

OFFER SUBMITTED IN NAME OF THE PRODUCT IS NONRESPONSIVE

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Recently, in a small business set-aside, the Government Accountability Office (“GAO”) confirmed an agency’s finding that a protester’s quotation was nonresponsive because it was submitted in the name of the product, not the company’s name. *Innovative Quality Solutions, LLC*, B-419009.2, Dec. 17, 2020. Explanations by the offeror were of no avail, because the offeror was clear.

Two offerors submitted quotes on a Department of Transportation solicitation for railcar movers, which was set-aside for small business. The solicitation required all contractors to be registered in the System for Award Management (“SM”) to receive award. Innovative submitted its quotation using the name of its product of railway cars, “Boss Railcar Movers (“BOSS”). The cover page of the quotation has a “Boss Railcar Movers” logo and the cover letter listed the same name in the letterhead, and stated that the quote was submitted on behalf of Boss Railcar Movers. The quote was signed by the executive vice president and general manager of Boss Railcar Movers.

In evaluating the two quotes received, the BOSS quote did not include a DUNS number, but a member of the technical evaluation team had obtained a DUNS number for BOSS in his market research. However, upon looking up that number, the SAM showed the DUNS number was for Innovative, not Boss. The contracting officer attempted to clarify the legal and business relationship between Innovative and Boss, however the company merely stated that Innovative would be the company delivering the railcar movers, and there was no company named “Boss Railcar Movers.” Soon thereafter, the agency emailed Innovative stating that the BOSS quotation was nonresponsive—BOSS was not a small business (for this set-aside), and BOSS was not registered in SAM.

After making award to another Company, Shuttlewagon, Inc., (the only other offeror) the agency was informed that that company was not a small business. The agency took corrective action, terminated the award to Shuttlewagon and stated that it was contemplating pursuing an unrestricted competition for the railcar movers. When Innovative protested the corrective action, GAO noted that a vendor must provide, within the four corners of its quotation, the information needed to properly evaluate the quotation. Further, the identity of a quoting entity must be clear and certain since ambiguity as to the quoter’s identity could result in there being no party that is bound to perform the obligations of the contractor. The entity that receives award should be the entity that submitted the initial quotation.

The GAO held that the quote was submitted in the wrong name (i.e. the name of the product), and the clarifications made by BOSS were not mere “clarifications” of a minor issue, but would result in changing the identity of the company that submitted the quote. This was not permissible, and GAO denied Innovative’s protest.

Takeaway. Always be certain that the company's name in SAM, as well as its DUNS number, are properly stated in your offer or quote. Leave no doubt as to the name or identity of the company that will be responsible if you receive award.

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