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Decision

Matter of: AdvanceMed Corporation

File: B-415360; B-415360.2; B-415360.3

Date: December 19, 2017

Daniel P. Graham, Esq., Tyler E. Robinson, Esq., Elizabeth Krabill McIntyre, Esq., and Caroline E. Colpoys, Esq., Vinson & Elkins LLP, for the protester.
Daniel J. Kelly, Esq., David Himelfarb, Esq., Cara A. Wulf, Esq., and Matthew G. Dalton, Esq., McCarter & English, LLP, for Health Integrity, LLC, the intervenor.
Lucy G. Mac Gabhann, Esq., and Linda Santiago, Esq., Department of Health and Human Services, for the agency.
Evan D. Wesser, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the agency's evaluation of the offerors' proposals was unreasonable because the agency reached different evaluation conclusions in a related procurement is denied, where the procurements were conducted under different solicitations and evaluated by different evaluation teams.
 2. Protest challenging the agency's technical and past performance evaluations and conduct of discussions is denied where the record shows that the evaluations and discussions were reasonable and consistent with the terms of the solicitation, or otherwise any errors were not materially prejudicial.
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DECISION

AdvanceMed Corporation, of Reston, Virginia, protests the award of a task order to Health Integrity, LLC, of Easton, Maryland, under request for proposals (RFP) No. HHSM-500-2017-RFP-0002, Medicaid Services (CMS), for Medicare and Medicaid program integrity services. The protester challenges the agency's evaluation of proposals, the reasonableness and meaningfulness of discussions, and the ultimate best-value determination.

We deny the protest.

BACKGROUND

CMS issued the RFP on February 3, 2017, to contractors holding one of CMS's Unified Program Integrity Contract (UPIC) indefinite-delivery, indefinite-quantity (IDIQ) contracts. RFP at 1.¹ The RFP sought proposals to support the agency's fraud, waste, and abuse detection, deterrence, and prevention activities for Medicare and Medicaid claims within the south western jurisdiction. RFP, Attach. J.1, Statement of Work (SOW), at 1.² The solicitation contemplated the award of a cost-plus-award-fee task order for a base year and four 12-month options. RFP at 5, 10.

The RFP provided for award on a best-value tradeoff basis consisting of cost and five non-cost evaluation factors. Id. at 42-43. When combined, the non-cost factors were to be significantly more important than cost. Id. at 42. 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. Id. at 42-43. In rating the first four non-cost factors--Section 508 compliance was to be evaluated on an acceptable/unacceptable basis--the solicitation provided that the agency would assign one of the following adjectival ratings: exceptional; very good; satisfactory; marginal; or unsatisfactory. Id. at 43-44. The solicitation further provided that the agency would assign an overall adjectival rating for the technical proposal. Id. at 43.

With respect to the accomplishing and integrating functional requirements -- scenario responses factor, the agency was to evaluate offerors' responses to two scenarios to evaluate each offeror's probability of successfully accomplishing and integrating the south western jurisdiction UPIC functional requirements. Id. at 44. The technical evaluation was to consider, among other factors: (1) how well the offeror supports the relevant facts and/or assumptions in their approach; (2) how well the relevant data points support the offeror's approach; (3) the strength of the offeror's determination in regards to compliance with state and federal regulations and policies; and (4) feasibility and strength for determining and choosing the approaches that are pursued for all possible relevant findings. Id.

¹ The RFP was subsequently amended twice; references herein are to the RFP as amended.

² CMS currently relies upon a network of contractors under several contract vehicles to carry out program integrity work for the Medicare and Medicaid programs. RFP, Attach. J.1, SOW, at 1. The UPIC IDIQ contracts combine and integrate these functions into a single contract for each of the five geographically defined jurisdictions. Id. The task order at issue requires the provision of services within the south western region, which includes the states of Colorado, New Mexico, Oklahoma, Texas, Arkansas, Louisiana, and Mississippi. Id.

With respect to the key personnel and staffing factor, the agency was to evaluate both the offerors' proposed key personnel and staffing plan. With respect to key personnel, the agency was to evaluate, among other considerations: (1) qualifications; (2) the benefits and skills the individuals bring in relation to the UPIC; and (3) previous experience related to a project of similar size and scope. Id. The agency was to evaluate proposed staffing plans based on, among other considerations: (1) how well the proposed labor categories, full time equivalents (FTE), and subcontracting plan met the offeror's technical approach; (2) demonstrated experience in successfully acquiring necessary labor to perform on a project of similar size and complexity; and (3) comprehensible organizational charts to sufficiently gain an understanding of the roles and responsibilities and placement of proposed personnel and subcontractors. Id. at 45.

With respect to past performance, the agency was to evaluate the offeror's and its proposed significant subcontractors' past performance to determine the likelihood that the prospective contract will be performed successfully. Id. With respect to small business utilization, the agency was to evaluate how realistic and committed the offeror is in utilizing various types of small business concerns. Id. With respect to Section 508 compliance, the agency was to evaluate offerors effectively on an acceptable/unacceptable basis in accordance with HHS Acquisition Regulation provision 352.239-74, Electronic Information and Technology Accessibility (December 2015). Id. Finally, the agency was to evaluate offerors' proposed costs for reasonableness and realism. Id. at 46.

Four offerors, including AdvanceMed and Health Integrity, submitted timely proposals in response to the solicitation. Agency Report (AR), Tab 5, Source Selection Decision (SSD), at 1. After conducting discussions with the offerors, CMS evaluated the final proposals of AdvanceMed and Health Integrity as follows:

| | AdvanceMed | Health Integrity |
|--|---------------------|-------------------------|
| Accomplishing & Integrating Functional Requirements -- Scenario Responses | Satisfactory | Very Good |
| Key Personnel & Staffing Plan | Satisfactory | Very Good |
| Past Performance | Satisfactory | Very Good |
| Small Business Utilization | Satisfactory | Very Good |
| Section 508 Compliance | Acceptable | Acceptable |
| Overall Technical Rating | Satisfactory | Very Good |
| Final Proposed Cost | \$79,269,416 | \$86,965,604 |
| Total Evaluated Cost | \$79,275,981 | \$86,968,662 |

Id. at 3-4.

The Source Selection Authority (SSA) determined that Health Integrity's proposal had strengths in all evaluation criteria that supported its ability to exceed the requirements of

the SOW and would provide significant measurable benefits to the government. Id. at 10. He found that the advantages and value to the government associated with the technical merits of Health Integrity's proposal warranted the evaluated premium of less than 10 percent, and therefore selected Health Integrity's proposal for award. Id. Following the receipt of a debriefing, the protester filed this protest with our Office.³

DISCUSSION

AdvanceMed primarily challenges the agency's evaluation of proposals under the non-cost factors of accomplishing and integrating functional requirements – scenario responses, key personnel and staffing plan, and past performance. The protester, in addition to challenging the agency's evaluation, also argues that CMS engaged in misleading and inadequate discussions with AdvanceMed. Furthermore, as a result of these alleged underlying errors, the protester also challenges the reasonableness of the agency's cost-technical tradeoff. For the reasons that follow, we find no basis to sustain the protest.⁴

The task order competition here was conducted among UPIC IDIQ contract holders pursuant to Federal Acquisition Regulation subpart 16.5. In reviewing protests of an award in a task order competition, we do not reevaluate proposals but examine the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. Diamond Info. Sys., LLC, B-410372.2, B-410372.3, Mar. 27, 2015, 2015 CPD ¶ 122 at 7; Harris IT Servs. Corp., B-406067, Jan. 27, 2012, 2012 CPD ¶ 57 at 5.

Differing Evaluation Results

AdvanceMed first challenges the agency's alleged failure to reconcile different evaluation conclusions between the south western region competition at issue here and a previous task order competition for the western region that was also conducted among UPIC contract holders. The protester contends that the similarities between the two procurements, in terms of the UPIC master SOW, the specific task order SOWs, and evaluation criteria, as well as the fact that the same SSA was responsible for the awards in both regions, required the agency to explain any variations in the evaluation findings between the two regions. See Protest (Sept. 26, 2017) at 20-22; AdvanceMed Comments & Supp. Protest (Nov. 6, 2017) at 10-13. CMS and the intervenor counter

³ The awarded value of the task order is approximately \$87 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of task or delivery orders under multiple-award IDIQ contracts. 41 U.S.C. § 4106(f).

⁴ AdvanceMed raises other collateral arguments. While our decision does not specifically address every argument, we have considered all of the protester's additional assertions and find that none provides any basis on which to sustain the protest.

that there was no duty to reconcile the evaluation findings where the task order procurements were conducted under different solicitations issued several months apart, the offerors submitted different proposals, and different technical evaluation panels (TEP) were convened to evaluate the proposals. For the reasons that follow, we find that the agency did not have an obligation to reconcile or otherwise explain any different evaluation findings here.

We have acknowledged that, as a general matter, it is not unusual for individual evaluators to reach different conclusions and assign different scores or ratings when evaluating proposals, since both objective and subjective judgments are involved. Novel Pharm., Inc., B-255374, Feb. 24, 1994, 94-1 CPD ¶ 149 at 6. Moreover, evaluation ratings under another solicitation are not probative of the alleged unreasonableness of the evaluation ratings under the solicitation at issue, given that each procurement stands on its own. Parmatic Filter Corp., B-285288, B-285288.2, Aug. 14, 2000, 2000 CPD ¶ 185 at 7.

We have applied these general principles, even where there are material similarities between related procurements. For example, in National Government Services, Inc., B-401063.2 et al., Jan. 30, 2012, 2012 CPD ¶ 59, our Office declined to impose a duty to reconcile evaluation results, notwithstanding that the requirements of two related procurements were essentially the same and the protester had submitted largely identical proposals in response to the two procurements. Specifically, we noted that: (1) the procurements had been conducted under different solicitations; (2) the evaluations did not involve a common source selection board (SSB) that reviewed the consensus ratings prepared by the evaluators; and (3) a different SSA was responsible for each award, each of whom prepared a separate source selection decision. Id. at 6-7.

Our Office distinguished the circumstances in National Government Services, Inc. from an exceptional case where we sustained a protest alleging that the agency had failed to reasonably reconcile different evaluation findings. Specifically, in CIGNA Government Services, LLC, B-401062.2, B-401062.3, May 6, 2009, 2010 CPD ¶ 283, our Office sustained a protest where the same SSB and SSA failed to reasonably address divergent evaluation findings for different regions where the record reflected that both regions were simultaneously procured using a single solicitation and offerors submitted a single common proposal for both regions. Our Office explained that “it was incumbent upon the SSB and SSA, when confronted with the differing evaluation results of essentially the same proposal, submitted by the same offeror under the same solicitation, to seek some sort of explanation, or otherwise arrive at an understanding, as to why this was the case, especially where there were significant rating differences in the respective evaluations.” Id. at 14. Our decision in National Government Services, Inc., however, clarified that “CIGNA addressed the limited circumstances of a common SSB and SSA reviewing inconsistent evaluations concerning identical proposals submitted under a single solicitation.” National Gov’t Servs., Inc., supra at 7.

AdvanceMed, while acknowledging the general principle that each procurement stands on its own, nevertheless argues that the exception to that principle articulated in CIGNA should apply here. Specifically, the protester argues that the exception is warranted because, among other considerations, the task orders were issued against the common UPIC SOW, the technical scenarios offerors were asked to address, although differing somewhat by region, were materially similar, the same evaluation criteria were utilized, and the same SSA ultimately made the award decisions. More specifically, AdvanceMed argues that it was unreasonable for the agency to award Health Integrity two strengths under the scenario responses factor for its proposed use of a data sharing tool and its approach to data analysis when materially similar features were not evaluated as warranting strengths in the western region, and for the agency to effectively downgrade AdvanceMed's past performance rating from very good to satisfactory where the underlying past performance information considered was materially similar. We find that the facts of this case do not warrant extension of the exception set forth in CIGNA.

As an initial matter, we note that AdvanceMed does not challenge the reasonableness of the third strength assigned to Health Integrity's proposal under the scenario responses factor. AR, Tab 11, South Western Region Health Integrity TEP Rep., at 4 (assigning a strength for the awardee's understanding and experience with Texas' Medicaid program). This strength, which is specific to the unique technical scenarios that offerors were expected to address in this RFP and is unchallenged by AdvanceMed, highlights that while similar, the south western and western region RFPs and the offerors' respective proposals submitted in response thereto were not identical in nature.

In any event, even accepting the protester's assertion that there were material similarities in terms of the RFPs' requirements, the evaluation criteria utilized, and the contents of the offerors' proposals, extension of the limited exception in CIGNA would not be appropriate here. In CIGNA, our Office was concerned with a scenario where a common SSB and SSA failed to reasonably address differing evaluation findings that were evaluated from a common proposal submitted under a single solicitation. Our concern was the agency's failure to reasonably reconcile differing evaluation findings that were simultaneously and contemporaneously raised.

In contrast, here the agency procured the associated services for the western region via a solicitation issued on July 13, 2016, and issued a separate solicitation for the south western region approximately eight months later on February 3, 2017. See AdvanceMed Corp., B-414373, May 25, 2017, 2017 CPD ¶ 160 at 1; RFP at 1. The agency convened a separate TEP for the western region, that TEP issued its final consensus evaluation reports in January 2017, and the SSA issued the western region SSD on February 2, 2017, which all occurred prior to the issuance of the south western region RFP on February 3, 2017. See AR, Tab 8a, Western Region SSD, at 1; Tab 8b, Western Region AdvanceMed TEP Rep., at 1. Meanwhile, the agency convened a separate TEP to evaluate the south western region proposals, that TEP issued its

consensus evaluation reports in September 2017, and the SSA issued his SSD for the south western region on September 14, 2017. See AR, Tab 5, SSD, at 1; Tab 11, South Western Region Health Integrity TEP Rep., at 1. In light of the different solicitations, different proposals, different TEPs, and significant passage of time between the procurements, we find no reasonable basis to find that the SSA was required to reconcile any alleged differences between the western and south western region evaluations.⁵

Other Alleged Evaluation Flaws

AdvanceMed also challenges CMS' assessment of several weaknesses in its technical proposal. In addition to challenging the merits of the assessed weaknesses, the protester also contends that the agency committed certain procedural errors, including failing to engage in meaningful discussions or reasonably considering available relevant information. As addressed in the examples below, we find no basis to sustain the protest on any of these bases.

Decreasing Staffing

AdvanceMed challenges the evaluation of a weakness in its key personnel and staffing plan related to its proposed decrease in the number of [DELETED], [DELETED], and [DELETED] during the option years. The protester contends that CMS failed to

⁵ AdvanceMed also challenged the agency's cost realism evaluation of Health Integrity's proposal, effectively contending that, in light of the similarities between and timing of this procurement relative to the western region procurement, it was highly probable that the awardee and agency replicated similar cost realism related concerns as our Office identified with respect to the western region procurement in our decision in AdvanceMed Corp., B-414373, May 25, 2017, 2017 CPD ¶ 160. See Protest (Sept. 26, 2017) at 7-11. Additionally, based on these allegations regarding the awardee's business proposal, the protester further alleged that the agency unreasonably evaluated Health Integrity's scenario responses. See id. at 11. We dismissed these protest allegations as legally and factually insufficient and speculative because, in essence, the protester relied exclusively on the fact that our Office has sustained a protest involving a different procurement conducted under a different solicitation and proposals as the basis for its allegations. These allegations failed to allege any specific flaws that occurred in connection with this procurement or account for material differences between the procurements. For example, the protester alleged that, notwithstanding an increase in the number of investigations anticipated for the south western region as compared to the western region, Health Integrity's total proposed costs for the south western region increased by only approximately 1 percent as compared to the western region, thereby suggesting that its proposal understated the cost of performance. This allegation, however, was fundamentally inconsistent with the protester's own proposal, which reflected a cost decrease of almost 30 percent as compared to the protester's proposal for the western region.

reasonably consider AdvanceMed's proposed efficiencies as justifying the reductions. See Protest (Sept. 26, 2017) at 7-9. AdvanceMed also argues that the agency's discussions were misleading as the agency did not specifically raise this concern as part of discussions of the protester's technical proposal, but rather only raised the matter in connection with discussions relating to the protester's business proposal. See Supp. Protest (Sept. 29, 2017) at 5-7; AdvanceMed Comments & Supp. Protest (Nov. 6, 2017) at 23-25. The protester further contends that the agency also erred by treating this issue as a technical weakness, as opposed to a cost realism issue requiring at worst only an upward adjustment to AdvanceMed's proposed costs. See AdvanceMed Supp. Comments (Nov. 22, 2017) at 14-16. For the reasons that follow, we disagree.

After evaluating offerors' initial proposals, the agency issued separate discussion letters relating to each offeror's respective technical and business proposals. In the agency's discussion letter to AdvanceMed regarding its business proposal, CMS specifically provided:

The number of FTEs and labor hours (direct and subcontractor) decrease from [Contract Line Item Number (CLIN)] 2 through CLIN 5. This decrease is most prevalent in the following labor categories:

- a. [DELETED]: The [DELETED] position will be significantly reduced across CLIN 2 through CLIN 5, without an increase in [DELETED] or [DELETED] labor hours throughout the progression of Option Periods to offset the reduction in [DELETED] labor hours.
- b. [DELETED]: The [DELETED] position will be significantly reduced across CLIN 2 through CLIN 5 without an increase in [DELETED] labor hours throughout the progression of Option Periods to offset the reduction in [DELETED] labor hours.
- c. [DELETED]: The [DELETED] position will be significantly reduced across CLIN 2 through CLIN 5 without an increase in [DELETED] labor hours throughout the progression of Option Periods to offset the reduction in [DELETED] labor hours.

The offeror should explain what the rationale is for the proposed decrease in hours and reduction in staff throughout the progression of option periods (CLINs 2 through 5) as described above.

AR, Tab 3C, AdvanceMed Business Proposal Discussions, at 3.

AdvanceMed responded to the specific concerns by explaining that it had planned efforts to identify and implement significant innovations to achieve minimum year over year efficiencies starting in the second option period. AR, Tab 2E, AdvanceMed Business Proposal Discussion Responses, at 14. The protester described various people, process, tool, and partnership innovations that it would consider implementing

during performance of the resulting task order. Id. at 14-17. Additionally, AdvanceMed downwardly revised its staffing figures in its Key Personnel and Staffing Plan volume of its Technical Proposal. AR, Tab 2B, AdvanceMed Revised Technical Proposal, § C - Key Personnel & Staffing Plan, at Table C.2-1.⁶

The TEP reviewed AdvanceMed's discussion responses and contemporaneously documented its outstanding concerns. Specifically, the TEP documented why each of the proposed innovations did not provide concrete, measurable, or objective justifications for how AdvanceMed would be able to maintain the workload throughout the option periods with the reduced proposed staffing. See AR, Tab 4D, South Western Region AdvanceMed Business Proposal Eval. Rep., at 11-12. The TEP also identified new concerns that arose from the introduction of these efficiencies during discussions. For example, the protester's discussion responses indicated that its Chief Technology Officer (CTO) would be responsible for initiating and managing the innovations and delivering the results to the UPIC South Western Region Program Director for implementation every year. AR, Tab 2E, AdvanceMed Business Proposal Discussion Responses, at 14. The TEP, however, noted that the involvement of the CTO in these activities was not otherwise addressed in AdvanceMed's staffing plan or business proposal. AR, Tab 4D, South Western Region AdvanceMed Business Proposal Eval. Rep., at 11. Notwithstanding these concerns which presented a "moderate risk level," CMS did not ultimately make any upward adjustment to the protester's total proposed costs associated with the concerns. Id. at 1. The TEP, however, did assess a weakness related to the reduced proposed staffing as part of its evaluation of AdvanceMed's revised key personnel and staffing plan volume of its technical proposal. The TEP noted its concern with the proposed staffing where there was no anticipated decrease in the proposed workload during the option periods, and the protester's discussion responses did not provide an acceptable rationale to support the proposed staffing decreases. AR, Tab 4B, South Western Region AdvanceMed TEP Rep., at 7-8.

As an initial matter, we find that the agency reasonably considered the associated risks of AdvanceMed's proposed staffing decreases. The TEP thoroughly discussed why the proposed innovations did not provide sufficient detail or justification to warrant the significant proposed staffing decreases in the option years, as well as the potential for the need for heightened government supervision. These concerns did not just involve matters of cost, however. Rather, the assumed efficiency gains which the agency found were either unsubstantiated or illusory, underpinned the protester's proposed significant staffing reductions in the option years, as well as increasing the potential need for heightened government supervision over AdvanceMed's performance. On this record,

⁶ We note that AdvanceMed's staffing plan specifically refers to the basis of estimate contained in Section G.3 of the technical proposal, which were designated in the RFP as "Business/Technical Assumptions." RFP at 40.

we find no basis to conclude that the agency unreasonably considered these issues as presenting some degree of technical risk.⁷

We also find that the discussions here were adequate because it is apparent that the agency specifically raised this exact staffing matter with the protester during discussions. As the agency's discussions unequivocally raised this issue with the protester, we find no basis to find that the agency failed to meaningfully address the matter with the protester. Even assuming for the sake of argument, however, that the agency should have raised its concerns with AdvanceMed with respect to its technical, versus business, proposal, we can discern no reasonable possibility of prejudice. The agency specifically notified AdvanceMed of its concern with respect to the protester's proposed decrease in staffing. The protester specifically responded to the agency's exact concern. The TEP, as part of its assistance to the cost evaluation team, specifically reviewed AdvanceMed's response and explained in its contemporaneous evaluation findings why the agency's concern remained outstanding. In this regard, it is not apparent what, if any, additional discussion responses or proposal revisions AdvanceMed would have offered had the identical concern been raised in the technical proposal discussions, as opposed to the business proposal discussions. Competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest, even if deficiencies in the procurement are found. DynCorp Int'l LLC, B-411465, B-411465.2, Aug. 4, 2015, 2015 CPD ¶ 228 at 12-13; HP Enter. Servs., LLC, B-411205, B-411205.2, June 16, 2015, 2015 CPD ¶ 202 at 6.

Additionally, it is not apparent that the removal of the weakness would have materially changed the relative competitive position of the parties with respect to the key personnel and staffing factor. In this regard, in addition to the one weakness, AdvanceMed was also assigned only one strength under the factor for the experience of its proposed Medicaid Operations Lead. AR, Tab 4B, South Western Region

⁷ AdvanceMed alternatively argues that there is no technical risk associated with its proposed staffing reductions because if the protester "is ultimately unable to achieve those efficiencies to perform the required workload with its proposed reduced number of [DELETED], the effect will be that AdvanceMed simply will not be able to let certain [DELETED] FTEs go as planned and will instead keep them on board to accomplish the required workload." AdvanceMed Comments & Supp. Protest (Nov. 6, 2017) at 24. The central flaw in this argument, however, is that this explanation was only first introduced by the protester's counsel in response to the agency report, and is not readily apparent from the face of the proposal. Nowhere did the protester specify in its proposal assumptions or its discussion responses that the proposed staffing reductions would only be implemented in the event the protester's implementation of its proposed innovations and efficiencies were successful. Barring any such contemporaneous proposal representations to this effect, we find no reasonable basis for the agency to have inferred such a result from AdvanceMed's proposal or discussion responses.

AdvanceMed TEP Rep., at 7. In contrast, Health Integrity was assessed three strengths under the factor related to the cross-functional experience of its proposed Medicaid Operations Lead and Medical Director, and extensive Administrative Law Judge Appeals hearing experience of its proposed Chief Legal Counsel. AR, Tab 5, SSD, at 8. The SSA concluded that the assessed advantages of the awardee's key personnel and staffing plan over AdvanceMed's proposal "warrant[ed] a cost premium for utilizing high-quality key personnel, with the ability to utilize their broad set of knowledge, skills, and experiences to enhance the quality of performance through efficiencies and collaboration, which are an added value to the Government." *Id.* AdvanceMed does not allege that the agency unreasonably failed to evaluate other strengths in its proposal, or challenge the reasonableness of the strengths evaluated in Health Integrity's proposal or the SSA's comparative assessment of the proposals under the factor. Thus, there is no basis to conclude that removing the one weakness from AdvanceMed's proposal would have changed the SSA's determination regarding the relative value of the unique strengths offered by the awardee's key personnel and staffing approach, which formed the basis for the SSA's selection decision.

Past Performance

AdvanceMed also challenges the evaluation of a significant weakness in its past performance for consistently failing to meet small business subcontracting requirements. AR, Tab 4B, South Western Region AdvanceMed TEP Rep., at 11. The protester contends that the agency unreasonably failed to consider positive performance trends demonstrating material improvements in AdvanceMed's small business utilization on highly relevant contracts, including as addressed in draft Contractor Performance Assessment Reporting System (CPARS) reports issued by CMS to the protester. *See* Protest (Sept. 26, 2017) at 16-20; AdvanceMed Comments & Supp. Protest (Nov. 6, 2017) at 18-21. The agency responds that it reasonably assessed the totality of the protester's past performance, and was not obligated to consider past performance information contained in draft CPARS reports. For the reasons that follow, we find no basis on which to sustain the protest on this basis.

The evaluation of past performance is a matter of agency discretion, and we will review the evaluation only to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and applicable statutes and regulations. National Gov't Servs., Inc., *supra* at 16. As we have explained, an agency's past performance evaluation may be based on a reasonable perception of a contractor's prior performance, regardless of whether the contractor disputes the agency's interpretation of the underlying facts, the significance of those facts, or the significance of corrective actions. PAE Aviation & Tech. Servs., LLC, B-413338, B-413338.2, Oct. 4, 2016, 2016 CPD ¶ 283 at 5. And, although consideration of past performance trends and corrective actions is generally appropriate, an agency is not required to ignore instances of negative past performance. *Id.* With regard to the scope of materials to be reviewed, we have previously explained that an agency's past performance evaluation is unreasonable where the agency fails to give meaningful consideration to available relevant past performance information. General Revenue Corp., et al., B-414220.2 *et al.*, Mar. 27,

2017, 2017 CPD ¶ 106 at 14. We have, however, also concluded that it may not be objectionable for an agency to decline to consider past performance information that is in pending draft form. See National Gov't Servs., Inc., B-412142, Dec. 30, 2015, 2016 CPD ¶ 8 at 16 n.27.

We conclude, however, that we need not resolve the contested significant weakness because, as with the key personnel and staffing factor, the record indicates that the issue was not a factor in the selection decision; thus, there is no basis to conclude that the protester suffered any competitive prejudice from the alleged error. In this regard, notwithstanding the protester's assessed significant weakness, the SSA concluded that the quality of the offerors' past performance was similar in nature and expressly indicated that Health Integrity's advantage under the past performance factor was not a discriminator for purposes of the selection decision. Specifically, the SSA found that:

[O]utside of the identified significant weakness in AdvanceMed's repeated shortcomings in meeting their Small Business Subcontracting goals, the performance history of both of these offerors identified more similarities than differences. Despite the difference in adjectival rating, which is warranted and supported, the identified advantages of [Health Integrity's] past performance do not rise to the level of paying a cost premium.

AR, Tab 5, SSD, at 9.

Accordingly, even if the significant weakness was removed, both offerors would still have been assessed two strengths, and no weaknesses under the past performance factor, and the SSA's determination regarding the similarities between the offerors' respective performance histories would not have materially changed. Past performance would have remained a non-factor on the cost-technical tradeoff. Thus, we find no basis to sustain the protest on this basis.

The protest is denied.

Thomas H. Armstrong
General Counsel