



# Decision

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**Matter of:** AdvanceMed Corporation

**File:** B-414373

**Date:** May 25, 2017

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## DIGEST

Protest challenging the agency's cost realism evaluation is sustained where the agency failed to recognize and reasonably assess the likely costs stemming from the awardee's proposed technical approach.

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## DECISION

AdvanceMed Corporation, of Reston, Virginia, protests the issuance of a task order to Health Integrity, LLC, of Easton, Maryland, under request for proposals (RFP) No. HHSM-500-2016-RFP-0027, issued by the Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS), for Medicare and Medicaid program integrity services. The protester challenges the agency's cost realism analysis and best-value decision.

We sustain the protest.

## BACKGROUND

The agency issued the solicitation on July 13, 2016, to contractors holding one of CMS's Unified Program Integrity Contract (UPIC) indefinite-delivery, indefinite-quantity (IDIQ) contracts. The solicitation sought proposals to support the agency's

fraud, waste, and abuse detection, deterrence, and prevention activities for Medicare and Medicaid claims within the Western Jurisdiction.<sup>1</sup> RFP, § B.1, at 3; RFP, Attach. J.1, SOW, at 1. The solicitation contemplated the award of a cost-plus-award-fee (CPAF) task order for a base year and four 12-month options. RFP, § B.4, at 3; RFP, Amend. 2, § F.2.

The solicitation provided for award on a best-value basis consisting of cost and five non-cost evaluation factors. RFP, § M.2, at 33-34. When combined, the non-cost factors were significantly more important than cost. RFP, § M.3, at 34. In this respect, the solicitation provided that “the Government is more concerned with obtaining superior technical/management features than with making an award at the lowest overall cost to the Government.” RFP, § M.2, at 33. At the same time, the solicitation informed offerors that “the Government will not make an award at a significantly higher overall cost to the Government to achieve slightly or moderately superior technical or management features.” Id.

The non-cost factors were as follows, in descending order of importance:

(1) accomplishing and integrating functional requirements--scenario responses; (2) key personnel and staffing plan; (3) past performance; (4) small business utilization; and (5) Section 508 compliance. RFP, § M.3, at 34. In rating the non-cost factors, the solicitation provided that the agency would assign one of the following adjectival ratings: exceptional, very good, satisfactory, marginal, or unsatisfactory. RFP, § M.3, at 34-35. The solicitation further provided that the agency would assign an overall adjectival rating that would reflect how well the offeror’s technical proposal meets the solicitation requirements. RFP, §§ M.2, M.3, at 33-34.

In evaluating cost, the solicitation stated:

The business proposals will be analyzed and evaluated by the Government to determine the reasonableness and the realism of the proposed cost/price. The purpose of this cost realism analysis will be to determine if the Offeror’s proposed costs demonstrate the Offeror understands the Government’s requirements and if the proposed costs are consistent with the various elements of the Offeror’s technical proposal. The Offeror’s

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<sup>1</sup> CMS currently relies upon a network of contractors under various contract vehicles to carry out program integrity work in the Medicare and Medicaid programs. RFP, Attach. J.1, Statement of Work (SOW), at 1; Contracting Officer’s Statement (COS) at 1. The UPIC IDIQ combines and integrates these functions into a single contract for each of the five geographically defined jurisdictions. RFP, Attach. J.1, SOW, at 1. The task order at issue here requires the provision of services within the Western Jurisdiction, which includes the states of North Dakota, South Dakota, Montana, Wyoming, Washington, Oregon, Idaho, California, Nevada, Utah, Arizona, Alaska, Hawaii, and the territories of American Samoa, Northern Mariana Islands, and Guam. Id.

Business Proposal will also be evaluated based on the Offeror's potential impact to the competitive pool and risk (financial, etc.).

RFP, § M.5, at 37. The concept of "risk," as it was used to evaluate both the technical and business proposals, was defined as "the likelihood that the Government will be negatively impacted by the Offeror's failure to meet the negotiated business, technical, management, schedule performance and cost." RFP, § M.2, at 33. The solicitation also provided that the "[a]ssessment of risk is an integral component of the evaluation" and that CMS "will assess risk and integrate their assessment into the overall rating of each Offeror." Id.

Of relevance to AdvanceMed's protest, the solicitation required offerors to "provide all proposal assumptions in detail that are used in preparing their business proposal[.]" RFP, § G.2, at 26. This included the "rationale for all business proposal elements[.]" such as "why was the labor category chosen [or] why the number of [Full-Time Equivalent (FTE)] proposed for that labor category, etc.?" Id. These assumptions were to be included in a Basis of Estimate document. RFP, § G.3, at 26. The solicitation also included template "business proposal spreadsheets" for each offeror to "indicate[] the levels of proposed costs that are to be provided." RFP, § F, at 23. The spreadsheets required offerors to break down their proposed hours and costs by task. See e.g., RFP, E.3.B. UPIC WJ Business Proposal Spreadsheet CLIN 0002.xlsx.

There were nine enumerated tasks, which were derived from a functional requirement set forth in the underlying IDIQ Umbrella Statement of Work (USOW). Agency Report (AR), Tab 1, UPIC USOW, at 3-6. Those tasks were as follows: Investigations (C.5.4); Transition (C.4); Vulnerabilities (C.5.1); Data Analysis (C.5.2); Lead Management (C.5.3); Appeals Support; (C.5.4.4); Support to CMS (C.5.8); Support to Law Enforcement (C.5.10); Information Technology (C.7.5); and Quality Assurance (C.7.7). The crux of AdvanceMed's protest involves the Investigations task (C.5.4).<sup>2</sup>

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<sup>2</sup> There are three types of investigations under the UPIC program: Medicare investigations, Medicare-Medicaid Data Match ("Medi-Medi") program investigations, and Medicaid audits. RFP, Attach. J.2, Workload Projections, at 1; AR, Tab 1, UPIC USOW, at 34.

Four offerors, including AdvanceMed and Health Integrity, submitted timely proposals in response to the solicitation. AR, Tab 7, Source Selection Decision (SSD), at 1. After conducting discussions with all four offerors, CMS evaluated the technical proposals of AdvanceMed and Health Integrity as follows:

	<b>AdvanceMed</b>	<b>Health Integrity</b>
<b>Accomplishing &amp; Integrating Functional Requirements-- Scenario Responses</b>	Satisfactory	Satisfactory
<b>Key Personnel and Staffing Plan</b>	Very Good	Satisfactory
<b>Past Performance</b>	Very Good	Very Good
<b>Small Business Utilization</b>	Satisfactory	Satisfactory
<b>Section 508 Compliance</b>	Acceptable	Acceptable
<b>Overall Technical Rating</b>	<b>Very Good</b>	<b>Satisfactory</b>

AR, Tab 7, SSD, at 3. CMS evaluated the business proposals of AdvanceMed and Health Integrity as follows and concluded that both offerors' probable costs were reasonable and realistic:

	<b>AdvanceMed</b>	<b>Health Integrity</b>
<b>Final Proposal Revision</b>	\$106,394,498	\$85,341,745
<b>Cost Realism Adjustments</b>	\$232	\$491,300
<b>Difference From Lowest Offeror After Adjustments</b>	\$21,004,864	\$443,179
<b>Probable Total Cost-Plus-Award-Fee</b>	<b>\$106,394,730</b>	<b>\$85,833,045</b>

Id. at 4. After comparing the technical proposals of AdvanceMed and Health Integrity factor-by-factor, see AR, Tab 7, SSD, at 7-8, the source selection authority (SSA) concluded that "the technical proposals submitted by these two offerors included more identified similarities in technical merit than differences, and despite the differential in adjectival rating assigned by the [technical evaluation panel], I believe that the two proposals are very close in overall technical merit, with a slight edge to AdvanceMed." Id. at 8. The SSA further concluded that "[w]hile the identified advantages of AdvanceMed's technical proposal would provide some benefit to the Government,

this benefit is not very great, and any premium warranted by that benefit should not be a significant amount.” Id. The SSA determined that the 23.96 percent cost premium associated with AdvanceMed’s proposal was “greater than the value of the advantages the Government expects to gain from AdvanceMed’s superior Technical Proposal.” Id. Accordingly, on February 7, CMS issued the task order to Healthy Integrity.<sup>3</sup> COS at 2.

The agency provided notice to the protester the same day. Protest, Ex. A, Award Notice. AdvanceMed requested a debriefing, which was provided on February 10. COS at 2; Protest, Ex. B, Debriefing. This protest followed.

## DISCUSSION

The protester challenges the agency’s cost realism evaluation. Specifically, AdvanceMed argues that CMS failed to consider whether the awardee’s proposed costs were realistic in light of its technical approach. Comment at 4. In this respect, AdvanceMed contends that Health Integrity’s business proposal significantly understated the likely costs of implementing its own technical solution. Comments at 4. As a result, AdvanceMed claims that Health Integrity’s proposed costs do not accurately reflect the cost the government would have to pay under the task order. Id. at 4-5.

In particular, the protester contends that Health Integrity: (a) “double-counted” hours throughout its proposal, but particularly with respect to the Investigations task, (b) failed to propose any hours to implement administrative actions; and (c) failed to propose sufficient hours for the most complex medical reviews. For the reasons stated below, we sustain the protester’s first two grounds and deny the third ground.<sup>4</sup>

Even in a task order procurement, when an agency evaluates a proposal for the award of a cost-reimbursement contract, an offeror’s proposed costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. Federal Acquisition Regulation (FAR)

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<sup>3</sup> The awarded value of the task order exceeds \$10 million. Accordingly, this procurement is within our statutory grant of jurisdiction to hear protests in connection with task and delivery orders valued in excess of \$10 million issued under civilian agency multiple-award IDIQ contracts. 41 U.S.C. § 4106(f).

<sup>4</sup> In its protest, AdvanceMed also challenged CMS’s evaluation of Health Integrity’s proposal under the key personnel technical factor. Protest at 10-14. In its agency report, the agency responded to this allegation. COS at 4-5; MOL at 9-11. In its comments, AdvanceMed did not address the agency’s response. Where, as here, an agency provides a detailed response to a protester’s assertions and the protester either does not respond to the agency’s position or provides a response that merely references or restates the original protest allegation without substantively rebutting the agency’s position, we deem the initially-raised argument abandoned. Jacobs Tech., Inc., B-413389, B-413389.2, Oct. 18, 2016, 2016 CPD ¶ 312 at 5. We therefore conclude that this protest ground has been abandoned, and do not consider it further.

§§ 15.305(a)(1), 15.404-1(d); Target Media Mid Atl., Inc., B-412468.6, Dec. 6, 2016, 2016 CPD ¶ 358 at 4 (applying FAR part 15 cost realism standards in a FAR part 16 task order procurement). Consequently, an agency must perform a cost realism analysis to determine the extent to which an offeror's proposed costs are realistic for the work to be performed. FAR § 15.404-1(d)(1); Vectrus Sys. Corp., B-412581.3 et al., Dec. 21, 2016, 2017 CPD ¶ 10 at 12. An agency is not required to conduct an in-depth cost analysis, see FAR § 15.404-1(d)(1), or to verify each and every item in assessing cost realism; rather, the evaluation requires the exercise of informed judgment by the contracting agency. Smartronix, Inc.; ManTech Adv. Sys. Int'l, Inc., B-411970 et al., Dec. 9, 2016, 2016 CPD ¶ 362 at 6.

Although an agency is not required to verify each and every variable, it must reasonably consider the extent to which the costs reflected in the offeror's technical approach reflect what the contract should cost, assuming economy and efficiency. Target Media Mid Atl., Inc., supra, at 4; KPMG LLP, B-406409 et al., May 21, 2012, 2012 CPD ¶ 175 at 12. In this regard, it is not sufficient for an agency to simply verify that an offeror has provided all required cost information; rather, the agency is required to take reasonable, documented steps to assess what costs are likely to be incurred under each offeror's technical approach, and explain the basis for a conclusion that the proposed costs are realistic for the work to be performed. Computer Sciences Corp. et al., B-408694.7 et al., Nov. 3, 2014, 2014 CPD ¶ 331 at 6. In short, a proper cost realism evaluation prevents an offeror from improperly "having it both ways"--that is, from receiving a technical evaluation rating based on its proposed performance but failing to propose costs that reasonably reflect that performance. Target Media Mid Atl., Inc., supra, at 5.

Our Office will sustain a protest where the cost realism evaluation fails to account for discrepancies between an offeror's proposed approach and an offeror's estimated costs. Id. (sustaining protest where agency failed to reasonably assess the likely costs stemming from the awardee's proposed technical approach to hire the incumbent's employees, as well as personnel from external sources); Tantus Techs., Inc., B-411608, B-411608.3, Sept. 4, 2015, 2015 CPD ¶ 299 (sustaining protest where agency failed to evaluate the awardee's cost proposal in light of its technical approach, concluding that, although the awardee's proposed cost may have been otherwise realistic, the costs were not evaluated in the context of the awardee's actual proposed technical approach); KPMG LLP, supra, at 13 (sustaining protest where agency failed to recognize discrepancies between the awardee's cost and technical proposals, finding that, "[i]n short, the agency failed to provide any reasonable basis for estimating the probable costs it will incur under the contract it awarded--a prerequisite to the award of every cost-reimbursement contract by the federal government."). As described below, we conclude that the agency failed to evaluate the awardee's cost proposal in light of its technical approach and assumptions.

#### Investigations Task (C.5.4)

AdvanceMed claims that Health Integrity's proposed costs do not accurately reflect the costs of its own technical solution. Comments at 4-5. In this respect, AdvanceMed claims that Health Integrity's business proposal does not align with its own projections regarding the level of effort required to perform certain tasks. Comments at 4. As a result, AdvanceMed alleges that Health Integrity understated its costs by [DELETED] percent. Id. at 13. Although AdvanceMed claims the understatement of costs is pervasive throughout Health Integrity's proposal, id., AdvanceMed focuses primarily on the understatement of costs relating to one critical task: Investigations (C.5.4).

As an initial matter, AdvanceMed notes that the labor hours proposed by Health Integrity are less than [DELETED] the hours that AdvanceMed proposed. Id. at 5. AdvanceMed proposed [DELETED] total hours and Health Integrity proposed [DELETED] total hours.<sup>5</sup> The [DELETED]-hour difference between the two proposals is largely due to differences in the hours proposed for one critical task in the statement of work: Investigations (C.5.4). For this task, AdvanceMed proposed [DELETED] hours and Health Integrity proposed [DELETED]--a difference of [DELETED] hours. AR, Tab 2b, Business Proposal (AdvanceMed), Labor Hour Summary (Tab "Task CLINs 0001-0005"); Tab 3b, Business Proposal (Health Integrity), Labor Hour Summary (Tab "Task CLINs 0001-0005").

The impact of the difference in hours proposed for this task reflects over \$[DELETED] million in costs,<sup>6</sup> which AdvanceMed points out "not only erases Health Integrity's evaluated \$20.5 million cost advantage, but makes AdvanceMed the lower-cost offeror and its technically superior proposal the best value to the Government." Comments at 4. AdvanceMed makes clear that it is not arguing that the agency should adjust Health Integrity's proposed hours to match those proposed by the protester. Id.

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<sup>5</sup> These figures are derived from the offerors' labor hour summary spreadsheets, which were required to be included in the offerors' business proposals. RFP at 25; AR, Tab 2b, Business Proposal (AdvanceMed), 07 AdvMed E.3.G UPIC WJ Business Proposal Spreadsheet Labor Hour Summary.xlsx (Tab "Task CLINs 0001-0005"); Tab 3b, Business Proposal (Health Integrity), Voll\_W\_00g\_HI\_LaborHR Sum\_BAFO 12122016.xlsx (Tab "Task CLINs 0001-0005"). For ease of reference, we will refer to these documents as the labor hour summaries.

<sup>6</sup> AdvanceMed calculated this figure by multiplying the difference in hours by Health Integrity's average labor rate for non-key personnel, which it estimated to be \$[DELETED] per hour over the life of the contract. Comments at 3-4. Throughout this decision, we refer to calculations performed by AdvanceMed. We find the calculations to be accurate and supported by the record, and further note that neither the agency nor the intervenor objected to these calculations.

Rather, AdvanceMed states that “[t]he point here is simply that this procurement turned entirely on the level of effort for the Investigations Task.”<sup>7</sup> Id.

We concur. The record supports AdvanceMed’s contention that the cost savings proposed by Health Integrity were related, in large part, to its performance of this critical task. Additionally, the cost savings of Health Integrity’s proposal was an important factor--if not the most important factor--in the agency’s source selection decision. Where a source selection decision relies heavily on an evaluated cost advantage, as here, an agency’s cost realism analysis must evaluate and address these cost-driving areas in order to be considered reasonable. See National City Bank of Indiana, B-287608.3, Aug. 7, 2002, 2002 CPD ¶ 190 at 11.<sup>8</sup> Here, the record before us does not establish that the agency performed any analysis of the most important performance/cost requirement under the solicitation--Investigations.<sup>9</sup>

As explained above, the solicitation required offerors to include in their proposals a Basis of Estimate, describing how the offeror estimated all proposed costs. RFP, § G.3, at 26. In its Basis of Estimate, Health Integrity explained that [DELETED] investigations would be handled by the “Investigator/Auditor” labor category and that [DELETED]. AR, Tab 3b, Business Proposal (Health Integrity), Basis of Estimate, at 7-8, 14-16. It further explained how the hours for the Investigator/Auditor labor category were determined.

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<sup>7</sup> For this reason, AdvanceMed does not argue, nor do we conclude, that the full \$[DELETED] million difference between the two proposals associated with this task represents an understatement in costs by Health Integrity. Rather, as we explain below, we find that AdvanceMed has established a reasonable possibility that Health Integrity may have understated its costs by approximately \$19.2 million.

<sup>8</sup> In National City Bank of Indiana, the agency had before it two technical proposals that received virtually identical technical evaluations, and thus, the proposed cost savings were dispositive in the award determination. Our Office concluded that, in such situations, it is “particularly important that the agency perform and document a meaningful realism assessment regarding the proposed savings.” National City Bank of Indiana, supra, at 11.

<sup>9</sup> As to be expected in a procurement for services to combat fraud, waste, and abuse within government healthcare programs, investigations are the core of the UPIC task order, which both offerors here recognized. In this regard, Health Integrity allocated [DELETED] percent of its total effort to the Investigations task (C.5.4.) and AdvanceMed allocated [DELETED] percent of its total level of effort to this task. See AR, Tab 3b, Business Proposal (Health Integrity), Labor Hour Summary (Tab “Task CLINs 0001-0005”); Tab 2b, Business Proposal (AdvanceMed), Labor Hour Summary (Tab “Task CLINs 0001-0005”).



In estimating the level of effort for the Investigator/Auditor labor category, Health Integrity provided the following explanation:

Investigator/Auditors can maintain a workload of [DELETED] investigations per FTE on a rolling basis. The West Jurisdiction workload from CMS indicates 985 Medicare and Medi-Medi investigations annually,<sup>[10]</sup> and each investigation is expected to take 180 days to complete on average. This will result in a rolling workload of approximately [DELETED] investigations at any given time.

Id. at 7. Based on these assumptions, Health Integrity proposed [DELETED] Investigator/Auditor hours per year. Id. at 7-8. This equates to [DELETED] FTE Investigator/Auditors required to investigate the Medicare and Medi-Medi leads, of which [DELETED] FTEs would be supplied by Health Integrity and [DELETED] FTEs would be supplied by its subcontractor. AR, Tab 3b, Business Proposal (Health Integrity), Basis of Estimate, at 8.

AdvanceMed alleges that, although Health Integrity represented that [DELETED] FTE Investigator/Auditors would be required to perform Investigations, its business proposal did not align with this analysis. Comments at 10. Instead, AdvanceMed contends that the awardee dedicated a substantial portion of those hours to tasks other than investigations. Id. To support its argument, AdvanceMed relies upon Health Integrity's business proposal spreadsheets. Id.; Supp. Comments at 2-3.

For example, AdvanceMed demonstrates that, for option year two (CLIN 0002), Health Integrity's labor hour summary shows that [DELETED] Investigator/Auditor labor hours were proposed for that year, which equates to [DELETED] FTEs. Comments at 10; AR, Tab 3b, Business Proposal (Health Integrity), Labor Hour Summary (Tab "Labor CLIN 0002"). The labor hour summary also shows that [DELETED] FTEs were to be supplied by the awardee and [DELETED] FTEs were to be supplied by the subcontractor. Id. At least initially, this would appear consistent with the awardee's Basis of Estimate.

However, AdvanceMed further demonstrates that, for this same option year, Health Integrity's cost summary indicates that these [DELETED] FTEs are spread across multiple tasks in addition to Investigations (C.5.4.). Comments at 10-11; AR, Tab 3b, Business Proposal (Health Integrity), Cost Summary.<sup>11</sup> In fact, the record shows that, in addition to Investigations, these FTEs performed work in all nine enumerated tasks

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<sup>10</sup> The solicitation instructed offerors to assume that there would be 795 Medicare investigations, 190 Medi-Medi investigations, and 200 Medicaid audits. RFP, Attach. J.2, Workload Projections, at 1.

<sup>11</sup> Health Integrity's cost summary for CLIN 0002 is labeled Voll\_W\_00b\_HI\_CLIN0002\_BAFO12122016.pdf. For ease of reference, we refer to this document simply as the cost summary.

under the solicitations. AR, Tab 3b, Business Proposal (Health Integrity), Cost Summary (CLIN 0002).

For instance, of the [DELETED] hours/ [DELETED] FTEs, only [DELETED] hours, or [DELETED] FTEs, were actually dedicated to investigating leads. Id. The remaining [DELETED] hours were dedicated to the eight other enumerated tasks. Id. AdvanceMed argues that, “[i]n other words, Health Integrity priced only [DELETED]% of the hours that Health Integrity itself estimated were necessary to perform the key task of investigating leads.” Id. According to AdvanceMed, this equates to a \$5.2 million understatement in Health Integrity’s proposed costs.<sup>12</sup> Id. at 11.

AdvanceMed raises the same argument with respect to the [DELETED] labor category, as well as the [DELETED] and [DELETED] labor categories, resulting in an understatement of \$3.5 million, \$3 million, and \$1.4 million, respectively.<sup>13</sup> Comments at 12-13. AdvanceMed points out that the missing hours associated with these four labor categories alone accounts for \$13 million of the \$20.5 million cost difference between the proposals of AdvanceMed and Health Integrity. Id. at 13. AdvanceMed argues that CMS’s failure to identify the discrepancy between Health Integrity’s proposed level of effort and its proposed costs “means that CMS did not accurately ‘evaluate the extent to which an offeror’s proposed costs are realistic for the work to be performed.’” Id. (quoting FAR § 15.404-1(d)(1)).

In response, CMS argues that it performed a “thorough cost realism analysis,” considering the “awardee’s labor mix, labor categories, and proposed hours[.]” Agency Final Statement at 1. In particular, CMS contends that it would be impossible for Health Integrity to have “gamed the system” as AdvanceMed alleges. Supp. MOL at 2. Rather, CMS alleges that “the evaluators looked at exactly the kind of things protester claims CMS did not.” Agency Final Statement at 1.

To support this contention, CMS references a spreadsheet in the record showing that the agency’s evaluators reviewed Health Integrity’s proposed hours by solicitation line item number (SLIN) and by labor category to determine whether the labor category was appropriate to perform the relevant tasks and to determine whether the offeror allocated an appropriate amount of hours to complete the tasks as required. Supp. MOL at 3

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<sup>12</sup> AdvanceMed concedes that personnel may, and likely will, support other tasks in addition to their primary task(s). Comments at 11. AdvanceMed contends, however, that these additional hours should be separately priced within those other tasks. Id. It argues that Health Integrity, by contrast, double-counted the hours, taking a portion of the hours estimated for the Investigations task and spreading that effort across the other tasks. Id.

<sup>13</sup> The responsibilities of these labor categories also fell within the Investigations task (C.5.4). AR, Tab 3b, Business Proposal (Health Integrity), Basis of Estimate, at 2, 6, 14.

(citing AR, Tab 6c3, Cost Realism Evaluation (Health Integrity), Revised Proposal Rollup.xlsx (Tab “CLIN 0001-0005 w OP Task). CMS concludes “[g]iven this methodology, that of comparing the business and technical proposals with respect to the hours proposed to ensure that the two were consistent, CMS does not believe that any double counting of hours could be hiding in the proposal as the protester alleges.” Id.

The flaw in CMS’s argument is that the record does not demonstrate that CMS evaluated the proposed level of effort at the task level, which is the level of detail requested by CMS in the RFP. See e.g., RFP, E.3.B. UPIC WJ Business Proposal Spreadsheet CLIN 0002.xlsx; RFP, § F, at 23-24 (explaining that offerors shall use the business proposal spreadsheets to indicate “the levels of proposed costs that are to be provided”). Rather, as the referenced spreadsheet shows, CMS performed its evaluation at the SLIN level.<sup>14</sup> An analysis at this level would not necessarily have revealed to the agency that Health Integrity proposed for certain labor categories, such as the Investigator/Auditor labor category, to perform a substantial number of hours on tasks other than investigations. Absent such an analysis, it is not clear to us that CMS recognized the true nature of Health Integrity’s technical approach or concluded that it was realistic. In sum, if substantial Investigator/Auditor hours are removed from the Investigations task (C.5.4), there is no indication from the record that the agency would have determined Health Integrity’s level of effort to be sufficient to accomplish that task. See Rockwell Int’l Corp., B-250921, Apr. 21, 1993, 93-1 CPD ¶ 338 at 8 (shifting a portion of the hours in a labor category raises the question of whether the hours remaining in that labor category will be sufficient to perform the effort required for that category).

The intervenor raises a different argument than the agency in response to the protester’s allegations. Health Integrity argues that it was not required to allocate all Investigator/Auditor labor hours to the Investigations task (C.5.4) and that its proposal never indicated that this labor category would work solely on this task. Intervenor Supp. Comments at 4-5. In this respect, Health Integrity notes that its Basis of Estimate indicated that the Investigator/Auditors’ “primary task is Investigations, with support to the [DELETED] team.” Id. at 5 (quoting AR, Tab 3b, Business Proposal (Health Integrity), Basis of Estimate, at 7). Accordingly, the intervenor argues that it was entirely consistent for it to allocate a certain amount of Investigator/Auditor hours to the [DELETED] task (C.[DELETED]) in addition to the Investigations task (C.5.4). Id.

Although we concur with the intervenor’s contention with respect to its Basis of Estimate, its argument does not explain why a substantial number of Investigator/Auditor hours were also allocated to perform the other seven enumerated

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<sup>14</sup> The agency did not identify any other document that would support its argument. Our review of the record demonstrates that such analysis is absent from the cost realism evaluation and the technical evaluation documents.

tasks, such as Information Technology (C.7.5) or Quality Assurance (C.7.7). Thus, we find this argument incomplete and unavailing.

Next, the intervenor argues that, when it stated in its Basis of Estimate that “[t]he primary task is Investigations,” it was referring to investigations in an “ordinary sense” and not the Investigations task (C.5.4). Id. at 6. Health Integrity argues that nearly all of the enumerated tasks involve some element of conducting an investigation, as that term is used in the ordinary sense. Id. Thus, the intervenor contends that AdvanceMed conflates the terms “investigation” and “Task C.5.4 – Investigation” and creates an argument that is contrary to what Health Integrity actually proposed. Id.

Although at first glance the intervenor’s argument appears plausible, a review of the record does not support its interpretation of the proposal language. Throughout Health Integrity’s Basis of Estimate, it listed the primary “task” or “tasks” that a particular labor category would perform. In nearly every instance in which it did so, the primary task(s) listed corresponded to one of the nine enumerated tasks in the statement of work, which Health Integrity listed with an upper-case letter. We have excerpted a few representative examples below:

Labor Category	Primary Task(s)
[DELETED]	“The primary tasks will be Data Analysis and Support to Law Enforcement, as well as supporting Investigations and Quality Assurance.”
[DELETED]	“Major tasks include CMS Support, supporting Investigations strategy, and Lead Management.”
[DELETED]	“The primary tasks will be Investigations and Quality Assurance, with support to Appeals.”
[DELETED]	“The primary tasks will be Data Analysis and Support to Law Enforcement, as well as supporting Investigations and Quality Assurance.”

AR, Tab 3b, Business Proposal (Health Integrity), Basis of Estimate, at 3-4, 8, 9-10. Accordingly, the more reasonable interpretation of the proposal language is that Health Integrity was referring to the enumerated tasks in the statement of work when it used the term “task” and was referring to the Investigations task (C.5.4) when it used the term “Investigations.”

Health Integrity’s representation is also inconsistent with other language in its Basis of Estimate. For instance, when describing how it estimated the proposed hours for the Investigator/Auditors, it explained that “Investigator/Auditors can maintain a workload of [DELETED] investigations per FTE on a rolling basis.” Id. at 7. Using CMS’s projected number of investigations, Health Integrity calculated that “[t]his will result in a rolling workload of approximately [DELETED] investigations at any given time.” Id. Thus, by dividing the number of investigations by the number of investigations by FTE, Health Integrity arrived at its proposed number of FTEs, i.e., [DELETED] FTEs. Id. at 8. This language makes clear that the proposed level of effort for the Investigator/Auditor was

based upon estimates to conduct actual investigations, not perform other work encompassed in other tasks.<sup>15</sup>

In any event, there is nothing in the contemporaneous record to suggest that CMS understood that the level of effort Health Integrity estimated for Investigator/Auditors to perform the primary task of “Investigations” included not only the work required by the Investigations task (C.5.4) but also every other task in the statement of work. Furthermore, apart from broad assertions that it reviewed “the awardee’s proposal in its entirety” and considered “the offeror’s technical approach,” Agency Final Statement at 1, CMS never represented in any of its protest filings that it interpreted Health Integrity’s proposal in the manner suggested by the intervenor or that it recognized that the intervenor intended for the Investigator/Auditors to perform work under all nine enumerated tasks. Accordingly, we are unable to determine whether—armed with this knowledge—the agency would have determined Health Integrity’s level of effort to be sufficient to accomplish the Investigations task.

For these reasons, we sustain this challenge to CMS’s cost realism evaluation. The record fails to demonstrate that the agency reasonably evaluated the extent to which Health Integrity’s proposed costs are realistic in light of its actual technical approach. TriCenturion, Inc.; SafeGuard Servs., LLC, B-406032 et al., Jan. 25, 2012, 2012 CPD ¶ 52 at 8 (sustaining protest of agency’s cost realism analysis because record did not demonstrate the evaluation was reasonable). See also Systems Research & Applications Corp.; Booz Allen Hamilton, Inc., B-299818 et al., Sept. 6, 2007, 2008 CPD ¶ 28 at 12 (“Where an agency fails to document or retain evaluation materials, it bears the risk that there may not be adequate supporting rationale in the record for us to conclude that the agency had a reasonable basis for the source selection decision.”).

#### Administrative Actions

AdvanceMed also argues that, even without the double-counting, Health Integrity’s estimates themselves were unrealistic and inconsistent with its own technical approach. Comments at 14. In other words, even if Health Integrity dedicated its hours to the task and activities identified in the Basis of Estimate, AdvanceMed argues that those hours would still be inadequate to perform the work required by the USOW and described in Health Integrity’s technical proposal. Id. Had CMS conducted a reasonable cost realism evaluation that compared Health Integrity’s costs to its proposed technical approach, AdvanceMed contends that CMS would have uncovered these shortfalls.

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<sup>15</sup> AdvanceMed also points out that Health Integrity’s contentions do not explain why it allocated a substantial number of hours to the Vulnerabilities (C.5.1) and Lead Management (C.5.3) tasks, which AdvanceMed argues involves work that occurs before an investigation has begun. AdvanceMed Final Statement at 2. AdvanceMed further explains that a substantial number of hours were allocated to the Quality Assurance (C.7.7) and Information Technology (C.7.5) tasks, which Health Integrity “does not even attempt” to tie to investigatory work. Id.

As explained above, the solicitation provided offerors with the projected annual number of investigations for the Western Jurisdiction. It did not, however, provide offerors with the projected number of administrative actions that investigations would generate. Administrative actions are those actions that result from an investigation that uncovers fraud, waste, or abuse and includes the following actions: payment suspension, enrollment revocation or termination, program exclusion, additional payment review, or civil monetary penalties. RFP, Attach. J.2., USOW, § 6, at 46. The UPIC contractor recommends the action, and CMS approves the action. Id. If no fraud, waste, or abuse is detected sufficient to justify an administrative action, the investigation is closed. Id., § 5.4.5, at 36. The RFP made clear that an investigation may not be closed until “all activities (e.g. CMS and state administrative actions are completed, law enforcement referrals are completed) are finalized.” Id.

Although implementing administrative actions was not listed as one of the nine enumerated tasks in the statement of work, a substantial portion of the statement of work is dedicated to this requirement and, in many respects, it is the purpose of the task order.<sup>16</sup> AdvanceMed contends that Health Integrity estimated no level of effort to implement administrative actions within the Investigator/Auditor and Nurse Auditor labor categories, despite indicating that these labor categories were part of the “Administrative Action Team.” Comments at 14-16; Supp. Comments at 5. We concur.

In its Basis of Estimate, Health Integrity estimated that “each investigation is expected to take 180 days to complete on average.”<sup>17</sup> AR, Tab 3b, Business Proposal (Health Integrity), Basis of Estimate, at 7. Health Integrity’s Basis of Estimate represents that it is proposing sufficient Investigator/Auditor hours to cover this 180-day investigatory period. Id. at 7-8. See also id. at 14-16 (providing the same estimate for the [DELETED] labor category). It does not appear, however, that Health Integrity has estimated any level of effort to implement administrative actions within these labor categories. This is particularly concerning because Health Integrity indicated in its technical proposal that it intended to perform this aspect of the statement of work and that its Administrative Action Team included the Investigator/Auditor and Nurse Auditor labor categories. AR, Tab 3a4, Technical Proposal (Health Integrity), 03\_VolIII\_W\_SecB\_ScenarioResponses\_BAFO12122016.pdf, at 2-3; Tab 3a9, Technical Proposal (Health Integrity), 09\_VolIII\_W\_SecE\_Atts.pdf, at 3, 7.

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<sup>16</sup> The purpose of the task order is to acquire services to perform fraud, waste, and abuse detection, deterrence, and prevention activities. RFP, Attach. J.1, SOW, at 1, 2. Where fraud, waste, and abuse is detected through an investigation, the administrative actions are crucial to deter and prevent future abuse of the government’s healthcare programs.

<sup>17</sup> This is consistent with agency expectations. In setting forth metrics for successful performance, the solicitation provided, for instance, that 85 to 89.9 percent of Medicare investigations should be moved to administrative action within 180 calendar days. RFP, Attach. J.1, SOW.

We find that a reasonable cost realism evaluation would have revealed that Health Integrity failed to propose any hours for this requirement of the statement of work and would have revealed the inconsistency between Health Integrity's technical proposal, which contemplated administrative actions, and its business proposal, which did not assign any hours for these actions. We sustain the protest on this ground. KPMG LLP, supra, at 12 (sustaining protest where agency failed to reasonably consider the extent to which the costs reflected in the offeror's technical approach reflect what the contract should cost); Metro Mach. Corp., B-297879.2, May 3, 2006, 2006 CPD ¶ 80 at 15 (sustaining protest where agency failed to account for an obvious and significant cost element associated with the actual cost of performance).

We note that, in response, CMS did not dispute AdvanceMed's allegations that Health Integrity proposed no level of effort for administrative actions. Supp. MOL at 4. Instead, the agency argued that "there is no reason to propose a level of effort for administrative actions" because there is no "need to pursue administrative actions following the close of an investigation." Id. The agency misses the point. AdvanceMed does not argue that there was a need to pursue administrative actions after the close of an investigation. Rather, consistent with the statement of work, AdvanceMed argued that there is a need to pursue administrative action following the 180-day period in which investigations are moved to administrative action. Comments at 14-15; Supp. Comments at 6.

The intervenor, once again, raised different arguments than the agency. The intervenor argues that the protester discounts the "possibility" that Health Integrity can investigate a lead, implement administrative actions, and move a case to closure within 180 days. Intervenor Supp. Comments at 8. The intervenor, however, fails to identify any language in its proposal committing to that accelerated timeframe. More importantly, the record does not show that CMS recognized this acceleration or concluded that it was realistic.

The intervenor also argues that the task of performing administrative actions was not one of the nine enumerated tasks and, hence, any time devoted to such actions had to be reflected within other tasks, such as Investigations (C.5.4). Id. at 9. The intervenor argues that it was reasonable to assume that Health Integrity budgeted for administrative actions within the tasks where administrative actions constitute an element of the task. Id. There are two problems with this argument. First, there is no indication in the record that the agency made such an assumption. Second, even assuming that the agency was inclined to make such an assumption, it is unclear to us how the agency could reasonably evaluate the realism of the level of effort proposed by Health Integrity for such actions without any indication of that level of effort.<sup>18</sup>

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<sup>18</sup> For example, in its proposal, AdvanceMed provided the agency with its proposed level of effort for administrative actions and the basis for this level of effort, i.e., previous experience and historical data from other jurisdiction. AR, Tab 2b, Business Proposal (AdvanceMed), 00 AdvMed UPIC WJ V1 Business Prop.pdf at 132. In its protest filings, (continued...)

With respect to this protest ground, AdvanceMed contends that Health Integrity's failure to propose a level of effort for administrative actions amounts to a \$5.9 million cost difference. This figure is based upon the level of effort AdvanceMed proposed for administrative actions. Comments at 17. AdvanceMed concedes that CMS may find a different level of effort--possibly something lower--to also be realistic. Id. However, it logically asserts that "it is clear from the USOW, Health Integrity's Technical Proposal, and plain common sense, that some level of effort is necessary to implement administrative actions." Id. We agree.

### Medical Reviews

Finally, AdvanceMed objects to the level of effort proposed by Health Integrity for medical reviews. Comments at 18. In this respect, AdvanceMed argues that Health Integrity, in developing its level of effort, erroneously assumed that over [DELETED] percent of the claims it would review would be the easiest types of claims and that it would need to review only a de minimis amount of the more complex types of claims.<sup>19</sup> Id. We deny this ground.

The solicitation did not provide an anticipated number of medical reviews by type. Accordingly, Health Integrity, in developing its level of effort for medical reviews, provided its own estimate of the number of claims by type. AR, Tab 3b, Business Proposal (Health Integrity), Basis of Estimate, at 6-7. Although AdvanceMed may believe that Health Integrity's estimates are too low, the agency accepted the estimates. AR, Tab 6c1, Cost Realism Evaluation (Health Integrity), at 1 (Health Integrity "used various types of estimating methods as the basis for developing their cost proposal. . . . [These] "estimating types and their use in developing their cost proposal are adequate.""). An offeror's disagreement with the agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. MicroTechnologies, LLC, B-413091.4, Feb. 3, 2017, 2017 CPD ¶ 48 at 7.

### Competitive Prejudice

Prejudice is an essential element of a viable protest. MicroTechnologies, LLC, B-412091, B-413091.2, Aug. 11, 2016, 2016 CPD ¶ 219 at 15. Here, in relation to the grounds upon which we sustain its protest, AdvanceMed has identified a possible \$19.2 million in understated costs. We resolve doubts regarding competitive prejudice in favor of the protest; where, as here, the protester has shown a reasonable possibility that it

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(...continued)

the intervenor did not identify any portion of its proposal that revealed its level of effort for administrative actions within the two challenged labor categories.

<sup>19</sup> The types of claims were: (1) Medicare Part A claims, (2) Medicare Part B claims, (3) durable medical equipment claims, and (4) home health and hospice claims.



was prejudiced by the agency's action, we will sustain its protest. SRA Int'l, Inc., B-410973, B-410973.2, Apr. 8, 2015, 2015 CPD ¶ 32 at 8.

## RECOMMENDATION

For the reasons discussed above, we conclude that CMS's evaluation of the cost realism of Health Integrity's proposal was unreasonable. We further conclude that AdvanceMed was prejudiced by this evaluation. We recommend that CMS conduct and document a new cost realism evaluation and prepare a new source selection decision. We also recommend that the agency reimburse the protester's reasonable costs associated with filing and pursuing its protest, including attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d). The protester's certified claims for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after the receipt of this decision. 4 C.F.R. § 21.8(f).

The protest is sustained.

Susan A. Poling  
General Counsel