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Decision

Matter of: 360 IT Integrated Solutions; VariQ Corporation

File: B-414650.19; B-414650.20; B-414650.23; B-414650.24; B-414650.25;
B-414650.26

Date: October 15, 2018

Richard J. Conway, Esq., Michael J. Slattery, Esq., Michael Montalbano, Esq., and Ioana Cristei, Esq., Blank Rome LLP, for 360 Integrated Solutions; and Scott M. McCaleb, Esq., Tracye Winfrey Howard, Esq., Moshe B. Broder, Esq., and Sarah B. Hansen, Esq., Wiley Rein LLP, for VariQ Corporation, the protesters. Richard P. Rector, Esq., Dawn E. Stern, Esq., and Eric P. Roberson, Esq., DLA Piper LLP (US), for Inersso Corporation, the intervenor. Gabriel E. Kennon, Esq., and Christopher M. Alwood, Esq., Department of Homeland Security, for the agency. Alexander O. Levine, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging scope of agency's corrective action is denied where the agency's plan to conduct discussions with all vendors is an appropriate remedy to address reasonable agency concerns.
 2. Protest challenging the adequacy of discussions is dismissed as premature where the protest is raised prior to award.
 3. Protest challenging agency's failure to answer questions prior to the closing date for quotation submissions is denied where the questions sought information the agency was not required to provide.
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DECISION

360 IT Integrated Solutions (360 ITIS), a small business located in Reston, Virginia, and VariQ Corporation, located in Rockville, Maryland, protest the pre-award actions taken by the Department of Homeland Security in connection with request for quotations (RFQ) No. HSCETC-17-Q-00010, issued by the Department of Homeland Security (DHS) for information technology operations support services (ITOSS). The protesters both assert that the agency's announced corrective action, taken in response to earlier

sustained protests, is overly broad. In addition, 360 ITIS contends that the agency failed to conduct meaningful and equal discussions, and that the agency's failure to answer questions prior to the closing date for receipt of quotations precluded the protester from competing on an intelligent and equal basis.

We deny the protests in part, and dismiss the protests in part.

BACKGROUND

The instant protests arise following a lengthy procurement and protest history. On March 31, 2017, DHS issued the RFQ, which consolidated seven separate ITOSS task orders into one task order under DHS's Enterprise Acquisition Gateway for Leading Edge Solutions (EAGLE) II indefinite-delivery, indefinite-quantity (IDIQ) multiple-award contract vehicle. The effort solicited includes the provision of a service desk, information technology field operations, cabling, video teleconferencing, hardware/maintenance, deployment, and financial/travel system support services, all in support of the U.S. Immigration and Customs Enforcement's (ICE), Office of the Chief Information Officer Operations Division.

The RFQ anticipated that the resulting task order would be a hybrid fixed-price, time-and-materials, and labor-hour task order with a 12-month base year and three 12-month option years. RFQ at 1.¹ The solicitation called for the evaluation of four factors, in descending order of importance: management approach, technical approach, past performance, and price. Id. at 10. The non-price factors, when combined, were significantly more important than price. Id.

On May 8, the agency received 11 quotations from interested vendors, including quotations from Inerso Corporation, 360 ITIS, and VariQ. On September 29, following discussions with vendors and the submission of revised quotations, DHS issued a task order for the ITOSS requirement to Inerso. After the issuance of the task order, our Office received protests from several vendors, including 360 ITIS. DHS subsequently agreed to take corrective action in response to these protests. On November 6, VariQ filed a protest with our Office of the agency's planned corrective action. Our Office dismissed the protest as academic after the agency announced it would revise its announced corrective action to conduct another round of discussions and permit vendors to submit revised quotations.

On January 31, 2018, following the submission of revised quotations, the agency reaffirmed its decision to issue the subject task order to Inerso, finding that Inerso's quotation conformed to all solicitation requirements and provided the best value to the agency. Id. at 26. Our Office received five protests in response to the agency's award decision, including protests from 360 ITIS, VariQ, and Ace Info Solutions, Inc.

¹ Unless otherwise indicated, citations to the RFQ refer to the amended RFQ provided in Tab 25 of the agency report (AR).

On May 18, our Office sustained 360 ITIS's protest, concluding that the agency had failed to adequately document its consideration of negative past performance information relating to 360 ITIS's proposed subcontractor, had not provided a meaningful explanation for its unequal treatment of the protester's quotation, and had not provided a meaningful explanation for its failure to assign a strength to 360 ITIS' quotation on the basis of its proposed staffing approach. See 360 IT Integrated Solutions, B-414650.7, B-414650.12, May 18, 2018, 2018 CPD ¶ 188. We recommended that the agency reevaluate quotations consistent with both the terms of the solicitation and our decision, and make a new source selection decision based on that reevaluation. See id. at 10.

On May 21, our Office sustained Ace Info's protest, concluding that the agency's evaluation of Inerso's past performance contained material errors and was inadequately documented. See Ace Info Solutions, Inc., B-414650.10, B-414650.14, May 21, 2018, 2018 CPD ¶ 189. Among other conclusions, we found that the agency had not adequately documented its basis for finding that one of the awardee's past performance references adequately met the RFQ's technical scope criteria. See id. at 7-8. We recommended that the agency reevaluate quotations consistent with both the terms of the solicitation and our decision, and then make a new source selection decision based on that reevaluation. See id. at 9.

On May 30, our Office sustained VariQ's protest, concluding that the agency's evaluation contained material errors and was inadequately documented. See VariQ Corp., B-414650.11, B-414650.15, May 30, 2018, 2018 CPD ¶ 199. Among other findings, we noted that the contemporaneous record did not support the agency's determination that a key personnel position proposed by the awardee, its Active Directory and Exchange (ADEX) Team Lead, met the solicitation's qualification requirements. See id. at 6. We recommended that the agency reevaluate quotations consistent with both the terms of the solicitation and our decision, or, alternatively, reopen discussions and request revised quotations before reevaluating, and then make a new source selection decision based on that reevaluation. Id. at 12.

On May 31, DHS conducted limited discussions with Inerso in which the agency raised issues stemming from the above GAO decisions. See AR, Tab 238, May 2018 Inerso Discussions. Specifically, the agency noted that the resume for Inerso's proposed ADEX Team Lead did not address one of the solicitation's key personnel requirements, and asked the vendor to provide an updated resume to address the requirement. See id. at 2. DHS also noted that Inerso's quotation indicated that one of its past performance references did not meet all of the technical scope criteria, and asked the vendor to address this issue in a revised quotation. See id.

DHS evaluated Inerso's revised quotation and, on June 14, announced it would again issue the subject task order to Inerso. AR, Tab 269, July Corrective Action Memo., at 7. Following the award decision, VariQ, 360 ITIS, and Ace Info filed protests of the award decision. On June 29, DHS announced that it would take corrective action by

conducting limited discussions with vendors to permit them to address any outstanding weaknesses, significant weaknesses, or deficiencies, and allow vendors to submit revised price quotations. On July 6, our Office dismissed these protests as academic based on the agency's announced corrective action.

From July 9 through July 16, our Office received protests of the agency's corrective action from 360 ITIS, VariQ, Ace Info, and Innovative Solutions, Inc., which our Office docketed as B-414650.19, B-414650.20, B-414650.21, and B-414650.22 respectively. On July 20, the agency announced that it had revised its corrective action plan again and would now hold discussions with all offerors and permit unlimited quotation and price revisions. On the basis of this revised corrective action, our Office subsequently dismissed Ace Info's and Innovative Solutions' protests as academic.²

Both 360 ITIS and VariQ filed supplemental protests challenging the July 20 corrective action notice, which our Office docketed as B-414650.23 and B-414650.24, respectively.³

On August 6, DHS issued RFQ amendment 9 along with corresponding discussion letters to all vendors that had previously submitted quotations. See AR, Tab 271, Amend. 9. The agency requested that vendors address the issues raised in the discussions letters and then submit final quotation revisions by August 13. On August 13, 360 ITIS filed a protest of the corrective action measures set forth in amendment 9, which our Office docketed as B-414650.25.

From August 7 through August 8, 360 ITIS submitted 20 questions to DHS relating to the solicitation, the agency's discussion items, and DHS's evaluation of vendors' quotations. On August 28, 360 ITIS filed a protest challenging the agency's failure to answer 18 of these questions. Our Office docketed this protest as B-414650.26.

We have consolidated all outstanding 360 ITIS and VariQ protests relating to this procurement, and address them herein.⁴

² We declined to dismiss 360 ITIS's and VariQ's protests as academic since these protests challenged the broad scope of the agency's corrective action, an issue that was not rendered academic by DHS's decision to expand the scope of its planned corrective action even further.

³ VariQ's supplemental protest was styled as an opposition to a dismissal request filed by the agency. Because the submission raised new arguments challenging the agency's July 20 corrective action, our Office docketed the challenge as a supplemental protest.

⁴ Prior to the agency's most recent corrective action, the agency issued a task order for the requirement to Insero for \$192,261,426. The expected value of the task order at issue thus exceeds \$10 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple-award IDIQ contracts

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DISCUSSION

Both protesters argue that the scope of the agency's corrective action is overly broad, unwarranted by the existence of any procurement defects, and unreasonable. Both protesters contend that rather than engage in discussions with all vendors, the agency should have simply awarded the task order to the next-in-line vendor, though both vendors assert that this would be them.⁵

VariQ, for example, asserts that the agency's discussions with Inerso were unnecessary and that the discussions conducted with VariQ were "inconsistent with any objectively reasonable evaluation of VariQ's [quotation]," thus demonstrating that the agency's discussion items were pretextual, *i.e.*, contrived in order to justify the broad scope of the agency's corrective action. VariQ Comments at 3. VariQ also contends that the agency's corrective action plan fails to address the concern raised in our earlier VariQ decision that the agency had inadequately documented its consideration of "substantial" strengths within its source selection decision memorandum. Id. at 4.

360 ITIS, in turn, argues that the agency's decision to conduct discussions was unreasonable because it was not narrowly tailored to any "legitimate procurement defect." 360 ITIS Comments, B-414650.19, at 8. In support of this argument, 360 ITIS asserts that the agency's discussion items, as they pertain to 360 ITIS's quotation, are not justified by the content of the quotation and instead apply an improper evaluation standard. The protester also contends that the agency waived its right to conduct discussions with Inerso, and therefore cannot justify the corrective action on the basis of any need to remedy prior inadequate discussions. The protester further argues that the agency is treating it unequally by conducting discussions with vendors, such as Inerso, that have "legitimately identified defects," but applying a more stringent standard with 360 ITIS's quotation and requiring it to "remedy false defects." Id. at 53. Finally, 360 ITIS asserts that the agency's failure to answer various questions, prior to the deadline for quotation submissions, precluded the protester from intelligently competing on an equal basis with other vendors.⁶

(...continued)

that were awarded under the authority of Title 41 of the U.S. Code. 41 U.S.C. § 4106(f)(1)(B).

⁵ The evaluation record does not clearly indicate which vendor, whether VariQ, 360 ITIS or some other vendor, would be next in line for award in this best-value procurement. Because we are denying both protesters' challenges, we need not decide this issue.

⁶ While we do not address in detail every argument raised in these protests, we have reviewed each issue and do not find any basis to sustain the protests.

Scope of Corrective Action

Contracting officers in negotiated procurements have broad discretion to take corrective action where the agency determines that such action is necessary to ensure a fair and impartial competition. Northrop Grumman Sys. Corp., B-410990.3, Oct. 5, 2015, 2015 CPD ¶ 309 at 8. The details of a corrective action are within the sound discretion and judgment of the contracting agency, and we will not object to any particular corrective action, so long as it is appropriate to remedy the concern that caused the agency to take corrective action. MSC Indus. Direct Co., Inc., B-411533.2, B-411533.4, Oct. 9, 2015, 2015 CPD ¶ 316 at 5.⁷

Relying primarily on decisions from the United States Court of Federal Claims (COFC), 360 ITIS contends that an agency's corrective action must narrowly target the defects it is intended to remedy. See 360 ITIS Comments, B-414650.19, at 7 (citing Dell Fed. Sys., L.P. v. United States, 133 Fed. Cl. 92, 107 (2017)).⁸ We decline to adopt this standard.

Our Office's standard envisions that the details of a corrective action will fall within the sound discretion and judgment of the contracting agency, and accordingly that a particular corrective action will not be objectionable so long as it is appropriate to remedy a reasonable concern raised by the agency. MSC Indus. Direct Co., Inc., supra. Our standard thus permits the agency discretion to determine how to appropriately remedy its reasonable concerns, absent a showing that this discretion is being abused in some way. See McKean Def. Grp.--Info. Tech., LLC, supra, at 4.

Based on our review of the record here, we find DHS's corrective action to be appropriate to remedy reasonable concerns identified by the agency. In this regard,

⁷ We have recognized a limited exception to the general rule that we will not object to an agency's corrective action, where the agency requests revised price quotations and the record establishes either that there was no impropriety in the original evaluation and award decision, or where there was an actual impropriety, but it was not prejudicial to any of the vendors. McKean Def. Grp.--Info. Tech., LLC, B-401702.2, Jan. 11, 2010, 2010 CPD ¶ 257 at 3. This exception is inapplicable here because, among other things, the record establishes that there was impropriety in the initial evaluation, which prejudiced other vendors.

⁸ We note that the United States Court of Appeals for the Federal Circuit recently rejected application of a "narrowly targeted" review standard for reviewing an agency's corrective action, and instead concluded that the Federal Circuit reviews corrective actions under the Administrative Procedure Act's highly deferential "rational basis" standard, which requires only that the contracting agency provide a coherent and reasonable explanation of its exercise of discretion. See Dell Federal Systems, L.P. v. United States, No. 17-2554, 2018 U.S. App. LEXIS 28240, at 17-18 (Fed. Cir. Sept. 24, 2018).

while the agency has identified numerous concerns as rationale for its decision to reopen discussions, we find three of these concerns, in particular, provide a reasonable justification for the scope of the agency's corrective action: (1) the agency's concern with the adequacy of its prior discussions with Inerso; (2) its concern with the staleness of vendors' pricing; and (3) its concern regarding the potential unavailability of an individual that was proposed for a key personnel position by multiple vendors.⁹

The first concern cited by the agency is the adequacy of DHS's prior discussions with Inerso. As the agency noted in its corrective action memorandum, our decisions in VariQ Corp., supra, and Ace Info Solutions, Inc., supra, identified errors in the agency's evaluation of Inerso's quotation relating to the absence of information in the quotation to support DHS's conclusions with respect to Inerso's proposed ADEX Team Lead and one of Inerso's past performance references. See AR, Tab 269, July Corrective Action Memo., at 9. Responding to these decisions, DHS identified new concerns relating to Inerso's quotation. These concerns were that Inerso's proposed ADEX Team Lead did not demonstrate compliance with the RFQ's key personnel requirements and also that one of the vendor's past performance references did not indicate compliance with the technical scope criteria. See Memorandum of Law, B-414650.19, at 13; AR, Tab 238, Inerso May 31 Discussion Letter, at 2.

In our view, the agency's concern with the adequacy of discussions is reasonable. It is a fundamental precept of negotiated procurements that discussions, when conducted, must be meaningful; that is, discussions must identify deficiencies and significant weaknesses in each vendor's quotation that could reasonably be addressed so as to materially enhance the offeror's potential for receiving award. See Williams Commc'n's Solutions, LLC, B-283900, Jan. 18, 2000, 2000 CPD ¶ 57 at 6. Here, because of our Office's earlier decisions, the agency identified new concerns with Inerso's quotation. Yet, the agency never discussed these concerns with Inerso in the prior discussions round regarding that same quotation.

360 ITIS argues that DHS has waived the right to conduct discussions with Inerso because, after our Office's decisions in VariQ Corp., supra, and Ace Info Solutions, Inc., supra, the agency "never reopened discussions and chose instead to reevaluate the quotations it had already received." 360 ITIS Comments, B-414650.19, at 49. We find this argument unavailing. As an initial matter, the day after the VariQ decision, DHS sent a discussion letter to Inerso raising the newly identified issues found in Inerso's quotation. See AR, Tab 238, May 2018 Inerso Discussions. Thus, the agency did not forego discussions in favor of reevaluation as the protester contends.¹⁰ Even if the

⁹ Because we find that these three concerns provide an adequate basis for the agency's corrective action, we need not examine the other concerns cited by the agency as support for the corrective action.

¹⁰ Similarly, the fact that the agency conducted discussions with Inerso immediately after the VariQ decision means that, contrary to 360 ITIS's contention otherwise, (continued...)

agency had foregone such discussions, however, it would not have been unreasonable for the agency to change its corrective action plan where, as here, it reasonably recognized a need to do so.

VariQ argues that DHS is under no obligation to conduct discussions with Insero, because agencies are not required to conduct discussions with unacceptable vendors. See VariQ Comments at 3 (citing Chenega Healthcare Servs., LLC, B-416158, June 4, 2018, 2018 CPD ¶ 200 at 5). This argument, however, ignores the fact that the agency already conducted a prior round of discussions with Insero, in December, and failed to mention the above-described issues during those discussions. Our Office has noted that where, after discussions have concluded, an agency identifies concerns relating to a quotation or proposal that should have been apparent to the agency prior to discussions, the agency is required to reopen discussions in order to raise its concerns. See Al Long Ford, B-297807, Apr. 12, 2006, 2006 CPD ¶ 68 at 8. In light of the agency's newly identified concerns with the content of Insero's quotation, we find that the agency's decision to reopen discussions was reasonable. Indeed, we note that our recommendation in VariQ Corp., *supra*, specifically provided for reopening discussions as one potential remedy available to the agency.

A second concern raised by the agency is the staleness of vendors' price quotations. In this regard, the most recent prices quoted by vendors were from December 2017, which is seven months prior to the date of the agency's corrective action memorandum. AR, Tab 269, July Corrective Action Memo., at 10. These prices were based on an RFQ pricing template that set forth the period of performance as follows:

- Transition Period: September 29, 2017 to January 28, 2018
- Base [Period]: January 29, 2018 to September 28, 2018
- Option Year 1: September 29, 2018 to September 28, 2019
- Option Year 2: September 29, 2019 to September 28, 2020
- Option Year 3: September 29, 2020 to July 28, 2021
- Transition Out: July 29, 2021 to August 28, 2021

Id. Because of the delays encountered due to protests and corrective action, the agency was not able to issue a task order that matched this period of performance. Accordingly, the agency amended the relevant period of performance as follows:

- Transition Period: December 29, 2018 to February 28, 2019
- Base Period: March 1, 2019 to September 28, 2019
- Option Year 1: September 29, 2019 to September 28, 2020
- Option Year 2: September 29, 2020 to July 28, 2021
- Transition Out: July 29, 2021 to August 28, 2021

(...continued)

Insero did not "waive[] its right to challenge the [a]gency's prior conduct of discussions." 360 ITIS Comments, B-414650.19, at 50.

See AR, Tab 272, Amend. 9 Attach N, Full Time Employee Report.¹¹ As seen from the above, the new period of performance contained different dates, shortened both the first transition period and the base period, and removed an entire year of contract performance.

Both 360 ITIS and VariQ argue that the agency's concern with vendors' pricing is unreasonable because DHS was not required to solicit revised pricing, and could have instead accommodated the shortening of the period of performance without conducting discussions. Both protesters argue that, accordingly, the agency's reopening of discussions was too broad a remedy.

We find the agency's plan to solicit updated pricing to be reasonable in light of the lengthy period of time that has elapsed since prices were last obtained and the changes to the period of performance that have occurred during that time. While DHS may have been able to proceed without soliciting such pricing, doing so ensures that the agency obtains the most accurate, up-to-date, and competitive pricing available. Accordingly, we find the corrective action to be appropriate to remedy a reasonable concern raised by the agency. See MSC Indus. Direct Co., Inc., supra.

A third concern raised by the agency is that a number of vendors, including 360 ITIS, proposed an individual, who retired at the end of May 2018, to fill a key personnel position, the Network Operations Center (NOC) Team Lead. See AR, Tab 269, July Corrective Action Memo., at 10. DHS's corrective action memorandum expressed concern that these quotations might no longer be up-to-date due to the potential unavailability of this individual. See id. at 10 n.4.

360 ITIS argues that this concern is both speculative and contradicted by a signed letter of intent from the NOC Team Lead, which was included in 360 ITIS's December 2017 quotation.¹² The protester asserts that the NOC Team Lead's resignation from a position with another contractor does not negate his letter of intent provided by 360 ITIS.

¹¹ The period of performance could not be extended beyond these dates due to a firm expiration date applicable to the EAGLE II contract. See AR, Tab 269, July Corrective Action Memo., at 10.

¹² 360 ITIS also included a new letter of intent, dated August 25, 2018, from the same individual in its comments. See 360 ITIS Comments, B-414650.19, Ex. A, Letter of Intent. Because this letter was not before the agency when it made its decision to conduct corrective action--and could not have been considered anyway--we do not consider it to be relevant to our assessment of the reasonableness of the agency's corrective action decision.

Here again, we find the agency's concern to be reasonable. While the NOC Team Lead signed a letter of intent prior to the last submission of 360 ITIS' quotation, we note that this was six months prior to his retirement in May. Although that retirement was with another contractor, we find it reasonable for DHS to be concerned that the retirement might similarly affect his availability with other vendors.¹³

In sum, we conclude that the agency's decision to conduct discussions and permit full quotation revisions was appropriate to address the agency's reasonable concerns. See MSC Indus. Direct Co., Inc., supra. Accordingly, we find that the scope of the challenged corrective action falls within the broad discretion afforded to the agency.¹⁴

Discussions with Vendors

In addition to the above protest grounds, 360 ITIS challenges the agency's evaluation findings, as detailed in the vendor's discussion letter. The protester argues that these findings are unfounded and reflect the application of unstated evaluation criteria. The protester further contends that DHS is treating vendors unequally by providing an opportunity to some vendors to remedy "legitimately identified defects," while at the same time applying a stricter standard of review to 360 ITIS's quotation and requiring it to "remedy false defects," *i.e.*, defects that have no genuine basis in the content of 360 ITIS's quotation. 360 ITIS Comments, B-414650.19, at 53.

We find these arguments to be premature. In our judgment, an allegation, like the one raised here, that an agency's actions are inconsistent with the terms of a solicitation is not a challenge to the meaning of the solicitation terms, or an assertion that some solicitation ambiguity exists, but is instead a challenge to the agency's evaluation judgments. Because the agency has not yet made an award decision, the protest of these evaluation judgments is premature. See Computer Assocs. Int'l, Inc., B-292077.2, Sept. 4, 2003, 2003 CPD ¶ 157 at 4 (dismissing as premature a pre-award protest alleging that the agency's actions were inconsistent with the terms of the

¹³ Indeed, we note that our Office has sustained a protest where the agency ignored evidence that an individual proposed for a key personnel position was no longer available. See Paradigm Techs. Inc., B-409221.2, B-409221.3, Aug. 1, 2014, 2014 CPD ¶ 257 at 6.

¹⁴ 360 ITIS argues that even if the agency was correct to conduct limited discussions with some vendors, it should not have reopened discussions with those vendors that were previously excluded from consideration for award. The protester, however, has not cited any meaningful differences between the applicable quotations that would lead us to conclude that the agency should have drawn a distinction between the quotations provided by such lower-rated vendors and the quotations of other vendors that the agency also found to need revision, *e.g.*, Insero. Accordingly, we conclude that the agency's decision to include these vendors within its next round of discussions was also within its discretion.

solicitation). Similarly, allegations that amount to assertions of unequal or other than meaningful discussions are also premature, where they are raised prior to the award decision. See, e.g., Northrop Grumman Tech. Servs., Inc., B-404636.11, June 15, 2011, 2011 CPD ¶ 121 at 4.¹⁵ As a result, these protest grounds are dismissed.

Questions Submitted by 360 ITIS

360 ITIS additionally argues that DHS's failure to respond to 18 of the protester's questions renders the solicitation ambiguous and precludes 360 ITIS from intelligently competing for an award on an equal basis with other vendors. In this regard, 360 ITIS submitted 18 questions to DHS prior to the final deadline for receipt of quotations.¹⁶ These questions sought information relating to the agency's evaluation methodology and discussion findings, and, in many instances, questioned and challenged the merit of the agency's discussion items.

We have reviewed the questions at issue and conclude that the agency's decision not to answer the questions was reasonable. In this regard, we note that the questions seek information relating to the agency's evaluation methodology; the agency's discussions with, or treatment of, other offerors; or seek to challenge the agency's discussion items themselves. We find the agency was under no obligation to provide this type of information to vendors prior to the close of the quotation submission date.

For example, thirteen of the questions seek specific information relating to the agency's evaluation methodology, sometimes relying on details gleaned from prior protests.¹⁷ For instance, in an August 8 letter, the protester asked, among other questions:

1. In the final evaluation performed after GAO sustained protests by 360 ITIS, ICE assigned 360 ITIS the highest management adjectival rating of Excellent, a technical adjectival rating of Good, and the highest past performance rating of Substantial Confidence. ICE then issued 360 ITIS

¹⁵ VariQ contends that the agency's corrective action fails to address the concerns expressed in our earlier VariQ decision, regarding the agency's documentation and evaluation of "substantial" strengths. VariQ Comments at 4. Similar to the above challenges, we find this protest ground to be premature, because it anticipates prejudicial agency action prior to any award decision being made. See SOS Int'l, Ltd., B-407778.2, Jan. 9, 2013, 2013 CPD ¶ 28 at 3 (protests that merely anticipate prejudicial agency action are speculative and premature).

¹⁶ 360 ITIS submitted a total of 20 questions to the agency, but 360 ITIS's protest focuses on only 18 of these questions. See 360 ITIS Protest, B-414650.26, at 11.

¹⁷ In addition to the six questions quoted herein, questions 1, 2, 3, 7, 8, 9, and 10 from 360 ITIS's August 7 letter also sought information relating to DHS' evaluation methodology. See AR, Tab 214, Aug. 7, 2018 Letter, at 1-2.

- an overall rating of Good. Will ICE explain how this combination of adjectival ratings result in an overall rating of Good?
2. What is the evaluation formula ICE uses for the overall adjectival rating?
 3. What is the requirement to achieve an overall rating of Excellent?
 4. Is there an adjectival rating higher than Excellent for Management?
 5. Is there an adjectival rating higher than Excellent for Technical?
 6. Is there an adjectival rating higher than Substantial Confidence for Past Performance?

AR, Tab 216, First Aug. 8, 2018 Letter.

We find that the agency was not required, at this stage in the procurement, to provide vendors with the requested details of its specific evaluation method. In this regard, our Office has consistently noted that agencies need not disclose evaluation guidelines for rating quotation features as more desirable or less desirable since agencies are not required to inform offerors or vendors of their specific rating methodology. ABB Power Generation, Inc., B-272681, B-272681.2, Oct. 25, 1996, 96-2 CPD ¶ 183 at 4.

While the protester asserts that without this information it “has no idea . . . how it can improve its offer,” 360 ITIS Comments, B-414650.26, at 11, we find that this representation overstates the matter. Although the details of DHS’s evaluation methodology arguably might help the protester improve its quotation, such details are certainly not necessary for the protester to be able to compete on an intelligent and equal basis. See, e.g., Northrop Grumman Corp.; ITT Gilfillan, B-274204 et al., Nov. 27, 1996, 96-2 CPD ¶ 232 at 10 (denying protest challenging agency’s failure to disclose, during discussions, the mathematical formula used in its evaluation calculations). Although it might help 360 ITIS to know the precise formula DHS uses to calculate its overall adjectival rating, for example, being ignorant of this formula will not prevent the vendor from providing a quotation that fully meets the requirements of the solicitation.¹⁸

In addition, three questions¹⁹ posed by the protester sought information about the agency’s treatment of other vendors, for instance:

10. In this submission to Amendment 9 are other offerors being advised of management and technical weaknesses or deficiencies beyond the issues ICE is raising with [DELETED]? In other words, are other offerors being

¹⁸ We note, in addition, that the protester has not asserted that this information was provided to other vendors.

¹⁹ These questions include questions 8, 10, and 13 from 360 ITIS’s August 7, 2018 Letter. See AR, Tab 214, Aug. 7, 2018 Letter, at 2.

advised of deficiencies or weaknesses in Volume I, Management-Technical, as well as Volume II, Past Performance?

AR, Tab 214, Aug. 7, 2018 Letter, at 2.

While the protester argues that these questions were aimed at determining the agency's process for all vendors, we note that the questions seek information about "other offerors," in light of the agency's treatment of 360 ITIS's quotation. Id. The questions thus seek assurances that the agency is acting properly and consistently in its evaluation of 360 ITIS, and implicitly anticipate that the agency is not. In our view, however, the agency was under no obligation to disclose its treatment of other vendors in response to 360 ITIS' questions.

Finally, five of the questions challenge DHS's discussion items, and ask the agency to provide further explanation or support for its conclusions, or to withdraw them entirely.²⁰ For example, 360 ITIS asked this question:

12. For both our [DELETED], ICE has assigned a noncompliance for requirements that do not exist. ICE has made the assumption that 360 ITIS would not deliver [the proposed individuals] because ICE knows these incumbent staff. Please confirm that these individuals comply with all requirements based on the previously submitted [letters of intent] these individuals signed in our December 19, 2017 Final Proposal Revision submission.

Id.

We find that these questions essentially amount to challenges to the merit of the agency's discussion items. While the protester argues that the questions were meant to clarify solicitation requirements, we note that the questions primarily seek further explanation or defense from DHS of its evaluation conclusions. The questions thus do not, as the protester contends, identify ambiguities within the solicitation that have been revealed by the agency's discussion items. Instead, the questions advance the position that DHS has no basis, within the solicitation's evaluation criteria, for its discussion items. Put another way: what the questions assert to be unclear is not the solicitation requirements but the bases for the agency's evaluation conclusions.

Because these questions amount to challenges to the discussions being conducted by the agency, we find that the issue of whether the agency was obligated to answer such questions relates to the adequacy and meaningfulness of discussions. As discussed above, however, allegations that amount to assertions of unequal or other than

²⁰ The five questions are questions 6, 11, 12, 13 from 360 ITIS's August 7, 2018 letter, and question 1 from 360 ITIS's second August 8, 2018 letter. See AR, Tab 214, Aug. 7, 2018 Letter, at 1-2; AR, Tab 215, Second Aug. 8, 2018 Letter, at 1.

meaningful discussions are premature, where they are raised prior to the award decision. See, e.g., Northrop Grumman Tech. Servs., Inc., supra.

We deny the protests in part, and dismiss the protests in part.

Thomas H. Armstrong
General Counsel