

FEDBID IS GOVERNMENT'S AGENT IN REVERSE AUCTION

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The Government Accountability Office (“GAO”) has recently confirmed that in a reverse auction conducted on behalf of an agency by FedBid (recently renamed “Unison Marketplace”), Fedbid serves as the government’s agent, and must comply with procedural requirements in the Federal Acquisition Regulation (“FAR”) or lose a protest. *BCW Group, LLC, B-417209 et al.*, March 27, 2019. In a “reverse auction,” the bidder that agrees to meet the technical and delivery requirements (and in most cases, the past performance requirements) and offers the lowest price receives the award.

In this procurement, the Department of the Interior issued a solicitation for brand name or equal interactive screens with touch technology, plus once maintenance. The procurement was to be held through the FedBid reverse auction technique. At the close of bidding, BCW’s bid of \$149,156 was the lowest bid submitted, and BCW checked a box on the FedBid website that stated “the vendor complies with all terms listed by the Buyer”—which was the Department of the Interior. However, BCW did not specifically restate that its bid included maintenance.

Following the close of the auction, FedBid sent a “validation request” by email to BCW which asked if BCW’s bid price was correct and “inclusive of all costs the Buyer [Interior] would incur if BCW’s bid is selected.” BCW responded by email and stated that the price was correct and included maintenance as required by the solicitation.

Six days after the auction, the agency opened the five bids submitted. Two weeks later, the award was made to ODIN at a price of \$179,669, despite BCW’s lower price. The agency stated that BCW agreed to comply with “all terms” but did not specifically restate that BCW would provide maintenance. *FedBid never notified the agency that it issued a validation request to BCW, or that BCW had responded and confirmed that its bid included maintenance.*

GAO noted that when FedBid hosts a reverse auction it acts as an agent for the agency conducting the procurement. Specifically, FedBid is conducting the procurement on behalf of the agency. And since the government, through its agent, FedBid, chose to request information from BCW on whether it was offering maintenance, the agency was required to consider that information in evaluating the bids that were received. (Note that FAR 1.102-2(c) requires that agencies conduct business with integrity, fairness and openness.)

Even though the contracting officer stated that he did not know that FedBid sent out a validation request, there was no dispute that the agency authorized FedBid to act on the agency’s behalf. Since BCW complied with FedBid’s request and verified that its bid included maintenance, and BCW was the lowest bidder, the GAO held that the agency was required to consider that information before making award. The protest was sustained.

Takeaway. When agencies deputize commercial entities (like FedBed) to conduct a procurement, the actions of those entities must comply with the FAR and with the fairness requirements for government procurement. Interior did not do so in this procurement.

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