

DISCUSSIONS WITH ONLY “BEST SUITED” VENDOR DEEMED OK

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The Government Accountability Office (“GAO”) recently held that in a Federal Acquisition Regulation (“FAR”) Part 8.4 procurement, an agency can reasonably engage in exchanges with only the “best suited” vendor, when the solicitation (an RFQ) indicated that such exchanges might occur. *A Square Group, LLC*, B-421792.5, April 11, 2025.

A Square Group (“ASG”) protested the issuance of a task order issued by the Department of Health and Human Services, Centers for Medicare and Medicaid Services (“CMS”) for health insurance marketplace and financial management operational analytics. The RFQ stated that a selection would be made on a best value basis, and that “Once the Government determines the offeror that is the *best suited* (*i.e.*, the apparent successful offeror), the Government reserves the right to communicate with only that offeror to address any remaining issues, if necessary, and finalize a Task order with that offeror. These issues may include technical and price.”

After several protests and corrective actions, CMS evaluated the revised quotations and selected Cogent as the best-suited vendor. CMS noted that Cogent’s proposed price was \$6.6 million lower than ASG’s proposed price, and that although Cogent’s quote had a “slightly lower overall technical rating,” it provided a better value because of its lower price.

ASG protested the agency’s evaluation of Cogent’s quote and best-suited vendor determination, and CMS’s conduct of exchanges with vendors. GAO reviewed the record and concluded that the agency knew of the advantages in ASG’s quote, and reasonably determined that those advantage were not worth paying the \$6.6 million higher price.

ASG also asserted that there were unfair and unequal discussions with ASG. GAO noted that it had previously resolved protests involving “similarly worded solicitation provisions that allowed an agency to address any issues, including technical or price, only with the “best suited” contractor. CMS had reasonably engaged in exchanges with Cogent, consistent with the terms of the RFQ, since it had determined it to be the “best suited vendor” and the agency could conduct multiple rounds of exchanges with Cogent.

Takeaway: If an FAR Part 8.4 RFQ stated that the agency could communicate with that offeror only, and address any remaining issues, then GAO will not sustain a protest against that procedure.

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