U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Veterans Medical Supply, Inc.

File: B-422168.4; B-422168.5

Date: July 11, 2025

John M. Manfredonia, Esq., Manfredonia Law Offices, LLC, for the protester.
Jared M. Levin, Esq., Department of Veterans Affairs, for the agency.
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DIGEST

Protest challenging the agency's corrective action taken in response to an earlier protest is denied where the record shows the corrective action was reasonable and appropriate to remedy the procurement error identified by the agency.

DECISION

Veterans Medical Supply, Inc. (VMS), of St. Petersburg, Florida, protests the corrective action being taken by the Department of Veterans Affairs' (VA) in connection with the agency's establishment of blanket purchase agreements (BPA) under request for quotations (RFQ) No. 36C24123Q0765. The VA issued the RFQ to obtain services to supply medical and surgical supplies in support of the VA's medical surgical prime vendor (MSPV) program. The protester asserts that the corrective action, specifically the agency's decision to cancel the protester's BPA, is unreasonable and improper.

We deny the protest.

BACKGROUND

The MSPV program was created to enable the VA to obtain necessary medical, surgical, dental, lab, and environmental management supplies with increased efficiency. The program is designed to achieve long-term savings by combining a "just in time" logistics approach with strategic sourcing and volume buying for supplies. U.S. Department of Veterans Affairs, Office of Procurement, Acquisition and Logistics, Medical/Surgical Prime Vendor Program, https://www.va.gov/opal/sac/mspv.asp (last visited July 3, 2025). The program is managed by the Veterans Health Administration's (VHA) Medical Supply Program Office. *Id*.

One of the tasks the Medical Supply Program Office performs as part of its management of the program is creating the MSPV product list. The product list is a comprehensive list of all medical supplies available for order and distribution under the program. Agency's Resp. to Req. for Add'l. Briefing, attach. A, Decl. of Director of Medical Commodities at ¶ 8. This list includes over 40,000 items. Protest, exh. 6, Decl. of the Contracting Officer (CO) for the RFQ at 1.

The Medical Supply Program Office manages the MSPV program in collaboration with VHA Procurement and the agency's Strategic Acquisition Center (SAC). *Id*. VHA Procurement and SAC carry out separate procurement functions. VHA Procurement establishes BPAs with suppliers for items on the product list. SAC contracts with prime vendors to manage and distribute the supplies. The prime vendors separately contract with the BPA suppliers to obtain the supplies. The prime vendors then provide the supplies to the VA as requested. The VA is not a party to the contracts between the suppliers and prime vendors. Agency's Resp. to Req. for Add'l. Briefing, attach. A, Decl. of Director of Medical Commodities at ¶ 8-9; Agency's Resp. to Req. for Add'l. Briefing at 12.

As relevant here, SAC awarded a prime vendor contract on June 1, 2023, called the MSPV Generation-Z Version 1 (Gen-Z V1) multiple-award, indefinite-delivery, indefinite quantity (IDIQ) contract. Memorandum of Law (MOL) at 6-7[1]; Agency Report (AR), Exh. 5, Gen-Z V1 Statement of Work (SOW) at 1. This contract was issued for consumable medical supplies. The statement of work (SOW) provided that

> [c]overed medical/surgical supplies eligible for order and distribution under this SOW are defined as medical, surgical, dental and laboratory supplies identified on the MSPV Product List separately established by the VA. For each MSPV Product List supply, VA has identified an authorized source of supply and pricing through a separate Request for Quote(s).

Gen-Z V1 SOW at ¶ B.1.b. The SOW also stated that certain medical supplies were excluded from the scope: "[s]pecifically excluded from the scope of this SOW: Orders for Reusable Medical Equipment (RME), except as necessary to assist with the set of specific medical/surgical supplies included in the MSPV Product List. Additional information on reusable medical equipment can be found in *Appendix A: Definitions*." *Id*. at ¶ B.2.a. The IDIQ contract defined reusable medical equipment as "[m]edical equipment designed by the manufacturer to be used for multiple patients." *Id*. at 97. The SOW further provided that the contracting officer "is responsible for making the final determination as to whether any order or supply is or is not within scope of this SOW." *Id*. at ¶ B.4.

On August 28, 2023, VHA Procurement issued RFQ No. 36C24123Q0765 to establish new BPAs and to modify existing BPAs to support the MSPV program. The RFQ was

[1] Page citations are made to the Adobe PDF pages.

issued as a service-disabled, veteran-owned small business set-aside, pursuant to Federal Acquisition Regulation part 13. AR, Exh. 2, RFQ at 1, 20. The RFQ sought quotations for approximately 7,380 items, which were listed in a quote sheet attached to the RFQ.[2] *Id*. at 6; Protest, exh. 7, RFQ Quote Sheet; Contracting Officer's Statement (COS) at ¶ 3.b. Vendors could submit quotations for any items listed on the quote sheet. RFQ at ¶ B.2. Included in the quote sheet were five separate line items for F-22 rollators manufactured by Drive DeVilbiss Healthcare (Drive).[3] Protest, exh. 7, RFQ Quote Sheet at rows 6548-6552; COS at ¶ 3.b. As relevant here, the RFQ stated that the government reserved the right to cancel or terminate BPAs. RFQ at 7.

The RFQ required each supplier awardee to enter into a commercial agreement with all Gen-Z V1 prime vendors. RFQ at II.A.1. The RFQ stated that this commercial agreement "will not contradict the underlying terms and conditions established by this BPA or the underlying prime vendor contracts. Failure to comply with the terms of this BPA, including provisions related to commercial agreements, will be considered cause for cancellation of the BPA." *Id*. The RFQ further stated that it is "incumbent on the [prime vendors] to honor the parameters of the contract scope of work. Where apparent conflicts arise, the CO[4] will make the final determination as to whether a supply is or is not within scope." RFQ at III.A.6. The RFQ was written to correspond directly with the scope of prime vendor IDIQs and this language mirrors the language described above in the Gen-Z V1 IDIQ regarding scope determinations.

On February 28, 2025, the agency established a BPA with the protester for three of the five Drive F-22 rollators. The protester did not submit a quotation for any other items. MOL at 5. On March 12, another firm filed a protest with our Office asserting that VMS was ineligible to receive a BPA and that the agency unreasonably evaluated quotations. *Congressional Medical Supply, LLC*, B-422168.3, April 9, 2025 (unpublished decision) at 1. The agency subsequently took corrective action by canceling VMS's BPA and amending the RFQ to remove all rollators from the quote sheet. The agency explained that rollators were the type of reusable medical equipment that was excluded from the scope of Gen-Z V1 IDIQ contract and therefore BPAs should not have been established for them. *Id*. VMS, intervening in the protest, raised numerous objections to the agency's proposed corrective action, asserting primarily that the rollators were included in the scope because they were on the MSPV product list. *Id*. On April 9, we dismissed the protest as academic as VMS had not established that the agency's corrective action

[2] The quote sheet contains 7,492 rows, each listing a medical supply. Protest, exh. 7, RFQ Quote Sheet.

[3] A rollator is a type of wheeled walker designed to provide support and stability for individuals with walking difficulties. Protest, exh. 5, F-22 Rollator User Guide.

[4] The RFQ does not explicitly state whether it is referring to the CO for the RFQ or the CO for the IDIQ. However, it appears from the context of the statement that the RFQ is referring to the CO for the IDIQ and her authority to make scope determinations for the IDIQ.

failed to render the protest academic, but rather generally challenged the reasonableness of the corrective action. *Id*. This protest followed.

DISCUSSION

The protester raises numerous challenges to the agency's corrective action. While we do not address every argument, we have considered all of them and find that none provide us with a basis to sustain the protest. We note at the outset that agencies have broad discretion to take corrective action where the agency has determined that such action is necessary to ensure fair and impartial competition. *G2 Global Sols., LLC*, B-416981.5, Jan. 24, 2020, 2020 CPD ¶ 59 at 3; *Quotient, Inc.,* B-416473.4, B-416473.5, Mar. 12, 2019, 2019 CPD ¶ 106 at 3. The details of implementing the corrective action are within the sound discretion and judgment of the contracting agency. 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. *G2 Global Sols., LLC, supra*; *Monbo Grp. Int'l,* B-420925.2, Nov. 21, 2022, 2022 CPD ¶ 288 at 3.

The protester primarily asserts that the contracting officer for the Gen-Z V1 IDIQ contract abused her discretion by determining that rollators were the type of reusable medical equipment that were excluded from the scope of the IDIQ contract because that the determination results in a procurement impropriety. That is, in the protester's view, the determination effectively modifies the MSPV product list, which only the Medical Supply Program Office can do. The protester contends that since the scope determination is improper, and it was the only reason its BPA was canceled, the cancelation of its BPA was improper. Comments at 1-2; Resp. to Add'l. Briefing at 1-2.

The agency contends that the RFQ's product list should not have included items such as rollators because they are reuseable medical equipment items rather than consumable medical equipment items, and therefore do not fall within the scope of the Gen-Z V1 IDIQ contract. In this regard, the agency states that the Medical Supply Program Office, which establishes and maintains the product list, erred when it supplied the contracting officer for the RFQ with a quote sheet that included rollators. The agency asserts that the MSPV product list is under regular revision and the Medical Supply Program Office works with SAC and VHA Procurement to identify which supplies should be removed or added to the product list as contracts are formed and BPAs are established. Agency's Resp. to Req. for Add'l. Briefing at 6, 10-11; *Id.,* attach. A, Decl. of Director of Medical Commodities at ¶¶ 8, 11.b, 11.d, 11.g, and 11.h.

The agency also explains that the contracting officer for the Gen-Z V1 IDIQ contract has the ultimate authority to make scope determinations as stated in the IDIQ's SOW. In exercising that authority, the contracting officer determined that rollators are excluded from the express terms of the IDIQ contract because they are reuseable, rather than consumable, and not otherwise the type of equipment that's necessary to assist with the consumable medical/surgical supplies included in the MSPV product list. Because the BPAs contemplated by the RFQ were intended to match the types of items that could be ordered under the Gen-Z V1 IDIQ contract, the agency had to cancel all BPAs for

rollators because they were outside the scope of the Gen-Z V1 IDIQ contract. The agency adds that, as stated in the terms of the RFQ, the contracting officer for the RFQ had the authority to cancel BPAs. Agency's Resp. to Req. for Add'l. Briefing at 4, 7.

The agency also represents that the Medical Supply Program Office is currently working with SAC and the prime vendors to modify the SOW in the Gen-Z V1 IDIQ contract to clarify whether any types of excluded reusable medical equipment should be added to the scope. Once the SOW is modified, the Medical Supply Program Office will work with VHA Procurement to identify which items should be removed or added to the product list. Agency's Resp. to Req. for Add'l. Briefing at 6, 10-11; *Id.,* attach A., Decl. of Director of Medical Commodities at ¶¶ 8, 11.b, 11.d, 11.g, and 11.h.

The protester responds that there's no evidence that the Medical Supply Program Office ratified the scope determination and therefore it is still an abuse of discretion. Protester's Resp. to Add'l. Briefing at 3-4. The protester also argues that the VA has not provided any evidence that the Medical Supply Program Office has removed rollators from the MSPV product list. *Id*. at 3.

We find the corrective action remedied the procurement error identified by the agency and the protester has not demonstrated that it was unreasonable or improper. As detailed in the agency's response to the protest and the underlying record, the agency determined that the RFQ erroneously included rollators on the quote sheet. While the rollators were listed on the MPSV product list, the agency reasonably concluded that this was an error because the scope of the Gen-Z V1 IDIQ contract is for the supply of consumable medical equipment and the rollators are not consumable medical equipment. Rather, they are reusable by multiple patients and not otherwise necessary "to assist with the set of specific medical/surgical supplies included in the MSPV Product List." Gen-Z V1 SOW at ¶ B.2.a. In this regard, the contracting officer for the Gen-Z V1 IDIQ contract concluded as follows:

> Walkers and rollator walkers are used independently and separately from consumable medical and surgical items on the Product List as they are medical devices used to support or maintain balance and stability while walking. Therefore, there is no apparent relationship between walkers and [sic] rollators and any specific medical surgical consumable supplies included on the MSPV Product List. Absent a nexus between this type of reusable medical equipment and specific medical surgical supplies on the MSPV Product List, the items are outside the scope of work.

Protest, exh. 3, Memorandum of Gen-Z V1 CO at 1-2. The Medical Supply Program Office concurred that rollators are a type of reusable medical equipment that are excluded from the scope of the IDIQ. Agency's Resp. to Req. for Add'l. Briefing, attach A., Decl. of Director of Medical Commodities at ¶¶ 11.a., 11.d. The agency took corrective action by canceling VMS's BPA and all other BPAs for rollators, or modifying them to eliminate rollators, and amending the RFQ to remove rollators from the quote sheet. COS at ¶ 3.i.

The protester has not demonstrated that the contracting officer for the IDIQ abused her discretion or that her scope determination resulted in any procurement impropriety. The agency supplied statements from the contracting officers and the Medical Supply Program Office explaining the ongoing process of executing the MSPV program and updating the MSPV product list and the protester has not presented evidence refuting these statements. The record shows that the Medical Supply Program Office establishes the list and works with SAC and VHA Procurement to adjust the list as necessary. Agency's Resp. to Req. for Add'l. Briefing, attach. A., Decl. of Director of Medical Commodities at ¶¶ 6, 8, 11.a-11.d. While the protester is correct that the rollators have not yet been removed from the MSPV product list, the agency stated several times that this is because there is a 60-day stockout period beginning when items are designated to be removed until they are actually removed from the list to avoid additional cost to the government for unsold stock. MOL at 9; COS at ¶ 3.k; Agency's Resp. to Req. for Add'l. Briefing at 5 n.4.

We also note that the RFQ stated that when a BPA is established after the award of a prime vendor contract, as was the case here, supplies offered would be released on an *updated MSPV product list*. RFQ at 8-9 ("BPAs can be modified for . . . Supply Additions/Removals. . . . All modifications will be reflected on the MSPV Product List the month following the accepted and signed BPA Modification.") Therefore, it is illogical for the protester to assert that this chain of events reveals an abuse of discretion or a procurement impropriety when it was clear from the terms of the RFQ that the agency intended to update the list as BPAs were established. To the extent the protester is challenging this process as described in the RFQ, this amounts to an untimely challenge to the terms of the solicitation, which had to be raised prior to the closing date for the receipt of quotations. 4 C.F.R. § 21.2(a)(1); *The Severson Grp., LLC*, B-418673.2 *et al.*, Aug. 17, 2020, 2020 CPD ¶ 275 at 3 n.1.

Based on the foregoing, we conclude the agency's decision to cancel or modify BPAs for rollators was reasonable and appropriate to remedy the procurement error it discovered. *Crewzers Fire Crew Transp., Inc.*, B-406601, July 11, 2012, 2012 CPD ¶ 204 at 8-9 (finding that the protester failed to show how the agency's corrective action was unreasonable or improper to correct the identified procurement error).

Finally, we address the protester's assertion that the agency is unequally applying corrective action. The protester contends that there were other items erroneously included on the quote sheet that the agency established BPAs for, yet the agency has not yet canceled or modified those BPAs. Resp. to the Add'l. Briefing at 2. Here, we find that the protester is not an interested party to challenge the agency's actions regarding BPAs for other supplies.

Under the bid protest provisions of the Competition in Contracting Act (CICA) of 1984, 31 U.S.C. § 3551-3557, only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract.

4 C.F.R. § 21.0(a)(1). The protester submitted a quotation for rollators only and no other items and concedes this fact. Resp. to the Add'l. Briefing at 2. As a result, the protester is not an actual or prospective vendor for any of these other supplies and its direct economic interest is not affected regardless of what course of action the agency chooses to take for these other BPAs. *See FEI.Com*, B-420815.2, June 21, 2023, 2023 CPD ¶ 147 at 4-6 (finding in part that the protester was not an interested party to challenge the establishment of a BPA with another firm because it was not an actual or prospective vendor whose direct economic interest was affected).

The protest is denied.

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