

BREAKING A PRICE TIE BY SELECTING A HIGHER QUALITY OFFER

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In a lowest-priced, technically acceptable acquisition by the Department of State using commercial item and simplified acquisition procedures for four rental vehicles, two vendors submitted technically acceptable quotations at the same price. The Request for Quotations (“RFQ”) included no tie breaking procedures, and the agency considered the quality of the quoted items to determine award among equally low-priced vendors. In a protest, the Government Accountability Office (“GAO”) found that this procedure was reasonable, and denied a protest by the losing vendor. *Avis Jordan*, B-417248, April 23, 2019.

The RFQ sought to rent vehicles of the current year model or no more than one year old. Both Avis Jordan and Masafat Car Rental provided technically acceptable quotations, each with the same lowest price. (Avis Jordan proposed 2017 Chevrolet Tahoes, while Masafat proposed 2019 Chevrolet Tahoes). The agency selected Masafat, noting that even though there was no tie-breaking procedure in the RFQ, the agency resolved the tie by selecting the newer model vehicles, which clearly were in the best interest of the government.

GAO found the State Department’s selection reasonable and denied Avis’s protest. GAO noted that while using FAR Part 13 (simplified) procedures, contracting officers are instructed to use innovative approaches to the maximum extent practicable. FAR 13.003(h)(4). Furthermore, Avis did not identify any procurement law or regulation or any provision of the RFQ that the agency had violated in its selection.

The GAO noted that in previous solicitations that contained no tie-breaking procedures, it has rejected challenges to a *reasonable* method chosen by the agency to break a tie. The GAO agreed that obtaining newer vehicles of the same model would be in the agency’s best interest, and found no basis to conclude that the agency’s tie-breaking method was unreasonable.

Takeaway. Contracting Officers should include some type of tie-breaking procedure in a lowest-price technically acceptable procurement, if the quotes are found to be equal in price. That would have eliminated the protest.

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