



**DOCUMENT FOR PUBLIC RELEASE**

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

## Decision

**Matter of:** BAO Systems, LLC

**File:** B-421561.13; B-421561.16; B-421561.18

**Date:** April 10, 2024

---

Alexander B. Ginsberg, Esq., and Frank V. DiNicola, Esq., Fried, Frank, Harris, Shriver & Jacobson LLP, for the protester.

Ryan C. Bradel, Esq., Chelsea A. Padgett, Esq., and Camille L. Chambers, Esq., Ward & Berry, PLLC, for Coforma, LLC; Stephen L. Bacon, Esq., Alexandria Tindal Webb, Esq., and Cindy Lopez, Esq., Rogers Joseph O'Donnell, PC, for Flexion Inc.; Richard P. Rector, Esq., Dawn E. Stern, Esq., and Christie M. Alvarez, Esq., DLA Piper LLP (US), for Nava Public Benefit Corporation; and Amy L. O'Sullivan, Esq., Zachary H. Schroeder, Esq., and David H. Favre III, Esq., Crowell & Moring LLP, for Softrams, LLC, the intervenors.

Pamela R. Waldron, Esq., and Christopher Monsey, Esq., Department of Health and Human Services, for the agency.

Sarah T. Zaffina, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

### DIGEST

1. In procurement conducted pursuant to the provisions of Federal Acquisition Regulation subpart 8.4, agency reasonably determined the protester's quotation ineligible for award where the solicitation required vendors to quote labor categories under a particular General Services Administration Multiple Award Schedule Special Item Number (SIN), and the protester quoted labor categories not under the required SIN.
  2. Protester is not an interested party to challenge the agency's evaluation and best-value tradeoff where protester is not eligible for award.
- 

### DECISION

BAO Systems, LLC (BAO), a small business of Washington, D.C., protests the decision by the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), not to select its quotation for the establishment of a blanket purchase agreement (BPA) under request for quotations (RFQ) No. 75FCMC21Q0013 for agile collaboration and modernization endeavors (ACME). The RFQ sought to establish

BPAs with multiple vendors holding contracts under General Services Administration (GSA) multiple award schedule (MAS) special item number (SIN) 54151S, information technology (IT) professional services. BAO argues that the agency unreasonably determined it was ineligible for award. BAO also challenges the agency's evaluation of quotations and best-value determination.<sup>1</sup>

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

## BACKGROUND

The primary purpose for establishing the ACME BPAs is to provide a streamlined commercial process to support CMS quality-related initiatives needing agile delivery services.<sup>2</sup> PWS at 4.<sup>3</sup> CMS components needing agile delivery services, including end user experience design, business analysis, software development, integration, data management and security, software release management, and other IT support services, will be able to use the BPAs to obtain these services from a streamlined, common contracting vehicle. *Id.* With the establishment of the ACME BPAs, CMS seeks to consolidate spending and facilitate its ability to “[c]ollect, analyze, and act on detailed transactional-level data” to improve contractor performance management. *Id.* at 5.

On June 21, 2021, pursuant to Federal Acquisition Regulation (FAR) subpart 8.4, CMS issued the RFQ to small businesses.<sup>4</sup> AR, TAB 18, RFQ amend. 9 at 1; AR, Tab 18A,

---

<sup>1</sup> 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; (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. Agency Report (AR), Tab 25A, Award Notice at 1-2.

<sup>2</sup> Agile methodology for delivery services is a software development process that “will directly or indirectly drive the delivery of information technology development within rapid time frames based upon consistent architectures and following standardized development guidelines to promote reuse and shareability of code and functionality across CMS, in alignment with the Federal Digital Government Strategy ‘Shared Platform Approach’ to ‘build once, use many times.’” AR, Tab 18B, RFQ attach. 2, Performance Work Statement (PWS) at 4.

<sup>3</sup> Citations to the record use the Adobe PDF or Microsoft Word pagination of documents produced in the agency report. The RFQ was amended nine times; all references to the RFQ are to the final version in amendment 9, unless otherwise noted.

<sup>4</sup> Although the solicitation was issued as an RFQ, throughout the record the parties use the terms vendors and quotations, and offerors and proposals interchangeably. Here,  
(continued...)

RFQ attach. 1, RFQ Instructions at 1. The RFQ instructed that “[t]his BPA is being competed under the GSA MAS schedule 54151S” and required vendors to submit quotations “in accordance with the MAS schedule 54151S.” RFQ Instructions at 1. The RFQ also contemplated that CMS would establish BPAs with no more than 10 vendors, and would issue call orders for an estimated value of \$900 million to \$1 billion under the BPAs, including base and option periods. *Id.*; AR, Tab 23, Post-Award Negotiation Memo at 3.

BPAs would be established using a best-value tradeoff process, providing each vendor fair consideration. RFQ Instructions at 28; *see also* FAR 8.405-3(a)(1); 8.405-3(b)(1)(ii)(B)(2)(C). The RFQ provided that it was in the best interest of the government to consider award to other than the lowest-priced or highest technically rated vendor. RFQ Instructions at 28. The RFQ also provided that all non-price evaluation factors, when combined, would be significantly more important than price, and that price would increase in significance if the agency assessed two or more vendors’ technical capabilities as relatively equal. *Id.*

The RFQ provided for the evaluation of quotations under four non-price factors: (1) design demonstration; (2) development, security, and operations (DevSecOps) case study; (3) technical challenge; and (4) corporate capabilities.<sup>5</sup> *Id.* at 29. The four non-price factors were equally important and quotations would be assessed a confidence rating under each. *Id.* at 28. The RFQ provided that CMS would analyze a sample order to evaluate price reasonableness and compliance with solicitation requirements. *Id.* at 31. The RFQ advised that, to the extent necessary, CMS might conduct exchanges only with the apparent successful vendors. *Id.* at 6.

The RFQ provided that the procurement would be conducted in three phases. After the government evaluated quotations for phase 1 and phase 2, the government would advise vendors of their likelihood of success. *Id.* at 7-8. Vendors were permitted to

---

the distinction between a quotation and a proposal has no bearing on our analysis in the protest; references herein are considered interchangeable. Our decision refers to the submission of quotations by vendors for consistency.

<sup>5</sup> The solicitation also provided for the evaluation of the successful vendors’ quotations under a fifth non-price factor: section 508 product accessibility template. The fifth factor was the least important factor and would not be rated; instead, CMS would evaluate successful vendors’ accessibility checklists and, as necessary, conduct exchanges with vendors to ensure that no BPAs were established with vendors failing to meet section 508 accessibility standards. *Id.* at 28-30.

Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d) requires agencies developing, procuring, maintaining or using electronic and information technology, to ensure that federal employees with disabilities and members of the public with disabilities seeking information from the agencies have access to and use of information and data that is comparable to federal employees and members of the public without disabilities. RFQ at 11-18; PWS at 26.

compete in subsequent phases even if CMS advised that they were not likely to be successful so long as the vendors notified CMS of their intent to participate. *Id* at 8-9. After phase 3, vendors would be divided into two groups--those recommended for BPAs and those that were not. *Id.* at 28.

BAO submitted a quotation for phase 1, demonstration of design capabilities, and was advised to continue in the competition. AR, Tab 8, BAO Phase 1 Advisory Notice. For phase 2, DevSecOps case study/repository, BAO again submitted a quotation; during the agency's evaluation, CMS assessed negative findings to BAO's quotation. CMS notified BAO that its likelihood of success had decreased and advised it not to participate in phase 3, technical challenge and corporate capabilities.<sup>6</sup> AR, Tab 15, BAO Phase 2 Advisory Down-Select Letter at 1-2. Nevertheless, BAO timely informed CMS of its intent to participate and timely submitted its quotation for phase 3.

CMS received 22 quotations for phase 3, which it evaluated. On March 17, 2023, CMS established ACME BPAs with eight vendors identified as the apparent successful contractors. Memorandum of Law (MOL) at 3. Following CMS's selection decision, five firms, including BAO, 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 developing 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: *VivSoft Technologies, LLC*, B-421561, B-421561.6, and *BAO Systems, LLC*, B-421561.5, B 421561.9. 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. With respect to BAO, the GAO attorneys advised that it also would likely sustain BAO's challenge to evaluation under factor 3, technical challenge.

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. See *BAO Sys., LLC*, B-421561.5, B-421561.9, June 27, 2023 at 1 (unpublished decision). On June 27, 2023, we dismissed BAO's protest because we found that the agency's corrective action rendered the allegations academic. *Id.* at 2.

The technical evaluation panel (TEP) reevaluated quotations and assigned new ratings to the vendors. CMS made three revisions to its evaluation of BAO's quotation; two revisions related to BAO's technical evaluation and one revision concerned BAO's price quotation. MOL at 5. BAO's quotation was assigned the following ratings:

---

<sup>6</sup> In phase 3, CMS would also review the vendors' business quotations, conflict of interest submissions, and section 508 checklists. See RFQ Instructions at 9.

Factor 1, Demonstration of Design Capabilities: High Confidence  
Factor 2, DevSecOps Case Study: Moderate Confidence  
Factor 3, Technical Challenge: Moderate Confidence  
Factor 4, Corporate Capabilities: Moderate Confidence.

AR, Tab 21, TEP Recommendation Rept. at 2. The TEP advised that although BAO received a rating of high confidence for factor 1, demonstration of design capabilities, the TEP identified multiple negative findings for the other factors that introduced risk to the government and decreased the TEP's confidence in BAO's ability to successfully perform the contract. *Id.* at 2, 4. The TEP concluded that BAO's quotation was not among the most advantageous to the government and did not recommend BAO for an ACME BPA. *Id.* at 4, 23.

Additionally, the contracting officer, who was the source selection authority, reevaluated BAO's business quotation and determined that it was unacceptable and ineligible for award because BAO quoted rates and labor categories from a different GSA MAS schedule contract than the one the RFQ required. Contracting Officer's Statement (COS) at 9; AR, Tab 27, BAO Ineligible Labor Categories Memo. Specifically, the contracting officer found that BAO quoted 45 out of 70 labor categories from SIN 518210C, which was not SIN 54151S as required by the RFQ and under which the ACME BPA is being competed.<sup>7</sup> *Id.*

On December 26, 2023, the contracting officer notified BAO that its quotation had not been selected and identified the eight firms selected by CMS for the ACME BPA. AR, Tab 25A, Award Notice at 1-2. In conjunction with the award notice, the contracting officer issued a brief explanation that provided BAO's quotation was not among the highest-rated technically and that the agency determined BAO had less technical merit than the eight awardees. AR, Tab 25B, Brief Explanation of BAO Evaluation at 1. The contracting officer also explained that because five of the eight awardees submitted higher price quotations than BAO, the contracting officer conducted a best-value tradeoff between BAO and the five vendors. *Id.* For each vendor, the contracting officer "determined that the technical merit of the higher-priced quoter was worth paying the price premium over BAO's lower-priced but less technically robust quotation." *Id.* Finally, the contracting officer informed BAO that its business quotation was ineligible because BAO proposed a large number of labor categories under SIN 518210C, even though the solicitation advised that the competition was being conducted under SIN 54151S. *Id.*

---

<sup>7</sup> Of the remaining 25 labor categories, the record reflects that one labor category [DELETED] does not have an exact match on BAO's MAS schedule, [DELETED] labor categories have been submitted by BAO's teaming partner under SIN 54151S, and [DELETED] labor categories map to BAO's legacy SIN 132 51. AR, Tab 19F, Corrected BAO Business Price Proposal (Sample Order), Tab Price Proposal, Column C (sic); see *also* AR, Tab 20C, TEP Review of BAO's Business Quotation, Feb. 9, 2023 at 3.

This protest followed.

## DISCUSSION

BAO raises numerous challenges to CMS's evaluation of its quotation and the resulting award decision. The gravamen of BAO's protest is that CMS should not have rejected its quotation because BAO quoted labor categories within the scope of its MAS contract, which it argues included labor categories from SIN 54151S. Protest at 19-21. BAO also alleges that the agency unreasonably evaluated its quotation under factor 3, technical challenge, conducted unequal and undocumented exchanges, and made an unreasonable best-value tradeoff decision. Protest at 21-28; Comments & Supp. Protest at 19-20; Supp Comments & 2<sup>nd</sup> Supp. Protest at 19-20. For the reasons that follow, we find the agency reasonably determined BAO was ineligible for award for quoting labor rates and categories inapplicable to the RFQ, and we deny this protest ground. We dismiss the remaining allegations because BAO is not an interested party.

### BAO's Proposed Labor Categories

BAO argues that the agency improperly rejected its quotation for quoting SIN 581210C labor rates and categories. Protest at 19-21. The protester contends the agency's action were improper because BAO's MAS contract has been approved for both SIN 581210C and SIN 54151S. *Id.* In this regard, BAO asserts that it submitted labor categories in its quotation approved under its FSS contract, which includes SIN 54151S, and the agency unreasonably evaluated its quotation. *Id.* at 21. BAO disputes that the RFQ required vendors to quote only labor categories under SIN 54151S and argues that the RFQ only required each vendor "to possess an *active [Federal Supply Schedule (FSS)] contract* 'under SIN 54151S.'"<sup>8</sup> Comments & Supp. Protest at 22-23. We deny this protest ground.

Where, as here, an agency issues a solicitation to FSS vendors under FAR subpart 8.4 and conducts a competition for the issuance of an order, our Office will not reevaluate the quotations; rather, we review the record to ensure that the agency's evaluation was reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. *FreeAlliance.com, LLC et al.*, B-419201.3 *et al.*, Jan. 19, 2021, 2021 CPD ¶ 56 at 5; *AllWorld Language Consultants, Inc.*, B-411481.3, Jan. 6, 2016, 2016 CPD ¶ 12 at 2-3. A protester's disagreement with the agency's judgment does not establish that an evaluation was unreasonable. *DEI Consulting*, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2.

Where an agency announces its intent to order from an existing FSS contract, all goods or services quoted must be on the vendor's schedule contract as a precondition to it receiving the order. *Deloitte Consulting, LLP*, B-419508, B-419508.2, Apr. 15, 2021, 2021 CPD ¶ 170 at 5. When a concern arises that a vendor is offering services outside

---

<sup>8</sup> GSA's MAS program is also known as the FSS. FAR 8.401. We use the terms interchangeably.

the scope of its FSS contract, the relevant inquiry is not whether the vendor is willing to provide the services that the agency is seeking, but whether the services or positions offered actually are included on the vendor's FSS contract, as reasonably interpreted. *Id.*; see, e.g., *AllWorld Language Consultants, Inc.*, B-411481.3, Jan. 6, 2016, 2016 CPD ¶ 12 at 6 (finding that agency could not issue a task order to a vendor that quoted labor category under its FSS contract that do not align with solicitation requirements, even if its FSS contract may include other services that could meet the requirement because those services were not quoted); *American Sec. Programs, Inc.*, B-402069, B-402069.2, Jan. 15, 2010, 2010 CPD ¶ 2 at 3 (finding awardee ineligible to receive task order because certain required services were not available on the required SIN); *Tarheel Specialties, Inc.*, B-298197, B-298197.2, July 17, 2006, 2006 CPD ¶ 140 at 4-9 (finding that agency improperly issued task order to vendor whose quoted labor categories under an FSS contract SIN did not meet the solicitation requirements).

As a preliminary matter, BAO argues that our Office previously decided this issue during the outcome determination ADR conducted in BAO's previous protest of the procurement, B-421561.5, B-421561.9, and therefore, the agency cannot "resurrect an argument that GAO already has considered and denied." Protest at 19-21. We disagree that our Office decided this issue previously. ADR conferences do not represent GAO's final decision of a protest; only decisions issued by the General Counsel on behalf of the Comptroller General represent the official position of our Office. Although an ADR conference reflects the view of a GAO attorney, such conferences are not a decision from our Office, and they do not bind our Office, should issuance of a written decision remain appropriate. *Inter-Con Sec. Sys., Inc.; CASS, a Joint Venture--Costs*, B-284534.7, B-284534.8, Mar. 14, 2001, 2001 CPD ¶ 54 at 2 n.1. Our earlier decision dismissed BAO's protest because the agency's corrective action would result in a new evaluation, rendering our resolution of the protest grounds academic. *BAO Sys., LLC*, B-421561.5, B-421561.9, June 27, 2023 (unpublished decision). Accordingly, we find no merit to this argument.<sup>9</sup>

Turning to the question of whether the agency properly rejected BAO's for quoting SIN 581210C labor rates and categories, by way of background, through a contract modification, GSA consolidated 24 legacy FSS contracts into a single MAS contract with

---

<sup>9</sup> We further disagree that our Office decided this issue previously. Indeed, this protest ground was not before our Office. The agency's earlier evaluation shows that CMS determined BAO was technically inferior to the awardees and that the price premium for the higher-priced awardees was worth the greater technical value and benefits; therefore, CMS did not select BAO for award. B-421561.5, B-421561.9, AR, Tab 25, BAO Award Notice & Brief Explanation, Mar. 17, 2023 at 2. In the protest before us now, the agency has determined that BAO's business quotation is unacceptable. These are two distinct issues. In any event, following our dismissal of the earlier protest, B-421561.5, B-421561.9, CMS reevaluated quotations, performed a new best-value tradeoff, and made a new award determination; the agency's corrective action supersedes its earlier evaluation, and renders the previous protest grounds, and any outcome predicted, academic. See *Dyna-Air Eng'g Corp.*, B-278037, Nov. 7, 1997, 97-2 CPD ¶ 132.

SINs. BAO MAS Contract No. 47QTCA20D000X, modification PS-A812 (BAO mod. PS-A812) at 2; see also GSA, MAS Consolidation Customer Brochure, Doc. 05-20-00484 (March 2020) at 2-3. The modification explained that it will “change to MAS, the structure of the offerings (Large Category, Subcategory, and SIN) and will align the terms and conditions of each contract with those of the new consolidated MAS solicitation.” BAO mod. PS-A812 at 2. It further explained that “[e]ach contract’s terms and conditions will depend on the Large Category(ies), Subcategory(ies), and SIN(s) awarded under your contract.” *Id.* The modification also noted that it would “**not** change the awarded items, pricing, contract number, period of performance.” *Id.*

As relevant here, GSA’s schedule 70 for IT services included two SINs--132 40, cloud services, and 132 51, IT professional services. When BAO’s MAS contract was modified, SINs 132 40 and 132 51 were removed from the contract and SINs 54151S and 518210C were added. BAO mod. PS-A812 at 3-4. Legacy SIN 132 40 corresponds to SIN 518210C, cloud and cloud-related IT professional services and legacy SIN 132 51 corresponds to the new MAS SIN 54151S, IT professional services. GSA, Crosswalk of Legacy MAS SINs to Current SINs, <https://www.gsa.gov/buy-through-us/purchasing-programs/multiple-award-schedule/crosswalk-of-legacy-mas-sins-to-current-sins> (last visited Mar. 25, 2024). The MAS contract also requires BAO to provide its pricelist through “the on-line [MAS] electronic data base,” *i.e.*, GSA Advantage. See *id.* at 31, 216-217; see also FAR 8.402(b) (schedule contractors must publish an authorized FSS pricelist). Additionally, FAR provision 8.402(b) requires the pricelist to include the pricing and the terms and conditions pertaining to each SIN on the vendor’s schedule contract.

CMS argues that the RFQ limited the competition to vendors holding GSA MAS SIN 54151S on their GSA contracts and that BAO’s quotation referenced SIN 518210C for various labor categories rather than SIN 54151S. MOL at 6; COS at 9. In this regard, CMS contends that BAO’s teaming partner [DELETED], submitted labor categories under SIN 54151S, but that BAO did not. MOL at 6; COS at 9. CMS asserts that after this protest was filed, the agency conducted an online search of BAO’s FSS contracts and did not find that the protester held any contract that referenced SIN 54151S. MOL at 7; COS at 9. CMS also asserts that it reviewed the GSA Advantage website link BAO included in its protest. The agency found the website links to SIN 54151S from BAO’s vendor page which accesses BAO’s pricelist and schedule contract, neither of which reference SIN 54151S. MOL at 7; COS at 9-10. Critically, in CMS’s view, the absence of SIN 54151S from BAO’s pricelist indicates BAO does not even hold an FSS contract that includes SIN 54151S, and CMS would be prohibited from making award to BAO when its FSS contract does not include the labor categories and rates applicable to SIN 54151S--that is, when BAO is not an SIN 54151S FSS contract holder. MOL at 7-8. CMS concludes therefore that it was reasonable to find BAO’s business quotation was unacceptable and ineligible for award. *Id.* at 8.

Based upon our review of the record, we find that CMS’s evaluation was reasonable. The RFQ expressly states that “[t]his BPA is being competed under the GSA MAS schedule 54151S” and directs vendors to submit quotations “in accordance with the



MAS schedule 54151S.” RFQ Instructions at 1. The RFQ also advises that vendors “shall confirm that all proposed labor categories align with the [vendor’s] current GSA MAS schedule contract.” *Id.* at 26. CMS provided further guidance during the question-and-answer period of phase 1 when the agency was asked to confirm that labor rates quoted should align with the firm’s GSA MAS SIN 54151S. AR, Tab 2B, RFQ amend. 1, attach. 8, Questions and Answers (Q&A) at 4. CMS responded that “[y]es, fully burdened rates proposed should align with [vendor’s] GSA MAS schedule 54151S schedule rates.” *Id.* CMS also reiterated that vendors could only propose labor categories from SIN 54151S during the phase 3 question-and-answer period. AR, Tab 17L, RFQ amend. 8, attach. 8, Q&A at 5. Specifically, for question 88, a vendor asked “[c]an the government advise if offerors can use all labor categories from the GSA MAS Schedule (all SINS)?,” to which the agency answered, “No.” *Id.* at 5.

The record reflects that BAO submitted a quotation for this procurement under a contractor teaming arrangement (CTA) with [DELETED]; both vendors submitted their MAS schedule contract pricing as part of their business quotation.<sup>10</sup> COS at 9; AR, Tab 19I, BAO Business Quotation at 2. In the business quotation, the MAS schedule contract pricing submitted by BAO references GSA schedule 70 rates and labor categories under legacy SINs 132 40 and 132 51; nowhere in the quotation does BAO’s MAS schedule contract pricing identify SIN 54151S. AR, Tab 19I, BAO Business Quotation at 35-74.

The record also reflects that when the agency reevaluated BAO’s business quotation, the contracting officer found that BAO’s quotation included rates and labor categories from SIN 518210C, which was not the SIN under which the ACME BPA was being competed. AR, Tab 27, BAO Ineligible Labor Categories Memo. The contracting officer found BAO’s quotation noncompliant with the solicitation because BAO quoted 45 out of 70 labor categories from an inapplicable SIN. *Id.*; COS at 9.

Moreover, as stated above, the MAS contract requires BAO to provide its pricelist through “the on-line [MAS] electronic data base,” *i.e.* GSA Advantage. See BAO mod. PS-A812 at 31, 216-217. The agency asserts that as part of the evaluation, the contracting officer accessed BAO’s pricelist for MAS schedule SIN 54151S, and the pricelist referenced rates and labor categories for SIN 518210C rather than the rates and labor categories for SIN 54151S. COS at 9-10; Supp. COS at 5; see *also* AR, Tab 26, BAO MAS Pricelist. In this regard, labor categories from the legacy SINs 132 40 and 132 51 are presently listed under BAO’s MAS schedule SIN 518210C.<sup>11</sup>

---

<sup>10</sup> The RFQ permitted vendors to submit quotations under CTAs, however, the RFQ required all team members to be contract holders under the current GSA MAS schedule SIN 54151S. RFQ Instructions at 4. The business quotation establishes that [DELETED] submitted rates and labor categories in accordance with MAS schedule SIN 54151S. AR, Tab 19I, BAO Business Quotation at 24, 28-33.

<sup>11</sup> In addition, the contracting officer asserts that when he viewed the GSA Advantage website that BAO included in its protest, the pricelist linked to the website references  
(continued...)

Here, the solicitation clearly required vendors to submit quotations referencing MAS schedule SIN 54151S rates and labor categories. Although BAO's teaming partner submitted rates and labor categories under SIN 54151S, BAO did not. Instead, BAO submitted 45 of 70 labor categories under SIN 518210C, which did not satisfy the requirements of the solicitation. Accordingly, we find reasonable the agency's determination that the labor categories BAO submitted under SIN 518210C did not meet the solicitation requirements. On this record, we find CMS reasonably concluded BAO's quotation was ineligible for award and we deny this protest ground.<sup>12</sup>

To the extent BAO argues that the solicitation did not clearly establish that vendors had to quote labor categories from SIN 54151S, we are unpersuaded by the protester's arguments. According to BAO, the agency's answer to question 88 "literally denotes the agency's refusal to advise on this issue" and is insufficient to demonstrate that the RFQ required only labor categories under SIN 54151S. Supp. Comments & 2<sup>nd</sup> Supp. Protest at 9 n.4. Assuming for argument's sake that question 88 is as cryptic as BAO contends, the language of the RFQ, in conjunction with the agency's answer during phase 1, clearly established a requirement for firms to provide labor rates and categories from SIN 54151S and no other. In this regard, where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. *RIVA Sols., Inc.*, B-417858.2, B-417858.10, Oct. 29, 2020, 2020 CPD ¶ 358 at 8-9.

In our view, the solicitation language, read as a whole, including the questions and answers, supports the agency's interpretation and fails to support BAO's interpretation. To conclude that vendors were required to have an active FSS contract that included SIN 54151S, but not required to quote labor categories under SIN 54151S is illogical. BAO's interpretation would ignore the agency's instruction to submit quotations "in accordance with the MAS schedule 54151S" and CMS's specific advice that fully burdened labor rates should align with vendors' MAS schedule SIN 54151S rates. We therefore find BAO's interpretation of the RFQ to be unreasonable and conclude as

---

rates and labor categories available under SIN 581210C. COS at 10; Supp. COS at 5. See also BAO MAS SIN 54151S Pricelist, [https://www.gsaadvantage.gov/ref\\_text/47QTCA20D000X/47QTCA20D000X\\_online.htm](https://www.gsaadvantage.gov/ref_text/47QTCA20D000X/47QTCA20D000X_online.htm) (last visited Mar. 28, 2024).

<sup>12</sup> Also, as previously noted, BAO's quotation submitted on August 15, 2022, references its GSA schedule 70 and legacy SINs 132 40 and 132 51. These legacy SINs were removed from BAO's MAS contract in February 2020 by modification PS-A812; thus, BAO's quotation included outdated and inaccurate information. It is a vendor's responsibility to submit a well-written quotation, with adequately detailed information, which clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. *Axxeum, Inc.*, B-420013, B-420013.2, Oct. 29, 2021, 2021 CPD ¶ 354 at 5. The fact that BAO failed to do so provides another basis for denying its challenge to the agency's finding of unacceptability.

stated above, that the solicitation required vendors to quote labor rates and categories from SIN 54151S.

#### Interested Party Status

CMS argues that because it was reasonable to find BAO ineligible for award and because BAO's MAS contract does not have the required SIN 54151S, BAO is not an interested party to protest the agency's award decision and GAO should dismiss BAO's protest. We agree.

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3557, and our Bid Protest Regulations, 4 C.F.R. §§ 21.0(a)(1), 21.1(a), only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of, or failure to award, a contract. Here, the procurement was competed under MAS contract SIN 54151S and required submissions in accordance with SIN 54151S for these services. Based on our conclusion that BAO's quotation was properly found unacceptable because it included labor categories from an inapplicable SIN and it is not apparent that BAO has the required SIN 54151S available under its MAS contract, we need not consider BAO's other challenges to CMS's evaluation. In this regard, BAO is not an interested party to raise these challenges because it would not be in line for contract award were its protest to be sustained. See 4 C.F.R. § 21.0(a)(1); *Cyberdata Techs., Inc., B-411070 et al.*, May 1, 2015, 2015 CPD ¶ 150 at 9.

This protest is denied in part and dismissed in part.

Edda Emmanuelli Perez  
General Counsel