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# Decision

**Matter of:** Correct Care Solutions, LLC

**File:** B-410116; B-410116.2

**Date:** October 24, 2014

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Ellen C. Bonner, Esq., Callaway Bonner Law, LLC, for the protester.

Jason A. Carey, Esq., McKenna Long & Aldridge LLP, for NaphCare, Inc., an intervenor.

William D. Robinson, Esq., and Oleta Vassilopoulos, Esq., Department of Justice, for the agency.

Frank Maguire, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. In the evaluation of proposals to provide medical care for federal inmates, agency properly considered whether an offeror had a network agreement in place with its proposed medical facility provider, where this consideration was logically encompassed by the stated evaluation approach, including whether offeror proposed appropriate mix of resources to deliver quality medical care, and solicitation specifically required offeror to describe each hospital network proposed.
  2. Protest that agency failed to raise during discussions concerns identified in the initial evaluation is denied where source selection decision either did not rely on the concerns or instead credited the proposal with an advantage in that area.
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## DECISION

Correct Care Solutions, LLC (CCS), of Nashville, Tennessee, protests the Department of Justice, Federal Bureau of Prison's (BOP), award of a contract to NaphCare, Inc. (NaphCare), of Birmingham, Alabama, under request for proposals (RFP) No. RFPP02061300001, for medical services at the Federal Correctional Institution (FCI), Fort Dix, New Jersey. CCS challenges the evaluation of proposals and the conduct of discussions.

We deny the protest.

## BACKGROUND

The RFP provided for the award of a requirements contract, for a base year with four option years, to provide comprehensive medical services on a fixed-price basis to inmates at the Federal Correctional Institution (FCI), Fort Dix, New Jersey. Award was to be made to the offeror whose proposal was “determined to be in the best interest of the Government” considering the following evaluation factors: technical, past performance, small disadvantaged business (SDB) participation, and price. RFP at 000043-44. Pertinent here, subfactors under the technical evaluation factor were (1) level of diversity of services proposed, (2) driving distance and conditions to and from the community-based providers, (3) accreditation status of the proposed contract facilities, and (4) enhancements to the basic contract requirements proposed by the offeror.<sup>1</sup> RFP at 000045. Regarding price, offerors were to propose discounts from or premiums above the benchmark Medicare rates for each category of services (inpatient facility services, outpatient facility services, inpatient physician services, outpatient physician services, and outpatient institution services--other physicians). Technical and past performance were equal, while SDB participation was less significant than technical and past performance, considered individually. The non-price factors, when combined, were approximately equal to price. RFP at 000044, 000048.

Nine proposals, including CCS’s and NaphCare’s, were received by the closing date of February 13, 2013. COS at 2.<sup>2</sup> CCS’s initial proposal received a marginal rating. AR, Tab 8, Initial Evaluation, at 000010. Several weaknesses were identified:

Virtua Memorial hospital and associated physicians are not under contract. Proposal states that tele-medicine may be used rather than an on-site provider. Driving distance for East Orange (over 70 miles) and associated physicians. Driving distance for some physicians associated with Centra State.

Id. After evaluation of initial proposals, the CO established a competitive range including CCS, NaphCare [deleted], and another offeror. COS at 7.

In a July 16 discussions letter to CCS, the CO informed CCS of several “issues” that needed to be resolved in its technical proposal, including, as relevant here, that:

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<sup>1</sup> In accordance with the source selection plan, each technical proposal was rated using the following scale: exceptional, very good, satisfactory, marginal, or unsatisfactory. CO (Contracting Officer) Statement (COS) at 3-4; AR, Tab 3, Source Selection Plan, at 000004.

<sup>2</sup> [deleted].

CCS offers Virtua Memorial Hospital but indicates they are not under agreement. Please address this and Virtua's ER trauma level (Attachment VII).

Local ER medical service is a weakness. Also, the facilities offered are short term acute care, trauma care is a concern. Please address this weakness/concern.

AR, Tab 9, Discussions Letter, July 16, 2013, at 000002.

CCS responded on August 6, advising that it was "continuing negotiations with Virtua Memorial Hospital" on a network agreement and was "confident" that it would add Virtua Memorial to its provider network. AR, Tab 10, CCS Revised Proposal, Aug. 6, 2013, at 000005. With regard to local emergency medical services, CCS advised that for "non-911 emergency services," Centra State Medical Center would be utilized, and "for life threatening 911 emergency services," Virtua Memorial Hospital would be utilized. Id. at 000010. In this regard, CCS advised that:

Virtua Memorial Hospital is considered geographically the closest and would be the destination by EMS personnel for all emergency patient cases from FCI Fort Dix. Currently, we intend to utilize their services for emergency case situations and case-by-case patient scenarios. CCS confirms that we will be responsible for the management and payment of all emergency services at Virtua Memorial Hospital.

Id.

In a second, November 5 discussions letter to CCS, the agency again expressed concern at CCS's lack of an agreement with Virtua Memorial, advising CCS that:

CCS offers Virtua Memorial Hospital but indicates that there still is no firm commitment/agreement in place. Please provide status.

Local ER medical service is a weakness should no agreement be put in place with Virtua Memorial. Please address EMS protocol with or without Virtua Memorial in proposed network.

AR Tab 12, Discussions Letter, Nov. 5, 2013, at 000002.

In its final revised proposal, CCS reiterated that it was attempting to "have dialog" with Virtua Memorial, but indicated that the hospital would not negotiate a contract with CCS until CCS received an award for FCI. CCS Final Revised Proposal at 000004. CCS, however, was "confident" that once it received an award, it would add Virtua Memorial to its provider network for this contract. Id. With regard to local emergency room medical service, CCS indicated that it was in "continuing

“negotiations” with Virtua Memorial, which it described as “the closest emergency room.” Id. at 000006. Further, CCS advised the agency with regard to Virtua Memorial that:

Currently, we intend to utilize their services for emergency case situations and case-by-case patient scenarios. CCS confirms that we will be responsible for the management and payment of all emergency services at Virtua Memorial Hospital. CCS confirms that our proposed physician pricing will successfully cover any and all required physicians in an inpatient and outpatient facility setting/office setting at Virtua Memorial Hospital.

Id.

Final revised proposals were evaluated as follows:

Offeror	Technical	Past Performance	SDB Participation	Price
CCS	Marginal	Exceptional	Exceptional [deleted]	100 Points <sup>3</sup>
NaphCare [deleted]	Exceptional	Very Good	Very Good [deleted]	88.370 Points
[deleted]	Satisfactory	Very Good	Very Good [deleted]	91.196 Points

AR, Tab 16, Source Selection Decision (SSD), at 2.

In his source selection decision, the CO concurred in the evaluators’ overall consensus rating of marginal for CCS’s technical proposal, and focused on the lack of an agreement between CCS and Virtua Memorial as a key concern:

Under this proposal, CCS proposed a network which lacks a hospital which would be the primary Emergency Room provider as recognized by the local emergency service responder. CCS offers Virtua Memorial for emergency care, however, there is no agreement in place and will seek an agreement with Virtua Memorial after an award.

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<sup>3</sup> The agency advises that pricing for the procurement was determined using offerors’ proposed percentage variances from benchmark Medicare rates and therefore there was no traditional “total price” or lump sum amount. The lowest price received 100 points; higher prices received correspondingly lower point scores. Agency Submission, October 21, 2014; see generally Supp. AR, exh. B, at 8-9 (Correct Care proposed prices); AR, Tab 18, Award Letter, at 3 (NaphCare proposed prices.) The agency advises that the independent government estimate of the contract value was [deleted].

Therefore, all medical care at Virtua Memorial would be out of network and subject the FCI to higher costs for these services. In addition, protocol for the emergency service provider is to transport the patient to the closest facility. Even though CCS offers medical services at Community Medical Center, the emergency service responder would transport the patient to Virtua Memorial or another facility out of CCS's network.

AR, Tab 16, SSD, at 000009, 000013.

The CO then discussed the relative merits of the NaphCare [deleted], CCS, and [deleted] proposals, finding that the NaphCare [deleted] proposal "obviously offers a superior technical solution, benefitted primarily by the diverse offering of multiple outpatient/inpatient facilities which are anticipated to meet all the FCI's needs." Id. at 000014. The CO contrasted the multiple facilities offered by the NaphCare [deleted] proposal with the more limited selection available under both the CCS and [deleted] proposals, noting that:

these proposals [CCS and [deleted]] failed to secure/offer a facility recognized by the emergency service responder as a primary ER, where the FCI would incur additional costs due to these services being out of network. The FCI would negotiate on a case-by-case basis for ER services and/or require additional consult fees/transportation costs associated in getting the inmate under a facility within their proposed network. Given that the proposals of CCS and [deleted] offers [sic] a significantly lower diversity of services which would not sufficiently meet the FCI's healthcare needs, it is my determination that the wider diversity offered by the higher-priced proposal does merit the price premium attached.

Id. at 000014. Having determined that NaphCare's proposal [deleted] represented the best value, award was made to NaphCare on July 7, 2014. Following a debriefing, CCS filed this protest.

## DISCUSSION

CCS challenges several aspects of the agency's evaluation of its proposal. The evaluation of an offeror's proposal is a matter within the agency's discretion, and this Office will not reevaluate proposals; rather, we will review an agency's evaluation to determine whether the agency's judgments were reasonable and consistent with the stated evaluation criteria. See, e.g., GC Servs. Ltd. P'ship, B-298102, B-298102.3, June 14, 2006 CPD ¶ 96 at 6. A protester's disagreement with an agency's judgments does not render the evaluation unreasonable. Id. Here, we have considered all of CCS's arguments and find that none furnishes a basis for

questioning the selection of NaphCare for award. We address CCS's most significant arguments below.

#### Unstated Evaluation Factor

CCS asserts that the agency applied an unstated evaluation factor, that is, the "purported need to have a contract in place prior to award with a proposed provider." Protest at 7. CCS argues that nothing in the RFP required that offerors actually enter into contracts with proposed providers of emergency medical services, or provide proof of such contracts. Id.

While agencies are not permitted to use unstated evaluation factors, an agency properly may take into account specific matters that are logically encompassed by, or related to, the stated evaluation criteria, even when they are not expressly identified as evaluation criteria. MINACT, Inc., B-400951, Mar. 27, 2009, 2009 CPD ¶ 76 at 3. Here, the RFP generally required offerors to "submit an explanation of the proposed technical approach in conjunction with the tasks to be performed in achieving the required output," and specifically required offerors to complete a form describing "each hospital network proposed." RFP at 000042, 000083. In addition, the solicitation provided for evaluation of the "[d]emonstrated approach to providing an appropriate mix of resources to deliver quality medical care to the inmates of the FCI, while mitigating the Government's costs and security risk"; the "[l]evel of diversity of services proposed"; and the "[d]riving distance and conditions to and from the community-based providers." RFP at 000045.

In these circumstances, we believe that an agency's consideration of whether or not an offeror had network agreements in place with its proposed medical facilities providers--insofar as that might affect the availability of services, cost to the government, or the security of inmates being transferred between facilities--was logically encompassed within the solicitation's stated evaluation approach. Further, while the solicitation may not have required that only hospitals currently in an offeror's network be proposed, whether or not there was a network agreement in place, or whether the offeror merely expected to be able to negotiate one, clearly was relevant to, and encompassed by, the evaluation of the offeror's proposed technical approach. Thus, we find this ground of protest to be without merit.

#### Risks Associated with Virtua Memorial Hospital

CCS challenges the agency's concern that it could be liable for additional costs if CCS was selected for award, but unable to enter into an agreement with Virtua Memorial. The protester asserts that under applicable statutes and regulations, Virtua Memorial has to accept patients with or without an existing network contract. Further, CCS points out that the RFP contemplates a fixed-price contract, and argues that, accordingly, CCS, not the government, bore the risk of additional costs that might arise if CCS is unable to enter into an agreement with Virtua Memorial.

As noted by the agency, however, CCS's willingness to bear the costs of treatment at Virtua Memorial, the closest hospital to FCI, appeared to be subject to significant limitations. The agency points to statements in CCS's final revised proposal, such as “[c]urrently, we intend to utilize their [Virtua Memorial's] services for emergency case situations and case-by-case patient scenarios,” and “CCS confirms that we will be responsible for the management and payment of all emergency services at Virtua Memorial Hospital.” CCS Final Revised Proposal at 000006. We find reasonable the agency's concern that these statements failed to demonstrate CCS's willingness to cover non-emergency hospital costs in all circumstances. Additionally, the agency points out that, if it attempted to avoid out of network costs by transferring the inmate to an in-network hospital, this transfer itself would result in additional costs, as well as increased security risks. AR at 11-13; Supp. AR, Oct. 16, 2014, at 2. Accordingly, we find that the agency reasonably concluded that CCS's failure to have an agreement in place with Virtua Memorial created the potential for cost and security risks and therefore was a weakness in CCS's proposal.

#### Discussions

CCS also challenges the adequacy of the agency's discussions, pointing to asserted discrepancies between evaluator write-ups and discussion letters. Supp. Protest at 2-3. For example, CCS points to concerns expressed in the initial evaluation regarding telemedicine and driving distances for some physicians associated with Centra State Medical Center, AR, Tab 8, Initial Evaluation, at 10, which were not carried forward to the initial discussions letter, AR, Tab 9, First Discussions Letter, at 2; Supp. Protest at 3.

The Federal Acquisition Regulation (FAR) requires agencies conducting discussions with offerors to address, “[a]t a minimum . . . deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond.” FAR §15.306(d)(3). When an agency engages in discussions with an offeror, the discussions must be “meaningful,” that is, sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision in a manner to materially enhance the offeror's potential for receiving the award. FAR §15.306(d); Lewis-Price & Associates, Inc., B-409851, B-409851.2, Aug. 26, 2014, 2014 CPD ¶ 263 at 9; Bank of Am., B-287608, B-287608.2, July 26, 2001, 2001 CPD ¶ 137 at 10-11. Nonetheless, an agency need not “spoon feed” an offeror as to each and every item that could be revised to improve an offeror's proposal. L-3 Sys. Co., B-404671.2, B-404671.4, Apr. 8, 2011, 2011 CPD ¶ 93 at 15; see Wolf Creek Federal Servs., Inc., B409187, et al., Feb. 6, 2014, 2014 CPD ¶ 61 at 10 (protester's word-by-word comparison of the evaluation record with the language in the discussions questions to argue that discussions were not meaningful does not reflect the standard for discussions established in the FAR and GAO decisions).

Applying this standard, we find no basis to conclude that the agency's discussions with regard to the issues cited by CCS were inadequate. For example, while CCS points to initial evaluator concerns with its approach to telemedicine, and claims these were not raised during discussions, the source selection decision credited the proposal with "Telehealth services using teleconferencing equipment to deliver diagnostic care and treatment," albeit at an additional cost. AR, Tab 16, SSD, at 000011. Similarly, CCS points to concerns in the consensus final evaluation with regard to both the driving distance to Centra State and the longer drive to East Orange General Hospital, AR, Tab 14, Final Consensus Evaluation-CCS, at 000009, and asserts that the Centra State concern was not raised during discussions. This concern expressed by the evaluators in the consensus final evaluation, however, was not carried forward to the source selection decision, which mentions the Centra State driving distance only in passing and without expressing concern. AR, Tab 16, SSD, at 000011. Further, although CCS is correct that the discussion letters did not specifically raise the issue of driving distance to Centra State, both discussion letters indicated clearly that driving distance to East Orange General was an issue, Discussions Letter, July 16, 2013, at 000002; Discussions Letter, Nov. 5, 2013, at 000002, effectively putting CCS on notice that the driving distances of its proposed providers was an area of concern for the agency. In our view, this was sufficient to lead CCS "into the areas of its proposal requiring amplification or revision." See Lewis-Price & Associates, Inc., supra, at 9.

Finally, CCS complains that while the agency raised a concern in its initial discussions letter as to the lack of proposed enhancements which would further the agency's mission, it did not again raise this issue in its subsequent discussions letters, AR, Tab 9, First Discussions Letter, at 000002; AR, Tab 12, Second Discussions Letter, at 000002, with the result that the final consensus evaluation downgraded its proposal for a lack of enhancements. AR, Tab 14, Final Consensus Evaluation-CCS, at 000011. Where, however, an agency has advised an offeror of its concern, there is no requirement that it raise the issue again in subsequent rounds of discussions, even where the issue continues to be a concern to the agency. Weibel Equipment, Inc., B-406888, B-406888.2, Sept. 21, 2012, 2012 CPD ¶ 279 at 12; USFilter Operating Servs., Inc., B-293215, Feb. 10, 2004, 2004 CPD ¶ 64 at 3. In any case, we note that the source selection decision in fact credited CCS's proposal with enhancements in the areas of electronic records management and telehealth services. AR, Tab 16, SSD, at 000011. In sum, CCS's arguments regarding discussions furnish no basis to question the award.

The protest is denied.

Susan A. Poling  
General Counsel