U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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Comptroller General
of the United States

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Decision

Matter of: NDCHealth Corporation (d/b/a RelayHealth)

File: B-424672

Date: October 27, 2026

Neil H. O'Donnell, Esq., Stephen L. Bacon, Esq., and Anjali Deodat, Esq., Rogers Joseph O'Donnell, PC, for the protester.
Brandon Dell'Aglio, Esq., and William Shim, Esq., Department of Health and Human Services, for the agency.
Heather Weiner, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's issuance of a solicitation for Medicare Part D transaction facilitator services as a commercial item acquisition using the General Services Administration's federal supply schedule was a reasonable exercise of the agency's discretion based on its reasonable analysis of its needs and the best approach to accommodating them and the results of market research.

DECISION

NDCHealth Corporation, doing business as RelayHealth, of Atlanta, Georgia, protests the terms of request for quotations (RFQ) No. 75FCMC26Q0067, issued by the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), to procure Medicare Part D transaction facilitator (PDTransFac) services via a task order issued under a General Services Administration's (GSA) federal supply schedule (FSS) contract. The protester argues that the agency's decision to purchase the PDTransFac services from the FSS was improper because the services are highly specialized, unique requirements that that do not qualify as commercial services that can be acquired using the FSS.

We deny the protest.

BACKGROUND

CMS administers the Medicare Part D prescription drug benefit program. Contracting Officer's Statement (COS) at 2; Memorandum of Law (MOL) at 2. A critical component

of Part D administration is the coordination of benefits (COB) between Medicare Part D plans and other payers, including non-Part D plans providing prescription drug coverage. COS at 2-3.

The PDTransFac services provide the infrastructure supporting Medicare Part D COB at the point of sale. *Id.* at 3. The contractor operates a 24/7 real-time online switching network connecting pharmacies, pharmacy switches, Part D plan sponsors, and other payers as designated by CMS. *Id.* Core functions of the PDTransFac services include: processing E1 pharmacy eligibility queries;[1] routing COB transactions (approximately 80 million transactions per month); managing true out-of-pocket (TrOOP) balance transfers; maintaining the Medicare Part D eligibility index; executing Health Insurance Portability and Accountability Act (HIPAA)-compliant business associate agreements with all Part D plan sponsors; and supporting disaster recovery and information security compliance at a Federal Information Security Modernization Act moderate level. *Id.*; Agency Report (AR), Tab 3.1, Market Research Report (MRR) at 2.[2]

RelayHealth has been providing PDTransFac services to CMS since the inception of Part D in 2006, and the requirement has historically been treated and acquired as a commercial service. COS at 3. Most recently, since 2021, RelayHealth has been performing the PDTransFac services through a task order issued under RelayHealth's FSS contract (number 47QTCA21D000L). MOL at 2; Protest, exh. 6, FSS Task Order at 53. This task order has fixed-price and time-and-materials contract line item numbers (CLINs), for a period of performance of August 1, 2021, to July 31, 2026, and a total contract value of $126,752,130. COS at 3.

In 2025, the GSA OIG performed an audit of RelayHealth's proposal to extend its FSS contract and issued its audit report on October 6, 2025. MOL at 2; Protest, exh. 1, GSA OIG Audit Report. The audit report found RelayHealth's commercial sales practices to be "current, accurate, and complete" but that they did not serve as a "suitable basis for negotiations" because RelayHealth did not have comparable non-schedule sales for both its per transaction pricing and labor category rates "due to the custom nature of the services offered." Protest, exh. 1, GSA OIG Audit Report at 3. The audit report also found that RelayHealth was unable to provide support for its proposed pricing. *Id*. Ultimately, the GSA OIG concluded that "the contracting officer should not exercise the

[1] An E1 transaction is a real-time Medicare Part D eligibility verification transaction that a pharmacy submits to the Part D transaction facilitator to obtain or verify information about individuals' drug coverage. U.S. Department of Health and Human Services, Office of Inspector General (OIG), Office of Audit Services, Audit of Medicare Part D Eligibility Verification Transactions, Report No. A-05-22-00022, Providers Used Medicare Part D Eligibility Verification Transactions for Permissible Purposes, Dec. 2024, available at https://oig.hhs.gov/documents/audit/10129/A-05-22-00022.pdf (last visited Oct. 12, 2026).

[2] Citations to the record use the Adobe PDF pagination of the documents produced.

proposed option extension because [RelayHealth's] proposed pricing is not adequately supported." *Id*. at 4. Nowhere in the report did the OIG conclude that the PDTransFac services were not commercial services. *Id.* at 3.

On January 29, 2026, RelayHealth responded to the OIG's Report and asserted that, while RelayHealth does not provide the exact offerings on its MAS contract to commercial customers, GSA should nonetheless permit the PDTransFac offerings to remain on RelayHealth's MAS contract and exercise the option. Protest at 9; *see* Protest, exh. 9, RelayHealth Resp. to GSA OIG Report at 148. Ultimately, the OIG rejected RelayHealth's position. Protest at 9.

On March 24, 2026, GSA advised RelayHealth that it intended to follow the OIG's recommendation not to exercise RelayHealth's FSS contract option. Protest at 9. That same day, RelayHealth informed CMS of GSA's decision. *Id.* RelayHealth's FSS contract expired on April 12, 2026. *Id.*

Market Research

On May 1, 2026, CMS issued a request for information (RFI) via both GSA eBuy and SAM.gov.[3] COS at 6. The RFI "expressly sought to determine the availability and technical ability of vendors to perform the Part D COB transaction processing requirement." *Id.*; AR, Tab 3.2, RFI Memo at 1. The RFI generated twelve responses. COS at 6. As tabulated in CMS's MRR, respondents included the large-business incumbent (RelayHealth), two additional other-than-small vendors, and nine small businesses. AR, Tab 3.1, MRR at 4-7. All of the businesses, other than the protester, indicated that they could perform the PDTransFac services under their FSS contracts.[4]

Based on the responses received, CMS concluded that "[t]he volume and diversity of responses confirm a competitive market exists for [information technology] IT professional services under [North American Industry Classification System] NAICS 541519." *Id.* at 4. CMS found that multiple respondents hold GSA [multiple-

[3] SAM.gov is the current governmentwide point of entry which serves as the single point where government business opportunities greater than $ 25,000, including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public. Revolutionary Federal Acquisition Regulation (FAR) Overhaul (RFO) 2.101.

[4] In November 2025, CMS released a prior market research survey and RFI (2025 RFI) to FSS contract holders for the re-procurement of PDTransFac services. Protest at 9. At the time RelayHealth responded to this RFI, it expected that its FSS contract would be extended for the upcoming option period. Protest at 9. As such, in its 2025 RFI response, RelayHealth indicated that it was capable of continuing to perform PDTransFac services and that it would submit a quote if this requirement was issued under the FSS. Protest, exh. 8, 2025 RFI Resp. at 132-146.

award schedule] MAS contracts under the applicable special item number (SIN) 52151S. *Id.* at 4-7. Beyond the written responses, CMS held one-on-one meetings with four vendors determined to be technically relevant. COS at 6-7.

Solicitation No. 75FCMC26Q0067

On July 9, 2026, CMS issued RFQ No. 75FCMC26Q0067 for PDTransFac services in accordance with the procedures of the FAR as implemented by the RFO subpart 8.4, to businesses holding a FSS contract for SIN 54151S (information technology professional services), and if applicable, SIN OLM (order-level materials). AR, Tab 4.1 RFQ at 1. The solicitation contemplates the issuance of a fixed-price task order with a period of performance of a base year and four 1-year option periods.[5] *Id.*; COS at 4. The expected contract value, including options, is approximately $131.7 million. COS at 5; AR, Tab 3.1, MRR at 1.

The solicitation provides for evaluation of quotations in three phases, with award to the highest technically rated vendor with a reasonable price. COS at 4; RFQ at 5. Phase 1 includes evaluation of corporate experience (mission focused); phase 2 includes evaluation of the oral presentation (interview style); and phase 3 includes the evaluation of the solution narrative-performance work statement and quality assurance surveillance plan. RFQ at 6.

The agency received quotations from two vendors by the July 22, 2026, due date for phase 1 quotations. COS at 6; Supp. COS at 1. RelayHealth filed this pre-award protest with our Office that same day. COS at 6.

DISCUSSION

RelayHealth challenges the agency's decision to procure the PDTransFac services using the FSS. The protester argues that the agency's conclusion that the PDTransFac services are commercial services is unreasonable because GSA's OIG has already concluded that PDTransFac services are not commercial services eligible for the FSS program. Protest at 14. The protester also challenges the agency's reliance on its market research, arguing that it conflicts with the agency's determination that the PDTransFac services qualify as a "commercial service" pursuant to RFO 2.101,[6] and therefore, cannot be acquired under an FSS contract. Comments at 12-14. In addition, RelayHealth contends that CMS's procurement approach to use the FSS is unreasonable because it violates RFO part 12, as well as special ordering procedures

[5] The acquisition is structured entirely on a fixed-price basis, with no time-and-materials pricing and no per-transaction pricing. COS at 4.

[6] The parties refer both to the FAR and RFO; however, we cite to the RFO as the controlling authority for this procurement. The parties do not argue that there is a meaningful difference.

for OLMs. *Id.* at 14-18. For the reasons discussed below, we conclude that the agency reasonably determined that the PDTransFac services are commercial services that can be acquired using the FSS.[7]

GSA OIG Audit Report

RelayHealth disagrees with CMS's determination that the PDTransFac services qualify as commercial services, and therefore, argues that the agency's decision to procure the services using the FSS is improper. In this regard, the protester contends that CMS's conclusion that the PDTransFac services qualify as commercial services is unreasonable because GSA's OIG has already concluded that PDTransFac services are not commercial services eligible for the FSS program. Protest at 14. The protester bases this assertion on its interpretation of the GSA OIG audit report discussed above.

In the protester's view, the audit report concluded that the PDTransFac services could no longer be provided under RelayHealth's FSS contract because they are not commercial services. The agency responds that the audit report does not address the issue of whether the services performed for CMS were commercial, let alone conclude that these services were non-commercial; instead, the agency asserts that the audit report found that RelayHealth should no longer continue providing these services under its FSS contract because RelayHealth failed to provide adequate support for its proposed pricing. As discussed below, we agree with the agency and find that the audit report does not conclude, or otherwise state an opinion, that the PDTransFac services are non-commerical.

As mentioned previously, since 2021, RelayHealth has been performing the incumbent contract for PDTransFac services under a task order issued under its now-expired FSS contract. MOL at 2; Comments at 3. In 2025, prior to the expiration of RelayHealth's FSS contract, the GSA OIG performed an audit of RelayHealth's proposal to extend its FSS contract. Protest, exh. 1, GSA OIG Audit Report at 3. As relevant here, the GSA OIG audit report examined RelayHealth's FSS contract that offered the following services, as identified by SIN: 54151HEAL (health information technology services); 54151ECOM (electronic commerce and subscription services); 54151S (information technology professional services; and OLM (order-level materials)). *Id.* at 6. RelayHealth's FSS contract included both labor category rates and transaction pricing. *Id.*

The stated objectives of the audit were to determine whether RelayHealth: (1) disclosed and submitted current, accurate, and complete commercial sales practices (CSP) information; (2) maintained sales monitoring and billing systems that ensure proper administration of the price reduction and billing provisions of the GSA contract;

[7] Although we do not address all of the protester's arguments in this decision, we have considered them all and find that none provides a basis upon which to sustain the protest.

(3) adequately accumulated and reported GSA schedule sales for industrial funding fee payment purposes; (4) assigned employees to work on GSA schedule task orders who are qualified for their billable positions; and (5) adequately segregated and accumulated labor hours, material costs, and other direct costs on GSA schedule time-and-material (T&M) task orders. *Id.* at 6-7.

The GSA OIG found that RelayHealth's CSP information was "current, accurate, and complete" but did not serve as a suitable basis for negotiations because "[RelayHealth] does not have comparable non-schedule sales for both its per transaction pricing and labor category rates due to the custom nature of the services offered." *Id.* at 8. Accordingly, GSA OIG requested that RelayHealth provide cost buildup information to support its 33 proposed labor category rates.[8] *Id.* Upon review, the GSA OIG found that the proposed labor rates were not supported by actual costs and included estimates.[9] *Id.* at 8-9.

With regard to RelayHealth's proposed transaction pricing, the GSA OIG found the following:

> [RelayHealth] could not provide support for its per transaction pricing. [RelayHealth] officials told us they did not know how the current pricing was established, and that the transactional processing services were developed specifically for its only GSA schedule customer, [CMS]. Additionally, each of the electronic healthcare-related transactions are: (1) substantively different than any other commercially offered transaction processing, (2) not offered to non-schedule customers, and (3) custom-designed for [CMS]. Finally, non-schedule per transaction pricing includes the cost of labor associated with supporting those transactions, but the per transaction costs of the GSA contract exclude labor costs.

Id. at 8.

[8] Specifically, the audit report noted the following:

> [RelayHealth] submitted its Commercial Sales Practices (CSP) information on January 10, 2025. [RelayHealth] proposed new rates for the proposed option period. We determined that [RelayHealth] does not have comparable non-schedule sales to support its proposed pricing. As a result, we asked [RelayHealth] to provide cost buildup information to support its 33 proposed GSA schedule labor rates. [RelayHealth's] CSP, cost buildup information, and proposed pricing served as the bases of our examination.

Protest, exh. 1, GSA OIG Audit Report at 6.

[9] For example, the GSA OIG found that RelayHealth used an [DELETED]. *Id.* at 8-9.

The protester points to items (1), (2), and (3), quoted above, as proof that the GSA OIG determined that RelayHealth's PDTransFac services were not commercial services. Protest at 8-9. Ultimately, the GSA OIG concluded that "[RelayHealth's] proposed GSA schedule contract transaction pricing and labor categories are not comparable to what it offers to its non-schedule customers," and "[a]dditionally, [RelayHealth] was unable to provide support for its proposed pricing." Protest, exh. 1, GSA OIG Audit Report at 9. As such, the audit report found that although RelayHealth's "CSP is current, accurate, and complete," it "does not serve as a suitable basis for negotiations," and recommended that "the contracting officer should not exercise the proposed option extension because [RelayHealth's] proposed pricing is not adequately supported." *Id.* at 1, 10.

Based on the record, including the full audit report, we find no indication that the audit report concluded that the PDTransFac services are non-commercial. The GSA OIG pre-award audit was conducted to review "the pricing information that will become the basis for the pricing awarded in the [FSS] contract extension," and specified that the "main purpose" of the audit is "to ensure that the pricing information provided is current, accurate, and complete." Protest, exh. 7, Audit Notification Letter at 130. The audit report also advised that the "purpose of this report is to assist contracting officials in administering the subject contract; it is not suitable for any other purpose." *Id.* at 4. As such, the focus of the audit report was the protester's proposed FSS pricing, and not the commerciality of the underlying services, as the protester asserts. While the protester points to statements in the report--that RelayHealth's transactional services for CMS were substantially different from other commercially offered transaction processing, were not offered to non-schedule customers, and were custom designed for CMS--these statements are not a conclusion of the GSA OIG that PDTransFac services in general are not commercial; rather, these statements are included as a description of RelayHealth's specific transactional processing services as part of the rationale provided as to why RelayHealth "could not provide support for its per transaction pricing." Protest, exh. 1, GSA OIG Audit Report at 8.

The protester has failed to demonstrate that the GSA OIG audit report concluded that PDTransFac services are non-commercial or improper for an FSS contract. Accordingly, the protester's unsupported interpretation of the audit report provides no basis to conclude that the agency's decision to procure PDTransFac services using the FSS was unreasonable. This protest ground is denied.

Determination of Commerciality

The protester also challenges CMS's conclusion that the PDTransFac services qualify as a "commercial service" pursuant to FAR 2.101, and in general, the agency's determination that the results of CMS's market research demonstrate that the PDTransFac services are commercial services.

As noted above, the agency issued the RFQ to businesses holding FSS contracts in accordance with RFO part 8.4. The FSS program is "directed and managed by GSA and provides Federal agencies with a simplified process to obtain commercial supplies

and commercial services at prices associated with volume buying." RFO 8.401(a); GSAR 538.271(a) ("FSS awards will be for commercial products and commercial services."). Under the FAR, "commercial service" is defined to include "[s]ervices . . . of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed or specific outcomes to be achieved and under standard commercial terms and conditions." RFO 2.101. Determining whether a product or service is a commercial item is largely within the discretion of the contracting agency, and such a determination will not be disturbed by our Office unless it is shown to be unreasonable. *Precision Lift, Inc.*, B-310540.4, Jun. 26, 2008, at 3.

As explained by the contracting officer and as referenced above, RFO 2.101 defines commercial services in part as services "of a type offered and sold competitively in substantial quantities in the commercial marketplace." COS at 12.

As discussed above, prior to issuing the RFQ, the agency issued an RFI seeking to determine the availability and technical ability of vendors to perform the Part D COB transaction processing requirement, which included a draft statement of objectives (SOO) that described the requirement as follows:

> CMS requires a Part D transaction facilitation contractor to support the accurate tracking of True Out-of-Pocket (TrOOP) costs, facilitate eligibility queries, and ensure secure and compliant exchange of protected health information (PHI) in accordance with Health Insurance Portability and Accountability Act (HIPAA) and applicable federal regulations.

AR, Tab 3.2b, Draft SOO at 1. The SOO also explained the various performance objectives for this requirement, including Part D transaction facilitation; HIPAA-compliant business associate agreement execution; pharmacy eligibility query support; disaster recovery and system architecture compliance, information security and privacy compliance; program and technical management; transition-in support; and Section 508 compliance. *Id.* at 3-10.

In addition, the RFI requested that the vendors address "[w]hat contract vehicles (GSA, MAS, GSA Alliant, etc.) . . . are the best fit for the Part D Transaction Facilitation requirement" and to "[p]lease include rationale." *Id.* at 2.

CMS received numerous responses to the RFI with vendors providing information as to their capabilities to provide the PDTransFac services, as well as suggesting that the best contract method for the procurement would be the GSA FSS contract vehicle. AR, Tabs 3.3–30; *see, e.g.*, AR, Tab 3.5, Vendor B RFI Resp. at 9 (stating that the vendor holds a GSA MAS contract, for SIN 54151S, which provides an "immediate path to award without vehicle on-ramp delay"); Tab 3.6, Vendor C RFI Resp. at 16 (describing how the GSA schedule aligns with the project's scope: "The MAS IT Professional Services SIN covers the full range of services required by the SOO: IT operations and maintenance, software development and sustainment, cybersecurity, data analytics, help desk support, program management, and transition support. It also supports

OLMs (materials) under T&M CLINs, which aligns with the SOO's OLM CLIN structure."); Tab 3.8 Vendor D RFI Resp. at 5; Tab 3.9, Vendor E RFI Resp. at 5 ("We recommend that this opportunity fall under GSA MAS (SINs 541611 or 54151S) or the OASIS+ Small Business Contract" because both "vehicles are applicable to this requirement and would provide operational readiness for the Medicare Transaction Facilitator and strategic alignment with CMS Medicare Drug Price Negotiation Program, as well as the competitive advantage of early, compliant participation."). The only RFI response that indicated that the vendor did not believe the services could be procured via the FSS was RelayHealth. AR, Tab 3.18, RelayHealth RFI Resp. at 4-5.

Thereafter, based on the RFI responses, CMS completed its MMR. AR, Tab 3.1, MMR. The report noted that the responses to the RFI confirmed "broad market interest and identified vendors with relevant NCPDP switching, healthcare IT, and federal program management experience." *Id* at 3. The MRR also found that "[t]he volume and diversity of responses confirm a competitive market exists for IT professional services under NAICS 541519." *Id.* at 3-7. As such, the agency determined that the IT professional services should be acquired under GSA MAS SIN 54151S and are commercial services consistent with standard industry practices.[10] *Id.* at 8.

In addition, in response to the protest, the contracting officer explains that the MRR reflects the agency's analysis under RFO 10.001(f), which directs that agencies must "procure commercial products and commercial services to the maximum extent practicable" and "using the results of market research, determine in the following order of priority, whether[:]" (1) a commercial product or commercial service on an existing governmentwide contract can meet the agency's requirements; (2) the requirements could be modified so the agency could use an existing governmentwide contract; (3) a commercial product or commercial service is available from another source; (4) a commercial product or commercial service could be modified to meet the agency's requirements; or (5) the requirement can only be satisfied by a nondevelopmental item. COS at 8.

The contracting officer states that "[a]pplying that framework to the results of the market research documented in the MRR and the [acquisition plan]," the contracting officer "determined that item (4) applies: commercial IT professional services available on an existing governmentwide commercial vehicle--the GSA MAS, SIN 54151S--can be configured and modified to meet CMS's Part D-specific operational parameters, including the applicable data elements, NCPDP transaction standards, matching logic, and Part D business rule." *Id.*

[10] The agency also noted that its market research supports the following: "An acquisition of supplies and services in amounts greater than the simplified acquisition threshold including options, if the contracting officer reasonably expects, based on the nature of the supplies or services desired, and on market research, that offers will include only commercial products or commercial services." AR, Tab 3.1, MRR at 1.

With regard to FAR 2.101's definition of commercial services as, in relevant part, "services 'of a type' offered and sold competitively in substantial quantities in the commercial marketplace," the contracting officer states that "[r]eal-time, high-volume pharmacy transaction switching and routing using NCPDP standards, eligibility verification and COB data exchange are unquestionably services 'of a type' performed in the commercial marketplace." *Id.* at 12-13.

In addition, the contracting officer further explains that the "agency made a deliberate design choice to solicit this requirement using a [SOO] rather than a Statement of Work (SOW)" and that "[b]y stating the Government's desired outcomes rather than prescribing a fixed method of performance, the SOO invites offerors to propose their own commercial approaches under their existing GSA Schedule contracts." *Id.* at 5. The contracting officer also states that "[c]onsistent with that approach, the SOO expressly directs the contractor to '[u]tilize existing commercial IT system(s) to support this objective.'" *Id.*

Based on our review, we find the agency reasonably determined that the PDTransFac services were commercial services that could be procured via the FSS. The record reflects that RelayHealth's incumbent contract for these services was procured via the FSS. Protest, Exhibit 4; AR Tab 1.1 CO Statement of Facts at 2, 12, 14. The record also shows, as discussed in detail above, that the agency conducted extensive market research, including issuing an RFI, and based on the multiple vendor responses received, determined that several vendors could provide these services through their FSS contracts. AR Tab 2.1 CMS Acquisition Plan; AR Tab 3.1 Market Research Report. In fact, only RelayHealth indicated that PDTransFac Services could not be procured via the FSS, and, as discussed above, its conclusion was solely based on GSA OIG's findings that RelayHealth's FSS pricing was unsupported--not a conclusion by GSA OIG that the services themselves were not commercial. AR Tab 3.18 RelayHealth RFI Resp.; Protest, Exhibit 1.

Although RelayHealth disagrees with the agency's determination that PDTransFac services qualify as commercial services as defined by RFO 2.101, as noted above, the agency's position is that PDTransFac services--that is, real-time, high-volume pharmacy transaction switching and routing using NCPDP standards, eligibility verification, and COB data exchange--are services "of a type" performed in the commercial marketplace. COS at 12-13; RFO 2.101 ("Commercial services means . . . [s]ervices of a type offered and sold competitively in substantial quantities in the commercial marketplace[.]"). RelayHealth's argument essentially is that because it does not sell these identical transactions to commercial customers, the services cannot be commercial. RelayHealth, however, acknowledges that it "operates a nationwide commercial pharmacy switch and is connected to two additional nationwide commercial pharmacy switches" that "route electronic prescription claims among pharmacies, pharmacy benefit managers, insurers, and other payers." Protest at 6. As such, the record reflects, and the protester does not dispute, that a commercial market exists for commercial pharmacy switches.

The protester attempts to distinguish that market from PDTransFac services by asserting that commercial switches "only facilitate transaction routing," whereas PDTransFac services layer Part D–specific COB and TrOOP functions on top. Protest at 5-6. However, as the contracting officer points out, this is precisely one of the circumstances contemplated by the market research requirements specified in RFO 10.001(f)(4)--that is, to use commercial services to the maximum extent practicable when the agency can determine, for instance, that a commercial service can be modified to meet the agency's requirements. Here, based on the agency's market research, CMS concluded that the commercial service (pharmacy switching) can be modified (through Part D-specific data elements, matching criteria, and business roles) to meet the agency's requirements. We find the agency's conclusion--that the PDTransFac services qualify as commercial services such that they can be acquired using the FSS--to be reasonable. The protester's disagreement with the agency's conclusion, without more, fails to demonstrate otherwise. This protest ground is denied.[11]

Compliance with RFO Part 12

RelayHealth contends that even if PDTransFac services are services "of a type" sold commercially, then CMS's procurement approach to use the FSS still is unreasonable

[11] In addition, the protester raises various other challenges to the agency's market research, which we also find without merit. For example, RelayHealth asserts that the RFI vendor responses received by CMS show that there is not a commercial solution that satisfies the PDTransFac services requirement. In support of its assertion, the protester points to the draft SOO that was attached to the RFI, which stated that, to perform the required PDTransFac services, the contractor "shall . . . utilize existing commercial IT system(s) to support this objective." Comments at 5, *quoting* AR Tab 3.2-b, RFI SOO at 3. The protester maintains that the agency's requirement to "utilize existing commercial IT system(s)" generated substantial confusion among multiple interested vendors. *Id.* For example, one vendor asked CMS to clarify whether a vendor is expected to "bring its own platform, license the incumbent's platform, or build a new solution," AR, Tab 3.6, Vendor B RFI Resp. at 6, and another vendor asked the agency to "[c]larify whether CMS expects an existing commercial network, subcontracted switching capability, cloud-native rebuild, or other delivery models." AR, Tab 3.19, Vendor J RFI Resp. at 8. In the protester's view, these requests for clarification show that the requirement was confusing for vendors and that "none of the vendors identified an existing commercial solution that can be used to execute all of the PDTransFac services required under the SOO." Supp. Comments at 2. We disagree. While the responses quoted by the protester indicate a request for clarification, they do not suggest that the vendors could not provide the services required under the SOO via their FSS schedules.

because it violates RFO part 12.[12] As relevant here, RFO 12.205(b)(1)(ii) directs that, "in solicitations and contracts for commercial products and commercial services . . . clause[s] may be tailored to reflect customary commercial practice."[13] In addition, RFO 12.205(d)(1)(iii)(A) provides that "[a]gencies may waive or tailor provisions and clauses authorized for use in acquisitions for commercial products or commercial services if . . . [f]or individual acquisitions, the head of the contracting activity approves the waiver or tailoring[.]"[14]

The protester asserts, based solely on RelayHealth's own pricing practices for transaction routing services, that the customary commercial practice for transaction routing services is that they "are sold predominantly on a per-transaction basis." Supp. Comments at 5. As such, RelayHealth contends that the RFQ's pricing structure--which is based on labor categories and rates--is inconsistent with customary commercial practice, and therefore, violates RFO part 12. The agency argues that its decision to procure PDTransFac services on the basis of labor hours and rates does not deviate from customary commercial practices.

We find no basis to conclude that the RFQ is inconsistent with customary commercial practices or otherwise violates RFO part 12. As referenced above, RFO part 12 provides that "in solicitations and contracts for commercial products and commercial services . . . clause[s] may be tailored to reflect customary commercial practice." RFO 12.205(b)(1)(ii). In the RFI, CMS asked vendors to recommend what tasks under the SOO should be priced as fixed-price or as time-and-materials. AR, Tab 3.2, RFI at 2. The agency also asked vendors to indicate what labor categories they would recommend for the effort. *Id*. None of twelve respondents, other than RelayHealth, indicated any concerns about whether pharmacy switch costs could be covered under such an arrangement or if such costs should be paid on a per transaction basis. AR Tabs 3.3 through 3.30, Vendor RFI Responses. Consistent with this market research, as well as the nature of the IT professional services being acquired, the agency decided to procure the PDTransFac services on a fixed-price basis. 2nd Supp. MOL at 2. Specifically, the agency found the following:

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[12] In its protest, RelayHealth cites to FAR part 12, rather than RFO part 12, specifically FAR 12.301(a)(2) and FAR 12.302(c). Supp. Comments at 4; Protester Briefing Reply at 4.

[13] The prior FAR version, FAR 12.301(a)(2), provided that "contracts for the acquisition of commercial products or commercial services shall, to the maximum extent practicable, include only those clauses . . . [d]etermined to be consistent with customary commercial practice."

[14] The prior FAR version, FAR 12.302(c), provided: "The contracting officer shall not . . . include any additional terms or conditions in a solicitation or contract for commercial products or commercial services in a manner that is inconsistent with customary commercial practice for the item being acquired unless a waiver is approved in accordance with agency procedures."

> The requirement will be procured on a Firm-Fixed-Price (FFP) basis. After conducting market research, including review of GSA's MAS ordering procedures, the acquisition planners determined that all work, materials, and Other Direct Costs (ODCs) associated with this effort can be sufficiently defined and estimated with a reasonable degree of confidence to support the use of an FFP contract type. The order will be structured entirely under the FFP contract type, with separate line items in each contract period corresponding to the distinct areas of work. The FFP contract type is appropriate for this requirement as the Government is able to establish fair and reasonable prices at the time of award, and the contractor will bear the responsibility for performance costs and resulting profit or loss. Accordingly, all contract line items will be priced on a firm-fixed-price basis.

AR, Tab 2.1, Acquisition Plan at 19; *see also* AR, Tab 3.1, MMR at 7-8 ("IT professional services acquired under GSA MAS SIN 54151S are commercial services consistent with standard industry practices. No tailoring of FAR Part 12 clauses is required.").

In addition, as the record reflects and the agency points out, "[p]harmacy switch services are only a small portion of the overall services being procured in the RFQ." 2nd Supp. MOL at 3, *citing* AR, Tab 4.2, SOO at 3-10 (showing that the SOO covers eight objectives, including Part D transaction facilitation; HIPAA compliant business associate agreement execution; pharmacy eligibility query support; disaster recovery and system architecture compliance; information security and privacy compliance; program and technical management; transition-in and transition-out support; and Section 508 compliance). Because accepting and routing transactions from pharmaceutical switches is only one portion of the Part D transaction facilitation objective, we find nothing unreasonable regarding the agency's decision to base the bulk of this procurement on IT labor being provided on a fixed-price basis. *Id.*

Furthermore, while RelayHealth may believe that charging on a per-transaction basis is the predominant method for commercial pharmacy switches to price the routing of prescription claims, the protester fails to point to anything other than its own pricing practices as support. In this regard, the protester does not provide any information about how other commercial pharmacy switches charge for these services. In any event, as noted by the agency, there is nothing in the RFQ to prevent offerors from securing the pharmacy switch services from other providers on a per-transaction basis, as long as the services are covered in the vendor's proposed price to the government. 2nd Supp. MOL at 3; RFQ at 15-17; *see also* AR, Tab 4.2, SOO at 3 (providing that vendors will handle "approximately 80 [million]" transactions per month, but not dictating how vendors are to arrange those services). Ultimately, we find nothing unreasonable regarding the agency's determination that procuring the requirement on a fixed-price basis is appropriate for acquiring the IT professional services here. While RelayHealth may disagree with the agency's conclusion, that disagreement, without more, is insufficient to demonstrate that CMS's decision to procure the PDTransFac services via

a fixed-price task order based on labor categories and rates is unreasonable or in any way violates RFO part 12. Accordingly, this protest ground is denied.

Order Level Materials

Finally, the protester argues that the RFQ violates special ordering procedures contained in the General Services Acquisition Regulation (GSAR) for order level materials (OLMs). Supp. Comments at 6-9; 2nd Supp. Comments at 4-6. In this regard, RelayHealth asserts that as part of the PDTransFac services, the contractor must accommodate delivery of data to and from commercial pharmacy switches and the switches would need to be reimbursed for providing that service. Supp. Comments at 6. RelayHealth contends that the costs associated with routing this data through commercial pharmacy switches would be considered OLMs. As discussed below, the protester has failed to demonstrate that CMS violated the GSAR's requirements.

GSA's acquisition regulations contain special ordering procedures for OLMs. *See* GSAR 552.238-115(a). These procedures are used to provide "supplies and/or services acquired in direct support of an individual task or deliver order," but "[t]he prices of order-level materials are not established in the FSS contract." *Id.* In this regard, the regulations provide that "[t]he value of order-level materials in a task or delivery order . . . under an FSS Contract shall not exceed 33.33 [percent]." GSAR 552.238-115(d)(4). Consistent with this requirement, the RFQ provides that "[a]ny proposed OLMs must be in support of the order and shall not exceed 33.33 [percent] of the total order value." RFQ at 17.

RelayHealth asserts that the RFQ violates the 33.33 percent restriction on OLMs because, in the protester's view, "any vendor selected to perform PDTransFac services would need [OLMs] in excess of the 33.33 [percent] limit set forth in the RFQ and GSAR 552.238-115(a)." Supp. Comments at 6. In this regard, the protester contends that the prices that vendors will need to pay the commercial pharmacy switch providers to route transaction data--the OLMs, according to the protester--will be much higher than the 33.33 percent threshold. In support of this position, the protester points to the two quotations CMS received in response to the RFQ and relies primarily on its own pricing for transaction services with commercial pharmacy switches. 2nd Supp. Comments at 5. In essence, the protester's argument is that, because no vendor, including the two that responded to the RFQ, can propose to provide the PDTransFac services without violating the 33.33 percent cap on OLMs, it is improper and in violation of the GSAR for the agency to acquire the services via the FSS.[15]

In order for CMS to make such a determination prior to issuing the RFQ, as the protester's position implies, the agency would first be required to conduct an analysis as

[15] We note that while the protester points to the two vendors' quotations for support, we disagree that the record demonstrates that either proposed approach necessitates that the OLMs would exceed 33.33 percent.

to whether the procurement will require OLMs, and if so, then analyze if the OLMs will exceed 33.33 percent. Nothing in the GSAR regulation cited by the protester, however, requires such an analysis by the agency prior to issuing the RFQ. *See e.g.* GSAR 552.238-115(a) (defining OLMs, as noted above); GSAR 552.238-115(d)(4) ("The value of order-level materials in a task or delivery order, or the cumulative value of order-level materials in orders against an FSS BPA awarded under a FSS Contract shall not exceed 33.33 [percent]."). As such, we find that RelayHealth has failed to demonstrate that CMS's RFQ in any way violated this GSAR regulation.[16] Accordingly, this protest ground is denied.

The protest is denied.

Edda Emmanuelli Perez
General Counsel

[16] To the extent the protester maintains that the proposed pricing submitted by the two vendors in response to the RFQ is only below the 33.33 percent OLM threshold because the pricing is actually too low to account for the commercial pharmacy switch OLM services proposed, this allegation amounts to a challenge to the evaluation of quotations, which the protester is not an interested party to raise. In order for a protest to be considered by our Office, a protester must be an interested party, that is, an actual or prospective offeror whose direct economic interest would be affected by the award or failure to award a contract. 4 C.F.R. § 21.0(a)(1). A protester is not an interested party to challenge the agency's evaluation of quotations where it would not be in line for contract award if its protest were sustained. *BANC3, Inc.*, B-416486, B-416486.2, Sept. 10, 2018, at 9. Here, as discussed above, we conclude that the agency reasonably found the PDTransFac services qualify as commercial services that can be procured using the FSS. As also detailed herein, RelayHealth acknowledges that it is not a FSS contract-holder. As such, because the procurement is restricted to FSS contract holders but RelayHealth does not have the requisite FSS contract, the protester is not eligible to compete under the RFQ. Since RelayHealth cannot compete for the task order under the RFQ, RelayHealth would not be in line for award even if we were to sustain its challenges to the evaluation of the vendors' quotations. Accordingly, the protester is not an interested party to raise these allegations, and we will not consider them.