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Washington, DC 20548**

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Decision

Matter of: Tipton Textile Rental, Inc.

File: B-406372

Date: May 9, 2012

Cynthia Malyszek, Esq., Malyszek & Malyszek, for the protester.
John W. Gannan, II, Esq., Department of Veterans Affairs, for the agency.
Paul N. Wengert, Esq., Glenn G. Wolcott, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency misevaluated awardee's quotation is sustained where solicitation required a barrier wall to achieve physical separation of soiled linens from cleaned linens, and awardee's quotation failed to comply with this requirement.
2. Under small business set-aside, contracting officer must have representation from the awardee of its status as a small business, and therefore, award of contract to a vendor whose quotation represented that the firm "is not" a small business concern is improper notwithstanding contracting officer's belief that vendor was confused by layout of small business representation and contracting officer's retrieval of a central contractor registry listing for a firm having a slightly different name, in which that firm was described as a small business.
3. Protest that agency misevaluated protester's quotation as unacceptable is sustained where agency initiated discussions by its inquiries to protester by telephone and during subsequent site visit by evaluators, but the agency based its evaluation only on the firm's original quotation, without considering the protester's responses to the agency's inquiries.

DECISION

Tipton Textile Rental, Inc., of Cape Girardeau, Missouri, a small business, protests the award of a contract to Linen King L.L.C., of Bixby, Oklahoma, by the Department of Veterans Affairs (VA) under request for quotations (RFQ) No. VA255-12-Q-0125 for linens supply and commercial laundry service at two VA medical centers in St. Louis, Missouri. Tipton argues that the VA improperly accepted the awardee's quotation notwithstanding its failure to meet the solicitation requirements, improperly rejected Tipton's quotation as unacceptable, and conducted improper discussions.

We sustain the protest.

BACKGROUND

The VA issued the RFQ on November 14, 2011, seeking quotations for commercial laundry service at the Jefferson Barracks VA medical center and the John Cochran VA medical center during a base year and three annual option periods. As amended, the RFQ provided for award of a single indefinite-delivery/indefinite-quantity requirements contract under a small business set-aside.¹ RFQ amend. 2 at 1; RFQ amend. 1 at 54.

The RFQ required the contractor to pick up, launder, and redeliver all hospital linens to the medical centers. Among other things, the RFQ specified certain requirements for handling and cleaning the linens, which included the following:

Physical separation, through the presence of a barrier wall and the use of pass-through equipment is required to maintain positive air pressure in the clean section relative to a negative air pressure in the soiled section. In no case shall clean and soiled linen share the same physical space. The Laundry Plant layout/design must incorporate a “design for asepsis” where by clean linen does not come into contact with soiled linens nor share the same physical space, thus avoiding cross-contamination or reintroduction of bacteria once processed.

RFQ amend. 2 at 10 (emphasis in original).

The RFQ instructed vendors to submit quotations addressing four evaluation factors: technical, past performance, quality assurance, and price. Vendors were also directed to provide “sufficient material . . . to allow evaluation of specific elements of [the] proposal,” RFQ at 72; RFQ amend. 2 at 4, and were notified that “[p]rior to award, the Government reserves the right to make a site visit to any laundry facility that will be used to process items under this solicitation.” RFQ amend. 1 at 4.

The RFQ instructed vendors to submit a “technical offer” volume that addressed each solicitation requirement “in the sequence outlined” and identified the corresponding evaluation factor. RFQ at 73. The RFQ noted that quotations would only be considered if the firm met “the technical capability [requirements]; show[ed]

¹ The November 14, 2011 RFQ was issued as an unrestricted procurement. RFQ at 1. On December 6, the VA issued amendment 2, which stated that the RFQ was being changed to a small business set-aside. RFQ amend. 2 at 1; see also Letter from Counsel for VA to GAO, Apr. 12, 2012, exh. 1, Procurement Request Review for the Small Business Program and Contract Bundling (VA Form 2268), Dec. 8, 2011, at 1.

evidence of business experience, [had a] location [that] meets the government[']s need, and in the judgment of the Government, [is] deemed financially responsible and employ[s] qualified personnel,” and included a “contingency plan in the event of any interruption of linen service.” RFQ at 73. The technical offer volume was also to include certain specified past performance information.² Id.

With respect to the price quotation, the RFQ required each vendor to quote both a per-pound price to purchase the existing linens supply from the VA at the beginning of contract performance period,³ and separate per-pound prices to be charged for the laundry services during each performance period. RFQ amend. 2 at 2-3. Prices were to be evaluated based on annual estimated laundry weights for each medical center: 443,334 pounds at the Jefferson Barracks location, and 819,779 pounds at the John Cochrane location. RFQ at 6-7; RFQ amend. 2 at 2-3.

The RFQ stated that the procurement would use simplified acquisition procedures and would “be in accordance with Parts 12, 13, and 15 of the FAR [Federal Acquisition Regulation] or some combination thereof.” RFQ at 72. A contract was to be awarded to the firm submitting the best value quotation, where the technical and past performance factors, when combined, were significantly more important than price.⁴ RFQ at 72.

On December 16, 2011, the VA received quotations from four firms, including Tipton, that represented they were small businesses, and a quotation from Linen King L.L.C.--which represented in its quotation that it “is not” a small business under the applicable size standard. Agency Report (AR) at 3; AR Tab 19, Linen King Price Quotation, at 77.

² For example, vendors were to provide information addressing how long the vendor had been in business, whether it had held government contracts previously, and whether any government contract had been terminated and under what circumstances. Vendors were also to provide references for at least three different hospitals, commercial facilities, and government agencies, “especially other VA hospitals,” where the firm provided laundry services for at least 3 years. RFQ at 73.

³ The RFQ explained that the VA expected to purchase the existing linens inventory from the incumbent, and sell it to the new contractor. RFQ amend. 1 at 6.

⁴ Since the best value language made no mention of the role of the quality assurance evaluation factor, several potential vendors submitted questions asking for clarifications regarding what technical information should be included in their quotations, and what role the quality assurance factor would play in the best value tradeoff. The VA responded to each of these questions with essentially the same answer--i.e., “You must provide an answer to the question. You may use your existing procedures as an example to respond to the question.” RFQ amend. 1 at 8 (responses to vendor questions).

Tipton's technical quotation provided a description of the firm, included a **[deleted]** related to quality control, listed past performance information, and included a statement by **[deleted]** to Tipton in response to the solicitation's requirement for a contingency plan. With respect to its experience, the technical quotation stated that Tipton had been in business since 1948 and was serving over 2,000 customers in St. Louis and southeast Missouri. Tipton provided contact information for two hospitals and one surgery center as past performance references. AR Tab 4, Tipton Quotation at 2, 5. Tipton also submitted online representations and certifications stating that the firm is a small business under the applicable size standard. Letter from Counsel for VA to GAO, Apr. 12, 2012, at 2 & exh. 3, Tipton Online Representations & Certifications, at 10. Tipton's price quotation provided annual per pound prices for each contract period for a total price of \$2.97 million. AR Tab 5 at 7.

In its quotation, Linen King identified itself as "Linen King LLC" of Bixby, Oklahoma. AR Tab 18, Linen King Technical Quotation, at 1; AR Tab 19, Linen King Price Quotation, at 1, 5. Its technical quotation provided a description of the firm's laundry and quality assurance processes, and listed past performance information. AR Tab 18, Linen King Technical Quotation, at 1-5. Linen King's quotation further stated that "[p]hysical/[f]unctional separation" between soiled and clean laundry would be achieved through "distinct barriers," "negative air pressure" and "positive air pressure." Id. at 1. However, Linen King's quotation also explained that it intended to achieve the required separation through "HLAC certification"⁵ for all of its facilities, which will occur "within the next 36 months." Id. at 25. Further, Linen King's quotation more specifically elaborated that the required separation would be achieved by "either ensuring that the air exchange exhaust fans are ALWAYS operating during business hours . . . or by constructing a barrier wall. . . ." Id. (underlining added).

Linen King's price quotation included hard-copy representations and certifications,⁶ among which was a certification stating that the firm "is not" a small business.⁷ AR Tab 19, Linen King Price Quotation, at 77. Linen King's price quotation listed annual per pound prices for each contract period for a total price of \$3.59 million.

The VA provided the vendors' quotations to three evaluators, along with a set of evaluation worksheets. The worksheets allowed each evaluator to select a rating of

⁵ HLAC refers to the Healthcare Laundry Accreditation Council, which has a voluntary accreditation process for inspecting and accrediting laundries. See www.hlacnet.org.

⁶ The record does not include any online representations and certifications for Linen King.

⁷ As noted above, the solicitation was initially issued as an unrestricted procurement.

superior, acceptable, or unacceptable, under each factor and subfactor, and provided space for written comments. Under the technical factor, the worksheets listed five technical subfactors: (a) detailed procedures for contract requirements including Quality Control Program, (b) detailed procedures for delivery turnaround time requirements, (c) personnel contact chart, (d) start-up and phase-in schedule, and (e) detailed contingency plan. AR Tab 14, Tipton Evaluator Worksheets at 17-19.⁸ For the technical factor and each of its subfactors, the evaluation worksheets identified particular evaluation standards. For example, with regard to technical subfactor (a), the worksheets identified, among other things, the following evaluation standard:

Provide detailed procedures to be used to ensure contract requirements are met including Quality Control Program, processing and packing requirements as stated in the Performance Work Statement. Contractor must certify that their facility maintains a physical separation through the presence of a barrier wall and the use of pass-through equipment of soiled and clean linen.

Id. (emphasis in original).

On December 28, 2011, the contracting officer and three evaluators began to evaluate the quotations. AR Tab 6, Source Selection Decision, at 1. According to the individual evaluator worksheets, Tipton's quotation was rated unacceptable, AR Tab 14, Evaluator Worksheets for Tipton Linen, while Linen King's quotation was rated acceptable.⁹ AR Tab 15, Evaluator Worksheets for Linen King. With regard to technical subfactor (a)--which, as noted above, contained the explicit requirement for a barrier wall--Linen King received two superior ratings and one acceptable rating. As justification, one evaluator checked the rating of superior and explained that "[t]he information provide[d] indicate[s] that the Offeror exceed[s] the requirement needed for the STL medical center," while the second justified a superior rating because "Using our QC program has barrier wall," and the third evaluated justified a rating of acceptable because "Information included in the proposal adequately addressed QC." AR Tab 15, Linen King Evaluation Worksheets, at 17.

⁸ Although the record provides a cover page and six worksheet pages for each of the three evaluators, each set is numbered 16 through 22.

⁹ One evaluator did not provide any rating for Linen King under either the past performance factor or the quality assurance factor or its subfactors; another evaluator did not provide any rating under the past performance factor. Id. Two evaluators rated Linen King superior for the overall technical factor. Id.

By letters dated January 10, the VA informed three of the five vendors that their quotations were unsuccessful.¹⁰ That same day, the contracting officer and one evaluator contacted Tipton by telephone to request additional information regarding, among other things, Tipton's quality assurance program, its capacity to perform the contract requirements, and its past performance. Contracting Officer's Statement at 2 & AR Tab 11, Declaration of VA Hospital Housekeeping Officer, at 1. With respect to the quality assurance program, the contracting officer asked for additional information on the firm's quality assurance plan, and Tipton responded by explaining its quality review process. Based on Tipton's response, the contracting officer determined that Tipton's quality assurance program should be rated acceptable. Contracting Officer's Statement at 2. Later that day, Tipton sent an e-mail confirming and reiterating the information it had provided during the telephone call. AR Tab 10, E-mail from Tipton Account Analyst to VA Contracting Officer and VA Hospital Housekeeping Officer, Jan. 10, 2012, at 1. In a subsequent telephone call, Tipton provided additional information regarding the capacity of its facility. AR Tab 11, Declaration of VA Hospital Housekeeping Officer, at 1.

The VA then scheduled site visits for both Tipton's and Linen King's facilities. The site visit to Tipton's facility was conducted on January 17; the site visit to Linen King's facility was conducted on January 18. The record contains no contemporaneous VA documentation with regard to either site visit.¹¹ The VA and Tipton are in dispute about much of what occurred during Tipton's site visit.

Tipton maintains that during the site visit the firm's representatives made a presentation regarding its proposed approach. Protest ex. 15 ("Tipton Welcomes [VA Evaluator]" Presentation Slides). The firm states that during the visit, its supervisors answered questions from the three VA evaluators, and each of Tipton's participants avers in a declaration that the VA evaluators stated before leaving that

¹⁰ The record is internally inconsistent with regard to the exclusion of these three vendors from the subsequent source selection decision. Specifically, the contracting officer asserts that he performed a cost/technical tradeoff between Linen King's quotation and one of the quotations excluded on January 10. Contracting Officer's Statement at 1. However, the excluded quotation, which purportedly formed the basis for this tradeoff analysis, was rated unacceptable under the past performance factor by every one of the three agency evaluators. AR Tab 22, Evaluation Worksheets for Offeror A.

¹¹ One of the evaluators describes the purpose of the site visit as an opportunity "to take a look at [Tipton's] facility." AR Tab 11, Declaration of VA Hospital Housekeeping Officer, at 1. The contracting officer acknowledges that he did not attend the site visit, but states that the visit was requested because the agency "was interested to see Tipton's facility based on its low price." Contracting Officer's Statement at 2.

the visit had shown that the firm was capable of performing the VA's requirements. Protest at 4-6; see Protest exhs. 11-14, Declarations of Tipton Executives.

In rebuttal, the VA evaluators acknowledge that they attended Tipton's presentation and toured the plant, but they characterize the conversation as "informal shop talk," or "idle conversation" and they ultimately dispute, or deny recalling, any of the specific statements recounted by Tipton. AR Tab 11, Declaration of VA Hospital Housekeeping Officer, at 1; AR Tab 12, Declaration of VA Administrative Officer, at 1. Both Tipton and one VA evaluator agree that the conversation included discussion of Tipton using a tunnel washer to meet the requirement for pass-through equipment; Tipton and one VA evaluator also agree that the VA made a recommendation that Tipton visit the loading dock at one of the VA medical centers to see how it operated. See AR Tab 13, Declaration of VA Linen Supervisor, at 1.

Immediately following the agency's January 17 site visit, Tipton sent e-mails to the VA to confirm in writing the information that had been discussed during the visit. Tipton's e-mails describe the site visit discussion as including verification of the plant's barrier walls, the negative airflow required by the RFQ, a planned location for installation of a tunnel washer to provide adequate capacity, the firm's standards for linens processing quality, and the firm's ability to supply additional linens if needed.¹² AR Tab 10, E-mail from Tipton to VA Hospital Housekeeping Officer & Contracting Officer, Jan. 18, 2012, at 1-2; E-mail from Tipton to VA Hospital Housekeeping Officer & Contracting Officer, Jan. 19, 2012, at 1.

On Friday, January 20, the VA notified Tipton that its quotation was unsuccessful. AR Tab 7, Letter from Contracting Officer to Tipton, Jan. 20, 2012, at 1. On Monday, January 23, the contracting officer prepared a source selection decision that included a cost-technical tradeoff between Linen King and one of the three previously-rejected vendors.¹³ According to the source selection decision, Tipton's

¹² Two of the evaluators assert that the evaluators met after the site visits to reach a consensus regarding the evaluations. AR Tab 11, Declaration of VA Hospital Housekeeping Officer, at 1; AR Tab 13, Declaration of VA Linen Supervisor, at 1.

¹³ As noted above, the vendor whose quotation was used for this tradeoff had been notified of its rejection on January 10. The evaluator worksheets establish that each of the evaluators rated that quotation as unacceptable under one or more of the evaluation factors. See generally AR Tab 22, Evaluator Worksheets for Offeror A. Nevertheless, the January 23 source selection decision states--without explanation--that the quotation was rated acceptable under all factors. AR Tab 6, Source Selection Decision, at 3. The record is devoid of any documentation reconciling the evaluators' unanimous determination that this quotation was unacceptable with the January 23 source selection decision's statement that the quotation was acceptable, nor has the VA offered any explanation for this discrepancy during the course of this protest.

quotation was rated unacceptable under the technical factor, and acceptable under the past performance and quality assurance factors. After noting that Tipton had a lower price than Linen King, the decision states that the contracting officer chose Linen King “because it represented the best value for these services.” AR Tab 6, Source Selection Decision Memorandum, at 4.

Also on January 23, Tipton requested a debriefing, and, on the same date, the VA sent a written debriefing to the company. The debriefing stated that Tipton’s quotation was evaluated as deficient under the technical evaluation factor because it “[p]rovided minimal information to meet the solicitation requirement” and “[d]id not provide adequate details for thorough evaluation.” AR Tab 16, Tipton Debriefing Memorandum, at 2. This protest followed.

DISCUSSION

Tipton argues that the VA miscalculated Linen King’s quotation by finding it acceptable despite the quotation’s failure to meet the solicitation requirements, including a barrier wall, and miscalculated Tipton’s quotation by failing to consider information that Tipton provided in response to the VA’s telephone calls and site visit. Protest at 1 & exh. 12, Declaration of Tipton Sales Manager, at 2 & exh. 13, Declaration of Tipton Account Analyst, at 2.

Evaluation of Linen King’s Quotation

Tipton first protests that award to Linen King was improper because Linen King’s facility does not have a barrier wall as the solicitation required and that Linen King’s quotation did not commit to meet this requirement. In this regard, Tipton asserts that the VA treated the firms unequally by evaluating Tipton’s quotation as unacceptable, yet making award to Linen King despite that firm’s failure to meet the solicitation’s barrier wall requirement. Protest at 1 & exh. 12, Declaration of Tipton Sale Manager, at 2 & exh. 13, Declaration of Tipton Account Analyst, at 2.

The VA concedes that Linen King lacks the required barrier wall, but argues that the agency properly evaluated the quotation because Linen King “provided in [its] technical offer to upgrade their facility to meet this requirement.” Contracting Officer’s Statement at 4. The record does not support this conclusion.¹⁴

¹⁴ Tipton also asserts that its own facility complies with the solicitation’s requirement for a barrier wall, although the contracting officer maintains it does not. During the protest the contracting officer asserted that the agency’s site visit to Tipton’s facility revealed that Tipton “has a partial wall with an opening and did not fully meet the requirements for positive air pressure, but did have the physical separation of clean and dirty linen mentioned in the solicitation.” Contracting Officer’s Statement at 5. As noted above, there is no contemporaneous VA documentation regarding the site visit, and the contracting officer’s argument appears to conflict with the position that

(continued...)

In response to a request from our Office that the agency clarify where Linen King's quotation addressed the barrier wall requirement, the VA referred to page 25 of Linen King's technical quotation. Letter from Counsel for VA to GAO, Mar. 21, 2012, at 2. As noted above, contrary to the agency's assertions, the referenced portion of Linen King's quotation does not state that it will comply with the solicitation's requirement for physical separation with a barrier wall. Rather, Linen King's quotation stated that it intended to achieve "functional separation," within 36 months, by "either ensuring that the air exchange exhaust fans are ALWAYS operating during business hours . . . or by constructing a barrier wall. . . ." AR Tab 18, Linen King Technical Quotation, at 25 (underlining added).

It is a fundamental principle of government procurement that contracting officials may not announce in the solicitation that they will use one evaluation scheme and then follow another without informing competitors of the changed plan and providing them an opportunity to submit proposals on that basis. Eloret Corp., B-402696, B-402696.2, July 16, 2010, 2010 CPD ¶ 182 at 10. Further, competitions must be conducted on an equal basis and offerors must be treated equally and be provided with a common basis for the preparation of their proposals, or as here, quotations. Brican Inc., B-402602, June 17, 2010, 2010 CPD ¶ 141 at 4. This principle is equally applicable to simplified acquisitions, and our Office will review allegations of improper agency actions in conducting simplified acquisitions to ensure that the procurements are conducted consistent with a concern for fair and equitable competition and with the terms of the solicitation. LASEOD Group, LLC, B-405888, Jan. 10, 2012, 2012 CPD ¶ 45 at 4.

Here, the VA failed to reasonably evaluate Linen King's quotation when the agency concluded that the quotation complied with the solicitation's barrier wall requirement. Specifically, Linen King stated only that--within 36 months--it would either always operate its exhaust fans or construct a barrier wall. The solicitation here explicitly stated that "[p]hysical separation, through the presence of a barrier wall . . . is required . . ." RFQ amend. 2 at 10. Further, we conclude that the agency did not evaluate Tipton and Linen King equally when it found Tipton's quotation unacceptable for lacking detail, yet evaluated Linen King's quotation as acceptable--even though Linen King's quotation did not commit to meet the barrier wall requirement that was clearly stated in the RFQ. Accordingly, we sustain the protest.

(...continued)

the VA took during the course of this protest that it did not engage in discussions with Tipton. Moreover, as discussed further below, the VA appears to have waived the barrier wall requirement for the awardee, but not for Tipton.

Compliance with Solicitation's Small Business Set-Aside Requirements

As described above, the RFQ was amended during the course of the procurement, and changed from an unrestricted solicitation to a small business set-aside. To be eligible for award as a small business, an offeror is required to represent in good faith that it is a small business at the time of its written representation. FAR § 19.301-1(a); see also 69 Fed. Reg. 76341 (Dec. 20, 2004) (describing operation of electronic representations of size status).

Linen King's quotation did not make that representation; rather, it represented that it "is not" a small business. AR Tab 19, Linen King Cost Quotation, at 77. In response to questions from our Office, the contracting officer stated that Linen King made a "common mistake . . . given the layout of the question," and that Linen King, in fact, is a small business.¹⁵ Letter from Counsel for VA to GAO, Apr. 12, 2012, at 2. According to counsel for the VA, the contracting officer based this conclusion on a listing in the Central Contractor Registry (ccr.gov) for a firm with a similar name-- "Linen King Group LLC," of Columbia, Missouri, although the vendor submitting the quotation here identified itself as Linen King L.L.C., of Bixby, Oklahoma. Id. & exh. 4, CCR record for Linen King Group LLC dated Apr. 12, 2012, at 3-4.¹⁶ Although the CCR listing provided by the VA does indeed describe "Linen King Group LLC" as a small business, the listing also expressly warns on the top of the first page that it is "[n]ot to be used as certifications and representations. See ORCA [the Online Representations and Certifications Application]." Id. at 3. No online

¹⁵ The certification at issue in Linen King's quotation was the standard set of representations and certifications contained in FAR § 52.212-3, which the firm completed by placing an "x" in the box next to the words "is not a small business concern." AR Tab 19, Linen King Quotation, at 77. We find no ambiguity in the question, which is used in essentially every federal contract solicitation, nor anything confusing about the "layout of the question." Further, Linen King responded, with apparent accuracy, to several other questions that were presented in exactly the same format. For example, the company represented that it "is not" a veteran-owned small business, it "is not" a small disadvantaged business, and it "is not" a woman-owned small business. Id. at 78-80. We have no basis to conclude that those representations were erroneous.

¹⁶ We note that both firms appear to share certain attributes, including addresses and executives. Compare AR Tab 18, Linen King Quotation, at 1 with Letter from Counsel for VA to GAO, Apr. 12, 2012, exh. 4 at 3 (CCR record for Linen King Group LLC). We express no view as to whether either firm, in fact, qualifies as a small business for this procurement, which is a question reserved for determination by the Small Business Administration, not our Office. See 4 C.F.R. § 21.5(b)(1) (2012). Our conclusion is limited to whether this vendor has represented in its quotation that it is eligible for award of a contract set aside for small businesses.

representations and certifications are available for either firm (that is, Linen King LLC, of Bixby, Oklahoma, or Linen King Group LLC, of Columbia, Missouri).

In our view, the VA had no reasonable basis--that can be seen in this record--to conclude that Linen King LLC, of Bixby, Oklahoma (the firm that submitted the quotation) had validly represented itself as a small business and was eligible for award--since its quotation unambiguously represented precisely the opposite. The fact that data (which warns that it is an unofficial listing) retrieved with regard to a similarly-named firm described that firm as a small business does not reasonably overcome Linen King's unambiguous representation that it is not. Accordingly, we sustain the protest.

Evaluation of Tipton's Quotation

In its challenge to the evaluation of its own quotation, Tipton also argues that the VA improperly refused to consider information Tipton provided in response to agency requests during agency-initiated telephone calls and the site visit. Tipton maintains that it was improper for the agency to evaluate Tipton's quotation as unacceptable for failing to provide adequate information, when Tipton, in fact, provided information responding to the agency's requests--but the agency refused to consider such information. Protest at 10-12; Protester's Comments at 3. In essence, Tipton argues that the VA's requests for information, via telephone and in questions asked during the site visit, ultimately constituted discussions with the company. As a result, Tipton argues that those discussions had to be meaningful, and that the agency had to consider Tipton's responses in evaluating its quotation.

The VA denies that its interactions with Tipton rose to the level of discussions, and argues that the agency properly refused to consider most of the information Tipton provided after submission of its initial quotation.¹⁷ Contracting Officer's Statement at 2. In particular, the agency maintains that it properly determined that Tipton's quotation was unacceptable on December 28, and thus, even though telephone conversations and site visits to both Tipton's and Linen King's facilities followed, none of those communications with either offeror constituted discussions.¹⁸ Contracting Officer's Statement at 2-3. The contracting officer maintains that, "at no time was Tipton informed that a request for a final proposal revision would be

¹⁷The contracting officer states: "With the exception of the contact information for [past performance] references, the VA did not consider any of Tipton's written information submitted to the VA after the proposal closing date." Contracting Officer's Statement at 3.

¹⁸ For example, the agency acknowledges that its evaluators sought Tipton's responses to various inquiries during the site visit, but maintains that those questions only "related to [the evaluators'] own curiosity." Contracting Officer's Statement at 4.

allowed or any revision of its offer would be accepted.” Id. at 5. Accordingly, the VA asserts that it made its source selection decision on the basis of information contained in the vendors’ initial submissions. AR at 6.

Our Office reviews allegations of improper agency actions in conducting simplified acquisitions to ensure that the procurements are conducted consistent with a concern for fair and equitable competition and with the terms of the solicitation. Kathryn Huddleston & Assocs., Ltd., B-289453, Mar. 11, 2002, 2002 CPD ¶ 57 at 6. Although an agency is not required to conduct discussions under simplified acquisition procedures, where an agency avails itself of negotiated procurement procedures, the agency should fairly and reasonably treat offerors in the conduct of those procedures. ERIE Strayer Co., B-406131, Feb. 21, 2012, 2012 CPD ¶ 101 at 4. In examining whether exchanges between an agency and an offeror are clarifications or discussions, our Office looks to the actions of the parties, and not merely to the characterization of the exchanges by the agency. Gulf Copper Ship Repair, Inc., B-293706.5, Sept. 10, 2004, 2005 CPD ¶ 108 at 6. Discussions occur when an agency communicates with an offeror for the purpose of obtaining information essential to determine the acceptability of a proposal, or provides the offeror with an opportunity to revise or modify its proposal in some material respect. Id.; accord. ERIE Strayer Co., *supra*, at 4.

While we will not lightly impose the requirement for meaningful discussions on a simplified acquisition, here, in our view, the VA initiated discussions with Tipton on January 10, which continued through a site visit and follow-up e-mails. Specifically, it appears the agency’s actions were plainly requests for additional information that was necessary to determine the acceptability of Tipton’s quotation. Indeed, the contracting officer states that, in addition to seeking past performance information during the January 10 telephone call, the agency “sought information from [Tipton] related to . . . its QA [quality assurance] program, and [Tipton’s] capacity [to perform the contract requirements]. Contracting Officer’s Statement at 2. The CO elaborates that, with regard to Tipton’s QA program, Tipton’s response to the agency’s questions indicated that it “had a review process, which satisfied our minimal requirements.” Id. Accordingly, the contracting officer concluded that Tipton’s quotation was acceptable with regard to the quality assurance factor (which differs from the evaluators’ unacceptable ratings). Id.

On this record, and with these facts, we conclude that the agency conducted discussions with Tipton and, as a result, those discussions were required to be meaningful. These were not.¹⁹

¹⁹ As noted above, the VA has no contemporaneous record of the matters raised with Tipton by telephone, or with either vendor during their respective site visits.

RECOMMENDATION

We recommend that the VA reopen this competition to address the numerous irregularities in this record. Specifically, we recommend that the VA consider whether it would be appropriate to establish a competitive range, hold meaningful discussions with vendors including Tipton, request revised quotations, evaluate the revised quotations on an equal basis, make a new source selection decision, and provide any required pre-award notice of the selection. Before making a new award, if the VA has selected Linen King, we also recommend that the VA determine whether Linen King L.L.C., of Bixby, Oklahoma (and not Linen King Group, LLC, of Columbia, Missouri), has validly represented itself to be a small business under this RFQ. If a contract has already been awarded to Linen King, and if that firm is not selected for award, we recommend that the VA terminate such contract. Finally, we recommend that the VA reimburse Tipton's costs of filing and pursuing its protest. 4 C.F.R. § 21.8(d)(1) (2012). Tipton's certified claim for costs, detailing the time expended and costs incurred, must be submitted to the VA within 60 days after this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Lynn H. Gibson
General Counsel