



GAO

Accountability * Integrity * Reliability

Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Active Headsets, Inc.

File: B-410764

Date: February 2, 2015

Thomas P. Brittain, for the protester.

Terry Fisher, for Acousticom Corporation, an intervenor.

Richard Ferguson, Esq., and Gail Booth, Esq., Defense Logistics Agency, for the agency.

Evan D. Wesser, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging an agency's conduct of a reverse auction is denied where the record shows that the reverse auction was conducted in accordance with the terms of the solicitation.

DECISION

Active Headsets, Inc., of Amarillo, Texas, protests the award of a contract to Acousticom Corporation, of Elkhart, Indiana, by the Defense Logistics Agency (DLA) under request for proposals (RFP) No. SPE7MX-14-R-0098 for microphone headsets. The protester alleges that the agency conducted the reverse auction in a manner inconsistent with the terms of the solicitation.

We deny the protest.

BACKGROUND

On April 2, 2014, DLA issued the RFP seeking to establish an indefinite-quantity contract to provide stock replenishment coverage for microphone headsets designated by National Stock Number 5965-01-527-5012. See RFP at 3. The RFP contemplated that the contract would be for a 3-year term, with an additional 1-year option. Id. The agency was to evaluate proposals based on three factors: price, past performance, and proposed delivery. Id. § M, at 4. For purposes of award, the non-price factors were "significantly less important" than price. Id. The RFP also incorporated Defense Logistics Agency Directive (DLAD) clause 52.215-9023,

Reverse Auctions (NOV 2012), which defines the agency's and offerors' respective obligations when the agency conducts a reverse auction. Id. at 28.

Active Headsets initially was the only approved source listed in the RFP for the designated headsets. See Agency Report (AR) at 2¹; RFP at 5. The protester submitted a proposal prior to the RFP's initial May 5 closing date, and subsequently extended the validity of its proposal at DLA's requests. See, e.g., Protest, exh. 5, Email from Contracting Officer (CO) (May 28, 2014). In or around August 2014, Acousticom became an approved source for the designated headsets. See AR, Tab 8, CO Memorandum (Aug. 18, 2014). On August 18, the agency amended the solicitation to add the awardee as an approved source and to extend proposal validity. See RFP amend. No. 1 at 2.

On September 17, the agency conducted a web-based reverse auction through a commercial, third party reverse auction system provider, Procurex, Inc. AR at 2; Tab 11, Procurex Event Bidding Detail Report, at 2. As discussed below, neither the protester nor the awardee submitted a bid during the reverse auction. AR, Tab 11, Procurex Event Bidding Detail Report, at 2. The agency selected Acousticom's initially submitted, lower-priced proposal for award. AR, Tab 17, Price Negotiation Memorandum, attach. 4. The awarded contract has a maximum value of \$627,246.40. AR, Tab 18, Contract No. SPE7MX-15D-0004.

DISCUSSION

Active Headsets raises four primary challenges to DLA's conducting of the reverse auction and resulting award decision. First, the protester alleges that Acousticom failed to participate in the reverse auction, thus rendering the awardee ineligible for award under the terms of the RFP. See Protest at 6-7. Second, the protester alleges that the auction system provided misleading information because it designated the protester as the "lead" bidder with regard to certain aspects of its bid, and, thus effectively induced the protester into not placing additional bids. See id. In a related allegation, Active Headsets argues that the auction website's use of the undefined data field "start price" was ambiguous and did not advise offerors that the agency would pre-load offerors' prices from their initial proposals as the starting bids for the reverse auction. See Protester's Response to Request for Dismissal (Nov. 18, 2014) at 2. Finally, the protester alleges that, notwithstanding that a reverse auction was conducted, DLA made its award decision based on the offerors' initial proposals, in violation of DLAD clause 52.215-9023(a), which states

¹ DLA initially requested dismissal of the protest; our Office denied the request for dismissal and requested that specific matters be further developed in the AR. The agency then submitted a combined renewed request for dismissal and contracting officer's statement; our Office treats the renewed request as the AR on the protest.

that the reverse auction will be used “to establish the final offered prices from each Offeror.” See Protest at 6-7.

In reviewing a protest challenging an agency’s evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency’s discretion. Management Sys. Int’l, Inc., B-409415, B-409415.2, Apr. 2, 2014, 2014 CPD ¶ 117 at 5. Rather, we will review the record only to determine whether the agency’s evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. Id. Here, we find that the record supports the reasonableness of the agency’s conducting of the reverse auction and resulting award decision.

First, contrary to the protester’s argument, the record provided by DLA establishes that Acousticom participated in the reverse auction. AR, Tab 11, Procurex Event Bidding Detail Report, at 2. In fact, both the awardee and the protester completed the registration for the reverse auction. Id. As discussed below, neither party submitted a bid during the reverse auction, and the protester does not cite to any requirement in the solicitation or DLAD that required offerors to place any bids during the auction. Thus, there is no basis to find that the awardee should have been eliminated from the competition on the ground that it failed to participate in the reverse auction.

Second, the record demonstrates that the reverse auction system utilized by DLA put bidders on notice regarding the status of their bids, as required by DLAD clause 52.215-9023(e). That clause requires that the system designate offers either as “lead,” meaning the current low price in the auction, or “not lead,” meaning not the current low price in the auction. RFP at 28. Here, the system contained a link titled “View Lead/Not Lead Bidder,” which showed a bidder’s current bid, the lowest bid, and the bidder’s relative position, i.e., “lead” or “not lead”. See AR, Tab 12, Screenshots from Procurex System, at 2, 3.² Although the system indicated that the protester was the “lead” bidder with regard to the escalation years, it also showed that for the overall contract, Active Headsets’ bid was “not lead.” Id. at 2. Thus, the system adequately put the protester on notice that it was not the “lead” bidder for the overall price.

² DLA produced the screenshots in response to our Office’s request for “a screenshot or other information reflecting how ‘lead’ status was conveyed to offerors during the auction.” Email from GAO (Nov. 20, 2014) at 1. Although the screenshots are dated November 24 and show that the reverse auction is closed, we find, and the protester does not dispute, that the information in the subsequently produced screenshots reasonably reflect the information conveyed to offerors during the reverse auction.

Also, the record shows that bidders were on notice that their initial proposed prices would be utilized as the starting bids for the reverse auction. The initial email that Active Headsets received after registering with the auction system stated: “Your Solicitation response price(s) will be pre-entered by the DLA Buyer as part of the event set up.” AR, Tab 10, Email from Procurex System Administrator (Sept. 11, 2014), at 1. In light of this express notice and the fact that the system clearly reflected that Active Headsets was not the overall “lead” bidder, we do not think that the data field “start price” was ambiguous. On this record, we conclude that the protester was on notice that it was not the overall lead bidder, and that the offerors’ initial proposals would be pre-loaded as the starting bids for the reverse auction.³

Finally, Active Headsets contends that DLA improperly used the offerors’ prices from their initial proposals, and did not obtain bids through the reverse auction. The only price bids received by the agency, however, were those contained in the offerors’ initial proposals, as neither party placed any bids during the reverse auction or otherwise revised their initial proposals in response to the agency’s request for final proposal revisions. See AR, Tab 11, Procurex Event Bidding Detail Report, at 2 (reflecting that each bidder made only one bid, which were the offerors’ pre-loaded initial proposals); AR, Tab 14, Email from CO (Oct. 30, 2014), at 1. As no bids other than the offerors’ initial proposals were received, the agency reasonably used the offerors’ initial pricing as the basis for its evaluation and award. To the extent the protester argues that the failure to receive additional bids during the reverse action violated the terms of DLAD clause 52.215-9023, we do not find this argument to present a valid basis for protest. That clause provides that an “offeror’s final auction price at the close of the reverse auction will be considered its final proposal revision.” DLAD clause 52.215-9023(f). We are not aware of any requirement, and the protester cites to none, that an offeror must submit a revised

³ Active Headsets also argues that DLA unreasonably declined to answer its question submitted through the reverse auction system’s instant message feature regarding the meaning of the “start price” data field. See Protester’s Response (Nov. 18, 2014) at 2; Affidavit of R. Trotter (undated) at 1. The record shows, however, that the protester failed to follow the applicable instructions for the submission of questions during the auction. The system’s terms and conditions, which the protester accepted as a condition to participating in the reverse auction (DLAD clause 52.215-9023(g)(2)), clearly state that questions concerning the procurement were to be submitted directly to the DLA CO, and “[d]o not use the instant message feature on this ProcureX website.” AR, Tab 5, Event Terms & Conditions for SPE7MX-14-R-0098 (emphasis added). Thus, we find no basis to conclude that DLA unreasonably failed to respond to the protester’s question that was submitted to the wrong address.

proposal in the absence of any change to the terms of the solicitation. Here, both the awardee and protester stood behind their originally submitted proposals.

The protest is denied.

Susan A. Poling
General Counsel