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## Decision

**Matter of:** UnitedHealth Military & Veterans Services, LLC; WellPoint Military Care Corporation; Health Net Federal Services, LLC

**File:** B-411837.2; B-411837.3; B-411837.4; B-411837.5; B-411837.6; B-411837.7; B-411837.8; B-411837.9; B-411837.10

**Date:** November 9, 2016

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### DIGEST

1. Where solicitation provided that the agency would consider whether a proposal reflected a realistic understanding of the risks and complexities associated with the required program commitments and contract terms and conditions, the source selection authority's extensive contemporaneous documentation supporting his

determination that the proposals reflected a clear understanding of the contract requirements complied with the solicitation's requirements.

2. Protesters' multiple assertions challenging the agency's evaluation of proposals under the technical/management and past performance factors simply reflect disagreement with the agency's judgments and provide no basis for sustaining the protests.

3. Protest that agency failed to evaluate the potential corporate acquisition of the east region awardee's parent corporation is denied where the acquisition has not occurred and the U.S. Department of Justice has filed an antitrust lawsuit to block the transaction.

4. Protest that agency failed to properly evaluate the corporate acquisition of the west region awardee's parent corporation is denied where the agency discussed the matter with the awardee during the procurement and reasonably concluded that the entity submitting the proposal would remain intact and would retain the resources on which its proposal was based.

5. Where west region awardee's proposal erroneously referenced outdated standards in an attachment to its quality management/quality improvement (QM/QI) plan, but the attachment did not affect the purpose for which the QM/QI plan was submitted nor the stated bases for evaluation of the plan, we reject the protester's assertion that the agency was required to reject the awardee's proposal.

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## **DECISION**

UnitedHealth Military & Veterans Services, LLC (UnitedHealth M&V), of Minnetonka, Minnesota, WellPoint Military Care Corporation (WellPoint), of Indianapolis, Indiana, and Health Net Federal Services, LLC (Health Net), of Rancho Cordova, California, protest the Defense Health Agency's (DHA or agency) award of a contract to Humana Government Business, Inc. (Humana), of Louisville, Kentucky, pursuant to request for proposals (RFP) No. HT9402-15-R-0002 to provide managed care support services (MCS) for the Department of Defense (DOD) TRICARE program<sup>1</sup> in the east region of the United States.<sup>2</sup> UnitedHealth

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<sup>1</sup> The TRICARE program is a managed healthcare program implemented by the DOD. Under Chapter 55 of Title 10, United States Code, specified persons associated with the uniformed services are entitled to government-funded health care. Eligible beneficiaries include active duty service members and their families, military retirees and their families, and family member survivors. Agency Report (AR), Sept. 2, 2016, at 1-2.

<sup>2</sup> For this procurement, the east region is primarily comprised of the states east of the Mississippi River, along with Arkansas, Louisiana, Oklahoma and portions of

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M&V also protests the agency's award of a contract to Health Net for TRICARE MCS services in the west region of the United States.<sup>3</sup> The protesters challenge various aspects of the agency's evaluation and source selection process.

We deny the protests.

## BACKGROUND

After seeking industry input through publication of a draft RFP in November 2014, the agency published RFP No. HT9401-15-R-0002 in April 2015, seeking proposals to assist the DOD in providing managed healthcare services for military members and their beneficiaries,<sup>4</sup> and to "financially underwrite the delivery of health care services" that are provided outside of the direct care system. 10 U.S.C. § 1072(7); see also RFP at 51-53. The solicitation contemplated the award of two contracts for a base performance period and five 1-year option periods<sup>5</sup>--one contract covering the east region of the United States and one covering the west region.<sup>6</sup> For each

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Texas. AR, File 10, RFP, at 24. (The documents provided with the agency report were labeled "Files," and the agency provided separate pagination for each AR File; that pagination is referenced in this decision.)

<sup>3</sup> The west region is primarily comprised of the states west of the Mississippi River, except for Arkansas, Louisiana, Oklahoma and portions of Texas. Id. at 25.

<sup>4</sup> Under the TRICARE program, a portion of the beneficiaries' medical care is provided as "direct care" at military treatment facilities (MTFs). AR at 1. However, insufficient capacity exists in the direct care system to provide all necessary medical care to all eligible beneficiaries. Accordingly, the contracts at issue here augment the health care services provided by the direct care system. In this regard, section C.1.1 of the RFP explains: "[t]he MCS Contractor (MCSC) shall assist the Military Health System in operating an integrated healthcare delivery system combining resources of the military's direct medical care system and the Contractor's managed care support to provide health, medical and administrative support services to TRICARE-eligible beneficiaries." RFP at 7.

<sup>5</sup> The two contracts are frequently referred to as the "T-2017 managed care support contracts" or simply "T-2017." AR at 1.

<sup>6</sup> The predecessor TRICARE contracts (referred to as the "T-3" contracts) were divided into three regions--north, south, and west. Under the T-2017 contracts, the T-3 north and south regions are combined into the east region; the west region remains the same. AR at 3. The east region covers approximately 5.9 million beneficiaries, and the west region covers approximately 2.9 million beneficiaries. Id. The solicitation permitted offerors to propose in both regions, but provided that an offeror could only be awarded a contract for one region, noting that if an offeror

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region, the solicitation sought proposals to: establish and maintain provider networks; operate a referral management system; perform beneficiary enrollments; conduct medical management programs; provide customer service for both beneficiaries and providers; and process TRICARE claims. RFP at 8-17.

The solicitation provided for award on a best-value basis, and established the following evaluation factors: technical/management,<sup>7</sup> past performance,<sup>8</sup> price/cost,<sup>9</sup> and small business participation.<sup>10</sup> Id. at 151-52. The solicitation provided that the technical/management and past performance factors were of equal importance and, individually, were more important than price/cost.

With regard to price/cost, offerors were required to complete price evaluation templates for each region; the templates included “pre-inserted plug in numbers, representing the Government health care cost estimates.” AR at 47; see AR,

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(...continued)

was determined to offer the best value in both regions, that offeror would be awarded the larger, east region contract. RFP at 151.

<sup>7</sup> Under the technical/management factor, the solicitation established 7 subfactors: (1) network management; (2) referral management; (3) medical management; (4) customer service; (5) claims processing; (6) program planning/control; and (7) transition management. The solicitation provided that subfactor 6 was the most important, and that subfactor 7 was less important than subfactor 6, but more important than subfactors 1 through 5 individually, which were of equal importance. Id. at 152. The solicitation provided that proposals would be assigned quality ratings (outstanding, good, acceptable, marginal, or unacceptable) and risk ratings (low, moderate, or high) under each subfactor. Id. at 152-54.

<sup>8</sup> For evaluation of past performance, the solicitation provided that the agency would assess the relevance of an offeror’s past performance and assign a confidence rating of substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence. Id. at 157-60. In this regard, the solicitation provided that the agency would consider the past performance of both the offeror and its “first tier subcontractors.” Id. at 139.

<sup>9</sup> The solicitation provided that total evaluated price (TEP) would be calculated as the aggregate price associated with: transitioning-in, underwritten healthcare costs, a per member per month (PMPM) price, the offeror’s fee, a service assist team price, and transitioning-out costs. RFP at 160.

<sup>10</sup> The solicitation established various goals for small business participation and provided that proposals would be evaluated on an acceptable/unacceptable basis under this factor. Id. at 161-62.

File 35, Pricing Templates.<sup>11</sup> Offerors were encouraged to propose guaranteed network provider discounts, in the form of a percentage discount from TRICARE allowable charges.<sup>12</sup> RFP at 53. For evaluation purposes, the solicitation provided that the dollar value of an offeror's guaranteed percentage discount would be calculated and subtracted from the solicitation's "plug in" cost estimate for healthcare costs. Id. at 160. The solicitation further stated: "application of the Offeror's guaranteed network provider discounts will be the only adjustments to the [underwritten health care costs]." Id. at 160-61.

Finally, and of particular relevance to these protests, sections M.2.2 and M.2.3 of the solicitation advised offerors that the agency would consider the extent to which an offeror's proposal demonstrated its understanding of the solicitation requirements, warning that a proposal that failed to realistically reflect such an understanding could be rejected. Specifically, these provisions stated:

M.2.2. Unrealistic Proposals. The Government may reject any proposal that is evaluated to be unrealistic in terms of program commitments, contract terms and conditions such that the proposal is deemed to reflect an inherent lack of competence or failure to comprehend the complexity and risks of the program.

M.2.3. Evaluation Approach. The Government will evaluate the extent to which the proposal exhibits a clear understanding of the work requirements and the means required to fulfill the requirements. The Government will also evaluate the extent to which the proposal demonstrates an ability to

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<sup>11</sup> The solicitation explained that the "plug-in" numbers were developed using TRICARE's actual allowable healthcare costs, and did not include reductions for any network discounts. RFP at 145.

<sup>12</sup> Healthcare providers are paid up to a TRICARE Maximum Allowable Charge (TMAC). The solicitation stated that, at the end of each contract performance period, the government will calculate the discounts actually achieved. RFP at 53. If the guaranteed percentages are not achieved, the agency will offset the dollar deficit from the contractor's next payment; that is, the contractor assumes the financial risk for achieving the guaranteed network provider discounts. Id. If the contractor exceeds the guaranteed discount, the contractor will earn ten percent of the amount exceeding the guarantee. Id. at 54.

meet or exceed the requirements defined in the Request for Proposal (RFP) and the quality of service which is likely to result from implementation of an Offeror's proposed methods.

RFP at 151.

On July 23, 2015, four offerors submitted proposals for the east region; three of those offerors also submitted proposals for the west region.<sup>13</sup> Thereafter, the proposals were evaluated and discussions were conducted. On February 16, 2016 final proposal revisions (FPRs) were submitted; the FPRs were subsequently evaluated by the agency's source selection evaluation board (SSEB),<sup>14</sup> and that evaluation was reviewed by the agency's source selection advisory council (SSAC). Thereafter, the evaluation record was reviewed by the source selection authority (SSA), who generally agreed with the prior evaluations "[but for] a few exceptions that are noted in my [the SSA's] narrative discussions [in the source selection decision documents]." AR, File 63, Source Selection Decision Document--East Region (SSDD-E), at 8; AR, File 364, Source Selection Decision Document--West Region (SSDD-W), at 4. The final proposal ratings for the east and west regions, respectively, were as follows:

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<sup>13</sup> UnitedHealth M&V, Health Net, and Humana each submitted proposals for both regions; WellPoint submitted a proposal only for the east region.

<sup>14</sup> The SSEB was comprised of a technical evaluation team (TET), a past performance evaluation team (PPET), and a price evaluation team (PET).

**East Region**

	<b>Health Net</b>	<b>Humana</b>	<b>WellPoint</b>	<b>UnitedHealth M&amp;V</b>
<b>Tech/Mgmt Ratings</b>				
<b>Network Mgmt (Subfactor 1)</b>	Outstanding Low Risk	Good Low Risk	Good Low Risk	Outstanding Low Risk
<b>Referral Mgmt (Subfactor 2)</b>	Outstanding Low Risk	Outstanding Low Risk	Outstanding Low Risk	Good Low Risk
<b>Medical Mgmt (Subfactor 3)</b>	Good Low Risk	Outstanding Low Risk	Good Low Risk	Outstanding Low Risk
<b>Customer Service (Subfactor 4)</b>	Outstanding Low Risk	Outstanding Low Risk	Outstanding Low Risk	Good Low Risk
<b>Claims Processing (Subfactor 5)</b>	Good Low Risk	Good Low Risk	Acceptable Low Risk	Acceptable Low Risk
<b>Prog. Plan/Control (Subfactor 6)</b>	Acceptable Low Risk	Good Low Risk	Acceptable Low Risk	Good Low Risk
<b>Transition Mgmt (Subfactor 7)</b>	Acceptable Low Risk	Acceptable Low Risk	Acceptable Low Risk	Acceptable Low Risk
<b>Past Performance</b>	Satisfactory Confidence	Substantial Confidence	Satisfactory Confidence	Satisfactory Confidence
<b>Total Evaluated Price</b>	\$40,170,839,65	\$40,517,947,263	\$40,712,000,000	\$43,073,480,195

**West Region**

	<b>Health Net</b>	<b>Humana</b>	<b>UnitedHealth M&amp;V</b>
<b>Tech/Mgmt Ratings</b>			
<b>Network Mgmt (Subfactor 1)</b>	Outstanding Low Risk	Good Low Risk	Outstanding Low Risk
<b>Referral Mgmt (Subfactor 2)</b>	Outstanding Low Risk	Outstanding Low Risk	Good Low Risk
<b>Medical Mgmt (Subfactor 3)</b>	Good Low Risk	Outstanding Low Risk	Outstanding Low Risk
<b>Customer Service (Subfactor 4)</b>	Outstanding Low Risk	Outstanding Low Risk	Good Low Risk
<b>Claims Processing (Subfactor 5)</b>	Good Low Risk	Good Low Risk	Acceptable Low Risk
<b>Prog. Plan/Control (Subfactor 6)</b>	Acceptable Low Risk	Good Low Risk	Good Low Risk
<b>Transition Mgmt (Subfactor 7)</b>	Acceptable Low Risk	Acceptable Low Risk	Acceptable Low Risk
<b>Past Performance</b>	Satisfactory Confidence	Substantial Confidence	Satisfactory Confidence
<b>Total Evaluated Price</b>	\$17,723,452,440	\$17,882,351,687	\$18,803,253,647

SSDD-E at 11; SSDD-W at 10.

In selecting Humana for award in the east region, the SSA concluded that Humana's proposal was superior to the other three proposals under the non-price/cost evaluation factors, and that Humana offered a lower price/cost than either UnitedHealth M&V or WellPoint; accordingly, no tradeoff was required in selecting Humana over those two offerors. With regard to Health Net, the SSA concluded that Humana's superiority under the non-price/cost factors outweighed Health Net's slightly lower price/cost. SSDD-E at 235-36.

In selecting Health Net over UnitedHealth M&V in the west region,<sup>15</sup> the SSA concluded that UnitedHealth M&V's proposal was slightly superior to Health Net's under the non-price/cost evaluation factors, but concluded that such superiority "simply does not merit the additional \$1,079,801,207 price." SSDD-W at 171.

On July 21, the offerors were notified of the source selection decisions. These protests followed.

## DISCUSSION

First, UnitedHealth M&V and WellPoint assert that, in making both awards, the agency failed to perform the realism assessment referenced in section M.2.2 of the solicitation. Next, UnitedHealth M&V, WellPoint, and Health Net challenge the east region award to Humana, with one or more of the protesters arguing that the agency's evaluation under the technical/management and past performance factors was flawed, and asserting that the agency was required to evaluate the pending acquisition of Humana's parent corporation by Aetna, Inc. Finally, UnitedHealth M&V protests the west region award to Health Net asserting that Health Net's proposal took exception to the solicitation requirements; that the agency inadequately evaluated the corporate acquisition of Health Net's parent corporation; and that the agency's past performance evaluation was flawed. As discussed below, we find no basis to sustain the protests.<sup>16</sup>

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<sup>15</sup> Although Humana's proposal was evaluated as offering the best value in both regions, the solicitation precluded an offeror from receiving more than one award. RFP at 151. Accordingly, since Humana's proposal had been selected for award in the east region, it was not considered for award in the west region. As noted above, WellPoint did not submit a proposal for the west region.

<sup>16</sup> In pursuing these protests, one or more of the protesters has challenged virtually every aspect of the evaluation and source selection process, raising multiple arguments that are in addition to, or variations of, those specifically discussed below. We have considered all of the protesters' allegations and find no basis to sustain their protests.

## Realism Evaluation for Both Awards

First, UnitedHealth M&V and WellPoint assert that the agency failed to properly consider the realism of the offerors' proposals as contemplated by section M.2.2 of the solicitation. As noted above, this section of the RFP warned offerors that the agency "may reject any proposal that is evaluated to be unrealistic in terms of program commitments, contract terms and conditions such that the proposal is deemed to reflect an inherent lack of competence or failure to comprehend the complexity and risks of the program." RFP at 151. Among other things, the protesters assert that the agency was required to perform a price/cost realism evaluation with regard to the offerors' guaranteed network provider discounts.

The agency responds that the solicitation did not contemplate a separate price/cost realism evaluation with regard to the guaranteed provider discounts or any other fixed-price element of the offerors' proposals.<sup>17</sup> The agency further maintains that, to the extent the solicitation required a realism assessment regarding the offerors' understanding of the program commitments, the contract terms and conditions, and the risks and complexities of performing the contract, the agency's comprehensive assessments met the solicitation requirements.

We have held that where, as here, a solicitation puts offerors on notice that a procuring agency may reject proposals that are evaluated as being unrealistic, the agency's rejection of proposals is discretionary, but the realism evaluation is mandatory. See, e.g., Optex Systems, Inc., B-408591, Oct. 30, 2013, 2013 CPD ¶ 244 at 4; Esegur-Empresa de Seguridad, SA, B-407947, B-407947.2, Apr. 26, 2013, 2013 CPD ¶ 109 at 4; Waterfront Technologies, Inc.--Protest and Costs, B-401948.16, B-401948.18, June 24, 2011, 2011 CPD ¶ 123 at 15-16.

Here, the contemporaneous evaluation record, including the SSA's comprehensive source selection documents for each region,<sup>18</sup> discussed in great detail the agency's positive assessments regarding the depth of the offerors' understanding of the contract requirements. Additionally, the record establishes that the agency considered all of the offerors' discounts in the context of the agency's estimate for the total underwritten healthcare costs. Specifically, for the east region, the offerors' guaranteed discounts were evaluated as follows:

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<sup>17</sup> The solicitation referenced a cost realism analysis with regard to contract line item number (CLIN) 9001 (the cost-reimbursement CLIN for transitioning out at the end of the contract). RFP at 161.

<sup>18</sup> The source selection document for the east region was 239 pages and the source selection document for the west region was 173 pages.

	<b>Overall Network Discount</b>
<b>Humana</b>	[redacted]
<b>Health Net</b>	[redacted]
<b>UnitedHealth M&amp;V</b>	[redacted]
<b>WellPoint</b>	[redacted]

AR, File 181, Price Evaluation Team (PET) Report (East), at 11.

In the west region, the offerors' guaranteed discounts were evaluated as follows:

	<b>Overall Network Discount</b>
<b>Humana</b>	[redacted]
<b>Health Net</b>	[redacted]
<b>UnitedHealth M&amp;V</b>	[redacted]

AR, File 444, Final PET Report (West), at 11.

In short, the contemporaneous evaluation record established that the agency viewed each of the proposals as reflecting a strong and realistic understanding of the contract's risks and requirements. The record further shows that the agency considered the offerors' guaranteed discounts, recognizing that in the east region, Humana's guaranteed discount was less than [redacted] percent higher than UnitedHealth M&V's discount, and was nearly [redacted] percent lower than WellPoint's discount; and that, in the west region, Health Net's discount was [redacted] percent higher than UnitedHealth M&V's discount.

At the hearing GAO conducted in connection with this protest,<sup>19</sup> the SSA provided testimony regarding the bases for his source selection decisions. Specifically, the SSA testified that he read the offerors' proposals, considered the SSEB and SSAC reports, conducted his own independent evaluation, and prepared the comprehensive decision documents for each region. Consistent with the contemporaneous evaluation documentation, the SSA testified that, in his judgment, all of the proposals "reflected a clear understanding of the requirements and risks of the program."<sup>20</sup> Hearing Transcript (Tr.) at 172-74. In this regard, the SSA

<sup>19</sup> In resolving this protest, GAO conducted a hearing, on the record, during which testimony was provided by the SSA and the contracting officer.

<sup>20</sup> This conclusion was consistent with agency's assignment of low risk ratings to all of the offerors' proposals under each of the technical/management evaluation subfactors. See SSDD-E at 12; SSDD-W at 10.

explained that he viewed sections M.2.2 and M.2.3 as “brother and sister components” of the RFP under which the agency assessed the offerors’ understanding of the contract requirements.<sup>21</sup> Tr. at 227. In this regard, the SSA testified that he viewed section M.2.3 as the “more positive side” of that evaluation, pursuant to which he documented his positive conclusions regarding the offerors’ clear understanding of the contract requirements. *Id.* Conversely, the SSA testified that he viewed section M.2.2 as a provision that would have come into play if he had found the proposals to be unrealistic—which he did not. Accordingly, the SSA explained that, because he did not find the proposals to be unrealistic, the agency’s evaluation record did not specifically refer to RFP section M.2.2. Nonetheless, he maintained that, in documenting the positive conclusion that the offerors realistically understood the contract requirements, the agency complied with the provisions of M.2.2. Tr. at 31-32, 168-69.

With regard to the proposed discounts, the SSA testified that he reviewed the PET reports, examined the offerors’ discounts, noted that they were within a narrow range, and concluded that they were generally consistent with the discounts that had been achieved under the predecessor contracts.<sup>22</sup> Tr. at 120-34.

As noted above, section M.2.2 provided that the agency would consider whether a proposal reflected a realistic understanding of the risks and complexities associated with program commitments and the contract’s terms and conditions. Based on our review of the entire record, including the SSA’s testimony that explained the extensive contemporaneous documentation supporting his conclusions, we conclude that the agency complied with the solicitation provisions regarding a realism assessment. The protesters’ assertions to the contrary are denied.<sup>23</sup>

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<sup>21</sup> As noted above, RFP section M.2.3 stated: “The Government will evaluate the extent to which the proposal exhibits a clear understanding of the work requirements.” RFP at 151.

<sup>22</sup> Under the prior TRICARE contracts, the SSA has served as the director for the TRICARE south region and the acting director for all three regions. Tr. at 18-20.

<sup>23</sup> The protesters similarly assert that the agency failed to comply with RFP section M.2.2 with regard to offerors’ fixed “per member per month” (PMPM) prices, which reflected various administrative services, including claims processing. Based on the agency’s reasonable determination, discussed above, that the offerors understood the contract requirements, we similarly reject the protesters’ assertions that the agency’s evaluation failed to comply with the requirements of section M.2.2 in the context of the offerors’ PMPM prices.

## Additional Challenges to the East Region Award to Humana

Next, UnitedHealth M&V, WellPoint, and Health Net challenge other aspects of the east region award to Humana. Among other things, one or more of the protesters challenge the agency's evaluation under the technical/management factor; challenge the agency's evaluation under the past performance factor; and assert that the agency failed to reasonably consider the potential acquisition of Humana's parent corporation by Aetna, Inc.

### Evaluation Under Technical/Management Factor

As noted above, the solicitation established 7 subfactors under the technical/management evaluation factor: (1) network management; (2) referral management; (3) medical management; (4) customer service; (5) claims processing; (6) program planning/control; and (7) transition management. RFP at 152. With regard to the technical/management factor overall, the SSA concluded that "all [four] offerors submitted strong proposals, and . . . the degree of difference among the offerors was not dramatic." AR, File 63, SSDD-E, at 235. Nonetheless, one or more of the protesters has challenged the agency's evaluation under virtually every evaluation subfactor, arguing either that the protester's proposal should have received higher ratings, that Humana's proposal should have received lower ratings, or that the evaluations were unequal.

For example, with regard to subfactor 1, network management, WellPoint complained that the evaluation was flawed because it "failed to credit" Wellpoint's proposal with a strength<sup>24</sup> for offering [redacted], and improperly credited Humana with a strength for [redacted]. WellPoint Supp. Protest, Sept. 12, 2016, at 72, 74-79. With regard to subfactor 3, medical management, WellPoint complained that the agency's evaluation was flawed for crediting Humana's proposal with a strength for providing [redacted], but not crediting WellPoint's proposal with a strength for what WellPoint asserts was a similar program. Id. at 88-90.

With regard to subfactor 4, customer service, WellPoint complained that the agency unequally failed to credit WellPoint's proposal with strengths for [redacted] that WellPoint asserts are superior to similar provisions in Humana's proposal. Id. at 93-94. With regard to subfactor 5, claims processing, WellPoint and Health Net complain that the agency unequally evaluated Humana's proposal by crediting

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<sup>24</sup> The solicitation defined a strength as "an aspect of an Offeror's proposal that has merit or exceeds specified performance or capability requirements in a way that will be advantageous to the Government during contract performance." RFP at 153.

Humana, but not the protesters, with a strength for proposing [redacted].<sup>25</sup> Id. at 81-86; Health Net Supp. Protest, Sept. 12, 2016, at 26-29.

With regard to subfactor 6, program planning/control, WellPoint and Health Net assert that the agency's evaluation was flawed for crediting Humana's proposal with strengths for proposing [redacted], while failing to credit WellPoint's and Health Net's proposals with similar strengths. WellPoint Supp. Protest, Sept. 12, 2016, at 67-72; Health Net Supp. Protest, Sept. 12, 2016, at 18-26. Finally, with regard to subfactor 7, transition plan, WellPoint asserts that the agency "overlook[ed] significant deficiencies in Humana's [proposal] . . . and important benefits in [WellPoint's proposal]." WellPoint Supp. Protest, Sept. 12, 2016, at 57.

In reviewing protests that challenge an agency's evaluation of offerors' technical proposals, our Office does not reevaluate proposals; rather, we review the record to determine if the evaluation was reasonable, adequately documented, and consistent with the terms of the solicitation and applicable statutes and regulations. See, e.g., Alutiig Tech. Servs. LLC, B-411464, B-411464.2, Aug. 4, 2015, 2015 CPD ¶ 268 at 4; Silverback7, Inc., B-408053.2, B-408053.3, Aug. 26, 2013, 2013 CPD ¶ 216 at 3. An offeror's disagreement with the agency's various judgments, without more, does not establish that the evaluation was unreasonable. See Alutiig Tech. Servs. LLC, supra.

Here, the agency has provided substantive, comprehensive responses to each of the protesters' multiple assertions regarding the agency's evaluation under the technical/management evaluation. Contracting Officer's Statement, Aug. 31, 2016; AR, Legal Memorandum, September 2, 2016; Supp. AR, Legal Memorandum, Sept. 30, 2016. As noted above, GAO will not reevaluate proposals; nonetheless, here, we have reviewed the entire evaluation record, along with the protesters' multiple assertions regarding alleged evaluation flaws and/or alleged inequities and the agency's responses thereto. Based on our review, we find no basis to conclude that the agency's technical/management evaluation was unreasonable or inadequately documented. That is, while the protesters have identified multiple areas of the agency's evaluation they would prefer to be different, their various arguments reflect nothing more substantive than disagreement with the agency's multiple, well-documented judgments. Accordingly, all of the protesters' various complaints regarding the technical/management evaluation are denied.

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<sup>25</sup> WellPoint also protests that the agency conducted unequal discussions with regard to subfactor 5, complaining that the agency failed to pose specific questions that, WellPoint asserts, would have led to WellPoint's proposal receiving additional evaluated strengths. WellPoint Supp. Protest, Sept. 16, 2016, at 101-04. WellPoint's allegations in this regard provide no basis to sustain its protest.

## Evaluation of Past Performance

As noted above, Humana's proposal received a substantial confidence past performance rating, while each of the protesters' proposals received a satisfactory confidence rating. Health Net and WellPoint assert that Humana's rating and/or each of their own ratings, was improper for various reasons. Among other things, Health Net asserts that the agency gave too much consideration to "minor" problems Health Net has previously had in performing TRICARE and/or other healthcare-related contracts. Health Net Protest, Aug. 5, 2016, at 37-38. Health Net also complains that the agency's past performance evaluation failed to reflect the fact that Humana has only prime contractor experience, not claims processing experience, and that Health Net's claims processing subcontractor has more claims processing experience than Humana's subcontractor. Health Net Supp. Protest, Sept. 12, 2016, at 12-14.

Conversely, WellPoint challenges the agency's past performance evaluation on the basis that Humana received too much credit for having been a prior TRICARE prime contractor, and complains that WellPoint was improperly downgraded because it has no TRICARE prime contractor experience. WellPoint Supp. Protest, Sept. 12, 2016, at 43-54. In this context, WellPoint asserts that "[p]rior experience as a TRICARE prime contractor was the unstated evaluation criteri[on] and golden ticket to attaining the highest Substantial Confidence rating." *Id.* at 44. Finally, WellPoint complains that the agency failed to give WellPoint sufficient credit for performing smaller non-TRICARE contracts, asserting that it was entitled to the highest past performance rating, substantial confidence. *Id.* at 46-50.

The agency responds that, consistent with the ratings, Humana's past performance record was "far superior" to that of the other offerors. Supp. AR, Legal Memorandum, Sept. 30, 2016, at 223; see SSDD-E at 232. In responding to Health Net's assertions, the agency notes that the quality of Health Net's performance was "substantially inferior to Humana's" based on the problems Health Net characterizes as "minor." *Id.* at 252-53; see SSDD-E at 229-32. Further, the agency maintains that it properly considered the past performance of the proposed subcontractors, as contemplated by the solicitation. See RFP at 139.

In responding to WellPoint's assertions regarding prior experience as a TRICARE prime contractor, the agency points out that the SSA considered WellPoint's past performance to be superior to that of either UnitedHealth M&V or Health Net--both of which are prior TRICARE prime contractors. Accordingly, the agency maintains that prior TRICARE prime contractor experience was not the "golden ticket" to a substantial confidence rating, nor was it an unstated evaluation factor. *Id.* at 225; see SSDD-E at 231-32. The agency further points to the contemporaneous evaluation documentation, in which both the past performance evaluation team (PPET) and the SSA expressed concern that WellPoint's prior experience did not include contracts of the same magnitude as the large east region contract--the only

region for which WellPoint competed. AR, File 161, PPET Report, at 19; SSDD-E, at 224-25. Accordingly, the agency maintains that it had a reasonable basis for assigning only a satisfactory confidence rating to WellPoint's proposal.

An agency's evaluation of past performance, which includes its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of agency discretion which we will not disturb unless the agency's assessments are unreasonable, inconsistent with the solicitation criteria, or undocumented. Fox RPM Corp., B-409676.2, B-409676.3, Oct. 20, 2014, 2014 CPD ¶ 310 at 3. Where a solicitation calls for the evaluation of past performance, we will examine the record to ensure that the evaluation was reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations. Divakar Techs., Inc., B-402026, Dec. 2, 2009, 2009 CPD ¶ 247 at 5. Further, a protester's disagreement with the procuring agency's judgment, without more, does not establish that an evaluation was improper. Beretta USA Corp., B-406376.2, B-406376.3, July 12, 2013, 2013 CPD ¶ 186 at 10. Finally, it is well settled that a particular offeror may possess unique advantages and capabilities due to its prior experience under a government contract, and it is not unreasonable for an agency to place particular emphasis on a firm's performance as an incumbent contractor, since such performance may be reasonably viewed as a more accurate indication of likely future performance than performance on other contracts. Cortez, Inc., B-292178 et al., July 17, 2003, 2003 CPD ¶ 184 at 9; Gonzales Consulting Servs., Inc., B-291642.2, July 16, 2003, 2003 CPD ¶ 128 at 7.

Here, we find no basis to question the agency's past performance evaluation. In this regard, the contemporaneous evaluation record establishes that the quality of Humana's past performance was consistently evaluated as superior to Health Net's. While Health Net argues that its prior problems were "minor" and should be disregarded, its opinion in that regard reflects mere disagreement with the agency's judgment, and provides no basis for sustaining its protest. Similarly, we reject Health Net's assertion that the past performance evaluation was flawed because it did not reflect the somewhat differing levels of claims processing experience of the offerors' proposed subcontractors.

With regard to WellPoint's complaints, the record does not support WellPoint's assertion that prior experience as a TRICARE prime contractor constituted an unstated evaluation factor. As noted above, WellPoint's past performance was considered superior to both Health Net's and UnitedHealth M&V's--both of which are prior TRICARE prime contractors, yet they received only satisfactory confidence ratings. In any event, as noted above, there is nothing improper in an agency placing particular emphasis on a firm's performance as an incumbent contractor, since such performance may be reasonably viewed as a more accurate indication of likely future performance. Cortez, Inc., supra; Gonzales Consulting Servs., Inc., supra. Finally, we find nothing unreasonable in the agency's determination that WellPoint's performance of contracts that were smaller than the east region contract

provided a basis for assigning a satisfactory confidence, rather than a substantial confidence, rating. Here, the solicitation specifically provided that, in evaluating past performance, the agency would consider the “scope and magnitude” of an offeror’s prior contracts. RFP at 158. On the record here, we find no merit in the protesters’ challenges to the agency’s past performance evaluation.

### Pending Acquisition of Humana

Next, WellPoint and UnitedHealth M&V protest the award to Humana on the basis that the agency failed to adequately consider the “risks to contract performance stemming from the anticipated Aetna acquisition of Humana.”<sup>26</sup> WellPoint Protest, Aug. 2, 2016, at 29; UnitedHealth M&V Supp. Protest, Aug. 8, 2016, at 3-21. Both protesters speculate as to how the potential acquisition could affect Humana’s contract performance, and maintain that the award to Humana was improper based on their projections of such potential risks.

The agency responds that Aetna’s proposed acquisition of Humana has not occurred and “may never occur.” AR, Legal Memorandum, Sept. 2, 2016, at 15. The agency further maintains that, in awarding the contract to Humana, it reasonably concluded that, even if Aetna ultimately succeeds in acquiring Humana’s parent corporation, Humana will remain a wholly owned subsidiary, and the protesters’ speculation regarding the potential risks flowing from that transaction did not rise to the level of sufficient certainty to have properly affected the agency’s award determination. Id. at 23-31. We agree.

Protest decisions regarding matters of corporate status and restructuring are highly fact-specific, and turn largely on the individual circumstances of the proposed transactions and timing. IBM U.S. Fed. a Div. of IBM Corp.; Presidio Networked Solutions, Inc., B-409806 et al., Aug. 15, 2015, 2014 CPD ¶ 241 at 22. Here, based on the facts presented, including the fact that the Department of Justice has sought to block the transaction, we do not find sufficient bases to question the agency’s award to Humana due to Aetna’s potential acquisition of Humana’s parent corporation. Specifically, we find nothing unreasonable in the

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<sup>26</sup> UnitedHealth M&V and WellPoint refer to a July 2015 press release, available at [www.businesswire.com/news/home/20150702005935/en/Aetna-Acquire-Humana-27-Billion-Combined-Entity#.VZYpMeTD90I](http://www.businesswire.com/news/home/20150702005935/en/Aetna-Acquire-Humana-27-Billion-Combined-Entity#.VZYpMeTD90I) (last visited November 4, 2016), which states that Aetna and Humana, Inc. (Humana’s parent corporation) have entered into a definitive agreement that Aetna will acquire Humana, Inc. The protesters acknowledge that the issue is “complicated” by the fact that, in July 2016, the U.S. Department of Justice filed an antitrust lawsuit “to block the acquisition.” See UnitedHealth M&V Supp. Protest, Aug. 8, 2016, at 3.

agency's position that the potential risks flowing from that possible transaction did not rise to a level of sufficient certainty to affect the agency's award determination.<sup>27</sup>

#### West Region Award to Health Net

Next, UnitedHealth M&V protests the west region award to Health Net on the bases that Health Net's proposal failed to comply with the solicitation requirements; that the agency failed to consider the corporate acquisition of Health Net's parent corporation; and that the agency failed to properly evaluate proposals under the past performance evaluation factor.

#### Compliance with the Solicitation Requirements

First, UnitedHealth M&V asserts that Health Net was ineligible for award because its proposal allegedly took exception to certain performance standards in the TRICARE operations manual (TOM). Specifically, UnitedHealth M&V refers to a document in Health Net's proposal that was submitted as attachment K to HealthNet's quality management/quality improvement (QM/QI) plan. The QM/QI plan was submitted in response to the solicitation's instructions for technical/management subfactor 6, program planning and control, which directed each offeror to describe its QM/QI program and provide a copy of its QM/QI plan. RFP at 138. Although the solicitation did not require that offerors reference particular TOM performance standards,<sup>28</sup> Health Net's attachment K referenced certain TOM standards, but erroneously referred to the standards for Health Net's predecessor T-3 contract; some of those standards have been revised for the T-2017 contract. Although the text of Health Net's plan expressly included statements that Health Net was proposing to comply with the revised standards, UnitedHealth M&V maintains that Health Net's inclusion of attachment K "took exception" to the solicitation requirements and, therefore, Health Net's proposal was rendered ineligible for award. UnitedHealth M&V Supp. Protest, Sept. 12, 2016, at 34-38.

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<sup>27</sup> UnitedHealth M&V similarly asserts that the agency had an obligation to consider and assess potential risks of organizational conflicts of interest (OCIs) flowing from Aetna's potential acquisition of Humana's parent corporation. UnitedHealth M&V Supp. Comments, Oct. 7, 2016, at 40-41. For the reasons discussed above, we similarly reject this argument.

<sup>28</sup> The solicitation directed offerors to describe their QM/QI processes. RFP at 138. The solicitation further provided that each QM/QI plan would be evaluated to determine "if an effective internal [QM/QI] program is being offered" and elaborated that plans would be "evaluated for timeliness, adequacy and appropriate use of communication medium (e.g. email, telephone, face-to-face meeting)." RFP at 157.

The agency responds that it is clear Health Net inadvertently referenced the TOM standards applicable to its prior T-3 contract. The agency further points out that Health Net's attachment K was not required by the solicitation, and Health Net's erroneous reference to the outdated TOM standards did not affect either the purpose for which the QM/QI plan was submitted or the RFP's stated bases for evaluation. In short, the agency maintains that, since the QM/QI plan was submitted for the agency to evaluate each offeror's QM/QI processes and procedures--not compliance with the performance standards--the agency did not view Health Net's erroneous reference to the outdated standards as taking exception to the terms of the solicitation. Id.

A proposal that takes exception to a solicitation's material terms and conditions must be considered unacceptable for award. See, e.g., Kratos Defense & Rocket Support Servs., Inc., B-413143 et al., Aug. 23, 2016, 2016 CPD ¶ 227 at 5. Material terms of a solicitation are those which affect the price, quantity, quality, or delivery of the goods or services being provided. Id. Nonetheless, this Office will not sustain a protest where the record reflects a procuring agency's reasonable determination that the awardee's proposal did not take exception to the solicitation's requirements. See Arrington Dixon & Assocs., Inc., B-409981, B-409981.2, Oct. 3, 2014, 2014 CPD ¶ 284 at 11; Dataproducts New England, Inc., et al., B-246149.3 et al., Feb. 26, 1992, 92-1 CPD ¶ 231 at 14-15; Wismer & Becker Contracting Engineers, B-202075, June 7, 1982, 82-1 CPD ¶ 538 at 7-8.

Here, based on our review of the entire record, we are not persuaded that it was unreasonable for the agency to accept Health Net's proposal, based only on Health Net's erroneous reference to the outdated standards in an attachment that did not affect the purpose for which the QM/QI plan was submitted or the stated bases for evaluation of that plan. On the specific facts presented here, we do not question the reasonableness of the agency's determination that Health Net's submission of attachment K did not take exception to the solicitation requirements, and we decline to sustain UnitedHealth M&V's protest on the basis of its assertion that the agency was required to reject Health Net's proposal based on the submission of that document.

#### Acquisition of Health Net's Parent Corporation

Next, UnitedHealth M&V protests that the agency failed to reasonably evaluate Health Net's proposal in the context of Centene Corporation's acquisition of Health Net's parent corporation, which became effective on March 24, 2016. In challenging the award based on this transaction, UnitedHealth M&V speculates that the acquisition will have a negative impact on Health Net's contract performance, asserting that the agency "failed" to consider that potential result. UnitedHealth M&V Supp. Protest, Aug. 8, 2016, at 7.

The agency responds that it did, in fact, consider the impact of Health Net's acquisition during the source selection process. Specifically, the record establishes that, during discussions conducted in December 2015, the then-pending acquisition was addressed and Health Net advised the agency as follows:

Health Net Federal Services, the prime contractor bidding, is a wholly owned LLC [limited liability corporation] of our parent company, and that is absolutely unchanged from a legal point of view or otherwise. . . . [W]e will continue to operate legally as Health Net Federal Services even as a result of the acquisition. So there will be no change whatsoever in our operations or in our commitments or in the representations that we have made as a wholly owned subsidiary.

AR, File 468, Transcript of Discussions with Health Net, at 31.

On March 25, 2016, the day after Centene completed the acquisition, Health Net provided the following statement to the agency:

As of March 24, 2016, Centene Corporation completed the acquisition of Health Net, Inc., and now is the ultimate parent corporation of offeror, Health Net Federal Services, LLC (Health Net). The merger has not affected the offeror in any manner. Health Net remains wholly intact, including all personnel, management, and resources.

AR, File 453, Health Net FPR Update, at 3658.

Thereafter, Health Net provided a "Guaranty Agreement for Corporate Guarantor" executed by Centene Corporation. Id. at 3682-83.

In short, the agency maintains that it considered the acquisition of Health Net and reasonably relied on Health Net's pre- and post-acquisition representations regarding its status and commitments, along with consideration of Centene's corporate guarantee. The agency further maintains that there was no evidence to create doubt in Health Net's or Centene's representations, and it reasonably concluded that Health Net, the offering entity, would remain intact, retain the same resources reflected in its proposal, and honor its commitments.

As noted above, protest decisions regarding matters of corporate status and restructuring are highly fact-specific, and turn largely on the individual circumstances of the proposed transactions and timing. IBM U.S. Fed. a Div. of IBM Corp.; Presidio Networked Solutions, Inc., supra. We have held that where a corporate acquisition or restructuring does not appear likely to have a significant impact on cost or technical impact on contract performance, and the offering entity remains intact and retains the same resources reflected in its proposal, the subsequent acquisition of that offeror does not render the agency's evaluation and

award decision improper. Id. at 22-23; Consortium HSG Technischer Service GmbH and GeBe Gebäude- und Betriebstechnik GmbH Südwest Co., Management KG, B-292699.6, June 24, 2004, 2004 CPD ¶ 134 at 4.

Here, the record shows that, contrary to UnitedHealth M&V's assertions, the agency did, in fact, consider the potential impact of the acquisition and, on the basis of Health Net's pre- and post-acquisition representations and Centene's corporate guarantee, concluded that Health Net would remain intact with the same resources that were reflected in its proposal. Accordingly, the agency reasonably concluded that the acquisition was not likely to have a significant impact on cost or technical performance. On this record we find no basis to question the agency's award to Health Net due to the corporate acquisition.<sup>29</sup>

### Evaluation of Past Performance

Finally, UnitedHealth M&V protests that the agency's past performance evaluation was "unreasonable and unfair," complaining that the agency improperly criticized UnitedHealth M&V for "difficulties" it faced, as a non-incumbent, when transitioning into its prior TRICARE contract. UnitedHealth M&V contends that this was unfair treatment because Health Net "[has not had to] transition into a new region in over a decade." United M&V Supp. Protest, Sept. 12, 2016, at 52-54. Accordingly, UnitedHealth M&V asserts that assigning satisfactory confidence ratings to both UnitedHealth M&V and Health Net was improper. Id.

The agency responds that, while UnitedHealth M&V and Health Net have each experienced adverse past performance under their prior TRICARE contracts, both are currently performing in a satisfactory manner; accordingly, both were given satisfactory confidence past performance ratings. Specifically, in making the west region award decision, the SSA stated:

Between Health Net and [UnitedHealth] M&V, I find that although each has a satisfactory performance record, they both have areas of concern in past performance. Neither offeror distinguishes itself from the other in terms of relevancy of contracts submitted. Health Net has declining performance

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<sup>29</sup> UnitedHealth M&V also asserts that the agency failed to consider any potential OCIs with regard to healthcare providers that are owned by, or affiliated with, Centene. To the contrary, the record establishes that the agency specifically requested that Health Net identify any affiliated healthcare providers and provide an OCI mitigation plan, AR, File 647, at 1; that Health Net responded as requested, id. at 3-6; and that, based on that response, the agency's contracting officer determined that there was "no significant potential OCI." Id. at 9-10. We have reviewed the record in this regard and find no merit to UnitedHealth M&V's protest regarding Health Net's potential OCIs.

ratings in the [redacted] contract over time and has had documented performance issues in its [redacted] contract which has many similarities in scope and complexity to the T-2017 RFP. [UnitedHealth] M&V's evaluation issues center on its well documented difficulties in performance during the T3 West Region transition and OP1 [option period 1].

. . . After consideration of all of the materials and evaluations, I cannot find a distinction. . . . I rate [United Health] M&V and Health Net essentially equal for Factor 2 [past performance] and find that both are substantially inferior to Humana's past performance.

SSDD-W at 167.

As noted above, an agency's evaluation of past performance is a matter of agency discretion which we will not disturb absent evidence that the agency's assessments were unreasonable, inconsistent with the solicitation criteria, or contrary to applicable statutes and regulations. See, e.g., Fox RPM Corp., supra. A protester's disagreement with the procuring agency's judgment, without more, does not establish that an evaluation was improper. Beretta USA Corp., supra.

Here, nothing in UnitedHealth M&V's complaints establishes that the agency's final assessments were unreasonable or inconsistent with the solicitation or applicable statutes and regulations. Specifically, the record establishes, and UnitedHealth M&V does not dispute, that both UnitedHealth M&V and Health Net have had problems in performing their prior TRICARE contracts. While UnitedHealth M&V asserts that it was entitled to a higher confidence rating because its past performance has improved, we find nothing unreasonable in the SSA's determination that, in light of both contractors' prior difficulties, their past performance was considered to be essentially equal and that both offerors warranted satisfactory confidence, but not substantial confidence, past performance ratings. UnitedHealth M&V's complaints to the contrary reflect mere disagreement with the agency's judgment, and provide no basis for sustaining its protest.

The protests are denied.

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