



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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: CIGNA Government Services, LLC

File: B-297915

Date: May 4, 2006

Craig A. Holman, Esq., Kara L. Daniels, Esq., and David J. Craig, Esq., Holland & Knight, LLP, for the protester.
Paul F. Khoury, Esq., Kathryn Bucher, Esq., Dorthula H. Powell-Woodson, Esq., Kara M. Sacilotto, Esq., Daniel P. Graham, Esq., and Kevin J. Plummer, Esq., Wiley Rein & Fielding LLP, for Noridian Administrative Services, LLC, an intervenor.
Jeffri Pierre, Esq., Anthony E. Marrone, Esq., and Christine Simpson, Esq., Department of Health & Human Services, for the agency.
Glenn G. Wolcott, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's cost realism analysis of awardee's proposed cost/price was reasonable where agency considered specific cost elements of the proposed cost/price, comparing the cost/price proposed for those elements with historical costs incurred by both the awardee and other contractors in performing similar activities.

DECISION

CIGNA Government Services, LLC protests the award of a contract by the Department of Health & Human Services, Centers for Medicare and Medicaid Services (CMS), to Noridian Administrative Services, LLC under request for proposals (RFP) No. CMS-2005-0012 to provide Medicare claims processing and services related to claims from suppliers and beneficiaries of durable medical equipment.¹ CIGNA protests, among other things, that CMS failed to perform an adequate cost realism analysis with regard to Noridian's proposed cost/price.

¹ CIGNA has protested two separate contracts awarded under the same solicitation: one awarded to Noridian Administrative Services, LLC, and one awarded to Palmetto GBA, LLC. In response to CIGNA's initial protest submission and its supplemental submissions, our Office opened two docket numbers: B-297915 and B-297915.2. We are addressing in this decision, under docket number B-297915, all protest issues

(continued...)

We deny the protest.

BACKGROUND

In December 2003, Congress enacted the Medicare Prescription Drug Improvement and Modernization Act of 2003 (MMA). Among other things, this legislation requires that CMS use competitive procurement procedures, pursuant to the Federal Acquisition Regulation (FAR), to replace the fiscal intermediaries and carriers on whom CMS has historically relied for claims processing services,² and who have been selected under other than competitive procedures. The replacement contractors under the MMA are referred to as “Medicare Administrative Contractors” (MACs). Pursuant to the transition, and in contrast to past practice, MACs are also required to comply with the Cost Accounting Standards (CAS).

In April 2005, CMS published RFP No. CMS-2005-0012, seeking proposals, for each of four geographic jurisdictions,³ to provide specified health insurance benefit administration services, including Medicare claims processing and payment services, related to durable medical equipment, prosthetics, orthotics and supplies

(...continued)

regarding the award to Noridian, and are addressing in a separate decision, under docket number B-297915.2, all protest issues regarding the award to Palmetto.

² In general, fiscal intermediaries have been responsible for processing Medicare payments for institutional providers (for example, hospitals and skilled nursing facilities) under Part A of the Medicare program; carriers have been responsible for processing payments for professional providers (for example, physicians and diagnostic laboratories) under Part B of the Medicare program. More specifically, contractors known as “durable medical equipment regional carriers” (DMERCs) have been responsible for processing Medicare claims for durable medical equipment under Part B of the Medicare program. RFP, Statement of Work, at 12. CIGNA is the incumbent DMERC contractor for the requirements at issue here.

³ The jurisdictions were defined, according to state/territory boundary lines, as follows: Jurisdiction A--Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont; Jurisdiction B--Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin, Kentucky; Jurisdiction C--Alabama, Arkansas, Colorado, Florida, Georgia, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas, Virgin Islands, Virginia, West Virginia; Jurisdiction D--Alaska, Arizona, California, Guam, Hawaii, Idaho, Iowa, Kansas, Missouri, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming, Mariana Islands, American Samoa. RFP, Statement of Work, at 12.

(DMEPOS).⁴ RFP § B.1. The procurements for each jurisdiction were conducted as separate competitions, but offerors were permitted to submit proposals for any or all of the jurisdictions. The solicitation provided that the source selection decision for each jurisdiction would be made on the basis of the proposal offering the best overall value to the government, considering cost/price and the following non-cost/price factors, listed in descending order of importance: offeror capability,⁵ implementation,⁶ quality control plan, corporate experience, past performance, and small disadvantaged business utilization plan. RFP § M.4. The solicitation provided that non-cost/price factors, when combined, were significantly more important than cost/price, and that cost/price would not be point scored but would be evaluated for cost realism. RFP §§ M.2, M.7.

Under prior Medicare claims processing procedures, CMS has employed an “activity-based costing” (ABC) system in which virtually all contractor costs, including all staffing hours, are direct-charged against a number of “activity codes.” Hearing Transcript (Tr.), Apr. 4, 2006, at 19-20.⁷ In specifying the various activities

⁴ The solicitation’s statement of work provided an overview of the required tasks, stating:

The contractor shall receive and control Medicare claims from DMEPOS suppliers and beneficiaries within its jurisdiction, as well as perform edits on those claims to determine whether the claims are complete and should be paid. . . . In addition, the Contractor calculates Medicare payment amounts and remits those payments to the appropriate party. The Contractor makes coverage decisions for new procedures and devices in local areas. The Contractor also conducts a variety of different suppliers’ services, such as answering written inquiries, and educating them on Medicare’s rules and regulations and billing procedures.

RFP, Statement of Work, at 13-14.

⁵ With regard to offeror capability, the solicitation established the following subfactors, listed in descending order of importance: understanding the requirements, project management, key personnel, information security, and compliance plan. RFP § M.4, at 163.

⁶ With regard to the implementation factor, the solicitation established the following subfactors, listed in descending order of importance: implementation plan, key personnel, and implementation risk. RFP § M.4, at 163.

⁷ In reviewing CIGNA’s protest issues, our Office conducted a hearing at the GAO building during which testimony was provided by various witnesses, including the source selection authority, the contracting officer, and various evaluation personnel. The hearing took place from April 4 through April 6, 2006; accordingly, the
(continued...)

contemplated under this solicitation, the statement of work frequently referenced particular ABC codes that have been associated with particular activities under the prior system.⁸ Under the most important non-cost/price evaluation factor, offeror capability, the solicitation directed each offeror to “provide a clear and concise description of its understanding of the requirements of the tasks provided in the statement of work.” RFP §L.15, at 116. This portion of the solicitation further directed each offeror to submit a “Work Breakdown Structure,” stating that:

The WBS [work breakdown structure] shall contain the major work tasks, milestones, timeframes and deliverables of the technical proposal directly correlated to the business proposal. Subdivide the statement of work task into their constituent activities Briefly describe each activity and its inputs and outputs. . . . In addition, resource information in the cost template for FTE data concerning labor hours and categories, materials and subcontracts, etc. must be contained in the technical proposal so that your understanding of the scope of work may be evaluated.

RFP § L.15, at 117.

On or before the specified closing date, Noridian and CIGNA submitted proposals for the jurisdiction D contract.⁹ Technical proposals were evaluated by a technical evaluation board (TEB);¹⁰ cost/price proposals were evaluated by a business

(...continued)

transcripts for each day’s testimony are identified by reference to their respective dates.

⁸ Thus, the RFP advised offerors that the “Bills/Claims Payment” function in the Statement of Work (SOW) was associated with the “11000 codes”; that the “Appeals/Reviews” function was associated with the “12000 codes”; that the “Inquiries” function was associated with the “13000 codes”; and that the “Provider Communications” function was associated with the “14000 codes.” RFQ § L.12, at 104. The SOW provided more detail. By way of example, under the general function “Bills/Claims Payment,” the SOW provided that more specific activities associated with “electronic data interchange support” were associated with activity codes 11201 and 11203, that activities associated with “paper bills/claims” were associated with activity code 11202, and that “misdirected claims” activities were associated with activity codes 11204 and 11209. SOW at 4.

⁹ CIGNA and Noridian were the only two offerors to submit proposals for jurisdiction D.

¹⁰ Subject matter experts (SMEs) were also assigned to assist the TEB, but the SMEs did not point score the proposals.

evaluation panel (BEP).¹¹ Noridian's proposed cost/price was [deleted] million; CIGNA's proposed cost/price was [deleted] million.¹² Agency Report (AR), Tab 17A, at 1; AR Tab 18A, at 1.

Upon completing the evaluation of initial proposals, the TEB submitted a report to the contracting officer which reflected the following ratings for the various evaluation factors:¹³

Evaluation Factor	Max. Score	CIGNA	Noridian
Offeror Capability	545	[deleted]	[deleted]
Implementation	170	[deleted]	[deleted]
Quality Control Plan	100	[deleted]	[deleted]
Corporate Experience	80	[deleted]	[deleted]
Past Performance	80	[deleted]	[deleted]
SDB Utilization Plan	25	[deleted]	[deleted]
Total	1000	[deleted]	[deleted]

AR, Tab 9, at 2, 20.

The TEB report identified various strengths and weaknesses in each proposal. Although the two proposals received relatively comparable point scores, the TEB expressed concern regarding Noridian's understanding of the unique DMEPOS claims processing requirements, stating:

NAS [Noridian] does not appear to understand the differences between the unique rules of DMEPOS versus NAS' current [Medicare] Part B operations. This could be extremely problematic for future DME MAC operations. In many cases, NAS seems to think little or nothing will need to change in terms of their processing and knowledge of the staff to handle DMEPOS, but this is not an accurate assumption. DMEPOS claims are very different from physician/practitioner claims.

AR, Tab 9, at 23.

¹¹ There was also a corporate experience/past performance panel to evaluate proposals under those factors, and an implementation panel to evaluate proposals under the implementation factor.

¹² The cost/price figures in this decision are rounded to the nearest tenth of a million.

¹³ Although the report was prepared by the TEB, it incorporated input from the corporate experience/past performance evaluation panel, the implementation panel, and the BEP's technical representative, who was responsible for reviewing the consistency between the technical proposal and the cost/price proposal.

A portion of the TEB report, under the heading “Business Proposal,” prepared by the BEP’s technical representative expressed similar concern, stating: “[Noridian’s] estimates for the bills/claims functions appear significantly low. The basis for the estimates for some of the activity codes need to be reviewed with this offeror.” AR, Tab 9, at 33-34.

In reviewing the proposals for all jurisdictions, the agency found that some of the offerors, including Noridian, proposed to meet particular requirements through use of “service centers” that were proposed as “other direct costs” (ODCs).¹⁴ AR, Tab 17A, at 3-4; Tr., Apr. 4, 2006, at 384-85. Because these service centers performed work for contracts in addition to the DMEPOS contract, the costs proposed to perform certain DMEPOS contract requirements reflected only a portion of the service center’s total costs; accordingly, the evaluators were unable to identify any “direct labor” charges to various DMEPOS activities—although the proposed ODC amounts for those activities clearly included labor costs. Tr., Apr. 4, 2006, at 385-86. In short, the agency determined that the total level of resources an offeror was proposing to perform various activities was not necessarily reflected by referencing only the “direct labor” proposed for that activity. Id.

By letters dated August 24, 2005, the agency initiated discussions with CIGNA and Noridian. AR, Tab 43. Due to the agency’s difficulty in determining the various levels of effort being proposed by the offerors, the agency created a “level of effort” (LOE) template for offerors to complete, sending that template to offerors with the August 24 discussion letters. With regard to the template, the discussion letters stated:

CMS is requesting that you confirm your proposed level of effort by completing the enclosed template as instructed. The template shall include all productive hours to fulfill the statement of work requirements related to your proposal. This includes those hours charged to the contract whether those hours are allocated through an indirect cost pool or to an ABC code. Your subcontractor hours shall be identified as well.¹⁵ The hours shall be provided by contract year

¹⁴ At the GAO hearing, agency personnel explained that the requirement for offerors to change their accounting systems from the previously-used “activity based” systems to CAS-compliant systems affected the manner in which offerors’ costs were identified and proposed. AR, Tab 17A, at 3-4; Tr., Apr. 4, 2006, at 384-85.

¹⁵ Notwithstanding the above, the contracting officer defined “productive hours” as hours of individuals that were assigned to work full time on the DMEPOS contract. Tr., Apr. 4, 2006, at 22-23. Accordingly, to the extent offerors were advised of the contracting officer’s definition, their templates may have reflected something less

(continued...)

for all years. In order to fully understand your proposed level of effort, CMS is asking that you confirm your proposed level of effort by way of completing this template. You are cautioned that this is not a request to revise your Business Proposal. Rather it is an analysis tool that will be used to better understand your proposed level of effort.

AR, Tab 43, at 1-2.

Both CIGNA and Noridian responded to the initial discussions and, thereafter, participated in various rounds of discussions, both written and oral, submitting various clarifications, modifications, and revisions to their initial proposals, including submission of the LOE templates.¹⁶

On December 1, 2005, the TEB issued another report, summarizing the impact of the discussions, clarifications, modifications and revisions that had occurred up to that time. Among other things, this report stated:

It should be noted that through discussions [with Noridian] it was noted by CMS that an area of improvement was demonstrated knowledge of specialized DME processing. NAS' response to this dealt with staff expertise in DME claims processing, prior communication with VMS on the claims processing system, a gap analysis between the Part B and DMERC claims information and a DME 101 training course for NAS employees. In summary, NAS feels these examples show how they will become more proficient with DME. As a result[,] these examples did provide information sufficient to raise some of the claims processing requirements scores. However, there continue to be concerns about NAS's understanding of how DMEPOS claims and processing is different than Part B.

AR, Tab 14, TEB Report (Dec. 1, 2005), at 3.

(...continued)

than the complete levels of effort contemplated. Further, the template did not request that the levels of effort identified be associated with any activity codes.

¹⁶ As ultimately submitted, Noridian's template reflected a total of [deleted] hours for the base period and CIGNA's template reflected a total of [deleted] hours for this period. Noridian Hearing Notebook, Tabs 109, 118. However, the LOE template hours were not associated with particular activity codes and, therefore, were not useful for assessing the level of effort an offeror was proposing to perform a particular activity.

On November 30, the agency requested submission of final revised proposals (FRPs). CIGNA and Noridian each submitted an FRP on December 9. The submissions were subsequently evaluated by the various evaluation panels, including the TEB and BEP. Noridian’s proposed cost/price was \$97.4 million; CIGNA’s proposed cost/price was [deleted] million. AR, Tab 17(c), at 1; AR, Tab 18(c), at 1.

On December 14, the TEB submitted its report on the offerors’ FRPs.¹⁷ The summary of the final technical evaluation ratings were as follows:

Evaluation Factor	Max. Score	CIGNA	Noridian
Offeror Capability	545	[deleted]	[deleted]
Implementation	170	[deleted]	[deleted]
Quality Control Plan	100	[deleted]	[deleted]
Corporate Experience	80	[deleted]	[deleted]
Past Performance	80	[deleted]	[deleted]
SDB Utilization Plan	25	[deleted]	[deleted]
Total	1000	[deleted]	[deleted]

AR, Tab 14, at 2; Tab 5, at 2-3; Tab 41, at 27.

With regard to Noridian’s FRP, the TEB report, under the heading “Strengths,” stated, among other things, as follows:

The OnBase document and management workflow system is described in detail throughout the proposal. It shows benefits such as facilitating quality assurance practices, imaging, and tracking documents across components, monitoring and measuring as a tool to meet timeliness standards, and ensuring that documents are routed in a standard, controlled and expeditious manner. Implementation of this system into the DME MAC environment should increase “quality control, cost savings and performance monitoring capabilities of an electronic

¹⁷ As with prior reports, the TEB report incorporated input from the other evaluation panels.

document management system.[”] Examples of the benefits of OnBase are apparent throughout the proposal. . . .

The proposal outlines innovative means to ensure high performance of employees.[¹⁸]

AR, Tab 15, at 8-9.¹⁹

Under the heading “Weaknesses,” the report repeated the TEB’s earlier concerns regarding Noridian’s understanding of the unique aspects of DMEPOS contracting, stating:

¹⁸ At the GAO hearing, the contracting officer testified that, in general, CIGNA was considered to be a “more manual-type contractor,” while Noridian was “more automated than CIGNA,” and that Noridian was considered to be a “very efficient contractor.” Tr., Apr. 4, 2006, at 66-67. This assessment is consistent with the TEB’s conclusions in its initial evaluation report, which stated: “Compared to peers, NAS [Noridian] is one of the lowest cost contractors. They have also consistently maintained low CERT [comprehensive error rate testing] scores, and have very low turnover of staff in general.” AR, Tab 9, at 32.

¹⁹ This TEB report also identified various strengths associated with CIGNA’s proposal, including the following statement:

[deleted]

AR, Tab 15, at 4-5.

In the area of Offeror Capability, specifically DME claims processing, NAS has failed to demonstrate a thorough understanding of the basic principles, unique rules and complexities of DMEPOS claims processing as opposed to local carrier processing.

AR, Tab 15, at 9.²⁰

Nevertheless, as shown in the tables above, the TEB's rating of Noridian's proposal with regard to offeror capability increased from an initial score of [deleted] to a score of [deleted] and that, overall, Noridian's proposal was rated only somewhat lower than CIGNA's proposal.²¹

The portion of the TEB's final report prepared by the BEP's technical representative (who was tasked with performing the cost realism analysis) had a more focused concern with regard to Noridian's understanding of the requirements. Specifically, under the heading "Cost Realism Analysis," the final TEB report stated:

The technical panel questioned the final calculation of number of claims per hour per person [that Noridian had presented orally during discussions] and asked NAS to revise their assumptions surrounding beneficiary submitted paper claims because there are more beneficiary

²⁰ The report also identified various "weaknesses" in CIGNA's proposal, including the following statement: "The most prominent weakness in [CIGNA's] proposal is its tendency to reiterate the language in the SOW without providing details." AR, Tab 15, at 6.

²¹ With regard to "understanding the requirements," (the most important subfactor under the offeror capability evaluation factor) Noridian's final rating increased from an initial score of [deleted] (out of a possible 300) to 220. AR, Tab 9, at 20; Tab 14, at 2. By comparison, CIGNA's initial rating under the "understanding the requirements" subfactor was [deleted] and its final rating was [deleted]. AR, Tab 9, at 2; Tab 15, at 2.

paper claims submitted in DME vs. Part B. This could have a direct impact on NAS' assumed productivity.^[22]

AR, Tab 15, at 12.

On December 14, the contracting officer met with all of the evaluation panel chairs to obtain their input regarding the award recommendations to be made to the source selection board (SSB) and the source selection authority (SSA) in a meeting scheduled to take place the following day.²³ At this meeting the TEB strongly recommended award to CIGNA with regard to jurisdiction D. The contracting officer expressed reservation with that recommendation, noting that CIGNA's proposed cost/price was significantly higher than Noridian's, yet CIGNA's rating for non-cost/price factors was only somewhat higher. Because of the TEB's concerns that Noridian did not have a complete understanding of the DMEPOS contract requirements, the contracting officer requested that the evaluation personnel consider whether an upward adjustment to Noridian's proposed cost/price should be made to reflect those concerns and, if so, to calculate what such an adjustment should be.

In response to the contracting officer's request, the TEB calculated a potential upward adjustment to Noridian's cost/price by increasing it to reflect the total level of direct labor hours that CIGNA had charged to all "11000" activity codes (the codes associated with the entire "Bills/Claims Payment" function) in the immediately preceding period under CIGNA's incumbent DMERC contract. AR, Tab 15.

²² At the GAO hearing, the TEB chair confirmed that the above-quoted description of the TEB's more focused concern regarding paper claims was accurate, testifying as follows:

Q. What's the difference between Part B and DME claims processing?

A. . . . My understanding is there's more submitted paper claims. There's some claims that may need manual intervention to work through. The claims have more attachments to them. . . .

Q. Putting aside paper claims, are there significant differences between DME claims processing and Part B claims processing?

A. I don't believe so.

Tr., Apr. 4, 2006, at 187-88.

²³ The competitions for all four jurisdictions were conducted simultaneously; accordingly, meetings involving the contracting officer, the SSB, and the SSA generally involved discussions with regard to all four competitions.

Thereafter, the contracting officer reviewed the proposed adjustment, but concluded that it would not be appropriate to apply the adjustment to Noridian's proposed cost/price. Among other things, the calculation reflected an upward adjustment for all of the "11000" code activities; yet the TEB's concerns related only to the much narrower activity code, 11202, associated with handling paper claims.

On December 15, the scheduled meeting between the evaluation personnel, the contracting officer, the SSB, and the SSA took place. At that meeting the contracting officer presented the TEB's conclusions with regard to the jurisdiction D competition and, consistent with the TEB's position, recommended award to CIGNA, notwithstanding CIGNA's higher cost/price. The calculated adjustment proposed by the TEB for Noridian's cost/price was not presented. Following completion of the presentations for each of the four jurisdictions, the SSA dismissed the evaluation panel chairs and "a further, lengthy discussion took place" between the SSA, SSB members, the contracting officer, and other "senior CMS management officials."²⁴ Contracting Officer's Statement, (Feb. 22, 2006), at 6.

Based on this "further, lengthy discussion," the SSA concluded that he could not make a source selection decision in favor of either jurisdiction D offeror without obtaining additional information. Accordingly, the SSA directed the contracting officer and the evaluation personnel to perform further analysis, specifically requesting, among other things, that they make a determination as to whether Noridian could be realistically expected to perform the contract requirements at the cost/price it had proposed. Id.

In response to the SSA's direction, the BEP's technical representative retrieved from CMS's existing database a substantial amount of proposal and historical cost information regarding all of the offerors that submitted proposals for the four DMEPOS jurisdictions; the BEP technical representative compiled the retrieved data in a chart labeled "Efficiency Comparison." Agency Report, Tab 16. The "Efficiency Comparison" chart compared offerors' various proposed costs, as well as various historical costs for Medicare Part B claims processing and, for incumbent DMERC contractors, specific costs billed under those contracts during the most recent contract period. Among other things, the "Efficiency Comparison" chart displayed the "cost per claim" for the total "Bills/Claims Payment" function as reflected in each offeror's proposal; the historic "cost per claim" for the total "Bills/Claims Payment" function incurred by each offeror under prior Part B Medicare work; and, for the four DMERC incumbents, the similar "costs per claim" incurred under those particular contracts. The proposed and historical costs were as follows:

²⁴ At GAO's request, the agency identified the other "senior CMS management officials" that participated in this discussion. They included CMS's Director of the Medicare Contractor Management Group who, at GAO's request, appeared and testified at the GAO hearing.

Cost Per Claim for “Bills/Claims Payment” (All 11000 Codes)

	DMEPOS Proposal Cost Per Claim	FY 2005 Medicare Part B Cost Per Claim	FY 2005 Incumbent DMERC Cost Per Claim
Noridian (Juris. D)	[deleted]	[deleted]	[deleted]
CIGNA (Juris. D)	[deleted]	[deleted]	[deleted]
CIGNA (Juris. C)	[deleted]	[deleted]	[deleted]
Palmetto (Juris C)	[deleted]	[deleted]	[deleted]
Offeror W (Juris. B)	[deleted]	[deleted]	[deleted]
Offeror X (Juris. B)	[deleted]	[deleted]	[deleted]
Offeror Y (Juris. A)	[deleted]	[deleted]	[deleted]
Offeror Z (Juris. A)	[deleted]	[deleted]	[deleted]

AR, Tab 16, Efficiency Comparison Chart.

More specifically, the “Efficiency Comparison” chart also displayed “cost per claim” data for the more specific activity code, 11202, “Manage Paper Bills/Claims.” The proposed and historical costs for that particular activity were as follows:

Cost Per Claim for “Manage Paper Bills/Claims” (Code 11202)

	DMEPOS Proposal	FY 2005 Medicare Part B	FY 2005 Incumbent DMERC
Noridian (Juris. D)	[deleted]	[deleted]	[deleted]
CIGNA (Juris. D)	[deleted]	[deleted]	[deleted]
CIGNA (Juris. C)	[deleted]	[deleted]	[deleted]
Palmetto (Juris C)	[deleted]	[deleted]	[deleted]
Offeror W (Juris B)	[deleted]	[deleted]	[deleted]
Offeror X (Juris B)	[deleted]	[deleted]	[deleted]
Offeror Y (Juris A)	[deleted]	[deleted]	[deleted]
Offeror Z (Juris. A)	[deleted]	[deleted]	[deleted]

AR, Tab 16, Efficiency Comparison Chart.

Upon reviewing all of the data displayed in the “Efficiency Comparison” chart, including the specific data displayed above,²⁵ the agency concluded that the data confirmed that, overall, Noridian has been a historically efficient and low-cost

²⁵ In addition to the information displayed above, the “Efficiency Comparison” chart included other data relating to the proposed and historical costs of the various offerors.

contractor. Further, the agency concluded that, with regard to the unique DMEPOS requirements involving paper claims, Noridian's proposal reflected a dramatically higher level of resources to perform that requirement in the DMEPOS environment than it has historically employed to handle paper claims under Part B of the Medicare program. More specifically, the agency determined that Noridian's proposed cost/price specifically contemplated costs at the rate of [deleted] per claim -- [deleted] times greater than the costs Noridian has historically incurred in processing paper claims under Part B of the Medicare program, and substantially higher than the costs proposed by most of the other DMEPOS offerors, including CIGNA. Accordingly, the agency concluded that Noridian properly anticipated that a significantly higher level of resources would be required to perform the requirements involving paper claims under the DMEPOS contract than Noridian has been required to apply to its successful performance of this activity under its prior Medicare work.

Because, as discussed above, the TEB's concerns regarding Noridian's understanding of the DMEPOS requirements, following discussions, were primarily focused on the unique DMEPOS requirements involving processing of paper claims, the agency concluded, based on all of the proposed and historical data contained in the "Efficiency Comparison" chart, together with the other information submitted in Noridian's proposal, that Noridian's proposed cost/price was reasonable and realistic. Based on that determination, the agency concluded that CIGNA's somewhat higher-rated proposal with regard to non-cost/price evaluation factors did not warrant payment of CIGNA's substantially higher cost/price. Thereafter, Noridian's proposal was selected for award. This protest followed.

DISCUSSION

CIGNA protests that CMS "completely abdicated" its responsibility to perform a cost realism analysis because it did not upwardly adjust Noridian's proposed cost/price as initially suggested by the TEB. We disagree.

When an agency evaluates a proposal for the award of a cost-reimbursement contract, an offeror's proposed estimated costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. Tidewater Constr. Corp., B-278360, Jan. 20, 1998, 98-1 CPD ¶ 103. Consequently, the agency must perform a cost realism analysis to determine the extent to which an offeror's proposed costs represents what the contract should cost, assuming reasonable economy and efficiency. McDonnell Douglas Corp., B-259694.2, B-259694.3, June 16, 1995, 95-2 CPD ¶ 51. That is, the purpose of a cost realism analysis is to determine what, in the government's view, it is likely to realistically cost the offeror to perform the contract requirements. Hager Sharp, Inc., B-258812, Feb. 17, 1995, 95-1 CPD ¶ 93. The FAR specifically provides that an agency's required cost realism analysis should consider the separate cost elements of an offeror's proposal, along with the agency's application of judgment, and provides that an agency may use various techniques and procedures, specifically

including consideration of actual/historical costs that have been incurred by the offeror or other contractors for the same or similar work. FAR § 15.404; United Int'l Eng'g, Inc. et al., B-245448 et al., Jan. 29, 1992, 92-1 CPD ¶ 122 at 10-11; DATEX, Inc., B-270268.2, April 15, 1996, 96-1 CPD ¶ 240.

Here, as discussed above, the agency considered all of the information submitted in Noridian's proposal, including, to the extent possible, the levels of effort associated with the various DMEPOS requirements, yet properly recognized that the available information did not definitively identify the specific levels of effort that were proposed for some of the specific DMEPOS activities. In this regard, the agency properly recognized that, while Noridian's proposal reflected substantial costs it would incur in connection with efforts at its various "service centers," these proposed costs could not be broken down to identify the particular levels of direct labor hours flowing from those service centers to perform particular DMEPOS activities. The agency also reasonably concluded that Noridian's proposal reflected a higher level of automation and efficiency than CIGNA's more "manual-type" approach to claims processing. Finally, the agency specifically considered Noridian's proposed costs to perform the DMEPOS requirements regarding paper claims--the area on which the TEB had focused its concerns regarding Noridian's understanding of the contract requirements--and compared the proposed costs to various other offerors' proposed and historical costs for performing this activity, along with Noridian's own historical costs for processing paper claims under Part B of the Medicare program. Based in part on Noridian's proposal of substantially higher costs per claim to perform the DMEPOS requirements than the cost per claim Noridian has historically incurred, the agency concluded that Noridian's proposal reflected Noridian's anticipated application of a substantially higher level of resources to perform this portion of the DMEPOS contract than Noridian has previously applied to similar activities under Part B of the Medicare program. Accordingly, the agency concluded on the basis of all of its analysis that Noridian's proposed cost/price was reasonable and realistic.

As noted above, the FAR specifically contemplates consideration of historical costs in performing a valid cost realism analysis. Accordingly, on the record here, we find no basis to question the reasonableness of the agency's cost realism analysis, which considered the unique attributes of Noridian's proposed approach as well as consideration of the specific costs proposed to perform particular elements of the

contract requirements, comparing Noridian's proposed costs to similar costs that have been proposed and incurred by Noridian and other offerors for related activities.

The protest is denied.²⁶

Anthony H. Gamboa
General Counsel

²⁶ CIGNA's protest challenging the agency's selection of Noridian makes various other allegations, including the assertions that CMS failed to make adjustments to CIGNA's overhead pool, misevaluated various other aspects of CIGNA's and Noridian's proposal, failed to conduct meaningful discussions, failed to perform a professional compensation analysis, and failed to make a proper best value determination. We have considered all of CIGNA's arguments regarding the jurisdiction D procurement and find no basis to sustain its protest.