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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Zebra Technologies International, LLC

File: B-296158

Date: June 24, 2005

William M. Weisberg, Esq., and Beth L. Jacobson, Esq., Sullivan & Worcester LLP, for the protester.

Capt. Scott N. Flesch, Department of the Army, for the agency.

Susan K. McAuliffe, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of agency's rejection of quotation as late is denied where record shows agency action was reasonable and consistent with the solicitation's late quotation terms.

DECISION

Zebra Technologies International, LLC protests the rejection of its quotation as late by the Department of the Army under request for quotations (RFQ) No. W91QUZ-05-Q-0001, for radio frequency identification products and services.

We deny the protest.

The RFQ, issued on December 16, 2004, contemplated the selection of multiple vendors for blanket purchase agreements (BPA) under five award groups; this protest involves the rejection of Zebra's quotation for selection under award group 3, for printers. The RFQ provided for issuance of one or more BPAs to vendors having technically acceptable quotations and satisfactory past performance. RFQ Part E-2, ¶ 2. Evaluation of the quotations was to include a "compliance review" (to determine whether the quotation complied with the terms of the RFQ), and a "technical acceptability review" (to review compliance with mandatory product and services requirements). RFQ Part E-2, ¶ 2(a), (b). Further, a performance risk assessment was to be performed by the agency for each vendor "based on the quality, relevancy and currency" of the vendor's past performance. RFQ Part E-2, ¶ 2(c). For the past performance evaluation, vendors were required to provide comprehensive information regarding their (and their subcontractors') past

performance, with detailed descriptions of the five largest relevant contracts performed within the last 3 years, including information about contract size, scope, pricing, and delivery terms, as well as an explanation of the firm's compliance with performance requirements. RFQ Part E-1, ¶ 12.4.3(a). Vendors were also required to send past performance questionnaires to the references they identified for those contracts, and to do so in sufficient time for the responses to be provided to the agency by the due date for receipt of the past performance volume of the quotation. RFQ Part E-1, ¶ 12.4.3(b).

In this regard, in an effort to prevent delay in the procurement from the past performance evaluation, all vendors were advised (by provisions in the RFQ, the cover letter to the solicitation, and several vendor questions and answers released by the agency) of the importance of timely submission of their past performance information. Vendors were instructed that in order to enable timely processing of the information by the agency, each vendor was required to submit the past performance volume of its quotation 1 week prior to the closing date scheduled for the balance of the firm's quotation (i.e., the technical and price aspects of its quotation). RFQ Part E-1, ¶ 2(b). For award group 3, relevant to Zebra's protest, the closing date for receipt of the technical/price quotations was March 7; accordingly, each vendor's past performance volume was required to be submitted by February 28.

The RFQ included the following prohibition against the late submission of quotation information:

Quotes or modifications of quotes received . . . after the exact time specified for receipt of quotes will not be considered for the initial round of BPA awards. If an emergency or unanticipated event or legal Federal holiday interrupts normal Government processes . . . the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume. The early quote submission of Past Performance information is subject to this late submission rule.

RFQ Part E-1, ¶ 5 (emphasis added).

Zebra submitted its past performance information (along with the balance of its quotation) on March 4, 4 days after the February 28 deadline for submission of the past performance volume. On March 21, the firm was informed that, pursuant to the late quotation provision of the RFQ, its quotation was rejected, because the firm failed to timely submit its past performance information. This protest followed.

Zebra contends that the agency lacked any reasonable basis to reject its quotation; Zebra asserts that the agency instead was required to waive its late past performance submission as a minor informality, since, according to the protester, its submission

of past performance information 4 days late should not delay the procurement or result in a competitive advantage to the firm.¹

It is the responsibility of each firm to deliver its proposal (or here, quotation) to the proper place at the proper time, and late delivery generally requires rejection of the submission. See Federal Acquisition Regulation § 15.208; Inland Serv. Corp., Inc., B-252947.4, Nov. 4, 1993, 93-2 CPD ¶ 266 at 2-3; Instruments & Controls Serv. Co., B-222122, June 30, 1986, 86-2 CPD ¶ 16 at 3. We have recognized that the late submission rules alleviate confusion, ensure equal treatment of all competitors, and prevent one firm from obtaining any unfair competitive advantage that might accrue where only one firm is permitted additional time to prepare its proposal or quotation for evaluation by the agency. Inland Serv. Corp., Inc., *supra*. While the government may lose the benefit of more advantageous terms included in a late submission, protecting the integrity of the competitive procurement process by ensuring fair and equal treatment among competitors is of greater importance than the possible advantage to be gained by considering a late submission in a single procurement. Id.; Phoenix Research Group, Inc., B-240840, Dec. 21, 1990, 90-2 CPD ¶ 514 at 5.

The record here provides no basis to question the reasonableness of the rejection of Zebra's quotation for failure to timely submit its past performance information. First, since the RFQ's late quotation provision expressly applied to the past performance submission, it is clear that the agency's rejection of Zebra's quotation for failing to meet the closing time specified for that submission falls squarely within the terms of the solicitation. Moreover, the protester has not shown that its failure to meet the mandatory past performance submission deadline was only a minor informality that must be waived, as Zebra argues, as a matter of form over substance.

Rather, our review of the record confirms the reasonableness of the agency's position that the RFQ's deadline for the past performance submissions was material to the agency's actual needs, and thus, was not merely a matter of form. This is

¹ Zebra also argues that the RFQ's late quotation provision does not require rejection of its quotation, since, according to Zebra, the only aspect of the late quotation rule that applies to the early past performance submission is the rule's exception to the filing deadline when there is an interruption to government operations. The protester, however, has materially misread the RFQ late quotation provision which, as quoted above, expressly provides that the early past performance submission is subject to the "late submission rule" (*i.e.*, the rule that quotation information received after the exact time for receipt will not be considered); contrary to Zebra's strained interpretation, the clause does not apply only an exception to the cited rule (*i.e.*, the extension of time granted in the event of an interruption to government operations) to the early past performance submission. RFQ Part E-1, ¶ 5.

evident, for example, from the repeated emphasis given in the RFQ (as well as its cover letter, and several answers to vendor questions published by the agency) to the agency's need to prevent any delay in the procurement from the substantial past performance evaluation efforts that were anticipated under the RFQ, including the management and review of the multitude of past performance reference questionnaires for each of the many vendors expected under each of the multiple award groups.

The agency further asserts that waiver of the deadline is not warranted in light of the fact that the past performance evaluations had already begun prior to the submission of Zebra's past performance information. These efforts, which the agency reports began upon the timely receipt of 10 other vendors' past performance submissions, include the review of past performance narratives, coordination and review of the numerous reference questionnaires received for each vendor, and a preliminary assessment of each vendor's performance risk. We agree with the agency that consideration of the protester's past performance submission filed 4 days late, after the agency had already begun the past performance evaluation, could reasonably result in the very type of procurement delay the agency intended to avoid by inclusion of the RFQ's early submission requirement—a requirement that Zebra, without any explanation, apparently chose to ignore. We thus cannot find reasonable Zebra's characterization of the past performance timeliness requirement as one merely of form, as the record shows that waiver of the requirement for the firm could have an adverse effect on the agency's timely completion of the evaluation.

We also cannot agree with Zebra's contention that no other vendor would be prejudiced if the protester were granted a waiver of the RFQ's required early past performance submission deadline. As the agency points out, waiving the submission deadline for only Zebra effectively confers a competitive advantage on the firm, since other firms were required to meet the constraints of the early deadline. Waiver of the requirement for Zebra thus would grant to that firm alone substantial additional time—4 days—to prepare its past performance volume for evaluation, rendering unequal the basis of competition among vendors under the RFQ. See GROH GmbH, B-291980, Mar. 26, 2003, 2003 CPD ¶ 53 at 3.

In sum, given the clear mandatory nature of the RFQ's requirement for an early past performance submission, and in light of the importance of protecting the integrity of the procurement process by maintaining equal treatment of the vendors, we have no

basis to question the agency's rejection of the protester's quotation as late for failing to meet the past performance submission deadline.

The protest is denied.

Anthony H. Gamboa
General Counsel