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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Piedmont Hoist & Crane

File: B-400563

Date: October 8, 2008

Roger H. Payne for the protester.

David L. Bell, Esq., Naval Facilities Engineering Command, for the agency.

Kenneth Kilgour, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly refused to consider the protester's late quotation is denied where the agency already had made award prior to receipt of the protester's quotation, and the delay in receipt of the quotation (which was sent electronically) was due to the protester's decision to modify the email address specified in the solicitation for submission of quotations.

DECISION

Piedmont Hoist & Crane (PHC) protests the rejection of its quotation as late by the Department of the Navy, Naval Facilities Engineering Command, under request for quotations (RFQ) No. N40085-08-Q-1799 for design and installation of a two-ton bridge crane at Cherry Point, North Carolina.

We deny the protest.

On August 5, 2008, the Navy posted the RFQ on the FedBizOpps website. The RFQ specified a closing date and time of 2 p.m., August 21. The RFQ contained instructions for submission of quotations, including the notice that "[e]lectronic bids may be submitted to the following email address: roicc_chpt_ktr_bids@navy.mil by the time stated on the [standard form] 18." RFQ at 7. The electronic version of the RFQ included a blue, underlined hyperlink for the email address. With the cursor placed over the hyperlink for the email address, it appears as roicc_chpt_ktr_bids@navy.mil, clearly showing the underscoring of the otherwise blank spaces between characters. The agency received one quotation, from Mid-Atlantic Crane, which received the award on September 3.

On September 5, PHC contacted the agency to ask about this procurement and was told that the agency had not received a quotation from PHC and that award had been made to another vendor. PHC maintained that it had sent its quotation by email on August 21, at 11:52 a.m., to the following address: roicccchptktrbids@navy.mil, eliminating the spaces created by the underscoring in the email address as set out in the RFQ. That same day, PHC submitted its quotation directly to the contracting officer, as well as information to show the August 21 submission of its quotation. Upon review of the information provided by PHC, the contracting officer determined that PHC's quotation had not been received because it was sent to the wrong email address. Because the agency first received PHC's quotation on September 5, after award already had been made, the agency did not consider PHC's quotation further.

The protester does not dispute that its quotation was received late and after award. Rather, the protester argues that the circumstances surrounding the late receipt of its quotation compel the agency to consider it. In this regard, the protester argues that the error in the email address it used was the result of the unclear manner in which the address was set out in the RFQ. Moreover, the protester asserts that the email address it used must exist because the protester received a notice of receipt of its email, similar to notices of receipt that it has received in response to other email submissions that were known to have been properly received.

We have long held that the requirement to obtain competition to the maximum extent practicable means that language requesting quotations by a certain date cannot be construed as establishing a firm closing date for the receipt of quotations absent a provision—which was not present here—expressly providing that quotations must be received by that date to be considered. Instruments & Controls Serv. Co., B-222122, June 30, 1986, 86-2 CPD ¶ 16 at 3. Instead, agencies should consider any quotations received prior to source selection if no substantial activity has transpired in evaluating quotations and other vendors would not be prejudiced. Id. See also KPMG Consulting LLP, B-290716, B-290716.2, Sept. 23, 2002, 2002 CPD ¶ 196 at 11. Here, where the agency had already made an award prior to its receipt of the protester's quotation, we see no reason to object to the agency's refusal to consider that quotation. John Blood, B-274624, Dec. 19, 1996, 96-2 CPD ¶ 233 at 2.

The protester's argument that the email address used by the agency for receipt of quotations was "complicated and error-prone," Comments at 2, and that if the address had been clear the protester would not have made the entry error, does not compel a different result. As noted above, the email address, with the underscoring, was clearly visible in the electronic version of the RFQ once the cursor was placed over the address. To the extent the underscoring was not apparent to PHC, PHC nevertheless failed to act reasonably in the electronic submission of its quotation, which directly resulted in the agency not timely receiving its quotation. Without first raising the issue with the agency, PHC simply assumed that what it perceived as blank spaces between the characters in the agency's email address were unintended and immaterial—as noted above, the email address used by PHC for the submission of its quotation simply eliminated the underscored spaces. It was unreasonable for

PHC to make this assumption and thereby modify the email address designated in the RFQ for the submission of quotations. Given PHC's own actions, we have no basis to conclude that the agency acted unreasonably by rejecting PHC's late quotation.

The protest is denied.

Gary L. Kepplinger
General Counsel