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Decision

Matter of: Noridian Administrative Services, LLC

File: B-401068.13

Date: January 16, 2013

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Anthony E. Marrone, Esq. and Jamie B. Insley, Esq., Department of Health and Human Services, for the agency.

Glenn G. Wolcott, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO participated in the preparation of the decision.

DIGEST

Protest challenging the agency's cost realism evaluation of protester's proposal is denied where agency reasonably concluded, based on the information contained in the protester's proposal and its response to discussion questions, that proposed cost/price reductions below protester's historical costs, which were to purportedly flow from protester's innovations, were already reflected in protester's historical costs since the proposed innovations had been previously implemented.

DECISION

Noridian Administrative Services, LLC, of Fargo, North Dakota, protests the award of a contract to National Government Services, Inc. (NGS), of Indianapolis, Indiana, under request for proposals (RFP) No. RFP-CMS-2007-0013, issued by the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), to obtain Medicare administrative contractor services. The

protester argues that the agency's cost/price realism evaluation of NAS's proposal was improper.

We deny the protest.

BACKGROUND

In August 2007, CMS first published the solicitation at issue, seeking proposals to perform a cost-plus-award-fee contract as the Medicare Administrative Contractor (MAC)¹ in a geographic area identified as "jurisdiction 6" for a 1-year base period and four 1-year option periods.² Following the selection of an awardee in 2009, protests were filed challenging that selection decision. Thereafter, the agency cancelled the award, amended the solicitation,³ and sought new proposals.

As amended, the solicitation provided for a best value award decision reflecting consideration of two factors: offeror capability⁴ and cost/price.⁵ RFP amend. 7, at 127-33. Of relevance to this protest, the solicitation provided that cost/price proposals would be evaluated for realism, elaborating that "[t]he purpose of this cost

¹ Pursuant to the Medicare Prescription Drug Improvement and Modernization Act of 2003 (MMA), MACs perform the claims services that were previously performed by "fiscal intermediaries" and "carriers." Prior to enactment of the MMA, fiscal intermediaries were generally responsible for processing Medicare claims from institutional providers (for example, hospitals and nursing facilities) under Part A of the Medicare program, and carriers were responsible for processing Medicare claims from professional providers (for example, physicians and diagnostic laboratories) under Part B of the Medicare program.

² The statement of work (SOW) for jurisdiction 6 includes Part A and Part B Medicare workload for the states of Illinois, Minnesota, and Wisconsin, as well as home, health and hospice (HH&H) workload for Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Michigan, Minnesota, Nevada, New Jersey, New York, Northern Mariana Islands, Oregon, Puerto Rico, U.S. Virgin Islands, Wisconsin, and Washington. Agency Report (AR), Tab A.3, RFP amend. 7, at 2; Contracting Officer's Statement at 1.

³ In June 2010, the agency issued RFP amendment Nos. 7 and 8, substantially revising sections L and M of the solicitation.

⁴ Offeror capability was further divided into two equally weighted subfactors: past performance and technical understanding. RFP amend. 7, at 130-31.

⁵ The evaluated cost/price for the base year requirements was added to the proposed cost/price of the four, one-year options, to calculate a total evaluated cost/price. RFP amend. 7, at 128.

realism [evaluation] will be to determine what the Government should realistically pay for the proposed effort.” Id. at 128.

Initial proposals responding to the June 2010 solicitation were submitted in July 2010; thereafter, discussions were conducted and final revised proposals were submitted. On September 30, 2011, the agency selected NGS for award; that award was, again, challenged by a protest in October 2011. In January 2012, the agency again advised this Office that it was taking corrective action, elaborating that it would either re-evaluate proposals on the basis of the existing record or reopen the procurement and request proposal revisions. Email from CMS to GAO, Jan. 25, 2012.

On February 17, 2012, the agency once again requested submission of revised proposals. Proposals were submitted on March 13, 2012 by three offerors, including NAS and NGS.⁶ Thereafter, the agency conducted discussions with the offerors. In evaluating NAS’s proposed cost/price, the agency found that proposed costs for [deleted] were substantially lower than the agency’s estimate. Accordingly, on June 7, the agency asked NAS the following discussion question:

NAS has not provided any information to support the proposed [deleted] costs for its J6 proposal. At this time, please clearly delineate NAS’ proposal assumptions for all [deleted] costs.

AR, Tab 6.B, Agency Discussion Questions to NAS, at 20.

On June 28, NAS responded by submitting various charts breaking down its historical costs⁷ and using those historical costs as a baseline from which proposed savings were projected. AR, Tab 7.d, NAS Response at 82-83. NAS further explained that the cost savings were due to innovations it was proposing-- specifically, [deleted]. AR, Tab 7.d, NAS Response at 82-83. The proposed [deleted] savings purportedly flowing from its proposed innovations was \$[deleted]. Source Selection Decision at 54.

⁶ The proposal of the third offeror is not relevant to resolution of NAS’s protest and is not further discussed in this decision.

⁷ Specifically, NAS’s response referenced the [deleted] costs it had incurred in performing as a MAC contractor in Jurisdiction 3 during the period from June 2011 through September 2011. AR, Tab 7.d, NAS Response to Discussion Questions, at 82-83.

In evaluating NAS's proposal and response to the discussion questions, the agency noted that NAS's initial proposal stated that the proposed [deleted] innovations had already been implemented in the [deleted], before the historical data period that NAS used as the basis for calculating projected cost/price savings. Contracting Officer's Statement, Nov. 7, 2012, at 5; AR, Tab 9.2, [deleted].

Based on NAS's initial proposal, along with NAS's response to the agency's discussions questions, the agency concluded that, because the proposed innovations had been implemented prior to the period that NAS used as a basis for its proposed cost/price savings, NAS would not realistically experience additional cost/price savings, over and above its historical costs. Accordingly, the agency made an upward adjustment to NAS's evaluated cost/price in the amount of \$[deleted].

Final revised proposals were submitted on July 25, 2012; these proposals were evaluated with the following results.

	NGS	NAS
Past Performance	Green	Green
Technical Understanding	Green	Green
Overall Offeror Capability	Green	Green
Evaluated Cost/Price	\$330.1 million	\$339.9 million

Source Selection Decision at 2.

Thereafter, the agency selected NGS for award based, in part, on NGS's lower evaluated cost/price. This protest followed.

DISCUSSION

NAS protests that the agency's cost realism adjustment with regard to NGS's proposed costs savings for [deleted] was improper. We disagree.

When an agency evaluates proposals for the award of a cost-reimbursement contract, an offeror's proposed estimated cost of contract performance is not considered controlling since, regardless of the costs proposed by the offeror, the government is bound to pay the contractor its actual and allowable costs. Metro Machine Corp., B-402567, B-402567.2, June 3, 2010, 2010 CPD ¶ 132 at 6; Honeywell Tech. Solutions, Inc., B-400771, B-400771.2, Jan. 27, 2009, 2009 CPD ¶ 49 at 17; see Federal Acquisition Regulation (FAR) § 16.301. As a result, a cost realism analysis must be performed by the agency to determine the extent to which an offeror's proposed costs represent what the contract costs are likely to be under the offeror's technical approach, assuming reasonable economy and efficiency.

FAR §§ 15.305(a)(1), 15.404-1(d)(1), (2); The Futures Group Int'l, B-281274.2, Mar. 3, 1999, 2000 CPD ¶ 147 at 3. Based on the results of the cost realism analysis, an offeror's proposed costs should be adjusted when appropriate. FAR § 15.404-1(d)(2)(ii). An agency's cost realism analysis need not achieve scientific certainty; rather, the methodology employed must be reasonably adequate and provide a measure of confidence that the agency's conclusions about the most probable costs under an offeror's proposal are reasonable and realistic in view of the cost information reasonably available to the agency at the time of its evaluation--including the information provided by the offeror in its proposal. See Metro Mach. Corp., *supra*. We review an agency's judgment in this area only to see that the agency's cost realism evaluation was reasonably based and adequately documented. Honeywell Tech. Solutions, Inc., *supra*, at 18; Jacobs COGEMA, LLC, B-290125.2, B-290125.3, Dec. 18, 2002, 2003 CPD ¶ 16 at 26.

Here, NAS acknowledges that its initial proposal specifically stated that the proposed [deleted] innovations had been "implemented" in the [deleted]. NAS Comments, Nov. 19, 2011, at 3. Nonetheless, NAS complains that its use of the word "implemented" "merely indicate[d] that [NAS] had begun [deleted]."⁸ NAS Comments, Nov. 19, 2011, at 3. NAS argues that "[a]s with any innovation, it takes time for savings to be realized as the revised processes are phased in and integrated into existing operations" and, therefore, some additional savings were realistic. *Id.*

An offeror has the burden of submitting an adequately written proposal and runs the risk that its proposal will be evaluated unfavorably where it fails to do so. United Def. LP, B-286925.3 *et al.*, Apr. 9, 2001, 2001 CPD ¶ 75 at 19; Carlson Wagonlit Travel, B-287016, Mar. 6, 2001, 2001 CPD ¶ 49 at 3, 6. Further, in evaluating proposals, it is generally reasonable for an agency to rely on information the offeror provides in its proposal. Able Bus. Techs., Inc., B-299383, Apr. 19, 2007, 2007 CPD ¶ 75 at 5; NCR Gov't Sys. LLC, B-297959, B-297959.2, May 12, 2006, 2006 CPD ¶ 82 at 8-9.

As discussed above, there is no dispute that NAS's proposal stated that its proposed innovations had been "implemented" in [deleted]--that is, prior to the period from which NAS drew the historical data used to calculate its projected savings. Further, the record is clear that, during discussions, the agency requested that NAS "clearly delineate NAS' proposal assumptions for all [deleted] costs." AR, Tab 6.B, Agency Discussion Questions to NAS, at 20. Based on our review of the record, we find nothing in NAS's response to the agency's explicit request that should have put the agency on notice that additional cost/price savings could be

⁸ NAS further asserts that: "[the word] 'Implement' means nothing more than to 'put into effect' . . . [and] is not synonymous with [the word] 'complete'." NAS Comments, Nov. 19, 2012, at 3.

reasonably expected to flow from NAS's already-implemented innovations. On this record, we find nothing unreasonable in the agency's cost realism adjustment to NAS's proposal.⁹

The protest is denied.

Susan A. Poling
General Counsel

⁹ We also note that the source selection authority contemporaneously considered the potential cost/technical tradeoff that would have been required if NAS's proposed cost/price had not been adjusted in any way. In this regard, the source selection decision states: "[E]ven if the government did not consider any cost realism adjustments to NAS FPR proposed costs . . . [NAS'] lower cost would not mitigate the analysis above and NAS would not be considered the highest technically rated Offeror." Source Selection Decision at 56. While that analysis reflects consideration of proposed costs/prices and cost/price adjustments that vary from the specific [deleted] cost/price adjustment discussed above, in our view the agency reasonably considered various alternatives in reaching its source selection decision and, based on the entire record, we find no basis to sustain NAS's protest.