



GAO

Accountability \* Integrity \* Reliability

Comptroller General  
of the United States

United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** Alliance Worldwide Distributing, LLC

**File:** B-408491

**Date:** September 12, 2013

---

Jason Kidd, Alliance Worldwide Distributing, LLC, for the protester.

C. Joseph Carroll, Esq., Department of Justice, United States Marshals Service, for the agency.

Robert T. Wu, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

### DIGEST

Protest is denied where agency reasonably conducted a price/technical tradeoff and determined that awardee's higher-priced proposal warranted payment of a price premium.

---

### DECISION

Alliance Worldwide Distributing, LLC (AWD), of Knoxville, Tennessee, protests the decision to award a contract to RBEX, Inc. d/b/a Apple Towing Co. under request for quotation (RFQ) No. DJM-13-A44-Q-0013 by the Department of Justice, U.S. Marshals Service (USMS) for towing, maintenance, disposal and storage services for forfeited and seized vehicles for the agency's Utah District. AWD argues that the agency conducted a flawed price/technical tradeoff resulting in an improper award to a higher-priced offeror.

We deny the protest.

The RFQ, issued on April 3, 2013, as a small business set-aside, contemplated award, without conducting discussions, of an indefinite-delivery/indefinite-quantity contract with a 1-year base period and up to four 1-year option periods. RFQ at 1-4. The procurement was conducted utilizing simplified procedures under the commercial items test program. RFQ, Attachment 1, at 1. Offerors were instructed that award would be made on a best value basis, considering technical capability and past performance factors which, when combined, were equally weighted with price. RFQ at 27. Price was evaluated by adding the total price for all options to the total price for the basic requirement. Id. The technical capability factor included

four subfactors: (1) facility, staffing, and security; (2) towing; (3) initial intake, storage, and maintenance; and (4) disposal. RFQ, Attachment 4 at 1. Under each subfactor, the RFQ identified additional evaluation criteria; ultimately the evaluation assessed proposals under 13 of these separate criteria. Id. at 1-2.

Two quotations were received by the closing date, one from AWD and another from Apple. Each proposal was evaluated for technical capability by the technical evaluation board, which prepared a narrative assessment and assigned adjectival ratings<sup>1</sup> for each of the evaluation criteria. A consensus adjectival rating was assigned to each proposal; both AWD and Apple received overall technical capability ratings of satisfactory. AR, Exh. 7, Basis for Award Decision at 2. However, a review of the adjectival ratings assigned to the underlying criteria shows that Apple received three ratings of very good and ten satisfactory ratings, while AWD received eleven satisfactory ratings and two marginal ratings. Id.

The agency also evaluated the proposals under the past performance factor, with Apple receiving an overall rating of outstanding, based on three submitted past performance references and five reports in the Past Performance Information Retrieval System (PPIRS).<sup>2</sup> AWD's proposal was also rated outstanding based on one submitted relevant reference and no data from PPIRS. AR, Exh. 7, Basis for Award Decision at 3-4. Apple's total price was \$749,550, and AWD's total price was \$712,787.50. Id. at 2.

In her source selection decision, the source selection authority (SSA) noted that, while both proposals received the same overall technical capability rating of satisfactory, Apple's proposal received three very good ratings on the evaluation criteria for facility, security, and advertising, while AWD's proposal received two marginal ratings for the advertising and sale process evaluation criteria. Id. at 5. As a result, the SSA found Apple's technical proposal superior to that of AWD. With respect to past performance, the SSA noted that, while both offerors received ratings of outstanding, Apple's rating was based on more relevant references and more data in PPIRS. Id. at 6. Based on these findings, the SSA concluded that Apple offered the best overall value at a reasonable price, and that the price premium was justified by Apple's technically superior proposal. Id.

---

<sup>1</sup> The adjectival ratings available for the technical capability factor were outstanding, very good, satisfactory, marginal and unsatisfactory.

<sup>2</sup> Past performance was rated as outstanding, satisfactory, or unsatisfactory. The PPIRS is a web-enabled, government-wide application that collects quantifiable delivery and quality past performance information. Federal Acquisition Regulation § 42.1503; General Dynamics Information Technology, Inc., B-407057, Oct. 12, 2012, 2012 CPD ¶ 293 at 10 n.3.

AWD's primary argument is that its proposal represented both the overall best value because its price was lower, and that it also submitted the lowest-priced, technically acceptable offer. Protest at 2. The protester argues that the agency was not justified in paying a 5 percent price premium, which it asserts was simply a price for convenience as Apple is the incumbent contractor. Id. at 3. The agency counters that the procurement was not conducted on a lowest-priced, technically acceptable basis, and that it was justified in paying a price premium for Apple's technically superior proposal. Legal Memorandum at 11-13. We agree with the agency.

When a protester challenges an agency's award decision, we will review that decision solely to determine if it was reasonable and consistent with the solicitation's evaluation scheme, procurement statutes and regulations. Great Lakes Towing Co. dba Great Lakes Shipyard, B-408210, June 26, 2013, 2013 CPD ¶ 151 at 3. Proposals with the same adjectival ratings are not necessarily of equal quality, and agencies may properly consider specific advantages that make one proposal of higher quality than another. Id. In conducting such an analysis, agencies may reasonably consider the underlying bases for ratings and assess advantages and disadvantages associated with the content of competing proposals. Id.

It is plain from the solicitation that award was to be made on a best value basis, not on a lowest-priced, technically acceptable basis. As a result, the solicitation afforded the agency the discretion to make a tradeoff between price and non-price factors in making its award decision. Our review of the record shows that the agency reasonably considered the underlying merits of each proposal and identified qualitative differences between the two proposals--even though both proposals received the same overall adjectival ratings for technical capability and past performance. In her weighing of these differences, the SSA reasonably determined that Apple's proposal offered technical strengths not found in AWD's proposal, and that AWD's proposal contained evaluated weaknesses not present in Apple's proposal. On this record, we find that the SSA reasonably concluded that the price premium for Apple's superior technical proposal was warranted.

AWD also argues that the weaknesses in its proposal could have been easily addressed through discussions. However, the RFQ expressly stated that award was to be made without conducting discussions. As we have held, an agency's discretion to hold discussions is quite broad, and is not generally reviewed by this office. L-3 Services, Inc., B-406292, Apr. 2, 2012, 2012 CPD ¶ 170 at 11. We have no basis to review that decision here.

The protest is denied.

Susan A. Poling  
General Counsel