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Decision

Matter of: Wisconsin Physicians Service Insurance Corporation

File: B-418580

Date: June 17, 2020

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Douglas W. Kornreich, Esq., and Pamela Waldron, Esq., Department of Health and Human Services, for the agency.
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DIGEST

Agency reasonably eliminated protester's proposal from consideration where the proposal contained multiple weaknesses and significant weaknesses including failure to adequately address the solicitation's requirements regarding staffing and jurisdiction-specific risks.

DECISION

Wisconsin Physicians Service Insurance Corporation (WPS), of Madison, Wisconsin, protests the decision by the Department of Health and Human Services, Centers for Medicare & Medicaid Services, to exclude WPS's proposal from further consideration under request for proposals (RFP) No. 75FCMC19R0002 for Medicare administration services. WPS asserts that the agency's bases for excluding WPS's proposal were unreasonable and inconsistent with the provisions of the solicitation.

We deny the protest.

BACKGROUND

In February 2019, the agency issued RFP No. 75FCMC19R0002 to obtain Medicare benefit and claims administration services¹ from a Medicare Administrative Contractor

¹ The solicitation provides that the awardee will, among other things, receive/control Medicare claims from healthcare providers, suppliers, and beneficiaries; determine

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(MAC) for the geographic area identified as “Jurisdiction 6” (J6).² AR, Tab 4, RFP at 8. The solicitation contemplates award of a cost-plus-award-fee contract for a 1-year implementation/base period and six 1-year option periods; provides that award will be made on a best-value tradeoff basis; and establishes the following evaluation factors: technical approach, past performance, and cost/price.³ RFP at 16, 133-38.

The solicitation required offerors to submit detailed management and staffing plans; identified several performance requirements that are considered “mission-essential,” including the medical review function,⁴ *id.* at 114; provided workload estimates for various requirements; and gave directions to offerors regarding the content of their proposals and the criteria against which they would be evaluated. For example, with regard to the medical review function, the solicitation directed each offeror to address its understanding of “jurisdiction-specific risk points.” *Id.* at 120. Offerors were also directed to provide detailed staffing information regarding total proposed full-time equivalent personnel (FTEs), labor categories/skill mix, and management-to-staff ratio, and to “clearly describe both [the offeror’s] historical and proposed management effort . . . so that the government can determine any substantial changes to management approach and span of control.”⁵ *Id.* at 115-17. In this regard, offerors were advised that proposals would be evaluated to determine the extent the staffing and management plans “will provide knowledgeable, quality personnel in sufficient number [to

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whether claims should be paid; calculate payment amounts; arrange for remittance of payments; and enroll/educate healthcare providers. Agency Report (AR), Tab 3, RFP Statement of Work (SOW) at 19.

² J6 encompasses the states of Illinois, Minnesota, and Wisconsin, in which the J6 MAC will support the Medicare Part A/B fee-for-service program. RFP at 8. The solicitation also provides that the J6 MAC will be responsible for processing Medicare home health and hospice billings in thirteen states (Alaska, Arizona, California, Hawaii, Idaho, Michigan, Minnesota, Nevada, New Jersey, New York, Oregon, Wisconsin and Washington) and five U.S. territories (American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands). *Id.* at 8.

³ The solicitation provides that the technical approach factor is more important than the past performance factor, and that technical approach and past performance combined are significantly more important than cost/price. *Id.* at 133.

⁴ The solicitation states that “the goal of the Contractor’s MR [medical review] program is to reduce the claims payment error rate by identifying, through analysis of data and evaluation of other information, program vulnerabilities . . . and by taking necessary action to prevent or address the identified vulnerabilities.” SOW at 120.

⁵ The solicitation reflects the agency’s assumption that offerors have experience as MACs.

successfully perform the contract].” *Id.* at 117. Finally, offerors were advised that “[f]ailure to provide the information required in order to evaluate a proposal could result in rejection of the proposal for being technically unacceptable.” *Id.* at 133.

On or before the April 1, 2019 closing date, proposals were submitted by four offerors, including WPS. WPS is currently the MAC for jurisdiction 5 (J5) and jurisdiction 8 (J8),⁶ and its proposal stated: “WPS’s proposed MR [medical review] strategy for this J6 contract is based on the MR strategy described in the [strategy document] that WPS submitted . . . for the J8 A/B MAC contract.” AR, Tab 6, WPS Proposal (Vol. II, Tab C) at 14. WPS’s proposal further stated that “the supervisors and manager will [redacted],” asserting that this approach was more “cost-efficient” than [redacted] and acknowledged that WPS intended for its supervisors to [redacted]. AR, Tab 5, WPS Proposal (Vol. III, Tab E) at 68. In this context, WPS’s proposal indicated that WPS intended to take [redacted] approach to certain workloads; that is, for example, the provider enrollment function would be performed by [redacted].⁷ AR, Tab 6, WPS Proposal (Vol 11, Tab C) at 8. Finally, WPS’s proposal reflected lower workloads than those contained in the RFP.⁸

In evaluating WPS’s proposal, the agency’s technical evaluation panel (TEP) identified multiple weaknesses and significant weaknesses⁹ under both the technical approach and past performance evaluation factors. For example, with regard to WPS’s technical approach to performing the medical review function, the TEP stated:

[WPS’s] approach to Medical Review is a significant weakness because of multiple concerns regarding the substance, quantity, productivity and management of [WPS’s] Medical Review program. . . .

⁶ J5 includes the states of Iowa, Kansas, Missouri, and Nebraska; J8 includes the states of Indiana and Michigan. AR, Tab 5, WPS Proposal (Vol. III, Tab C) at 14, 16.

⁷ The solicitation identifies provider enrollment as a mission-essential function and states that, in performing this function, the contractor is to “ensure that only qualified providers, suppliers, practitioners, or other entities are enrolled or maintain their billing privileges in the Medicare Program.” AR, Tab 3, RFP attach. J.1, SOW at 73.

⁸ The RFP provided that proposals could be based on different workloads than those provided in the RFP, but stated that the offeror “shall fully document and provide [its] rationale” for such differing workloads. RFP at 106.

⁹ The agency defined a weakness as “a flaw in the proposal that increases the risk of unsuccessful contract performance,” and a significant weakness as “a flaw in the proposal that appreciably increases the risk of unsuccessful contract performance.” AR, Tab 9, Source Selection Plan, at 21.

[WPS's medical review] strategy for this J6 contract is based on the [strategy document] . . . that WPS submitted . . . for the J8 AB MAC contract. . . . The TEP finds this proposal feature unsupported given that [WPS] did not provide any further detail[s]. . . . [WPS's] proposed MR approach does not address the workloads for this jurisdiction; does not indicate that [WPS] understands the jurisdiction-specific risk points for this contract or even conducted basic research and analysis to assess jurisdiction-specific risk points. . . .

[WPS's proposed] workloads are significantly lower than most of the RFP workloads . . . [and] absent more explanation as to how the J8 [strategy document] adequately takes into account the risk points of the J6 jurisdiction and related proposed workloads, the [agency] does not find the proposed workloads sufficient to ensure an adequate approach to medical review. . . . Therefore the TEP finds that [WPS] has not proposed reasonable workload levels for this jurisdiction and will be at risk for understaffing. . . .

Finally . . . [WPS's proposal] does not ensure [that WPS] is proposing the same level of management oversight for the J6 as its historic experience [T]he TEP finds that [WPS's] historic management span of control was [redacted], and the proposed level was [redacted] [WPS] provides no explanation for the inconsistencies between . . . historical and actual.

AR, Tab 7, TEP Report at 59-60.

Next, the TEP assessed a significant weakness in WPS's technical approach on the basis that WPS proposed to staff several mission-essential functions using "labor categories that are not intended to directly complete the type of workload proposed." *Id.* at 61. For example, with regard to performing the provider enrollment function,¹⁰ the TEP noted that "[WPS's] proposed skill mx . . . included labor categories that do not process [provider] applications," elaborating that many of the proposed labor categories "are non-productive"¹¹ with responsibilities "other than processing the RFP workloads." *Id.* Overall, the TEP concluded that WPS's proposal "will likely result in understaffing." *Id.*

¹⁰ As noted above, the provider enrollment function is intended to "ensure that only qualified providers, suppliers, practitioners, or other entities are enrolled or maintain their billing privileges in the Medicare Program." AR, Tab 3, SOW at 73.

¹¹ The solicitation required offerors to identify their proposed labor categories as either "productive" or "non-productive," defining the former as "labor that is solely dependent on workload volume" and the latter as "labor with no ties to workload fluctuations" or "labor that increases based on other factors, such as manger hours." RFP Attach. J.22, Instructions to Offerors.

The TEP similarly identified multiple weaknesses with regard to WPS's past performance, summarizing them as follows:

The most notable and most relevant areas of concern within WPS's relevant past performance record relate to the A/B MAC J8 and A/B MAC J5 contracts:

- WPS's continued difficulty managing and implementing a sustainable Medical Review program across multiple periods of performance under both J5 and J8;
- WPS's consistently poor Section 912 reviews,^[12] with high risk findings that are both well above the national averages for multiple years and matching the maximum number of findings awarded for certain fiscal years; and
- WPS J5's three-year pattern of both decreasingly effective performance under Quality of Service and three-year pattern of decreasingly effective contract management.

Id. at 63-64.

Overall, WPS's proposal was assigned the lowest possible ratings under each of the non-cost/price evaluation factors.¹³ The four proposals were evaluated as follows:

	Past Performance	Technical Approach
Offeror A	High Confidence	Good
Offeror B	Solid Confidence	Good
Offeror C	Solid Confidence	Acceptable
WPS	Low Confidence	Unacceptable

Id. at 9.

¹² Section 912 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 requires evaluation and testing with regard to the security of a contractor's information systems. AR, Tab 3, SOW, at 26, 52-54.

¹³ In evaluating proposals under the technical approach evaluation factor, the TEP assigned adjectival ratings of excellent, good, acceptable or unacceptable. In evaluating proposals under the past performance factor, the TEP assigned ratings of high confidence, solid confidence, satisfactory confidence and low confidence. AR, Tab 7, TEP Report, at 4- 6. As relevant here, an unacceptable rating under technical approach was defined as "an inadequate technical approach and understanding of the SOW requirements," and a rating of low confidence under the past performance factor was defined as reflecting "a low expectation (little to no confidence) that the Offeror will successfully meet the contract performance requirements." *Id.* at 5-6.

Thereafter, the contracting officer determined that elimination of WPS's proposal from further consideration was appropriate. AR, Tab 8, Determination of Removal, Feb. 12, 2020. In documenting her determination, the contracting officer reiterated the TEP's assessment of multiple weaknesses and significant weaknesses under both the technical approach and past performance evaluation factors. With regard to technical approach, the contracting officer noted, among other things, that WPS's medical review strategy was based on WPS's proposal for J8, but that "WPS did not provide any further detail," and echoed the TEP's concern that WPS's proposal "does not address the workloads for [J6]," and does not indicate that WPS "even conducted basic research and analysis to assess jurisdiction-specific risk points." *Id.* at 8. The contracting officer further expressed concern that WPS's proposed workloads "are significantly lower than most of the RFP workloads," concluding that "WPS has not proposed reasonable workload levels for this jurisdiction and will be at risk for understaffing." *Id.* at 8-9.

Similarly, in documenting the basis for eliminating WPS's proposal from further consideration, the contracting officer discussed WPS's proposed approach to perform several mission-essential functions using labor categories that "are not intended to directly complete the type of workload proposed," noting that personnel in these labor categories are responsible for performing "roles other than processing RFP workloads."¹⁴ *Id.* at 10. In reviewing WPS's technical approach, the contracting officer also concluded that WPS provided "insufficient justification" for its "proposed management ratio." *Id.* at 13.

Finally, the contracting officer documented her concerns regarding WPS's past performance under its J5 and J8 MAC contracts. In this regard, she noted that in performing the medical review function in the J5 and J8 contracts, WPS had been "challenged by an inability to meet timeliness standards, successfully implement change requests . . . and generally manage the [medical review] business function," adding that "this was not the failure of a single contract, but a systemic enterprise failure." *Id.* at 17. With regard to the J5 contract, the contracting officer further noted WPS's "consistently poor Section 912 reviews," and its "three-year pattern of decreasingly effective contract management." *Id.* at 14-15.

Following her documentation of the multiple weaknesses and significant weaknesses in WPS's proposal under both the technical approach and past performance evaluation factors, the contracting officer stated:

Given the collective significant weaknesses and weaknesses outlined above, with the technical approach being more important than past performance,

¹⁴ Both the TEP and contracting officer identified specific examples of such labor categories, including [redacted] and [redacted] that WPS proposed to perform various RFP workloads. AR, Tab 7, TEP Report at 61-63; Tab 8, Determination of Removal at 10-13.

WPS's technical approach has been determined unacceptable. Therefore, I am removing this proposal from further consideration.

Id. at 19.

On February 14, 2020, WPS was notified that its proposal would not be further considered. On March 16, following a debriefing, WPS filed this protest.

DISCUSSION

WPS protests that the agency's exclusion of WPS's proposal from further consideration was unreasonable and/or contrary to the terms of the solicitation. More specifically, WPS's March 16 protest asserted that the agency: (1) unreasonably concluded that WPS's proposal failed to adequately address jurisdiction-specific risks, maintaining that the agency applied a standard that only the incumbent could meet; (2) "unreasonably penalized" WPS's proposal for reflecting lower workloads than those contained in the RFP; and (3) improperly criticized WPS's proposal with regard to its management/staff ratio. Protest at 6-15. Subsequently, WPS expressly withdrew these protest allegations. WPS Withdrawal of Protest Grounds, May 18, 2020. Given these withdrawals, we view the agency's evaluation regarding these areas to be unchallenged.

WPS's protest also complained that the agency improperly: viewed WPS's technical proposal as inconsistent with WPS's basis of estimate; criticized the labor categories WPS proposed to perform mission-essential functions; and improperly evaluated WPS's past performance. In light of our determination, discussed below, that the agency reasonably excluded WPS's proposal from consideration on the basis of the multiple weaknesses/significant weaknesses in WPS's proposal that WPS no longer contests, we do not specifically address these additional allegations other than to note that we have reviewed the record and find that these additional allegations do not constitute adequate bases for sustaining the protest.

In responding to WPS's protest, the agency pointed out that the solicitation provided specific directions regarding the required content of proposals, including requirements that proposals address jurisdiction-specific risks; demonstrate appropriate staffing; provide detailed support and rationale for alteration of the RFP-provided workloads; and include historic management/staffing information. See Memorandum of Law at 2-5; RFP at 106, 115, 120-21. The agency further points out that WPS's proposal failed to comply with the RFP directions with regard to these requirements--and, accordingly, was assessed multiple weaknesses and significant weaknesses which reasonably led to the elimination of its proposal.

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency; we will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. *Team Systems*

International, B-411139, May 22, 2015, 2015 CPD ¶ 163 at 5. It is an offeror's burden to submit an adequately written proposal for the agency to evaluate; otherwise it runs the risk of having its proposal found technically unacceptable. *Id.*, citing *Menendez-Donnell & Assocs.*, B-286599, Jan. 16, 2001, 2001 CPD ¶ 15 at 3. A protester's disagreement with evaluation judgments, by itself, does not render those judgments unreasonable. *Metson Marine Servs., Inc.*, B-413392, Oct. 19, 2016, 2016 CPD ¶ 313 at 3.

Here, based on our review of the record, it is clear that the solicitation provided detailed instructions to offerors regarding the required content of their proposals, including requirements that proposals address jurisdiction-specific risks; demonstrate appropriate staffing, including management/staff ratios; and provide detailed support and rationale for alteration of the RFP-provided workloads. The solicitation also warned that failure to provide such information could result in rejection of an offeror's proposal. Further, as discussed above, the agency clearly determined that WPS's proposal failed to adequately address the solicitation requirements, and our review of the record (including the fact that WPS no longer contests most of these determinations) finds nothing unreasonable in the agency's various assessments. Finally, the record establishes that, in contrast to WPS's technically unacceptable proposal, the agency received proposals from three other offerors--each of which was rated acceptable or better with regard to its proposed technical approach.

On this record, we find nothing unreasonable in the agency's determination to eliminate WPS's proposal from further consideration.

The protest is denied.

Thomas H. Armstrong
General Counsel