



Decision

Matter of: Heath Construction, Inc.

File: B-403417

Date: September 1, 2010

Dennis Heath for the protester.

Lindsay C. Roop, Esq., Department of Veterans Affairs, for the agency.

Paula J. Haurilesko, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In a sealed bid procurement, which did not authorize the submission of bids by facsimile, the agency did not violate a procurement law or regulation when it rejected the protester's facsimile bid, even though the protester was informed by the contract specialist that it could submit its bid by facsimile.

DECISION

Heath Construction, Inc., of Arvada, Colorado, protests the rejection of its bid under invitation for bids (IFB) No. VA-263-10-RA-0142, issued by the Department of Veterans Affairs (VA) for an electrical generator. The VA rejected the bid because it was submitted by facsimile.

We deny the protest.

The IFB provided for the award of a contract for the acquisition and installation of an electrical generator to provide standby power to the operating suite of the Sioux Falls VA medical center. IFB at 5-6. The IFB incorporated by reference Federal Acquisition Regulation (FAR) clause 52.214-5, "Submission of Bids," which provides that facsimile bids would not be considered unless authorized by the solicitation. *Id.* at 16. The IFB also instructed potential offerors to contact the contract specialist in the event of questions. *Id.* at 1.

One day before bid opening, Heath contacted the contract specialist to ask whether the bid could be submitted by email or facsimile transmission. Agency Report, Tab 2, Emails between Heath and the VA. The contract specialist informed Heath that the firm could transmit its bid by facsimile transmission to the attention of the

contracting officer and identified a telephone number for a facsimile machine. Id. Heath transmitted its bid by facsimile to the identified telephone number on the bid opening date. Contracting Officer's Statement of Facts at 1. The contracting officer, who states that she was unaware of the contract specialist's communication with Heath until after bid opening, rejected Heath's bid because facsimile bids were not authorized by the IFB. Id. This protest followed.

Heath argues that the VA should accept its bid because the contract specialist gave Heath permission to submit its bid by facsimile, and it would have submitted its bid by courier if not misled by the contract specialist.

A bid sent by facsimile must be rejected unless permitted by the solicitation. FAR § 14.301(c); see GROH GmbH, B-291980, Mar. 26, 2003, 2003 CPD ¶ 53 at 2; PBM Constr., Inc., B-271344, May 8, 1996, 96-1 CPD ¶ 216 at 2. Moreover, information that is necessary to submit bids, or the lack of which would be prejudicial to an uninformed bidder, should be provided to all prospective bidders in the form of an amendment to the IFB. FAR § 14.308(c). We have found that information concerning the availability of facsimile transmissions is procurement information that must be provided to all bidders since facsimile transmission confers a potential competitive advantage of permitting more time for bid preparation. PBM Constr., Inc., *supra*, at 2 n.2.

Here, while the record shows that the protester contacted the very person the agency designated for receipt of questions on the face of the solicitation—and received a response via email from that individual—the law and precedent support the VA's decision to reject this bid. The IFB did not authorize the submission of bids by facsimile. In addition, Heath could not rely upon the communication from the contract specialist, who lacked the authority to amend the solicitation. Although Heath asserts that it obtained no competitive advantage and in fact was disadvantaged by faxing its bid, we have long held that the potential for competitive advantage is sufficient to require an agency to reject a faxed proposal when the solicitation did not authorize facsimile transmission.

Finally, although this result is consistent with our prior decisions, we think that procuring agencies should ensure that the personnel designated on the face of solicitation documents to respond to prospective bidders' questions provide accurate information concerning a solicitation.

The protest is denied.

Lynn H. Gibson
Acting General Counsel