liquidity Price Proposal, Narrative,

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[5] These scenarios, and the array of expected service volumes, were not disclosed to offerors in the RFP.

[6] The services volumes used in the scenarios were based on agency assumptions, and not based on offerors' anticipated gross or net proceeds as reflected in their operational/financial business models. The agency explains that this is because offerors' assumptions were "data elements," which the RFP stated would not be evaluated. RFP amend. 2, § F.8.2.4.

§ A.3.2.1.5; Model 1 Bid Form. Maximus also proposed "short haul" and "long haul" rates, using different truck sizes and weights, which were higher than Liquidity's. Maximus Price Proposal, Narrative § 5.0. The agency explains that it calculated discount rates comparing offerors' proposed pricing (for the base year) at various distances and at various load weights. These discount rates, which reflected Liquidity's lower prices, ranged from [redacted] percent to [redacted] percent, and averaged [redacted] percent, considering all distances and load weights. GSA Hearing Exh. T, Transportation Cost Analysis, at 3; Tr., Vol. 3, at 25. GSA reduced this average to a range of [redacted] percent (and thus reduced Liquidity's price advantage) by excluding all long haul and at least some full truckload weights from the computation based on its assumption that most of the transportation provided under the contract would be short hauls at less than full truckload weights. Narrative of GSA's Price Analyst, July 23, 2004, at 3; Tr., Vol. 3, at 24.

For warehouse services, Liquidity proposed (for the base year) a fixed price of $[redacted] per square foot per month, while Maximus proposed $[redacted]. Liquidity Price Proposal, Model 1 Bid Form; Maximus Price Proposal, Model 1 Bid Form. The discount rate here is [redacted] percent. However, the agency explains that it reduced this rate to a range of [redacted] percent because it found that Maximus's warehouse price included additional services not offered by Liquidity; the reduction in rate, the agency explains, was so that it could compare "apples to apples." Narrative of GSA's Price Analyst, July 23, 2004, at 3; Tr., Vol. 3, at 31-32.

Having determined the discount rate for transportation to be [redacted] percent, and the discount rate for warehousing to be [redacted] percent, GSA states that it took the average of those rates ([redacted] percent) to use as the overall discount rate for comparing offerors' transportation and warehouse costs in its quantitative analysis. By using this rate in its analysis, the agency found that Maximus was more likely to maximize net proceeds and offered more favorable pricing under both Model 1 and Model 2. In other words, by decreasing the overall discount rate to [redacted] percent, GSA effectively decreased Liquidity's price advantage in the competition.

During the protest hearing, we asked the agency to further explain the basis for its selection of a [redacted] percent discount rate. The agency's price analyst explained that there is no contemporaneous documentation of this discount rate calculation. Tr., Vol. 3, at 67. He further stated that the rate was based on agency assumptions that were made because the agency "didn't want their decision to be governed by the warehousing and transportation elements of things" since it believed that these services would only constitute 2-5 percent of the contract. Tr., Vol. 3, at 19, 21. However, even assuming that the services would only constitute 2-5 percent of the contract, the analyst admitted that "changing the parameters [for transportation and warehousing] could change the outcome," as Liquidity had a "significant advantage" in terms of transportation and warehousing pricing under Model 1 that could offset any pricing advantage Maximus had under Model 2. Id. at 19-20.

We find that GSA's pricing analysis was unreasonable because the comparison of offerors' "discount rates" did not reflect the actual proposed prices or cost to the government for these services. While Maximus's warehouse price may have included additional services not offered by Liquidity, the fact remains that the price to the government for Maximus's warehouse space will be higher than the price for an equivalent amount of Liquidity warehouse space, and the price evaluation did not reflect this difference in cost to the government. (In this regard, the agency did not find that the additional warehouse services allegedly offered by Maximus would result in quantifiable savings in costs that the government would otherwise incur.)

Furthermore, we find that the agency's rationale for reducing Liquidity's price advantage for warehouse services is unsupported by the contemporaneous record. While the agency explains that the reduction in discount rate from [redacted] percent to [redacted] percent was due to differences in proposal approaches, the contemporaneous record does not demonstrate that the agency evaluated the asserted differences in warehousing services. Indeed, the agency's current assertion that it did so is inconsistent with the remainder of its pricing analysis, which did not take into account any differences in offerors' proposal approaches under any of the other service areas considered in the price evaluation. For example, Liquidity's price proposal states that many of its warehousing services are included with its value-added-services pricing, yet GSA did not make any adjustments to the value-added-services pricing to take into account this proposal difference, as it did with warehousing. In fact, we note that the agency asserts, in response to other protest challenges to the price evaluation, that differences in proposal approaches were to be evaluated only under the technical approach factor, and not the price factor. See, e.g., Agency Report, July 2, 2004, at 3.

We also find that GSA erred in calculating its discount rate for transportation services. Although it may have been reasonable to assume that most of the transportation provided would be short hauls at less-than-full truckloads, there is no basis for excluding all of the long distances from consideration, as if no long haul services would be used. The agency does not claim that no long haul services would be used, the RFP does not specify that long hauls would not be required or considered in the evaluation, and, consistent with the RFP, both offerors proposed prices for both long and short hauls. On these facts, we find that the agency must consider in its price evaluation all of the costs of long haul transportation that it reasonably expects to use during contract performance, and, moreover, should disclose to offerors the basis for its evaluation of these costs prior to proposal submission.

We also find that these errors in the agency's evaluation prejudiced the protester. Competitive prejudice is an essential element of every protest; where the record does not demonstrate that the protester would have had a reasonable chance of receiving award but for the agency's actions, we will not sustain a protest, even if deficiencies in the procurement process are found. Leisure-Lift, Inc., B-291878.3, B-292448.2, Sept. 28, 2003, 2003 CPD ¶ 189 at 10; Statistica v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996). Here, GSA's price analyst testified that when the discount rate rises above [redacted] percent, the outcome of the price evaluation would "flip" in favor of Liquidity. Tr., Vol. 3, at 51. Based on the discussion above, if GSA repeated its quantitative analysis, adjusting upward only the warehouse price to reflect the actual discount rate of [redacted] percent, and not making any changes to the transportation discount rate of [redacted] percent (the midpoint of the agency's range for less-than-full truckloads and short hauls), the overall discount rate would increase to [redacted] percent, which apparently alters the outcome in favor of Liquidity. Narrative of GSA's Price Analyst, July 23, 2004, at 4. Adding in some portion of the long hauls and full truckloads that were not considered in the price evaluation would increase Liquidity's price advantage even further. The errors in the agency's price evaluation thus prejudiced Liquidity.

In considering the appropriate remedy here, we note that Liquidity has also raised a number of other protest challenges to the price evaluation, including that GSA's quantitative scenario analysis (1) relied on improper assumptions concerning gross proceeds and net proceeds, (2) failed to take into account differences in offerors' operational/financial business models or recovery rates, (3) improperly estimated the relative amount of services to be performed (for example, that transportation and warehousing services amounted to only 2-5 percent of the contract), and (4) improperly weighted the base and option years. Liquidity also challenges the evaluation of Maximus's proposed performance measures under the technical approach and related experience factors, and argues that GSA held improper discussions with Maximus over these measures. Our review of the solicitation indicates that the RFP is unclear with respect to these areas and does not adequately inform offerors how proposals will be evaluated. We recommend that GSA address these issues in its corrective action.

In view of our findings above, we recommend that GSA amend its solicitation to clarify how transportation and warehouse costs will be evaluated, how the pricing scenarios will be analyzed, and how the agency will evaluate performance measures. We further recommend that after revising the solicitation, the agency seek revised proposals, hold discussions if appropriate, and reevaluate proposals. We also recommend that Liquidity be reimbursed the expenses of filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1) (2004). In accordance with section 21.8(f)(1) of our Bid Protest Regulations, Liquidity must file its certified claim for costs, detailing the time expended and costs incurred, directly to the agency within 60 days of receipt of this decision.

The protest is sustained.

Anthony H. Gamboa
General Counsel