U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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Comptroller General
of the United States

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Decision

Matter of: Skyward IT Solutions, LLC

File: B-421561.10

Date: October 10, 2023

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Pamela R. Waldron, Esq., and Krystal Jordan, Esq., Department of Health and Human Services, for the agency.
Heather Weiner, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the scope of an agency's proposed corrective action in response to several earlier protests is denied where the corrective action is reasonable in light of the flaws the agency believes exist in the procurement.

DECISION

Skyward IT Solutions, LLC, a small business located in Gaithersburg, Maryland, protests the scope of the agency's corrective action concerning request for quotations (RFQ) No. 75FCMC21Q0013, issued by the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), for the establishment of multiple blanket purchase agreements (BPAs) for agile collaboration and modernization endeavors. Skyward argues that the agency's corrective action fails to identify the flaws in the procurement process that the corrective action is intended to remedy. The protester also asserts that the corrective action is insufficient to address the issues raised in Skyward's prior protest.

We deny the protest.

BACKGROUND

On June 21, 2021, the agency issued the RFQ to vendors holding contracts under General Services Administration Multiple Award Schedule special item number (SIN) 54151S, for information technology professional services, using the procedures of Federal Acquisition Regulation (FAR) subpart 8.4. Agency Report (AR), Tab 4A, RFQ

at 1, 3.[1] The solicitation was set aside for small businesses and anticipated the establishment of multiple blanket purchase BPAs contemplating the issuance of fixed-priced, time-and-material, and labor-hour call orders.[2] *Id.* at 1. Award was to be made on a best-value tradeoff basis, considering design demonstration; development, security, and operations (DevSecOps) case study; technical challenge; corporate capabilities; and price.[3] RFQ at 21. As relevant here, the RFQ provided that once the agency identified "the best-suited [vendors] (*i.e.*, the apparent successful contractors)," the agency may "communicate with only those contractors to address any remaining issues," including "technical and price." RFQ at 6.

The contracting officer, who was also the source selection authority, conducted a comparative assessment of the quotations and performed a best-value tradeoff, finding that there were eight quotations that provided the best value to the government. AR, Tab 21A, Source Selection Memo at 2-3. Consistent with the terms of the solicitation, which provided that after the agency had selected the apparent successful contractors, it could engage in communications solely with those firms to address any remaining issues, the agency held exchanges and received quotation revisions from the eight vendors identified as the "best-suited." COS at 2; AR, Tab 17A, RFQ amend. 008 at 30. The agency's exchanges were limited to two issues: section 508 compliance, which the RFQ provided was to be evaluated only for the proposed awardees; and concerns regarding labor category mapping that the agency identified during a labor category mapping exercise it performed on the quotations of the eight apparent successful vendors after completion of the best-value tradeoff. AR, Tab 21A, Source Selection Memo at 3; COS at 2. After considering the quotation revisions submitted by the eight apparent successful contractors, the contracting officer confirmed his selection decision that these eight vendors provided the best value to the government. AR, Tab 21A, Source Selection Memo at 3.

On March 17, 2023, the agency established BPAs for the solicited requirement with the eight vendors that had been identified as the apparent successful contractors.[4]

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[1] References herein to the agency report are to the report provided in response to Skyward's prior protest, which was docketed by our Office as B-421561.3, B-421561.8.

[2] The solicitation provided that the agency would identify a "[m]aximum of 10 [a]wards" of capable vendors to compete and provide services under the BPA. RFQ at 1.

[3] The RFQ also requires a section 508 compliance checklist, to be evaluated only for the proposed awardees. AR, Tab 17A, RFQ amend. 008 at 30. Though not at issue in this decision, section 508 refers to the Rehabilitation Act of 1973, as amended, which generally requires that agencies' electronic and information technology be accessible to people with disabilities. *See* 29 U.S.C. § 794d.

[4] The agency selected the following eight vendors for the establishment of BPAs: (1) Bellese Technologies, LLC, of Owings Mills, Maryland; (2) Coforma, LLC, of Washington, District of Columbia; (3) Dynanet Corporation, of Elkridge, Maryland;

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Memorandum of Law (MOL) at 1. In the wake of that selection decision, five firms, including Skyward, filed protests with our Office challenging the propriety of the agency's actions. Those protests raised a variety of challenges to the agency's evaluation of quotations; the agency's conduct during exchanges; and the reasonableness of the agency's source selection decision.

After development of the protests, the GAO attorneys assigned to the protests conducted an outcome prediction alternative dispute resolution (ADR) conference with the parties in two of the protests: [DELETED]; and [DELETED]. During the conference, the GAO attorneys advised the parties that GAO would likely sustain the protesters' challenges to the agency's evaluation under factor 1, demonstration of design capabilities. In response to the [DELETED] and [DELETED] protests, on June 22, 2023, the agency advised our Office that it intended to take corrective action. Specifically, the agency advised that it intended to reevaluate quotations, make a new award decision, suspend all BPA awards pending the reevaluation, and take any additional action that the agency deems necessary. Req. for Dismissal ([DELETED]) at 1; Req. for Dismissal ([DELETED]) at 1.

Also on June 22, the agency requested dismissal of Skyward's protest, maintaining that the "corrective action in [the] two related protests renders [Skyward's] protest academic." Req. for Dismissal (Skyward) at 1. Thereafter, on June 26, the agency requested to "rescind" its request to dismiss Skyward's protest and the "corresponding Notice of Voluntary Corrective Action." Req. to Rescind at 1. In support of its request, the agency expressed its view that "CMS reasonably evaluated Skyward IT Solutions and reasonably determined Skyward IT Solutions did not merit an award." *Id*. We dismissed the protest, nonetheless, because we found that the agency's corrective action in the two related protests rendered the allegations in Skyward's protest academic. *Skyward IT Solutions,* LLC, B-421561.3, B-421561. 8, June 27, 2023 (unpublished decision).

In our decision, we explained that, to the extent the agency was requesting to rescind its notice of corrective action in Skyward's case, the agency never submitted a notice of corrective action in response to Skyward's protest; instead, the agency advised that it was taking corrective action in response to two related protests and requested dismissal because its corrective action in the other protests rendered Skyward's protest academic. *Id.* at 2. In addition, we explained that, "even if the agency rescinds its dismissal request based on its position that CMS 'reasonably evaluated Skyward IT Solutions and reasonably determined Skyward IT Solutions did not merit an award,' . . . the fact remains that the agency is still opting to take corrective action that allows for the reevaluation of proposals and the issuance of a new award decision in response to the

(4) Flexion Inc., of Madison, Wisconsin; (5) Nava Public Benefit Corporation, of Washington, District of Columbia; (6) Octo Metric LLC, of Atlanta, Georgia; (7) Oddball, Inc., of Washington, District of Columbia, and (8) Softrams, LLC, of Leesburg, Virginia. AR, Tab 25, Award Notice at 1-2.

two related protests." *Id.* Therefore, based on the proposed corrective action, we dismissed Skyward's protest as academic. *Id.*

On July 6, 2023, shortly after we dismissed its prior protest, Skyward filed its current protest challenging the scope of the corrective action based on the contents of the agency's dismissal request.

DISCUSSION

Skyward argues that the agency's corrective action fails to identify the flaws in the procurement process that the corrective action is intended to remedy. The protester also asserts that the corrective action is insufficient to address the issues raised in Skyward's prior protest. For the reasons discussed below, we find the protester's arguments fail to provide a basis to sustain the protest.[5]

Reasonableness of the Agency's Corrective Action

The protester contends that the agency's intended corrective action is not reasonable because the agency has failed to articulate the flaws in the procurement process that the agency is remedying with its corrective action.

Agencies have broad discretion to take corrective action where the agency determines that such action is necessary to ensure a fair and impartial competition. *CSRA, LLC*, B-418903.9, Feb. 3, 2022, 2022 CPD ¶ 54 at 4. The details of implementing corrective action largely are within the discretion of the contracting agency, and we generally will not object to any particular corrective action, provided it is appropriate to remedy the concern that prompted the agency to take corrective action. *Id.*

Here, we find no basis to conclude that the agency's proposed corrective action is unreasonable. The agency explains that it is taking corrective action in response to errors identified in the protests of the two other vendors regarding factor 1, demonstration of design capabilities. The agency states that its "corrective action in the [DELETED] and [DELETED] protest[s] was the result of an Outcome Prediction held by GAO regarding these two protests." MOL at 2. The agency explains that "[d]uring the Outcome Prediction, the GAO attorneys stated their view that the Agency had erroneously evaluated [DELETED] and [DELETED] with respect to [f]actor 1[.]"[6] *Id.* at

[5] While we do not discuss each individual protest argument raised by the protester, we have considered them all and find that none provides a basis to sustain the protest.

[6] The protester asserts that the agency is unclear regarding its corrective action because, in its memorandum of law, the agency erroneously refers to factor 1 as the corporate experience factor. MOL at 2. As the protester correctly points out, factor 1 concerns demonstration of design capabilities, not corporate experience. Comments at 4. Other than this single error, all other references by the agency in the

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2. As such, the contracting officer states that the agency is taking corrective action to address these errors, including a "reevaluation of Factor 1" and "mak[ing] a new award decision." COS at 1. The contracting officer further states that his "decision to take corrective action with [regard] to Skyward was based on the belief that the [a]gency's reevaluation of Factor 1 . . . would impact the overall evaluation of [quotations] and overall ranking of [vendors]." *Id*.

Despite the agency's statement that its corrective action--of reevaluating quotations under factor 1 and making a new award decision--is intended to address errors in the agency's evaluation under factor 1, Skyward maintains that the agency nonetheless has failed to sufficiently identify the flaws that its corrective action is intended to address. In support of its position, Skyward relies on *Kupono Gov't Servs., LLC; Akima Sys. Eng'g, LLC*, B-421392.9 *et al.*, June 5, 2023, 2023 CPD ¶ 136, in which our Office sustained a protest where it was not evident from the record the concerns that prompted the agency to take corrective action, and therefore, our Office could not tell whether the proposed corrective action was appropriate to remedy the unidentified concerns. The *Kupono* decision, however, is distinguishable from the instant protest.

In *Kupono*, the agency's corrective action limited offerors to submitting revised cost proposals. *Id.* at 2-4. Two offerors challenged the corrective action, arguing that the revision of cost proposals necessitated revisions to their technical proposals. *Id.* at 3. Our Office found that the protesters had shown that their respective cost and technical proposals were "inextricably intertwined," but that the agency, in response, failed to adequately explain "why permitting offerors to revise their technical proposals would be inappropriate or otherwise adversely affect the competition." *Id.* In sustaining the protest, our Office concluded that the agency had not adequately explained the concerns that gave rise to its decision to take corrective action such that our Office was able to determine whether the corrective action was appropriate to remedy the agency's concerns. *Id.*

Here, in contrast to *Kupono*, as noted above, the agency explains that its corrective action will reevaluate quotations under factor 1, demonstration of design capabilities, and make a new award decision in order to address errors identified in the agency's evaluation under factor 1. While the protesters in *Kupono* raised legitimate challenges to the sufficiency of the agency's corrective action which the agency failed to adequately rebut, Skyward here does not assert or even suggest that the agency's proposed corrective action of reevaluating quotations under the design capabilities factor and making a new award decision in any way fails to address the agency's concern regarding its evaluation under this factor or is otherwise improper. Protest at 4 5; Comments at 4-5.

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memorandum of law and contracting officer's statement to its intended corrective action refer to factor 1 generally, with no mention of corporate experience. *See* MOL at 2-3; COS at 1-2. That the agency's intended corrective action concerns factor 1, demonstration of design capabilities, and not corporate experience, is also consistent with the ADR conference conducted by the assigned GAO attorneys.

In these circumstances, we have no basis to object to the agency's decision to reevaluate quotations under factor 1 and make a new award decision. The precise form of the corrective action is a matter committed to the sound discretion and judgment of the agency. *CSRA, LLC*, *supra.* Here, the record reflects that the agency's proposed corrective action--to reevaluate quotations under factor 1 and make a new award decision--is intended to address errors in the agency's evaluation under factor 1. Thus, we conclude that the agency's corrective action is reasonable because it remedies the errors uncovered by the agency. As such, this protest ground is denied.

Issues Identified in Skyward's Prior Protest

Skyward argues that the agency's corrective action is insufficient to address issues identified in its previous protest. In this regard, the protester asserts that, because the corrective action does not involve conducting exchanges and receiving revised quotations from Skyward and the other vendors, it is insufficient to address Skyward's prior protest ground alleging that the quotations of three of the awardees should have been found ineligible for award, and as a result, those vendors should not have been included in the agency's exchanges with the "best suited" vendors. Comments at 6. According to the protester, during the agency's initial evaluation, the agency established a "competitive range" of eight quotations it considered to be the "best value" and then engaged in exchanges with only those eight vendors. *Id.* The protester asserts that because the agency's intended corrective action involves conducting a new evaluation (and thus involves the agency abandoning the previous evaluation), all vendors "are now effectively in a competitive range and should be treated equally" (*i.e.*, by giving all vendors the same opportunity to engage in exchanges and revise their quotations). *Id.* As discussed below, we find the protester's argument provides no basis to sustain the protest.

As relevant here and noted above, the corrective action includes reevaluating quotations under factor 1 and making a new award decision. COS at 1; MOL at 2. This corrective action necessarily will include a new best-value tradeoff and a new selection of best-value quotations (*i.e.*, identification of best-suited vendors/apparent successful contractors). The contracting officer also clarified in response to the protest that the corrective action "would impact the overall evaluation of [vendors] and the overall ranking of [vendors]," and that he chose to include Skyward's quotation in the corrective action because its "overall ranking may change following the reevaluation[.]" COS at 1.

In addition, as also addressed previously, the RFQ provides for the assessment of best-value based on consideration of price and the following five non-price factors: design demonstration; development, security, and DevSecOps case study; technical challenge; and corporate capabilities. RFQ at 21. The contracting officer based his best-value determination solely on these factors and found that there were eight quotations that provided the best value to the government. AR, Tab 21A, Source Selection Memo at 2-3. Consistent with the terms of the solicitation, the contracting officer then conducted exchanges and received quotation revisions from the eight vendors identified as the "best-suited." COS at 2; AR, Tab 17A, RFQ amend. 008 at 30.

Pertinent here, the agency's exchanges were limited to two issues: section 508 compliance, which the RFQ provided was to be evaluated only for the proposed awardees; and concerns regarding labor category mapping that the agency identified during a labor category mapping exercise it performed on the quotations of the eight apparent successful vendors after completion of the best-value tradeoff. AR, Tab 21A, Source Selection Memo at 3; COS at 2. After considering the quotation revisions submitted by the eight apparent successful contractors, the contracting officer confirmed his selection decision that these eight vendors provided the best value to the government. AR, Tab 21A, Source Selection Memo at 3.

Based on our review, we do not agree that the proposed corrective action will result in unequal treatment of quotations. The record reflects that the contracting officer based his best-value determination solely on the above-listed evaluation factors identified in the RFQ. AR, Tab 21A, Source Selection Memo at 2-3. The record also shows that the agency's exchanges were limited to two issues--508 compliance and labor category mapping--and that neither issue factored into the agency's best-value determination. AR, Tab 21A, Source Selection Memo at 3; COS at 2. In this regard, as specified in the RFQ, 508 compliance was only evaluated for proposed awardees after the best-value determination was completed and the best-suited vendors had been identified. AR, Tab 17A, RFQ amend. 008 at 30. Similarly, labor category mapping was not considered by the agency as part of its evaluation of all quotations; rather, this assessment was performed only on the best-suited quotations after completion of the best-value tradeoff. AR, Tab 21A, Source Selection Memo at 3. Because these two issues were not identified by the agency until after the best-value tradeoff had been completed, neither issue could have had any impact on the best-suited determination. On this record, we fail to see, and the protester has not demonstrated, how the agency's limited exchanges with the apparent successful vendors as part of the initial source selection will competitively disadvantage Skyward or the other vendors during the agency's corrective action.

Furthermore, to the extent Skyward asserts that the agency's exchanges constituted unequal treatment or unequal discussions, or that the agency's evaluation of quotations during corrective action will somehow be improper, Skyward's allegations merely anticipate prejudicial agency action and are, therefore, speculative and premature. *See DGC Int'l*, B-410364.2, Nov. 26, 2014, 2014 CPD ¶ 343 at 3. We assume that agencies will conduct procurements in a fair and reasonable manner in accordance with the terms of the solicitation, and our Office will not consider a protest allegation which speculates that an agency will not evaluate proposals in the manner set forth in the solicitation. *Paramount Grp., Inc.*, B-298082, June 15, 2006, 2006 CPD ¶ 98 at 6-7.

Finally, to the extent the protester alleges that the corrective action is too narrow in scope because it does not address the issues identified in Skyward's prior protest, there

is no requirement that an agency's corrective action remedy flaws alleged in an earlier protest where, as here, no decision on the merits was issued by our Office. *Qwest Gov't Servs., Inc., d/b/a CenturyLink QGS*, B-419271.4, B-419271.7, Apr. 14, 2021, 2021 CPD ¶ 169 at 9. Accordingly, we find no basis to question the scope of the agency's corrective action.

The protest is denied.

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General Counsel