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Decision

Matter of: MAXIMUS Federal Services, Inc.

File: B-410359

Date: December 17, 2014

Richard P. Rector, Esq., Seamus Curley, Esq., and Dionis M. Gauvin, Esq., DLA Piper LLP-US, for the protester.

Thomas K. David, Esq., and Kenneth D. Brody, Esq., David, Brody & Dondershine, LLP, and Walter J. Batla, Esq., Dodd & Batla, P.C., for C2C Solutions, Inc., the intervenor.

Lucy G. Mac Gabhann, Esq., and Douglas Kornreich, Esq., Department of Health and Human Services, for the agency.

Pedro E. Briones, Esq., and Nora K. Adkins, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that an awardee has an impaired objectivity organizational conflict of interest is denied where the agency's contracting officer investigated the awardee's relationship with its parent organization, and reasonably concluded that no conflict exists.
 2. Protest of an agency's technical and past performance evaluations is denied where the evaluations were reasonable and consistent with the solicitation's evaluation criteria.
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DECISION

MAXIMUS Federal Services, Inc. (Maximus), of Reston, Virginia, protests the issuance of a task order to C2C Solutions, Inc., of Jacksonville, Florida, under letter request for proposals (RFP) No. 140993, issued by the Department of Health and Human Services (HHS), Centers for Medicare and Medicaid Services (CMS). The solicitation sought proposals from "qualified independent contractors" to conduct reconsiderations of Medicare claim determinations. Maximus protests its technical and past performance evaluations, and contends that C2C has an organizational conflict of interest (OCI) that should have disqualified the firm from the competition.

We deny the protest.

BACKGROUND

CMS relies on several different types of contractors in providing benefits under Medicare Part A and Part B, including: (1) Medicare Administrative Contractors (MAC), which process and pay claims, and make initial determinations on whether an individual is entitled to benefits and the amount of benefits available to that individual; (2) Beneficiary and Family Centered Care-Quality Improvement Organizations (BFCC-QIO), which make initial determinations of whether services are, or were, reasonable and medically necessary, meet quality of care standards, and would be more economical on an inpatient or outpatient basis; and (3) Quality Innovation Network-Quality Improvement Organizations (QIN-QIO), which conduct broad, formal activities that are designed to serve as a catalyst for quality improvement of healthcare services provided to beneficiaries, and that involve providers and practitioners.¹

These three types of Medicare contractors (MAC, BFCC-QIO, and QIN-QIO) are described in greater detail in our recent decision Q2 Administrators, LLC, B-410028, Oct. 14, 2014, 2014 CPD ¶ 305, in which we denied (as we do here) a virtually identical protest alleging that C2C had an impermissible OCI that should have disqualified the firm from a procurement for the same services solicited here, albeit in a different jurisdiction, where C2C's parent company provides QIN-QIO services. Recovery Audit Contractors (RAC), are a fourth type of Medicare contractor that was not at issue in our Q2 Administrators decision, but are also relevant to the protester's OCI allegations here. RACs identify overpayments and underpayments and recover overpayments stemming from instances where Medicare improperly paid a claim under Part A or Part B. See 42 U.S.C. §§ 1395ddd(f), (h); 42 C.F.R. part 405, subpart C; part 421, subpart D (2014); see, e.g., HealthData Insights, Inc.; CGI Federal Inc., B-409409 et al., Apr. 23, 2014, 2014 CPD ¶ 134 (denying protest of solicitation for RAC services).

¹ Medicare is the federal health insurance program for persons aged 65 and over, and for certain individuals with disabilities or end-stage renal disease. Generally, Medicare Part A covers inpatient hospital care; Medicare Part B covers physician's services, outpatient care, and medical supplies and equipment. See www.medicare.gov/what-medicare-covers/index.html. Since Medicare's inception in 1965, HHS has relied on private entities, including "fiscal intermediaries," multiple types of contractors, and private insurance plans, to administer benefits. See, e.g., Medicare: Contractors and Private Plans Play a Major Role in Administering Benefits, GAO-14-417T (Mar. 2014); CMS, *Contractor Entities at a Glance: Who May Contact You about Specific [CMS] Activities*, MLN Matters No. SE1123, Apr. 17, 2014, www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNMattersArticles/downloads/SE1123.pdf.

In this procurement, CMS seeks the services of a Qualified Independent Contractor (QIC, a fifth type of Medicare contractor) to handle secondary appeals of benefit determinations. A beneficiary or healthcare provider dissatisfied with a MAC's (or certain other Medicare contractor's) redetermination decision (redeterminations are the first level of claim appeal), may request a "reconsideration" of that decision. 42 U.S.C. § 1395ff(c); 42 C.F.R. §§ 405.960-978; see Q2 Administrators, LLC, supra, at 2-3 (describing levels of claim appeals under Part A and Part B). Reconsiderations are the second level of claim appeals, and the type of adjudication services being procured here.

Solicitation

CMS issued the solicitation to four contractors, including Maximus and C2C, that currently hold IDIQ contracts for QIC services, to conduct reconsiderations of Part A and Part B redeterminations by MACs in the Part A West QIC jurisdiction,² including reconsiderations of recovery claims against beneficiaries or providers.³ Agency Report (AR), Tab 9.A, Negotiation Mem., at 3; RFP amend. 2, § J-1, Statement of Work (SOW), at 1. The RFP provided for issuance of a fixed-price task order (for a 2-month transition period, a base year, and 1 option year) on a best-value basis, considering the following evaluation factors: technical approach; key personnel qualifications/availability/overall staffing; quality assurance; security (information technology (IT) and physical); past performance; subcontracting approach; and price. RFP amend. 2 at 1, 3, 17-20.

² As relevant here, the Part A West QIC jurisdiction covers Missouri, among other states and U.S. territories. See generally www.cms.gov/Medicare/Appeals-and-Grievances/OrgMedFFSAppeals/ReconsiderationbyaQualifiedIndependentContractor.html (current QIC contractors and jurisdictions that they serve).

³ While Medicare typically has primary payment responsibility for a beneficiary's medical expenses that are covered and otherwise reimbursable, in some situations another insurer (or insurers) has the primary payment responsibility. In such "Medicare Secondary Payer (MSP) situations," Medicare is only responsible for paying for a beneficiary's Medicare-related healthcare costs that are not the responsibility of the primary insurer or insurers. Because it is not always apparent that a beneficiary has other primary insurance, Medicare may inadvertently pay for services that are subsequently determined to be the financial responsibility of another payer. These mistaken payments represent money owed to Medicare and are known as MSP debt. See, e.g., [Diversified Collection Servs., Inc., B-406958.3, B-406958.4, Jan. 8, 2013, 2013 CPD ¶ 23 at 2-3; Recovery Auditing In Medicare for Fiscal Year 2013, CMS Rep. to Congress, \[www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-FFS-Compliance-Programs/Recovery-Audit-Program/Downloads/FY-2013-Report-To-Congress.pdf\]\(http://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-FFS-Compliance-Programs/Recovery-Audit-Program/Downloads/FY-2013-Report-To-Congress.pdf\)](#).

The RFP instructed offerors to submit separate technical and business (i.e., price) proposals. Id. at 12-15. In their technical proposals, offerors were to describe their approach to performing the SOW requirements under each non-price evaluation factor. See id. at 20. Under the key personnel qualifications/availability/overall staffing factor, offerors were to submit an organizational chart of personnel roles and responsibilities, as well as propose and provide resumes for two key personnel positions (a program director and a medical director). See id. at 13; SOW at 18. Under the security factor, offerors were to describe their plan for ensuring IT and physical security, and address concerns such as protecting health information, receiving mail, etc. See RFP amend. 2 at 19-20. Under the past performance factor, offerors were to provide government or non-government performance evaluations for the same or similar SOW effort performed during the past 3 years. See id. at 13.

With regard to key personnel qualifications/availability/overall staffing, the RFP stated that the agency would evaluate the relevant skills, educational background, professional experience, and special qualifications of an offeror's proposed personnel. See id. at 19. With regard to security, the RFP stated that the agency would evaluate whether the offeror demonstrated an understanding of CMS' security requirements, and the offeror's ability to work with other CMS contractors and the Office of Medicare Hearings and Appeals, while maintaining secure communications. See id. With regard to past performance, the RFP stated that the agency would evaluate an offeror's capacity, experience, and actual performance of similar work, including the quality of the product or services provided, timeliness, cost control, and business relations. Id. at 20.

Consistent with the statutory requirement that a QIC be independent from the contractor whose determinations the QIC is reviewing, 42 U.S.C. § 1395ff(c)(2), the RFP also included the following conflict of interest provision:

a qualified independent contractor (QIC) is defined as "an entity or organization that is independent of any organization under contract with the Secretary that makes initial determinations[, including, but not limited to, Medicare Administrative Contractors, Recovery Audit Contractors, and/or Quality Improvement Organizations]. QIC contractors are required to demonstrate, as part of their technical and business proposal, an approach to performing the work required in the statement of work that is free from any apparent or perceived conflict of interest. With regard to an impaired objectivity conflict, the QIC contractor must demonstrate sufficient independence between itself and any of its related entities that meet the definition above. Indicia of independence would include for example, distinct corporate identities, separate facilities, different management, and separate work forces. Additionally, if the entities are independent, the resources of one entity should not affect the contract performance of the other. As it is CMS'

responsibility to ensure that a QIC does not have impaired objectivity when reviewing reconsiderations, which is crucial to the integrity of the appeals process, proposals will be evaluated to ensure that any potential conflicts are sufficiently mitigated prior to award. If CMS determine[s] that a perceived or actual conflict of interest is not sufficiently mitigated, the contractor will be precluded from receiving an award in accordance with FAR [Federal Acquisition Regulation §] 9.504(e).

RFP § H.2, at 7; see generally Q2 Administrators, LLC, supra, at 2-3 (describing recent CMS regulatory reforms bifurcating Quality Improvement Organization tasks in order to address OCI concerns).

The solicitation required an offeror to submit with its business proposal either: (1) information that has changed from that disclosed in its most recent conflict of interest certificate--in accordance with section H.2 (as described above), or (2) if no information has changed, a statement that the contractor's conflict of interest certificate is correct and accurate, and a statement that the contractor has reviewed the specific work required by the task order and determined that it has no actual, apparent, or potential conflicts of interest.⁴ RFP amend. 2, § L.4.J, at 15-16. The RFP stated that the agency would evaluate an offeror based on the information provided and its most recent conflict of interest certificate in accordance with RFP sections H.2 and L.4. RFP amend. 2, § M.1.D, at 17.

Proposals

C2C and Maximus (the incumbent here) submitted proposals in response to the RFP, and, as instructed by the solicitation, provided their most recent annual conflict of interest certifications and updated disclosure statements. Contracting Officer's (CO) Statement at 3-4.

In its business proposal, C2C disclosed that the firm is a wholly-owned subsidiary of TMF Health Quality Institute (TMF), of Austin, Texas. AR, Tab 5.B.(1), C2C Initial Bus. Proposal, OCI Statement, at 1. C2C also disclosed that under a prime contract with CMS, TMF provides--to the agency, MACs, RACs, and other entities nationwide--claims data and statistics on hospital discharges and services that are

⁴ QIC contractors, under their umbrella IDIQ contracts with CMS, are required to submit annual conflict of interest certificates disclosing in detail the firm's financial interests in other entities, contractual relationships, organizational structure, and program for identifying and mitigating conflicts of interests, among other things. See, e.g., AR, Tab 4.A, Protester's QIC Contract, §§ H.2.d-e, at 24-31.

vulnerable to improper payments.⁵ AR, Tab 5.A(3), C2C Updated OCI Certificate, at 14-15, 27-28. C2C further disclosed that TMF was awarded an IDIQ contract by CMS to provide QIN-QIO services in a number of states and U.S. territories, including a task order to provide such services in the state of Missouri. See id. at 2, 15, 28-29. However, C2C's certificate stated that its parent organization's PEPPER/FATHOM and QIO-QIN contracts did not present conflicts of interest, because TMF does not perform medical or case reviews under those contracts. See id. at 27-28. C2C's proposal certified that (with the exception of two MAC subcontracts that the parent/subsidiary proposed to mitigate if awarded the task order at issue here, see infra n.11) C2C did not otherwise have an actual, apparent, or potential conflict providing the required QIC services in the Part A West QIC jurisdiction.⁶ See AR, Tab 5.A(3), C2C OCI Updated Certificate, at 1-2; Tab 5.B.(1), C2C Initial Bus. Proposal, OCI Statement, at 1-2.

Evaluation

The agency's contracting officer and a technical evaluation panel (TEP) evaluated proposals and conflict of interest certifications, and determined that neither Maximus nor C2C had an OCI that would prevent it from conducting Part A West reconsiderations in an independent and objective manner. See AR, Tab 7.A, TEP Evaluation Mem., at 10-14; Tab 9.B.1, OCI Mem., at 15; CO's Statement at 4.

The offerors' proposals were evaluated as follows:

⁵ The contract is referred to as the "PEPPER/FATHOM" contract, that is, the Program for Evaluating Payment Patterns Electronic Report (PEPPER), and the accompanying database software developed by TMF, the First-look Analysis Tool for Hospital Outlier Monitoring (FATHOM). See AR, Tabs 12.A(1)-(3), PEPPER/FATHOM Task Order and SOW; www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Data-Analysis/; www.pepperresources.org.

⁶ Maximus, the protester, is itself affiliated with a QIC contractor. Q2 Administrators, LLC, of Reston, Virginia, the protester in our October 18, 2014, decision by the same name, is a subsidiary of Maximus. Protest at 18; AR, Tab 6.A.3(a), Protester's Bus. Proposal, OCI Compliance Plan, at 5, 21. Q2 Administrators is also one of the four contractors (including Maximus and C2C) that currently hold IDIQ contracts with CMS for QIC Services. See AR, Tab 9.A, Negotiation Mem., at 3; Q2 Administrators, LLC, supra, at 3.

	Maximus	C2C⁷
Technical Approach	Excellent	--
Key Personnel/Availability/Staffing	Very Good	--
Quality Assurance	Excellent	--
Security	Very Good	--
Past Performance	Very Good	--
Subcontracting Approach	Pass	--
OVERALL TECHNICAL RATING	VERY GOOD	EXCELLENT
PRICE	\$60,111,060	\$58,309,053

AR, Tab 9.A, Negotiation Mem., at 12.

As relevant here, Maximus' very good key personnel qualifications/availability/overall staffing rating reflected five key strengths and no weaknesses, including that the firm's proposed program director has strong experience [DELETED], its proposed medical director [DELETED], and the firm is successfully performing [DELETED].⁸ See AR, Tab 7.A, TEP Evaluation Mem., at 8. Maximus' very good security rating reflected four key strengths and no weaknesses, including a comprehensive knowledge and understanding of CMS's IT, physical security, and privacy requirements. *Id.* at 8-9. Finally, Maximus' very good past performance rating reflected five key strengths including that the contractor has historically met or exceeded SOW, timeliness, and quality requirements. *Id.* at 9. However, the TET assessed one past performance weakness in Maximus' proposal--that the firm was under a corrective action plan under two of its QIC contracts to address earlier quality concerns related to a backlog of claim reconsiderations. See *id.*

After conducting a cost/technical tradeoff, the agency determined that C2C's proposal, with its higher overall technical rating and nearly \$1.8 million lower price,

⁷ CMS did not provide C2C's adjectival ratings under each of the technical evaluation factors because the protester, except for alleging an OCI, does not challenge the evaluation of C2C's proposal.

⁸ Under the agency's adjectival rating scheme, a very good rating reflected a highly competent offeror whose proposal was comprehensive, thorough, and characterized by sound approaches, with some strengths and technical advantages and a high probability that the government's goals and objectives will be met. See AR, Tab 1.B., TEP Chairperson's Statement, exhib. A, Rating Standards, at 2. The rating also reflected no deficiencies in the proposal and minor weaknesses that are easily correctible. See *id.*

provided the best value to CMS. AR, Tab 9.A, Negotiation Mem. at 12. The agency issued the QIC task order to C2C and this protest followed.⁹

DISCUSSION

Maximus alleges that C2C has an OCI that should have disqualified the firm from the competition. Maximus also protests its technical and past performance evaluations. While our decision here does not specifically discuss each and every protest argument, we have considered all of the protester's assertions and find none furnish a basis for sustaining the protest.

Organizational Conflict of Interest

Maximus contends that CMS failed to evaluate whether C2C has an impaired objectivity OCI, because its parent organization (TMF), in performing the PEPPER/FATHOM contract (supra n.5), could manipulate the number of claim appeals in coverage areas where C2C would conduct reconsiderations as a QIC. Protest at 16. According to the protester, if TMF generates an abundance of PEPPER reports for a particular coverage area, there will be a corresponding increase in findings of overpayments of Part A claims, which in turn would lead to an overall increase in the number of appeals of those findings that C2C would adjudicate as the QIC. Protester's Comments at 27. Thus, Maximus argues, TMF has a financial incentive to increase the amount of Part A "outlier" data generated in order to steer additional claim reconsiderations to its subsidiary, C2C.¹⁰ Id. The protester also posits that TMF, which developed and maintains the FATHOM database that stores PEPPER data, could easily manipulate that data. See id. Maximus also points out that the contract requires TMF to provide outreach and training to assist MACs, RACs, and providers, in using PEPPER/FATHOM, and argues that providers may be reluctant to challenge PEPPER data, because TMF's subsidiary, C2C, will adjudicate overpayment claims based on that data.¹¹ Id. at 27-28, citing AR, Tab 12.A(3), PEPPER/FATHOM Option Year 1 SOW, at 10.

⁹ The estimated value of the task order at issue exceeds \$10 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of task orders under multiple-award indefinite-delivery, indefinite-quantity (IDIQ) contracts. 41 U.S.C. § 4106(f)(1)(B).

¹⁰ The protester does not allege any specific instances of improper behavior involving the awardee or its parent organization.

¹¹ Maximus' protest also challenges the award to C2C on the basis of TMF's subcontracts with MACs. Protest at 14-16. Because CMS responded to this protest ground in its report (AR at 23-27), but the protester, in its comments on the report, did not address the agency's response (see generally Protester's Comments), we

(continued...)

CMS argues that the contracting officer thoroughly examined the protester's OCI allegations, properly evaluated C2C's conflict of interest disclosure consistent with statutory and RFP requirements, and reasonably concluded that no conflict exists. AR at 7-14. The agency explains that PEPPER/FATHOM does not itself identify the presence of payment errors, but is only a data gathering tool for auditing and showing trends in claims submissions. Id. at 29. CMS maintains that the PEPPER/FATHOM contract does not require TMF to perform initial claim determinations or identify payment errors that could ultimately be reviewed by C2C, and therefore does not violate the QIC statutory independence requirement. Id. at 29-31.

The FAR requires that contracting officers avoid, neutralize, or mitigate potential significant OCIs so as to prevent an unfair competitive advantage or the existence of conflicting roles that might bias a contractor's judgment or impair its objectivity. FAR §§ 9.504(a), 9.505. Certain procurements may be particularly sensitive to conflicts of interests, and, as here, an agency's statutes and regulations may impose additional, often more stringent conflict of interest limitations in addition to the FAR. See, e.g., Radiation Safety Servs., Inc., B-237138, Jan. 16, 1990, 90-1 CPD ¶ 56 at 3 (The Nuclear Regulatory Commission (NRC), because of its functions as both licensor and regulator of nuclear devices, is particularly sensitive to conflicts of interests, and NRC regulations implementing the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2210a, impose a more precise standard than the FAR). The FAR recognizes that conflicts may arise in factual situations not expressly described in the relevant FAR sections, and advises contracting officers to examine each situation individually and to exercise "common sense, good judgment, and sound discretion" in assessing whether a significant potential conflict exists and in developing an appropriate way to resolve it. FAR § 9.505.

The identification of conflicts of interest is a fact-specific inquiry that requires the exercise of considerable discretion. Guident Techs., Inc., B-405112.3, June 4, 2012, 2012 CPD ¶ 166 at 7; see Axiom Res. Mgmt., Inc. v. United States, 564 F.3d 1374, 1381 (Fed. Cir. 2009). The responsibility for determining whether an actual or apparent conflict of interest will arise, and to what extent the firm should be excluded from the competition, rests with the contracting agency. Aetna Gov't Health Plans, Inc.; Foundation Health Fed. Servs., Inc., B-254397.15 et al., July 27, 1995, 95-2 CPD ¶ 129 at 12. OCI determinations must be based on "hard facts" that indicate the existence or potential existence of a conflict; mere inference or suspicion of an actual or potential conflict is not enough. See Turner Constr. Co., Inc. v. United States, 645 F.3d 1377, 1387 (Fed. Cir. 2011); PAI Corp. v. United States, 614 F.3d 1347, 1352 (Fed. Cir. 2010). Our Office reviews a contracting officer's consideration

(...continued)

consider this protest ground to be abandoned. See Accumark, Inc., B-310814, Feb. 13, 2008, 2008 CPD ¶ 68 at 2 n.1.

of an OCI for reasonableness and, where an agency has given meaningful consideration to whether a significant conflict of interest exists, we will not substitute our judgment for the agency's, absent clear evidence that the agency's conclusion is unreasonable. See TeleCommunication Sys. Inc., B-404496.3, Oct. 26, 2011, 2011 CPD ¶ 229 at 3-4; PCCP Constructors, JV; Bechtel Infrastructure Corp., B-405036 et al., Aug. 4, 2011, 2011 CPD ¶ 156 at 17.

As relevant here, the protester's arguments concern an "impaired objectivity" OCI, which arises where a firm's ability to render impartial advice to the government will be undermined by the firm's competing interests, such as a relationship to the service being evaluated. FAR § 9.505-4; Pragmatics Inc., B-407320.2, B-407320.3, Mar. 26, 2013, 2013 CPD ¶ 83 at 3; PURVIS Sys., Inc., B-293807.3, B-293807.4, Aug. 16, 2004, 2004 CPD ¶ 177 at 7.¹² As we describe above, Maximus contends that TMF's collection of Medicare Part A overpayment data under its PEPPER/FATHOM contract, and TMF's provision of such data to MACs, RACs, and providers, presents an improper financial incentive for TMF to manipulate overpayment data in order to steer additional reconsiderations (that is, to generate more work) for its subsidiary, C2C.¹³ The protester also contends that TMF's provider outreach and training tasks under its PEPPER/FATHOM contract may dissuade providers from challenging the PEPPER overpayment data because TMF's subsidiary's will adjudicate overpayment claims.

The protester's impaired objectivity allegations also concern statutory independence requirements of QICs. In this respect, the statute requires that a QIC be "independent of any organization under contract with the Secretary that makes initial determinations," and meet the "requirements established by the Secretary consistent with paragraph [c](3)," which provide in relevant part:

[(c)(3)](K) Independence requirements

- (i) In general ..., [a QIC] shall not conduct any activities in a case unless the entity--

¹² While FAR subpart 9.5 does not explicitly address the role of affiliates in the various types of organizational conflicts of interest, there is no basis to distinguish between a firm and its affiliates, at least where concerns about potentially biased ground rules and impaired objectivity are at issue. Aetna Gov't Health Plans, Inc.; Foundation Health Fed. Servs., Inc., *supra*, at 12.

¹³ C2C is paid a fixed-fee per claim that it adjudicates under the terms of its IDIQ contract and task orders for QIC services. RFP amend. 2 at 1. As we discuss above, the SOW requires the QIC to conduct reconsiderations of, among other things, recovery claims against beneficiaries or providers. SOW at 1.

- (I) is not a related party (as defined in subsection (g)(5) of this section);
- (II) does not have a material familial, financial, or professional relationship with such a party in relation to such case; and
- (III) does not otherwise have a conflict of interest with such a party.

42 U.S.C. §§ 1395ff(c)(2), (c)(3)(K). We find, based on our review of the record, including all of the arguments raised by the parties, that the contracting officer meaningfully considered whether C2C had a impaired objectivity OCI, consistent with the terms of the RFP and statute (42 U.S.C. § 1395ff(c)), and reasonably concluded that no conflict existed.

As described above, the solicitation incorporated the statutory definition of a QIC, and advised offerors that CMS would review their disclosure statement and conflict of interest certificate to evaluate whether the offeror is free from any apparent or perceived conflict of interest; has sufficient independence between itself and any of its related entities that make initial determinations; and, if the entities are independent, whether the resources of one entity affect the contract performance of the other. RFP amend. 2, § H.2, at 7.

The contracting officer states that, after receiving Maximus' protest, he investigated the protester's OCI allegations by consulting with CMS contracting officials and technical experts responsible for the PEPPER/FATHOM contract. CO's Statement at 17-18. The contracting officer asked the contracting official a series of questions about PEPPER/FATHOM, including whether TMF could manipulate data or "steer" claims to its subsidiary. Id. at 17. He also states that he inquired about CMS' oversight of the contract. Id. The contracting officer further states that he gathered information about PEPPER/FATHOM from their respective websites. Id. at 15-16; see supra n.5 (web addresses). He explains that PEPPER is a comparative data report and auditing tool that provides hospital-specific Medicare statistics for discharges that are vulnerable to improper payments, and that, as explained by C2C in its OCI certificate, any actual improper payments (such as billing or coding errors, or unnecessary hospital admissions) can only be further identified through an actual review of the medical record, which TMF would not be conducting. See CO's Statement at 15-16.

Based upon this information and investigation, the contracting officer states that he concluded that: any link between the provision of PEPPER/FATHOM data and increased claims to C2C seems technically unfeasible, very remote, and extremely unlikely; TMF, under its PEPPER/FATHOM contract, is not making initial claims determinations that could ultimately be reviewed by its subsidiary, C2C; and C2C would not violate the QIC independence statute in that regard. Id. at 16, 18. The contracting officer also found--as required by the solicitation--satisfactory indicia

of independence between C2C and TMF (the parent/subsidiary). Id. at 10. He concluded that they operate as different companies based on their separate boards of directors and senior management, as well as geographically distinct corporate operations and separate computer and information technology (IT) systems. Id.

We see no basis on which to conclude that the contracting officer's conclusions here were unreasonable. Our Office has recognized that an agency may reasonably find that certain relationships between companies or corporate affiliates are too remote or that the possibility of a conflict is too unlikely or speculative to conclude that there is a disqualifying OCI. See, e.g., AdvanceMed Corp.; TrustSolutions, LLC, B-404910.4 et al., Jan. 17, 2012, 2012 CPD ¶ 25 at 10-12 (protest that awardee would have impaired objectivity OCI providing Zone Program Integrity Contractor (ZPIC) services because it would audit preferred providers and entities with whom its parent organization holds contracts is denied where CO reasonably concluded that possibility of a conflict was too remote and too far removed); Diversified Collection Servs., supra, at 7-11 (CMS contracting officer reasonably determined that awardee did not have an OCI where it would not be responsible for determining whether a claim was properly coded or whether a billed service was necessary); CIGNA Gov't Servs., LLC, B-401068.4, B-401068.5, Sept. 9, 2010, 2010 CPD ¶ 230 at 11-13 (CMS contracting office reasonably determined that awardee's activities, and access to information, in connection with performing contracts related to implementation of agency's new accounting system did not create an OCI). Accordingly, we find no basis to sustain the protester's contention that the contracting officer abused his discretion in concluding that no conflict exists in this situation.¹⁴

Maximus' Evaluation

The protester also contends that CMS improperly evaluated Maximus' technical proposal under the key personnel qualifications/availability/overall staffing, security, and past performance factors. Protest at 18-21. Essentially, Maximus' evaluation challenge amounts to nothing more than the protester's tallying the number of strengths and weaknesses assessed by the evaluators, and comparing that tally to the rating definitions. For example, the protester complains that its "very good" ratings, under the key personnel qualifications/availability/overall staffing and security evaluation factors, were inconsistent with the adjectival rating scheme,

¹⁴ Maximus also argues that the professional relationships that TMF cultivates with providers in Missouri under its QIN-QIO contract/task order also presents an improper financial incentive for its subsidiary, C2C, to rule more favorably on claim reconsiderations from such providers. See Protest at 10; supra at 2 (describing QIN-QIO functions). We find no merit to these allegations; the protester raises the exact protest arguments in that regard that our Office thoroughly addressed, and denied, in our recent decision. Q2 Administrators, LLC, supra, at 8-10.

which provided for an assessment of an “excellent” rating for “many major strengths and technical advantages.” Protester’s Comments at 30. Moreover, Maximus complains that it was unreasonable for CMS to assess a very good past performance rating based solely on one weakness in light of the number of strengths assessed in its proposal. Id. at 31.

Our Office has consistently recognized that ratings, be they numerical, adjectival, or color, are merely guides for intelligent decision-making in the procurement process. Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 11. The evaluation of proposals and assignment of adjectival ratings should generally not be based upon a simple count of strengths and weaknesses, but on a qualitative assessment of the proposals consistent with the evaluation scheme. See Clark/Foulger-Pratt JV, B-406627, B-406627.2, July 23, 2012, 2012 CPD ¶ 213 at 14.

Here, the contemporaneous evaluation record reflects that the agency reasonably considered the qualitative merits of Maximus’ technical proposal. As described above, the record shows that, consistent with the solicitation’s terms, the TET evaluated, among other things, the relevant experience of Maximus’ proposed key personnel, the firm’s comprehensive understanding of CMS’ security requirements, and the timeliness and quality of its past performance. See AR, Tab 7.A, TEP Evaluation Mem., at 8-9. Where the evaluation and source selection decision, as here, reasonably consider the underlying basis for the ratings, including the advantages and disadvantages associated with the specific content of competing proposals, in a manner that is fair and equitable, and consistent with the terms of the solicitation, the protester’s disagreement over the actual numerical, adjectival, or color ratings is essentially inconsequential in that it does not affect the reasonableness of the judgments made in the source selection decision. General Dynamics, American Overseas Marine, B-401874.14, B-401874.15, Nov. 1, 2011, 2012 CPD ¶ 85 at 10.

Accordingly, we find that CMS reasonably evaluated the protester’s proposal consistent with the terms of the RFP, and the protesters disagreement with CMS’s judgment in that regard does not establish that the agency acted unreasonably. See Citywide Managing Servs., supra, at 10-11.

The protest is denied.

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