



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Dura Brands, Inc.

File: B-415539; B-415541

Date: December 28, 2017

Fayez Yousef, for the protester.

Dennis J. Gallagher, Esq., Department of State, for the agency.

Joshua R. Gillerman, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protests challenging agency's selection of a higher-priced, technically acceptable bids over the protester's bids are denied where the agency reasonably found that the protester's bids failed to include material information required by the solicitations, and therefore were technically unacceptable.

DECISION

Dura Brands, Inc., of Glendale, California, protests the award of contracts to U.S. Army Tactical Supply, of Kuwait City, Kuwait, and to Enrichment Bookstore & Arts Center, of Decatur, Georgia, under solicitation Nos. PR6708889 and PR6708930, both issued by the Department of State for copies of educational books. Dura challenges the agency's determination that its lowest-priced bids were technically unacceptable.

We deny the protests.

BACKGROUND

Both procurements, posted to FedBid¹ on September 11, 2017, were conducted as reverse auction buys. FedBid Listing, B-415539, at 9; FedBid Listing, B-415541, at 9.

¹ FedBid, Inc., is a commercial online procurement services provider that operates a website at FedBid.com, which, among other things, hosts reverse auctions. FedBid refers to procurements conducted through its system as "buys" and a participant in the reverse auction is said to submit a "bid."

Relevant to the protest, the FedBid solicitation postings included specific bid submission requirements pertaining to non-pricing information. The bid submission instructions provided that “[s]ellers MUST enter exactly what they are bidding (including make, model, and description) into the blank description field in order for the bid to be considered.” FedBid Listing, B-415539, at 9; FedBid Listing, B-415541, at 9. (emphasis in originals). Dura expressly indicated that it had “read and understood” these instructions regarding providing specific make, model, and description information into the description field in order for the bid to be considered. Dura’s Bid, B-415539, Dura’s Bid, B-415541.

After bidding closed, the agency made awards to U.S. Army Tactical Supply and to Enrichment BookStore for \$3,313.60 and \$3,009.70, respectively, as the firms submitting the lowest-priced, technically acceptable bids. Contracting Officer’s Statement (COS) B-415539, at 1; COS, B-415541, at 1. While Dura submitted bids of \$1,683.40 and \$1,982.40, the agency found the bids technically unacceptable because, rather than providing the required description of the requested books, Dura only wrote the word “[n]ew” in the description field. COS B-415539, at 1; COS, B-415541, at 1. After learning that its bids were found technically unacceptable, Dura filed these protests.²

DISCUSSION

In both of its protests, Dura challenges the agency’s conclusion that its bids were technically unacceptable. Dura notes that the FedBid solicitation posting included the title and International Standard Book Number (ISBN) for each book requested by the agency. Protest, B-415339, at 2-3; Protest, B-415541, at 2-3. According to Dura, since ISBNs uniquely identify each book, and denote the format of the book, there was no need to provide an additional description in the designated field with its bids. Protest, B-415339, at 2-3; Protest, B-415541, at 2-3. Dura then concludes that completing the description field was not necessary to demonstrate its bids’ technical acceptability, and that it only provided the description of “[n]ew” in the designated field because the FedBid listing required this field be completed in order to submit a bid. Protest,

² The agency argues that Dura’s protests, filed on October 11, should be considered untimely because Dura learned of the agency’s award decisions on September 29. Agency Report (AR), Memorandum of Law (MOL), B-415539, at 1-2; MOL, B-415541, at 1-2. However, it was not until October 2 that Dura learned that it was not selected for either award because its bids were found technically unacceptable. Protest, B-415339, at 2; Protest, B-415541, at 2. As Dura’s protests challenge the agency’s conclusion that its bids were technically unacceptable, they are timely filed within 10 days of when it learned the bases of its protests. 4 C.F.R. § 21.2(a)(2).

B-415339, at 3; Protest, B-415541, at 3. For the reasons discussed below, we have no basis to object to the agency's conclusion that Dura's bids were technically unacceptable.

When using the simplified acquisition evaluation procedures listed in Federal Acquisition Regulation (FAR) part 13, an agency must conduct the procurement consistent with a concern for fair and equitable competition and evaluate quotations in accordance with the terms of the solicitation. In reviewing protests of allegedly improper simplified acquisition evaluations, we examine the record to determine whether the agency met this standard and exercised its discretion reasonably. Emergency Vehicle Installations Corp., B-408682, Nov. 27, 2013, 2013 CPD ¶ 273 at 4. A vendor is responsible for affirmatively demonstrating the merits of its quotation and risks the rejection of its quotation if it fails to do so. Id.

As noted above, the solicitations required vendors to provide make, model, and description information into the designated description field of the FedBid listing in order to be considered. FedBid Listing, B-415539, at 9; FedBid Listing, B-415541, at 9. Dura, however, failed to provide any make, model, or description information in the designated description field for either FedBid listing. Dura's Bid, B-415539; Dura's Bid, B-415541. Rather, Dura merely wrote the word "[n]ew" in the description field for each book. Dura's Bid, B-415539; Dura's Bid, B-415541. Consequently, the agency notes that it lacked confidence that the books Dura was offering complied with the agency's specifications due to Dura's failure to clearly describe the books in the description field. COS, B-415539, at 1; COS, B-415541, at 1. The agency further explains that Dura's failure to repeat the ISBN codes and other requested specifications in the description field raised concerns that Dura might be intending to provide different books, or different editions, than it required. Email from Agency to Parties, Dec. 11, 2017. Thus, our review of the record provides us with no basis to question the agency's conclusion that the protester's bid was technically unacceptable for failure to include all the information that was required by the solicitation. See Emergency Vehicles Installations, Corp., supra.

Moreover, to the extent that Dura now argues that the requirement to provide a book description in the description field "constituted [an] unreasonably narrow technical requirement," Protest, B-415539, at 2; Protest, B-415541, at 2, this argument alleges an impropriety in the solicitations that, in ordered to be timely, was required to be raised prior to the closing time for receipt of bids. 4 C.F.R. § 21.2(a)(1). While Dura argues that providing a description of the books would have been redundant, or that the

requirement to provide information related to make, model, and description is inapplicable to procurements for books, Protest, B-415539, at 2-3; Protest, B-415541, at 2-3, Dura was required to raise these challenges prior to the time set for receipt of bids. 4 C.F.R. §21.2(a)(1).

The protests are denied.

Thomas H. Armstrong
General Counsel