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Decision

Matter of: Xerox Corporation

File: B-417498.2; B-417498.3

Date: August 16, 2021

Jonathan S. Aronie, Esq., Ryan E. Roberts, Esq., and Daniel J. Alvarado, Esq., Sheppard Mullin Richter & Hampton LLP, for the protester.
Michael E. Barnicle, Esq., Keith J. Feigenbaum, Esq., and Patrick J. Gavin, Esq., Duane Morris LLP, for Trident Engineering and Procurement, Inc., an intervenor.
Bruce T. McCarty, Esq., and Kevin F. Phillips, Esq., Defense Logistics Agency, for the agency.
Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's conduct of a reverse auction is denied where the record shows that the agency conducted it in accordance with the rules established for the reverse auction.
2. Protest challenging agency's evaluation of the awardee's proposal is denied where the record shows the agency's evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations.

DECISION

Xerox Corporation, of Washington, D.C., protests the award of a contract to Trident Engineering and Procurement, Inc., of Pottsville, Pennsylvania, under request for proposals (RFP) No. SP7000-19-R-1001, issued by the Defense Logistics Agency (DLA) for an array of shipboard multipurpose devices, along with supplies and support services. Xerox argues that the agency conducted an improperly administered reverse auction and also misevaluated the awardee's proposal.

We deny the protest.

BACKGROUND

The RFP contemplates the award of a fixed-price, indefinite-delivery, indefinite-quantity contract, on a lowest-price, technically acceptable (LPTA) basis, to provide an array of

single function, multi-function and specialty devices¹ (along with supplies and support services) to be installed aboard ships operated worldwide by the Navy, the Marines, the Coast Guard and other authorized mobile federal government entities for a 7-year period of performance.² The RFP provided that proposals would be evaluated considering price, technical, and past performance factors, with the technical and past performance factors to be evaluated on a pass/fail (acceptable or unacceptable) basis. RFP at 4-5. The RFP also advised that the agency intended to use a commercial provider's reverse auction procedures to conduct price discussions. RFP at 5. We discuss the reverse auction procedures used here in detail below.

In response to the RFP, the agency received proposals and, after discussions, determined that the proposals of Xerox and Trident were technically acceptable. Both firms were invited to participate in the agency's reverse auction. At the conclusion of the reverse auction, Trident was determined to be the LPTA offeror, having submitted a final total price of \$131,530,317. Based on these results, the agency made award to Trident and Xerox's protest followed.

DISCUSSION

Xerox argues that the agency conducted an improperly administered reverse auction and maintains that the agency should reopen the auction in order to permit it to adequately compete. Xerox also argues that the proposal submitted by Trident was technically unacceptable for several reasons that Xerox maintains should have resulted in the elimination of Trident's proposal from consideration. Finally, Xerox argues that the agency unreasonably failed to adequately evaluate Trident's past performance, and maintains that Trident should have received a rating of unacceptable for its past performance. We discuss Xerox's contentions below after first providing additional background about the reverse auction.

Additional Information about the Reverse Auction

As noted, the RFP contemplated that the agency could use a reverse auction procedure in connection with conducting price discussions. RFP at 6. The RFP provided the following additional information about the reverse auction:

During each round of reverse auction, the system displays the lowest offer price(s) unless the auction instructions are different. All offerors and authorized auction users see the displayed lowest price(s). This disclosure is anonymous and a generic identifier displays for the offeror.

¹ The devices are essentially copiers and printers.

² The RFP states that the period of performance is up to 7 years, including any options. RFP at 2. However, the RFP did not define a base or option periods for the contract, and did not require offerors to submit separate pricing for base and option year requirements.

Generic identifiers include designators such as “offer A” or “lowest-priced offeror.”

Id.

The record shows that Xerox and Trident were provided email instructions on April 20, 2021, several days prior to the start of the reverse auction. Agency Report (AR), exh. T, Reverse Auction Instructions. The instructions advised the offerors of the following parameters for the reverse auction: (1) it would last for a 1-hour period; (2) the first 45 minutes of the hour would be designated as the “regulation bid period”; (3) the last 15 minutes of the hour would be designated as the “final blind bid period”; and (4) minimum bid decrements of no less than \$500 would be permitted during the bidding. *Id.* at 1. The instructions described the differences between the regulation and final blind bid periods as follows: “The leading low bid will be visible during the regulation bid period and multiple bids may be entered during this time. During the final blind bid period, bidders will not be able to see the leading low final bid until the auction has completed.” *Id.* As relevant to the protest allegation, the instructions also provided:

Please note: Unless an initial bid has been entered for your Company, bidders must provide a bid during the regulation bid period to be considered eligible for participation in the final blind bid and will only have one (1) opportunity to enter a final blind bid.

Id.

The record shows that Xerox and Trident were advised that the reverse auction would take place on the morning of April 26. AR, exh. T, Reverse Auction Instructions. The April 20 email conveying the reverse auction instructions also advised the offerors that they could submit revised pricing prior to the start of the reverse auction, and that any revised pricing had to be submitted to the agency no later than April 22. *Id.*

The record shows that, on April 22, the agency’s contract specialist entered the pre-reverse auction prices that had been submitted by Trident and Xerox into the auction portal; those prices were \$181,336,405.30 for Trident, and \$193,111,304 for Xerox.³ AR, exh. P, Declaration of the Contract Specialist, at 2. On the morning of April 23, the agency’s contract specialist sent invitations to the offerors to permit their participation in the reverse auction. *Id.* Shortly after the invitations were sent, personnel from Xerox logged into the auction portal. Throughout the day on April 23, and also on April 24, 25 and 26--prior to the beginning of the reverse auction--Xerox personnel logged into the auction portal a total of 19 times. *Id.* at 3; AR, exh. N, Reverse Auction Activity Log.

³ The record reflects a \$0.10 variation in Trident’s proposed pre-auction price. Trident’s price is identified variously as \$181,336,405.40 and \$181,336,405.30. AR, exh. P, Declaration of the Contract Specialist, at 1, 4. This 10-cent variation is essentially immaterial, and the record shows that the nominally lower price was the one displayed at the start of the reverse auction. *Id.* at 11.

Each of the 19 times Xerox personnel logged into the auction portal before the beginning of the reverse auction, they saw the same screen displayed in the portal, which appeared substantially as follows for the Xerox users:

Item	Qty	U of M	Start Price	Previous Extended Bid Price	Minimum Decrement	New Bid Price	Position	Overall Lowest Bid
SMDP RA# 2001	1	Each	\$181,336,405.30	\$193,111,304	\$500	\$193,111,304	NOT LEAD	\$181,336,405.30

AR, exh. P Declaration of the Contract Specialist, at 4, pdf 11.⁴

Once the regulation bid period of the reverse auction commenced, Xerox placed the first bid, lowering its price to \$147,000,405.30. AR, exh. P, Declaration of the Contract Specialist, at 6. At that point, the contract specialist explains that both offerors' portal displays presented Xerox's newly lowered bid price under both the "New Bid Price," and the "Overall Lowest Bid."⁵ *Id.* The Xerox portal also changed to display the word "LEAD," under the "Position" column, whereas Trident's portal, as a result of Xerox's new and lower bid, displayed "NOT LEAD" under the "Position" column. *Id.* Using the contract specialist's narrative description, we conclude that the Xerox portal display appeared substantially as follows after Xerox submitted its lowered bid price (structured as in the previous screenshot):

Item	Qty	U of M	Start Price	Previous Extended Bid Price	Minimum Decrement	New Bid Price	Position	Overall Lowest Bid
SMDP RA# 2001	1	Each	\$181,336,405.30	\$193,111,304	\$500	\$147,000,405.30	LEAD	\$147,000,405.30

After Xerox placed its initial bid, Trident also placed a bid during the regulation bid period. The amount of Trident's bid was \$181,000,000, which was higher than the amount Xerox had bid. AR, exh. P, Declaration of the Contract Specialist, at 6. While

⁴ Our citation is to page 4 of the Contract Specialist's declaration, and to a screenshot attachment to that declaration that is at Adobe pdf page 11.

⁵ The record does not include a screenshot of the offerors' portal views once the bidding began, but the contract specialist provided a narrative description, submitted with the agency report, explaining how the portal views would have changed upon the submission of bids. Neither the protester nor the awardee have disputed the accuracy of the narrative description of the changes seen in each offeror's portal after the bidding began.

Trident's portal displayed its lowered bid price, it also continued to present the amount of Xerox's bid under the column "Overall Lowest Bid." In addition, the entry under the "Position" column shown in Trident's portal continued to display "NOT LEAD." *Id.* Correspondingly, and in contrast to the view seen by Trident, the view seen by Xerox during the balance of the regulation bid period remained unchanged as a result of Trident's bid. Specifically, Xerox's lower bid price of \$147,000,405.30 was displayed as the "Overall Lowest Bid." *Id.* In addition, Xerox continued to be listed as the "LEAD" in the "Position" column for the remainder of the regulation bid period. *Id.*

At the conclusion of the regulation bid period, the final blind bid period commenced. As explained in the April 20 email instructions, during the final blind bid period the offerors could no longer see any changes to the bidding. It was during this blind bid period that Xerox submitted its final bid price of \$146,999,905.30, which was \$500 less than its earlier bid (in compliance with the requirement that bids be made in decrements of no less than \$500). AR, exh. P, Declaration of the Contract Specialist, at 6. Also during the blind period, Trident submitted a final bid price of \$131,530,317. *Id.* Because Trident's bid was the lowest overall bid at the conclusion of the auction, Trident was declared the winner.

Reverse Auction Protest Issues

Xerox argues that it was misled during the reverse auction process into thinking that it was the only offeror engaged in the auction. In support of its position, Xerox argues that it was not expressly advised that the agency would enter starting bids for the offerors, and also argues that the agency did not expressly inform it that other offerors were participating in the reverse auction. Xerox also argues that because it did not know that the agency would enter its starting bid, it was led to believe that it was required to submit at least one bid during the regulation bid period in order for it to be eligible to submit a bid during the blind bidding period.

We find no merit to any of these contentions. First, the April 20 email instructions provided to all offerors were clear regarding the possibility that the agency could enter an initial, or starting, bid for offerors. Again, those instructions provided--in bold-face type--as follows:

Please note: *Unless an initial bid has been entered for your Company, bidders must provide a bid during the regulation bid period to be considered eligible for participation in the final blind bid and will only have one (1) opportunity to enter a final blind bid.*

AR, exh. T, Reverse Auction Instructions at 1 (emphasis supplied). The record therefore does not support the conclusion that Xerox was unaware of the possibility that the agency could enter an initial bid on behalf of the firm.

Second, to the extent that Xerox did not understand that the agency could enter an initial bid price on its behalf, the information available to Xerox before the start of the auction made it clear that, in fact, the agency had actually entered the firm's initial bid

price. As noted, the screen shot of Xerox's portal prior to the start of the reverse auction displayed the company's original, pre-reverse auction, price. In fact, Xerox's original price was actually listed twice on the pre-reverse auction screen, once under the "Previous Extended Bid Price" column, and a second time under the "New Bid Price" column.

Given that Xerox knew its actual, pre-reverse auction price, there can be no doubt that Xerox knew--or should have known--that the agency had, consistent with the reverse auction instructions, entered an initial price for it, and that the price corresponded precisely to the amount of Xerox's pre-reverse auction price. As noted, the record shows that Xerox personnel logged into the reverse auction site 19 times before the reverse auction began; no fewer than 5 different Xerox employees viewed the reverse auction site prior to the beginning of the reverse auction. AR, exh. N, Reverse Auction Activity Log.

Third, the pre-reverse auction information available to Xerox also included--twice--Trident's original bid price (without attribution to Trident). The price was listed first under the column labeled "Start Price" and second under the column "Overall Lowest Bid." Given the specificity of Trident's initial bid price--expressed as dollars and cents--there is no reasonable basis to suggest Xerox had been misled to think that the agency had entered an entirely arbitrary figure as the starting price for the auction. This also was consistent with the reverse auction instructions, which provided that the agency could enter initial bids for the offerors, and that the low price would be displayed and visible to all auction participants.

Fourth, the information displayed to Xerox before the start of the reverse auction showed in all capital letters that Xerox was in the "NOT LEAD" position. There can be no logical explanation for listing Xerox in the "NOT LEAD" position unless there was at least one other bidder participating in the competition. Moreover, once the reverse auction started and Xerox made a bid that was lower than the original starting bid price, Xerox's position changed from "NOT LEAD" to "LEAD." This change further corroborated the fact that there was at least one other bidder competing for the requirement. Given these facts, coupled with the fact that there were two bid prices prior to--and at the start of--the reverse auction, there is no reasonable basis for our Office to conclude that Xerox was misinformed about the existence of at least one other bidder.

Fifth, the record shows that 5 different Xerox employees accessed the reverse auction site, and the record further shows that all of those employees logged into the site throughout the day of April 23, 3 days before the reverse auction began. To the extent any of Xerox's employees were confused about any of the information appearing on the

reverse auction site at that point in time, there is no record of the company making any inquiry about the matter.⁶

Finally, Trident's submission of a bid that was higher than the bid submitted by Xerox after the start of the reverse auction was unobjectionable, and did not violate any of the reverse auction instructions. Simply stated, Trident made a strategic decision to bid in the manner that it did, and nothing in the rules of the reverse auction prevented the firm from doing so.

In sum, on the record before us, there is no basis to conclude that the agency was unreasonable in its conduct of the reverse auction. Xerox was expressly informed in the reverse auction instructions that the agency could enter initial bid prices for the offerors, and Xerox was provided information before the reverse auction began that was--or should have been--adequate for it to ascertain that there was at least one other bidder participating in the reverse auction. In addition, there was nothing objectionable or improper in Trident's strategy of withholding its much lower bid until the beginning of the final blind bid period, thus shielding the bid from Xerox's sight.

In the final analysis, Xerox essentially was outbid by Trident's strategic use of the reverse auction process that was outlined for both companies, and now seeks to have another opportunity to revise its price. We have no basis to conclude that the agency's actions were unreasonable or otherwise inconsistent with the rules of the reverse auction. We therefore deny this aspect of Xerox's protest.

Technical Acceptability of the Trident Proposal

Xerox next argues that the agency erred in finding the Trident proposal technically acceptable. In addition, Xerox argues that the agency relaxed certain unspecified solicitation requirements only for Trident. We have considered all of Xerox's allegations and find no merit to any of them. We discuss Xerox's specific allegations below.⁷ We note that, in reviewing challenges to an agency's evaluation of proposals, our Office does not substitute our judgment for that of the agency; rather, we review the record to

⁶ The record does show that one of Xerox's employees sent the contract specialist an email on April 23, after receiving the reverse auction invitation, but the employee only asked to have an additional Xerox employee added to the reverse auction invitation list. AR, exh. P, Declaration of the Contract Specialist, at 3.

⁷ In arguing that the DLA relaxed certain RFP requirements, Xerox alleges--without elaboration--that the agency relaxed an unspecified list of equipment performance requirements for Trident. Xerox identifies just one equipment performance requirement--that the proposed devices be capable of disassembly and reassembly in a particular amount of time--as an example of this broader allegation, but has not otherwise articulated any other specific equipment performance requirements it believes the agency relaxed. We have reviewed this example and have no basis to object to DLA's evaluation of the awardee's proposal for the reason advanced by Xerox.

determine whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation scheme and applicable statutes and regulations. *CDO Technologies, Inc.; Abacus Technology Corporation*, B-418111 *et al.*, Jan. 14, 2020, 2020 CPD ¶ 26 at 5. On this record, we have no basis to object to the agency's evaluation of Trident's technical proposal.

Xerox argues that the agency should have found Trident's proposal technically unacceptable for three specific reasons. Of the three bases for its protest challenge, Xerox identifies two requirements that it maintains were not satisfied by Trident in its proposal: a requirement for the contractor to have a facility clearance, and a requirement that the devices to be furnished by the contractor be "common criteria certified" through a government approved certification entity.

Both of these requirements included in the solicitation's performance work statement (PWS) were to be satisfied during contract performance. Provisions such as these require the contractor (as opposed to the offeror) to obtain the necessary licenses, permits, clearances or certifications, and must be satisfied during contract performance. Consequently, offerors are not required to satisfy such requirements prior to award, and these requirements do not affect the propriety of the agency's award decision, except as a matter of the contractor's general responsibility. *ThyssenKrupp Elevator Corporation*, B-410456, Dec. 30, 2014, 2015 CPD ¶ 18 at 4-5.

For example, the provision requiring the facility clearance provides as follows: "Contractor must have a facility clearance." AR, exh. R, PWS, at 18. The agency clarified this requirement in a "questions and answers" amendment to the RFP. Specifically, the following question and answer are included in the amendment:

Q: Paragraph 16.6.2 "Contractor must have a facility clearance." By when must a contractor obtain a facility clearance? Do interim facility clearances satisfy the technical requirements?

A: The contractor will begin the process upon award and have 45 days to complete. See DD Form 254 package attached to Amend 0004.

AR, exh. S, Solicitation Questions and Answers Amendment, at 3, Question 38. The record is therefore clear that these requirements are performance requirements to be met after award, rather than requirements to be met at the time of proposal submission. We therefore have no basis to object to the DLA's determination that the Trident proposal was technically acceptable for these two reasons.

The third requirement that Xerox argues should have resulted in the rejection of the Trident proposal as technically unacceptable relates to the provision of devices that are produced by a single manufacturer. See AR, exh. R, PWS, at 28. Xerox argues that, although Trident's proposal claimed to be offering all Hewlett Packard products, two classes of the devices Trident offered actually are manufactured by Canon. Xerox therefore maintains that DLA should have rejected Trident's proposal for this reason.

We find no merit to this allegation. The agency specifically asked Trident during discussions for documentation from Hewlett Packard showing that the two classes of devices in question were in current production by Hewlett Packard, and would remain in production for six months after contract award. AR, exh. B, Trident Discussion Questions at 5. In response to the agency's discussion question, Trident submitted a letter on Hewlett Packard letterhead from Hewlett Packard's chief technology officer that provides as follows:

Upon review of the [discussions] Letter and PWS HP [Hewlett Packard] certifies that the equipment Trident Engineering and Procurement ("Trident") proposes for SMDP Class PC (HP SPO8116b) and SMDP Class PBW (HP SPO3305c) are commercial items currently in production as new equipment as of the date of Trident's final revised proposal submission and will be in production for six months after contract award.

AR, exh. D, Trident Technical Proposal, at 31. This letter satisfied the agency's concerns, and we have no basis to object to the agency's determination that the Trident proposal was technically acceptable for this reason.⁸ We therefore deny this aspect of Xerox's protest.

Past Performance Evaluation

Finally, Xerox alleges that the agency should have assigned Trident a rating of unacceptable for its past performance. According to the protester, the record shows that there was a past performance example dating from 2014 showing that Trident's past performance was unsatisfactory. Xerox argues that this example should have led the agency to conclude that Trident's overall past performance was unacceptable.

The RFP here required offerors to provide a list of up to three contracts performed within the past three years. The solicitation explained that the agency would use those past performance examples, along with data obtained from other sources, to determine whether an offeror's past performance was acceptable or unacceptable. RFP at 4-5. The data to be obtained from other sources was to be no more than 5 years old.

Separately, the RFP provided that the agency could use information obtained from the System for Award Management, the Federal Awardee Performance and Integrity

⁸ Xerox argues that the agency had a duty to investigate this question further because, according to Xerox, Hewlett Packard and Canon have a long history of "white labeling" one another's products. According to Xerox, "white labeling" is a practice involving the sale of a product manufactured by one company that is actually labeled as a product manufactured by another company (for example, the sale of a product manufactured by Cannon that is labeled as a Hewlett Packard product). However, given the fact that the agency received the letter quoted above from Hewlett Packard's chief technology officer, we have no basis to find that the agency had a duty to investigate the matter any further, as suggested by Xerox.

Information System repositories, and the Past Performance Information Retrieval System, for purposes of determining the offeror's responsibility. RFP at 4.

The record shows that, for the limited purpose of considering Trident's responsibility, the agency conducted a comprehensive search of the enumerated data bases. AR, exh. O, Trident Past Performance Evaluation, at 1. The results of these search efforts produced a comprehensive list of prior contracts performed by Trident and, among that list is one example--a contract performed between January and September, 2014--that Xerox argues should have been considered in evaluating Trident's past performance. *Id.* at 5.

As noted, the RFP provided that, in evaluating past performance, the agency would confine its review to contracts performed within the last 5 years. Trident's past performance proposal was submitted on December 11, 2020. AR, exh. F, Trident Past Performance Proposal. The example identified by Xerox was performed outside of that 5-year period, and therefore properly was not considered by the agency in its past performance evaluation of Trident. To the extent the agency considered this example at all, the record shows that it did so only in connection with its responsibility determination. Xerox does not argue that the agency unreasonably determined Trident responsible. Under the circumstances, we have no basis to object to the agency's evaluation of Trident's past performance for the reason advanced by Xerox.

The protest is denied.

Edda Emmanuelli Perez
General Counsel