



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This version has been approved for public release without any redactions.

Decision

Matter of: Innovative Quality Solutions, LLC

File: B-419009.2

Date: December 17, 2020

Shane J. McCall, Esq., Christopher S. Coleman, Esq., Nicole D. Pottroff, Esq., and Quinten R. Fisher, Esq., Koprince Law, LLC, for the protester.
Felecia R. McBride, Esq., Department of Transportation, for the agency.
John Sorrenti, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the agency improperly decided to pursue an unrestricted full and open competition after taking corrective action on a procurement previously set aside for small businesses is denied where the record shows that the agency reasonably found that the protester's quotation was nonresponsive and therefore there were no small businesses eligible for award.

DECISION

Innovative Quality Solutions, LLC (IQS), of Grandview, Missouri, challenges the corrective action taken by the Department of Transportation under request for quotations (RFQ) No. 6913G620Q300058, for two railway car spotters. IQS argues that the agency unreasonably determined that IQS's quotation was nonresponsive, and that the agency should have made award to IQS as the only remaining eligible small business rather than cancel the set-aside decision to pursue a full and open competition as part of corrective action.

We deny the protest.

BACKGROUND

The agency issued the RFQ under Federal Acquisition Regulation (FAR) part 12, acquisition of commercial items, and FAR subpart 13.5, simplified acquisition procedures, as a small business set-aside for two railway car spotters for the Portsmouth Naval Shipyard in Portsmouth, New Hampshire. Agency Report (AR), Tab A, RFQ at 1. The RFQ contemplated award of a single, fixed-price purchase order.

Id. Award would be made to the vendor that submitted the lowest price “along with a technical narrative that lays out an acceptable technical understanding and plan for meeting the [r]ailway [c]ar [s]potters configuration and delivery requirements” of the RFQ. *Id.* at 41. The RFQ also required that all vendors be registered in the System for Award Management (SAM) in order to receive award. *Id.* at 2.

The agency received quotations from two vendors, IQS and Nordco, Inc., doing business as Shuttlewagon, Inc. As relevant to this protest, IQS submitted its quotation using the name for its product line of railway cars, BOSS Railcar Movers (BOSS). AR, Tab C, BOSS Quotation Part 2.¹ The cover page of the quotation had a “BOSS Railcar Movers” logo, and a cover letter to the quotation listed “BOSS Railcar Movers” on its letterhead. *Id.* at 2. The cover letter stated “[o]n behalf of BOSS Railcar Movers, I would like to thank you for the opportunity to serve our Navy,” and was signed by the executive vice president/general manager (EVP/GM) of BOSS.² *Id.* The quotation was for the BOSS ZX mobile railcar mover, and included specifications and pictures of that type of railcar; in the pictures, the name “BOSS” was printed on the railcar. *See id.* at 2-6, 8-9. Throughout the quotation, all references were to a BOSS railcar. *See generally id.* The only mention of IQS in the quotation was its inclusion on two different technical drawings that showed modifications that had been made to the BOSS ZX railcar. *Id.* at 8, 9. While the drawings showed pictures of the railcars with the “BOSS” name on the side, a box on the bottom of each page containing the drawings had a proprietary and confidential legend and included the name “Innovative Quality Solutions.”³ *Id.*

The agency determined that both vendors’ quotations were technically acceptable but that the BOSS quotation was the lowest priced. Contracting Officer’s Statement (COS) at 1. As a result, the contracting officer began to prepare an award to BOSS, and attempted to find a company called BOSS in SAM using a data universal numbering system (DUNS) number.⁴ *Id.* The BOSS quotation did not include a DUNS number, so

¹ As further explained in this decision, the protester asserts that “BOSS Railcar Movers” is a product line of railcars manufactured by IQS; it is not a separate company. For purposes of this decision, we will refer to the quotation as the “BOSS quotation” while referring to the protester as IQS.

² When the EVP/GM emailed the quotation to the agency, the email signature line stated “BOSS Railcar Movers” and included the logo for BOSS. AR, Tab C, Email from Protester to Agency, June 25, 2020.

³ Marketing materials included with the quotation also named BOSS Railcar Movers and did not include any mention of IQS. *See* AR Tab C, BOSS Quotation Parts 3, 4.

⁴ The “DUNS” numbering system is established by Dun & Bradstreet Information Services for purposes of establishing the precise identification of a contractor. *Gemmo S.p.A.*, B-416864.3, Sept. 19, 2019, 2019 CPD ¶ 328 at 10 n.12. DUNS numbers are used to identify the entity that is the vendor or offeror for a given procurement. *See id.*

the contracting officer used a DUNS number that he obtained from a member of the technical evaluation team to search for BOSS in SAM.⁵ *Id.* However, SAM showed that the DUNS number was for a company called IQS, not for BOSS.

To clarify and confirm the DUNS number for BOSS, on July 16, the contracting officer emailed the EVP/GM identified in the BOSS quotation. *Id.*; AR, Tab I, Email from Agency to Protester, July 16, 2020 (12:53 p.m.). In the email, the contracting officer asked the EVP/GM to clarify whether the DUNS was “correct for Boss Railcar Movers,” and included the results of the search in SAM for that DUNS number, which read as follows:

Innovative Quality Solutions, LLC
DUNS: 054427095
CAGE Code: 8KXB0
Status: Active
c/o BOSS RAILCAR MOVERS
4116 DOCTOR GREAVES RD
GRANDVIEW, MO, 64030-1138 ,
UNITED STATES

Id. In response, the EVP/GM stated “[t]he DUNS information is correct.” *Id.*, Email from Protester to Agency, July 16, 2020 (3:46 p.m.).

Because the DUNS number was for a company called IQS and not BOSS, on July 21, the agency again emailed the EVP/GM to ask about the relationship between BOSS and IQS. Specifically, the contracting officer asked whether BOSS was a subsidiary of IQS and requested an explanation of BOSS’s business and legal relationship to IQS. AR, Tab J, Email from Agency to Protester, July 21, 2020 (6:52 a.m.). In response, the EVP/GM stated that “BOSS is the name of our product (BOSS Railcar Mover) and Innovative Quality Solutions, LLC is the company name. An analogy would be Ford Motor Company builds the F150 pickup truck or the Explorer SUV. Innovative Quality Solutions builds the BOSS Railcar Mover.” AR, Tab K, Email from Protester to Agency, July 21, 2020 (10:07 a.m.).

Eight days later, the contracting officer emailed the EVP/GM again and stated that he was “seeking clarifications only related to your quote,” and that the EVP/GM “may not amend or supplement your quote and this is not opening negotiations.” AR, Tab P, Email from Agency to Protester, July 29, 2020 (4:26 p.m.). In the email, the contracting officer explained that the solicitation required all contractors to be registered in SAM to receive an award and that the agency could not find a company named BOSS in SAM,

⁵ The technical evaluation team member obtained what the member thought was a DUNS number for BOSS through market research that the member conducted prior to the procurement. COS at 1.

or a DUNS number for BOSS. The contracting officer asked the EVP/GM to clarify where the agency could find that information. *Id.* In response, the EVP/GM stated that IQS “is the manufacture[r] of the BOSS Railcar Mover, if you are searching for BOSS Railcar Mover, that name will not show up in SAM.” *Id.*, Email from Protester to Agency, July 29, 2020 (5:55 p.m.). The EVP/GM also explained that IQS, and not BOSS, would be the company delivering the railcar movers. *Id.*

On July 31, the contracting officer again emailed the EVP/GM and requested that the owner of IQS address the agency’s concerns with the “unclear legal and business relationship between IQS and Boss.” AR, Tab U, Email from Agency to Protester, July 31, 2020, (8:20 a.m.). In response, the EVP/GM explained that IQS “is a manufacturing company that produces a railcar mover branded as ‘BOSS Railcar Mover,’ and that “[t]here is not a company named BOSS Railcar Mover.” *Id.*, Email from Protester to Agency, July 31, 2020 (10:01 a.m.) (emphasis omitted). The EVP/GM also stated that “[a]ll of our literature, emails, letterheads, and marketing materials are carefully developed to promote the brand of our product which is the ‘BOSS Railcar Mover.’” *Id.*

On August 11, the agency emailed to the EVP/GM a letter explaining that the agency had rejected the BOSS quotation as nonresponsive. AR, Tab Z, Notification of Nonresponsive Quotation. The letter stated that “BOSS Railcar Movers quote was submitted on its behalf and signed by BOSS Railcar Mover. BOSS railcar is not a small business and subject solicitation is a 100% small business [set-aside where only small businesses are eligible.” *Id.* The letter also explained that the solicitation required all contractors to be registered in SAM to receive award, and that based on the explanation that the agency had requested from the EVP/GM, “BOSS Railcar Movers identified it is not a company and is not registered in SAM.”⁶ *Id.*

After finding the BOSS quotation to be nonresponsive, the agency made award to Shuttlewagon, Inc. IQS filed a protest at GAO challenging this award on August 13. After the protest was filed, the agency was informed that Shuttlewagon was not a small business. As a result, the agency took corrective action, terminating the award to Shuttlewagon, and stated that it was contemplating pursuing an unrestricted competition for the railcar movers. *Innovative Quality Solutions, LLC*, B-419009, Sept. 14, 2020 (unpublished decision). In light of the agency’s corrective action, we dismissed IQS’s protest as academic. *Id.* On September 11, IQS filed this protest with our Office, challenging the agency’s corrective action.

⁶ The same day the agency sent the notification to BOSS, the contracting officer emailed himself a “[n]ote to [f]ile” in which he stated that he had determined that the BOSS quotation was nonresponsive because the solicitation required all quotations to be from small businesses registered in SAM. AR, Tab X, Email from Contracting Officer to Contracting Officer, Aug. 11, 2020. The note to file further explained that “IQS was registered in SAM but there was [no] indication in the Boss proposal of that relationship.” *Id.*

DISCUSSION

IQS alleges that the agency's corrective action was flawed for two reasons. First, IQS argues that it was an eligible small business vendor and that the agency unreasonably found the BOSS quotation to be nonresponsive. Second, IQS asserts that because it is the only remaining eligible small business, the agency's decision to pursue an unrestricted competition in corrective action is flawed and violates the small business regulations, and the agency must instead make award to IQS. For the reasons discussed below, we deny the protest.⁷

The responsibility for submitting a well-written and adequately detailed quotation--here, including an adequate explanation of the relationship between BOSS and IQS--lies first and foremost with the vendor. See, e.g., *Exceed, LLC*, B-419010, Nov. 17, 2020, 2020 CPD ¶ 368 at 7. In this regard, the vendor must provide, within the four corners of its quotation, the information the agency needs to properly evaluate the quotation. See *SSI Tech., Inc.*, B-411585, Aug. 26, 2015, 2015 CPD ¶ 275 at 3. As relevant here, uncertainty as to the identity of a quoting entity renders the quotation technically unacceptable, since ambiguity as to the quoter's identity could result in there being no party that is bound to perform the obligations of the contract. *Knight Point Sys., LLC*, B-418746, Aug. 24, 2020, 2020 CPD ¶ 314 at 5. The entity awarded the contract should be the entity that submitted the initial quotation. *Raytheon Co.*, B-409651, B-409651.2, July 9, 2014, 2014 CPD ¶ 207 at 6.

As explained above, the protester's quotation was submitted on behalf of BOSS, on BOSS letterhead, and represented that BOSS would provide the railcars in response to the solicitation. Based on this, the agency understood that a company called BOSS, and not IQS, had submitted the quotation. The agency's communications with the EVP/GM revealed that BOSS was not an actual company, but was a product line of railcars manufactured by IQS. The communications further revealed that any award would have to go to IQS, as that company would provide the railcars. The agency concluded that the quotation as submitted did not identify the relationship between BOSS and IQS and that it therefore could not make an award on the basis of a quotation that appeared to be from BOSS, which was not listed in SAM, and not an actual small business. Based on the contents of the BOSS quotation, and our review of the record, we find that the agency reasonably concluded that the quotation was

⁷ IQS raises several additional arguments for why it was improper for the agency to reject its quotation as nonresponsive. We have reviewed these arguments and find that none provides a basis on which to sustain this protest. For example, IQS claims that the agency could not reject the BOSS quotation as nonresponsive solely because the quotation did not include the SAM registry information or the SAM representations and certifications. Comments at 4. However, the agency did not find the quotation nonresponsive for merely failing to include this information; rather, the agency rejected the quotation because it concluded that the quotation was from a company called BOSS, but it could not find that company in SAM to confirm it was an eligible small business, and ultimately found that BOSS was not an actual company at all.

submitted in the name of a company called BOSS, and not IQS, and that therefore the quotation was nonresponsive because BOSS was not an actual company.

IQS contends that the agency should have accepted the explanations the EVP/GM provided in the correspondence with the agency as clarifications regarding the name of its business. Protest at 6. IQS maintains that any confusion caused by the use of the BOSS name in the quotation was a minor issue that was quickly resolved by the EVP/GM's email responses, and that the agency was within its rights to accept this information as a clarification. *Id.* The agency counters that except for IQS's name on the technical drawings, "[a]nything that could tie IQS to [BOSS]'s quote came after the due date for quotation and during clarifications where [BOSS] was not permitted to revise or supplement its quote."⁸ COS at 3.

As relevant here, although an agency is not required to conduct discussions under simplified acquisition procedures, any exchanges that do occur with vendors in FAR part 13 procurements, like all other aspects of such procurements, must be fair and equitable. *Northstate Heavy Equipment Rental*, B-416821, Dec. 19, 2018, 2018 CPD ¶ 430 at 5. Our Office has looked to FAR part 15 as guidance in making this determination. See *ERIE Strayer Co.*, B-406131, Feb. 21, 2012, 2012 CPD ¶ 101 at 4-5; *Ranger Am. of the Virgin Islands, Inc.*, B-418539, B-418539.2, June 11, 2020, 2020 CPD ¶ 194 at 8. In this regard, FAR 15.306 defines clarifications as "limited exchanges" that agencies may use to allow vendors to clarify certain aspects of their proposals (or in this case quotations) or to resolve minor or clerical mistakes. See FAR 15.306(a)(2); *Arrington Dixon & Assocs., Inc.*, B-409981, B-409981.2, Oct. 3, 2014, 2014 CPD ¶ 284 at 9. Discussions, by contrast, occur when an agency communicates with a vendor for the purpose of obtaining information essential to determine the acceptability of a proposal or quotation, or provides the vendor with an opportunity to revise or modify its proposal or quotation. *Arrington Dixon & Assocs., Inc.*, *supra*; see FAR 15.306(d).

We agree with the agency that it could not accept the explanations regarding the relationship between BOSS and IQS as clarifications. As explained above, the quotation was submitted on behalf of BOSS and represented that BOSS would provide the railcars. The only mention of IQS in the quotation was the inclusion of the name on the protective legend for two technical drawings showing the details of the railcars. The quotation contained no explanation of the relationship between IQS and BOSS. Given this, we find that it was reasonable for the agency to conclude that the quotation was submitted by a company called BOSS. Thus, the explanations that BOSS was a product line, of which IQS was the manufacturer, and that any award would have to be made to IQS, and not BOSS, did not clarify a minor issue but would result in changing the identity of the company that submitted the quotation. Accordingly, we find

⁸ In this regard, we note that in one of the emails to the EVP/GM requesting more information about how the agency could find BOSS in SAM, the agency explained that it was seeking clarifications and that the EVP/GM could not amend or supplement the quotation. AR, Tab P, Email from Agency to Protester, July 29, 2020 (4:26 p.m.).

reasonable the agency's decision that its acceptance of this explanation would result in a revision or supplementation to the quotation that was not allowed during clarifications.

IQS also argues that the record confirms that the agency knew, or should have known, that IQS and BOSS were the same entity. See Comments at 3. IQS raises several arguments and points to various documents in the record that it claims support this position. We disagree. As explained above, based on the information contained in the BOSS quotation, the agency reasonably concluded that BOSS was the company that submitted the quotation. Because the agency had to make award based on the BOSS quotation, whether or not it knew about the relationship between BOSS and IQS is irrelevant. The agency simply could not make award to IQS when it had reasonably concluded that the quotation was from a company called BOSS.⁹

In sum, we find that the agency reasonably determined that the BOSS quotation was nonresponsive. As a result, IQS is not eligible for award, and we therefore need not address the protester's second argument that the agency's decision to pursue an

⁹ At any rate, with regard to whether the agency could have acted on any knowledge it had about the relationship between BOSS and IQS--or was required to act on such knowledge, as the protester contends--we have reviewed the record and find that it does not support IQS's arguments.

unrestricted competition rather than make award to IQS is flawed and violates the small business regulations.¹⁰

The protest is denied.

Thomas H. Armstrong
General Counsel

¹⁰ We note that the argument that the agency should make award to IQS as the only remaining eligible small business is based on a misunderstanding of the law. IQS argues that “[w]here there is only one small business offeror on a small business set-aside, an agency must make an award to that small business.” Protest at 3. In support of this argument, IQS cited to FAR 19.502-2(a), which states that “[i]f the contracting officer receives only one acceptable offer from a responsible small business concern in response to a set-aside, the contracting officer should make an award to that firm.” Protest at 3 (citing FAR 19.502-2(a)).

However, this section of the FAR applies to small business set-asides for acquisitions valued above the micro-purchase threshold, but under the simplified acquisition threshold (\$750,000 as applied to this procurement). FAR 19.502-2(a). IQS’s total quoted price was over \$1,000,000; therefore, this FAR provision did not apply to this procurement. Moreover, the provision states that the agency “should make an award” where there is only one acceptable offeror, but does not require it to do so. Thus, even if IQS was the only remaining eligible small business--and it was not--IQS has not shown that the agency was required to award the contract to IQS.