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Decision

Matter of: TriWest Healthcare Alliance Corporation

File: B-415222.3; B-415222.4; B-415222.6; B-415222.7

Date: May 2, 2019

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DIGEST

1. Protest challenging the agency's evaluation of offerors' technical proposals is denied where the evaluations and source selection decisions were reasonable and consistent with the terms of the solicitation.
2. Protest that the solicitation contained a latent ambiguity and agency's evaluation of price proposals was unreasonable is denied where the solicitation is not ambiguous and the agency's evaluation of price was reasonable and consistent with the terms of the solicitation.
3. Protest that the agency failed to compute and consider total evaluated prices in a best-value tradeoff is denied where the agency reasonably considered the price premium as a percentage of savings in comparison to the government estimate in accordance with the terms of the solicitation.

DECISION

TriWest Healthcare Alliance Corporation (TriWest), of Phoenix, Arizona, protests the award of two contracts to Optum Public Sector Solutions, Inc. (OPSS), of Rockville, Maryland, under request for proposals (RFP) No. VA791-16-R-0086, issued by the

Department of Veterans Affairs (VA) for community care network (CCN) services. The protester challenges multiple aspects of the agency's evaluations of proposals and source selection decisions.

We deny the protests.

BACKGROUND

The RFP was issued on December 28, 2016, pursuant to Federal Acquisition Regulation (FAR) parts 12 and 15. Agency Report (AR), Exh. 3, RFP, at 1, 175. The RFP contemplated award of three fixed-price indefinite-delivery, indefinite-quantity (IDIQ) contracts, one in each of the three regions specified in the RFP, for a base period ending September 30 of the fiscal year in which the award is made and seven 1-year options. Id. at 5-6, 36, 176, 187.¹ The purpose of the procurement is to establish and maintain a network of high performing licensed healthcare providers and healthcare practitioners to deliver patient-centered care to veterans. Id. at 57. This care includes medical, surgical, complementary and integrative healthcare services, durable medical equipment, pharmacy, and dental services. Id. at 56. These protests relate to the contracts awarded in regions 2 and 3, which have a maximum ordering value of over \$18 billion and \$21.5 billion, respectively.²

The RFP included the following evaluation factors, listed in descending order of importance: (1) technical; (2) past performance; (3) socioeconomic concerns; and (4) price. Id. at 187-188. The technical factor included the following three subfactors: (1) network management and claims adjudication; (2) management approach; and (3) corporate experience/capability. Id. at 187. The RFP advised that the first two subfactors were of equal importance and that each of these two subfactors, individually, was more important than the third subfactor. Id. at 188. The RFP also advised that the non-price factors, when combined, were significantly more important than price. Id. The RFP stated that the following ratings would be used when evaluating the technical factor and subfactors: outstanding, good, acceptable, marginal, or unacceptable.³ Id.

¹ Citations to the RFP are to the conformed solicitation provided by the agency at Exhibit 3 of the agency reports.

² The RFP identified region 2 to include Ohio, Kentucky, Indiana, Illinois, Missouri, Kansas, Nebraska, Iowa, Wisconsin, Michigan, Minnesota, North Dakota, and South Dakota. RFP at 5-6. The RFP identified region 3 to include Oklahoma, Arkansas, Louisiana, Tennessee, Mississippi, Alabama, Georgia, South Carolina, Florida, Puerto Rico, and the U.S. Virgin Islands. Id.

³ The RFP stated that offerors' past performance would be evaluated for both relevancy and confidence level. RFP at 188-190. For relevancy, the RFP stated that the following ratings would be used: very relevant, relevant, somewhat relevant, or not relevant. Id. at 189. For confidence level, the RFP stated that the following ratings would be used: substantial confidence, satisfactory confidence, neutral confidence, limited confidence, (continued...)

Regarding price, the RFP proposal instructions stated: “Some [contract line item numbers (CLINs)] and SubCLINs are already priced by the VA. The Offeror must propose pricing for all non-prepriced CLINs. . . . Offerors must provide pricing for the base year and all option periods for all non-prepriced CLINs in the region for which it is proposing.” RFP at 185-186. The RFP assigned a weighted value, in terms of a percentage, to each of the non-prepriced CLINs and subCLINs; the total weighting for all CLINs included in the price evaluation equaled 100 percent.⁴ Id. at 191-195.

In addition, the RFP identified three methods that the agency would use to calculate a score for each CLIN, depending on the CLIN, and also advised offerors that the agency would calculate the scores using the reference rate. Id. at 191. The reference rate was defined as “the unit price that was used to develop the [independent government cost estimate (IGCE)] or the price the VA expects to pay for the service for each CLIN or SubCLIN, as applicable.” Id. The agency used the score and weighted value of each CLIN to obtain a weighted score. For example, for several CLINS, the agency calculated the weighted score by first finding the percent difference between the offeror’s average unit price for the CLIN and the IGCE, and then multiplying that number by the applicable CLIN weight.⁵ Id.

The agency then totaled the weighted score of the CLINs to obtain a cumulative weighted score. Id. Any cumulative weighted score greater than 0.00 represented a price lower than what the agency expected to pay. AR, Exh. 166, Price Evaluation Report (Region 2), at 19; Price Evaluation Report (Region 3) at 13. A cumulative score of .05, for example, indicated the offeror’s proposed prices were 5 percent less than what the agency expected to pay. Id. Therefore, a higher cumulative weighted score indicated greater cost savings to the government. Id.; RFP at 191. Further, the RFP stated that the agency would use FAR part 15 price analysis techniques to determine whether prices were fair and reasonable, and the contracting officer “may determine the proposed prices fair and reasonable based solely on an analysis of the cumulative weighted score in accordance with this section.” RFP at 191.

(...continued)

or no confidence. Id. at 190. The RFP further stated that the following ratings would be used to evaluate the socioeconomic concerns factor: full credit, partial credit, minor credit, or no credit. Id. at 189-191.

⁴ For example, CLIN XXX2 had a weighted value of 30.5 percent for region 3. RFP at 194.

⁵ For example, an offeror with an average CLIN unit price (base and all options) of \$15.47, for a CLIN where the IGCE unit price is \$23.70 and weight is 3.8 percent, would have a weighted score of 0.01320 ($\$23.70 - \$15.47 = \$8.23$; $\$8.23 / \$23.70 * 0.038 = 0.01320$). AR, Exh. 167 (Region 3), CCN Price Evaluation Tool, Example Tab; see also AR, Exh. 47, Questions and Answers, #35.

The RFP stated that the agency would use a tradeoff process to make an award to the responsible offeror whose proposal, conforming to the solicitation, was determined to be the best value to the government, price and other factors considered. Id. at 187.

The agency received proposals from three offerors, including TriWest and OPSS. Contracting Officer’s Statement and Memorandum of Law (COS/MOL)(Region 2) at 4; COS/MOL (Region 3) at 4. After the initial evaluations of proposals, the agency established a competitive range that included all three offerors, and conducted discussions, and timely received first proposal revisions (FPR-1) on May 14, 2018. After the technical evaluation team (TET) evaluated the revised proposals, the source selection advisory council (SSAC) reviewed the TET findings and “conducted reconciliation across the region[s] and across offerors to ensure consistency in the evaluation of FPR-1.” AR, Exh. 160, TET Report (Region 2), at 1; TET Report (Region 3) at 1.

After its review, the SSAC recommended that the TET add or remove strengths or weaknesses from the technical evaluation of FPR-1 for all offerors for regions 2 and 3. Id. As a result of the FPR-1 evaluation and the SSAC recommendations, the agency conducted further discussions with all offerors and timely received final revised proposals (FPR-2). Id. The TET then evaluated the offerors’ FPR-2 submissions and noted its final evaluations in the technical evaluation report. Id. The SSAC then reviewed the final TET report and prepared its comparative analysis for submission to the source selection authority (SSA). AR, Exh. 171, SSAC Comparative Analysis (Region 2), at 4; SSAC Comparative Analysis (Region 3) at 4.

In its final evaluation of TriWest’s technical proposals, the agency identified 17 strengths and three weaknesses in region 2, and 17 strengths and four weaknesses in region 3. AR, Exh. 173, Source Selection Decision Document (SSDD) (Region 2), at 8; SSDD (Region 3) at 8. In its final technical evaluation of OPSS’s technical proposals, the agency identified 18 strengths and one weakness for region 2, and 19 strengths and one weakness for region 3. Id. The agency’s final evaluation of the proposals was as follows:

REGION 2	TriWest	OPSS
Technical	Outstanding	Outstanding
Network Management and Claims Adjudication	Outstanding	Outstanding
Management Approach	Outstanding	Good
Corporate Experience/Capability	Outstanding	Outstanding
Past Performance	Somewhat Relevant / Satisfactory Confidence	Somewhat Relevant / Satisfactory Confidence
Socioeconomic Concerns	Partial and Minor Credit	Partial and Minor Credit
Price (Score)	0.13867	0.23898

REGION 3	TriWest	OPSS
Technical	Good	Good
Network Management and Claims Adjudication	Good	Good
Management Approach	Good	Good
Corporate Experience/Capability	Good	Outstanding
Past Performance	Somewhat Relevant / Satisfactory Confidence	Somewhat Relevant / Satisfactory Confidence
Socioeconomic Concerns	Partial and Minor Credit	Partial and Minor Credit
Price (Score)	0.13458	0.18968

Id. at 7. The SSA performed a best-value tradeoff and concluded that OPSS provided the best value to the government. Id. (Region 2) at 8-13; (Region 3) at 8-14.

On December 28, the agency awarded the contracts for regions 2 and 3 to OPSS. COS/MOL (Region 2) at 6-7; COS/MOL (Region 3) at 7. On January 17, 2019, the agency concluded TriWest's debriefings. These protests followed.

DISCUSSION

The protester argues that the agency performed a disparate technical evaluation of offerors' proposals that relied on unstated evaluation criteria. The protester also challenges virtually every aspect of the agency's price evaluation, and argues that the agency should have rejected OPSS's proposal for failing to comply with material requirements of the RFP. TriWest also argues that the source selection decisions are irrational because the agency failed to compare the real differences in costs to the government. As discussed below, we find no basis to sustain the protests.⁶

Technical Evaluation

Network Management and Claims Adjudication

The protester argues that, in region 3, the agency improperly credited OPSS for an extensive network in Florida, but nothing in the RFP provided any basis for the agency to single out experience in Florida for extra credit. Protest (Region 3) at 43-44. The agency argues that it reasonably evaluated the proposals in accordance with the RFP criteria, and because Florida has the largest veteran population of all region 3 states

⁶ TriWest's initial and supplemental protests raise multiple allegations. While our decision here does not specifically discuss each and every argument and/or variation of the arguments, we have considered all of TriWest's assertions and find no basis to sustain the protest.

and territories, the differences in offerors' proposed network adequacy in Florida could properly provide an advantage. COS/MOL (Region 3) at 67-71.

Regarding the network management and claims adjudication subfactor, the RFP required offerors to describe their approach to developing and maintaining a high-quality provider network, differentiate between existing and targeted network capacity, and describe how the proposed network model would support network adequacy requirements, including how the number and types of providers in regions would be determined. RFP at 180-181. The RFP advised that, for this subfactor, the agency would evaluate offerors for the feasibility to meet the performance work statement requirements regarding a provider network. Id. at 189. As relevant to this requirement, the performance work statement provided, in pertinent part, as follows:

Network adequacy will be determined for each VA Facility located in the awarded CCN Region and by specific categories of care. The Contractor must always utilize two primary factors to achieve network adequacy: (i) geographic accessibility to a provider based on drive times, and (ii) appointment availability. Where access is inadequate (drive time or appointment availability) as determined by VA, the Contractor will be required to recruit providers and practitioners currently practicing in that area to participate in the CCN.

The CCN must always:

1. Include individual providers, practitioners, and institutional facilities
2. Coordinate with the care and services provided by VA
3. Monitor quality and cost-effective care
4. Be adequate in size, scope, and capacity to ensure that Veterans receive timely access to care

Id. at 66.

In its evaluation of the proposals, the TET rated both offerors as good. AR, Exh. 160, TET Report (Region 3), at 6. Neither the TET nor SSAC identified a specific strength in OPSS's proposal related to its proposed or existing network in Florida. Regarding the TriWest proposal, the evaluators noted that "TriWest includes obtaining [DELETED], however, TriWest does not demonstrate a current affiliated network presence in five (5) (Alabama, South Carolina, Georgia, Puerto Rico, and the US Virgin Islands) of the 11 states/territories within Region 3." Id. at 331, 350 (citing AR, Exh. 154, TriWest Technical Proposal, at 16). The SSA concluded that OPSS had a competitive advantage under the network management and claims adjudication subfactor, and explained as follows:

[OPSS] has a clear, competitive advantage. . . . [OPSS] has the largest network in four states, Puerto Rico and the Virgin Islands. TriWest has

the largest network in three states. . . . [OPSS] has the largest network in [Florida]. . . .

[OPSS] demonstrates it currently has more providers in its commercial network in Region 3 ([DELETED]) than it estimates will be needed by CCN ([DELETED]). Therefore, in many specialties VA will be able to leverage these additional providers as [VA medical center (VAMC)] needs change. [OPSS] has the largest, most robust existing network in six states/territories: Arkansas, Tennessee, Mississippi, Florida, Puerto Rico, and US Virgin Islands. [OPSS] has the largest network in Florida, the state within Region 3 with the highest number of Veterans and the highest number of referrals. . . . [OPSS] has [DELETED] more existing providers than TriWest in [Florida]. . . . To ensure the determination of [OPSS's] competitive advantage, [OPSS's] network providers by category of care, by total unique [national provider identifier] count, and within [Florida], was reviewed. The data confirmed that [OPSS's] current, broad distribution of provider types within its robust network is aligned with VA's needs, more so than TriWest[,] which is a competitive advantage.

AR, Exh. 173, SSDD (Region 3), at 8-9.

It is axiomatic that in a negotiated procurement an agency must evaluate proposals based on the solicitation's enumerated evaluation factors. FAR § 15.305(a); RTI Int'l, B-411268, June 26, 2015, 2015 CPD ¶ 206 at 12. Agencies, however, properly may evaluate proposals based on considerations not expressly stated in the solicitation where those considerations are reasonably and logically encompassed within the stated evaluation factor, and where there is a clear nexus between the stated and unstated criteria. Straughan Env'tl., Inc., B-411650 et al., Sept. 18, 2015, 2015 CPD ¶ 287 at 8.

On this record, we find the agency's evaluation to be reasonable. The RFP specifically advised the agency would evaluate the feasibility of the offeror's proposed approach to meet provider network requirements, see RFP at 189, and one requirement was network adequacy (e.g., geographic accessibility to a provider), see id. at 66. Even the protester acknowledges that demand for healthcare in Florida is higher than in other region 3 states and territories. Protest (Region 3) at 43 ("Attachment E to the RFP did provide historical referral data that indicates Florida had the highest number of referrals among the ten Region 3 states, at approximately 30% of the total number of referrals in Region 3."). We agree with the agency that it was reasonable to assess the extent of an offeror's existing and proposed networks in the state with the greatest demand for services, and to conclude that the offeror that proposed the most extensive network and resources to maintain network adequacy had a competitive advantage over other offerors. The protester's contention that an extensive network in Florida should not be viewed as a competitive advantage represents its disagreement with the SSA's judgment, but does not provide a basis to sustain the protest.

Corporate Experience/Capability

The protester argues that the agency's evaluation of OPSS's proposal under the corporate experience/capability subfactor was unequal, relied on unstated evaluation criteria, and contradicted the RFP. Specifically, the protester argues that the agency unequally credited only OPSS with the experience of its parent and affiliates, and further credited OPSS with experience in commercial sector technologies and best practices while penalizing TriWest for its government sector experience, contrary to the RFP evaluation criteria. Protest (Region 2) at 37-42; Protest (Region 3) at 39-43.

The agency argues that offers were evaluated equally and consistent with the RFP criteria, and OPSS's proposal was properly credited for the experience of its parent and affiliates whose resources the proposal indicated would be provided during contract performance. COS/MOL (Region 2) at 55-61; COS/MOL (Region 3) at 55-61. The agency further argues that the slight advantage in the OPSS proposal correlated to the dedication of resources by its affiliates to contract performance, and the specific experience of these entities, not to any distinction between or preference for commercial versus government experience. COS/MOL (Region 2) at 57-59; COS/MOL (Region 3) at 57-59. The agency argues that TriWest was also credited with the experience of its parent and affiliates, and both offerors were fairly rated as outstanding despite the slight advantage the agency reasonably determined was offered by OPSS. COS/MOL (Region 2) at 63-67; COS/MOL (Region 3) at 63-67.

When reviewing a protest challenging an agency's evaluation of proposals, our Office will not reevaluate proposals nor substitute our judgment for that of the agency, as the evaluation of proposals is generally a matter within the agency's discretion. Del-Jen Educ. & Training Group/Fluor Fed. Solutions LLC, B-406897.3, May 28, 2014, 2014 CPD ¶ 166 at 8. Rather, we will review the record to determine whether the agency's evaluation was reasonable; consistent with the stated evaluation criteria, applicable procurement statutes, and regulations; and adequately documented. Id. An offeror's disagreement with the agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. KSC BOSS Alliance, LLC, B-416334, B-416334.2, July 27, 2018, 2018 CPD ¶ 267 at 5.

Regarding the corporate experience/capability subfactor, the RFP instructed offerors to include the following information in their proposals:

E.2.8.3.1 Provide a general corporate background, experience, and qualifications of the Offeror.

E.2.8.3.2 Provide a general corporate background, experience, and qualifications of the organization to include any offeror's joint venture partner(s) or affiliate(s)/parent organization(s) if the information provided shows that the workforce, management, facilities or other resources of the joint venture partner(s), affiliate(s)/parent organization(s) will bear on the likelihood of successful performance by the Offeror.

E.2.8.3.3 Describe organizational infrastructure, management practices, number of personnel currently employed by department and number of years the prime firm (not including sub-contractors) has been in [the] business of developing and maintaining a network of healthcare providers and processing healthcare claims.

E.2.8.3.4 Describe the organization's experience with managing dental networks and pharmacy benefits.

RFP at 182-183. The RFP advised offerors that the proposals would be evaluated to determine whether the organization has the infrastructure, experience, and capabilities to manage a large, complex, and comprehensive healthcare network inclusive of medical and dental providers, pharmacy benefits management, and claims adjudication. Id. at 189.

In its evaluation of region 2 proposals, the agency rated both TriWest and OPSS outstanding. AR, Exh. 160, TET Report (Region 2), at 6. The record shows that both TriWest and Optum were credited with the corporate experience of their parent and affiliates. TriWest was credited for managing the TRICARE program for the Department of Defense for 17 years in the central and west regions, and for currently managing CCN predecessor network services in 28 states and the Pacific Islands. Id. at 278. The record shows that the agency recognized that TriWest was owned by 12 of its BCBS plan partners, and that its "long-standing relationship with the providers in the nonprofit BCBS plan partners has fortified strong relationships and further benefit[ed] the Veterans to ensure the highest quality of care." Id. at 279-280. The agency further explained as follows:

TriWest and its partners combined corporate background, experience and network qualifications align with VA CCN requirements, yet the size of the broad-based network composed of partners and affiliates provide an indication of the likelihood of successful performance in managing large complex comprehensive healthcare networks, even if one or more partners left the network.

Id. at 280.

In region 3, the agency rated TriWest as good and OPSS as outstanding. AR, Exh. 160, TET Report (Region 3), at 6. The agency similarly credited TriWest with the corporate experience of its parent and affiliates in its region 3 evaluation as it did in region 2. See id., at 492 ("TriWest and its parent/affiliates provide the corporate background and experience as well as providing a current broad-based network which indicates its ability to meet contract requirements."). In both regions, the SSA concluded that OPSS had an advantage due to the "breadth, depth and diversity of its corporate experience." AR, Exh. 173, SSDD (Region 2), at 11; SSDD (Region 3) at 12.

Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the offerors' proposals. Paragon Sys., Inc.; SecTek, Inc., B-409066.2, B-409066.3, June 4, 2014, 2014 CPD ¶ 169 at 8-9. Here, TriWest has not made the requisite showing that the agency treated the two proposals unequally. Contrary to the protester's allegation, the record shows that TriWest was credited with the corporate experience of its parent and affiliates. However, in the comparative analyses of proposals, the SSA considered the differences between the offerors' experience identified in the proposals and concluded that OPSS had a competitive advantage over TriWest.

In addition, TriWest argues that the agency credited OPSS with experience in commercial sector technologies and best practices while penalizing TriWest for its government sector experience, contrary to the RFP evaluation criteria. The SSA specifically found that OPSS "demonstrated a greater degree of corporate maturity managing large complex healthcare networks, commercial, wholesale, and government dental programs, as well as its own [pharmacy benefits management] experience of its Pharmacy Services Department of United Healthcare." AR, Exh. 173, SSDD (Region 2), at 10-11; SSDD (Region 3), at 11. Regarding TriWest, the SSA found that it had also demonstrated the ability to manage a large complex healthcare network, but that its "background and experience is limited to Government programs only." AR, Exh. 173, SSDD (Region 2), at 11; SSDD (Region 3), at 11. The SSA concluded that OPSS had a competitive advantage, specifically stating as follows:

The depth and breadth of [OPSS's] corporate experience, which far exceeds the other offerors, along with [OPSS's] proposed lowest prices, is advantageous to the VA. [OPSS] is a proven market leader that will allow VA to stay on the cutting edge of healthcare, rather than being in a reactive mode, as VA has proven to be, historically. This is evidenced by [OPSS's] proposal to invest \$[DELETED] in technology annually, which I find to be a realistic goal for [OPSS] as their revenues are in excess of \$[DELETED] annually. [OPSS's] ability to leverage its experience in management practices, quality practices, resourcing, innovative healthcare technology, workforce management and facilities structure increases the likelihood of successful contract performance.

AR, Exh. 173, SSDD (Region 2), at 13; see also SSDD (Region 3), at 13-14 (stating that OPSS's "robust network and extensive corporate experience" far exceeds other offerors and citing to OPSS's \$[DELETED] annual investment in technology to conclude that OPSS has a "clear competitive advantage"). TriWest's disagreement with the SSA's judgment does not demonstrate that the agency evaluated the offers disparately. KSC BOSS Alliance, LLC, supra.

Price Evaluation

As noted, some CLINs were already priced under the terms of the RFP, and offerors were required to propose prices only for non-prepriced CLINs, as instructed. RFP

at 185-186. For example, CLIN XXX1 for healthcare services was priced up to 100 percent of Medicare reimbursement. Id. at 7. However, regarding CLIN XXX2, the RFP stated as follows:

CLIN XXX2, is for Reimbursement for Highly Rural Care Areas and Scarce Medical Specialist Services. This CLIN only applies if the Contractor must execute a specific agreement in a Highly Rural Care Area at a rate that exceeds Medicare as required to maintain Network Adequacy. Adequate documentation must be provided to the Contracting Officer for review and disposition to support a request for higher than Medicare rates. The Contractor may, in Highly Rural Care Areas, exceed Medicare but shall not exceed the rate in this CLIN. This CLIN is priced based on a percentage of Medicare.

Id. In addition, with respect to CLIN XXX2 (and others for which Medicare pricing was available), the RFP stated that the CLINs were “considered a pass-through of invoice amounts from the CCN community provider to the Contractor to the VA,” and that payment to the contractor “will be the lesser of the value paid to the CCN community provider or the rate identified in the applicable CLIN.” Id. at 6. For each region, the solicitation’s pricing schedule for CLIN XXX2 indicated that for each claim submitted for reimbursement for highly rural care areas would be “Up to ___% Medicare” for the base and all option periods. Id. at 13, 19, 25.

The RFP further instructed as follows: “Offerors must provide pricing for the base year and all option periods for all non-prepriced CLINs in the region for which it is proposing. Failure to price the base and all option periods shall cause the offer to be rejected from further consideration.” Id. at 186. The RFP also required that offerors provide a narrative description of their price proposals, and specifically, that offerors provide a description for how they developed their proposed highly rural care area rates. Id. As relevant to CLIN XXX2, the RFP defined a highly rural care area as “[a]ny Highly Rural Location, any Critical Access Hospital or any geographic location that necessitates a reimbursement greater than Medicare rates in order to maintain network adequacy.” Id. at 51. A highly rural location was defined as “a sparsely populated area located in a county that has fewer than seven individuals residing in that county per square mile.” Id.

For CLIN XXX2, in both of its proposals OPSS proposed reimbursement at 100 percent of Medicare, and provided the required narrative to explain its development of its highly rural care area rates. For example, in its proposal for region 3, OPSS explained as follows:

To derive the appropriate Medicare reimbursement rate for Highly Rural areas in Region 3, we used the following process:

- a) Identified [DELETED]

b) Identified [DELETED]

c) Evaluated [DELETED]

Optum has an extensive network of more than [DELETED] physicians and other healthcare professionals nationwide. Of these, [DELETED] are in Region 3. Through direct discussion with our provider community during the development of this response, we have determined that the only area of Region 3 that receives more than 100 percent of Medicare rates is [DELETED]. Based on this finding, we propose 100 percent of Medicare for CLIN 3002.

AR, Exh. 151, OPSS Final Price Proposal (Region 3), at 21-22; see also Exh. 151, OPSS Final Price Proposal (Region 2), at 22 (stating that of its [DELETED] providers in region 2, there were [DELETED] practices in highly rural zip codes and “no cases where a provider is currently contracted [DELETED] percent of Medicare.”).

TriWest argues that the RFP required offerors to propose prices in excess of Medicare reimbursement for CLIN XXX2 for reimbursement for highly rural care areas and scarce medical specialist services. Protest (Region 2) at 19-25; Protest (Region 3) at 18-24. The protester alternatively argues that if the RFP can be construed to permit offerors to propose CLIN XXX2 at only Medicare reimbursement rates, then the RFP contains a latent ambiguity that the agency failed to recognize and cure through the conduct of discussions with offerors. Protest (Region 2) at 25-26; Protest (Region 3) at 24-25. The agency argues that TriWest’s interpretation of the RFP is unreasonable, and the RFP contained no ambiguity. COS/MOL (Region 2) at 10-18, 26-27; COS/MOL (Region 3) at 11-19, 27-28. The agency further argues that the RFP contained no limitations regarding the prices offerors could propose for CLIN XXX2. COS/MOL (Region 2) at 15-27; COS/MOL (Region 3) at 14-26.

Where a dispute exists as to a solicitation’s actual requirements, we begin by examining the plain language of the solicitation. Point Blank Enters., Inc., B-411839, B-411839.2, Nov. 4, 2015, 2015 CPD ¶ 345 at 4. We resolve questions of solicitation interpretation by reading the solicitation as a whole and in a manner that gives effect to all provisions; to be reasonable, and therefore valid, an interpretation must be consistent with such a reading. Desbuild Inc., B-413613.2, Jan. 13, 2017, 2017 CPD ¶ 23 at 5. If the solicitation language is unambiguous, our inquiry ceases. Id. An ambiguity, however, exists where two or more reasonable interpretations of the solicitation are possible. Colt Def., LLC, B-406696, July 24, 2012, 2012 CPD ¶ 302 at 8. If the ambiguity is an obvious, gross, or glaring error in the solicitation then it is a patent ambiguity; a latent ambiguity is more subtle. Id.

Our review of the solicitation does not show that the RFP was latently ambiguous. The RFP specifically stated that for CLIN XXX2, pricing “only applies if the Contractor must execute a specific agreement in a Highly Rural Care Area at a rate that exceeds Medicare as required to maintain Network Adequacy” and that the “Contractor may, in

Highly Rural Care Areas, exceed Medicare but shall not exceed the rate in this CLIN.” RFP at 7 (emphasis added). If the offeror were to exceed Medicare rates, “[a]dequate documentation must be provided to the Contracting Officer for review and disposition to support [the] request for higher than Medicare rates.” Id. As noted, the solicitation requested offerors to price CLINs XXX2 “Up to ___% Medicare.” Id. at 13. The plain language of the solicitation permits, but not does not require, pricing at a rate in excess of 100 percent of Medicare.

To the extent that the RFP defined a highly rural care area as one that “necessitates a reimbursement greater than Medicare rates in order to maintain network adequacy,” we find that this language describes a condition characteristic in a highly rural care area but does not itself create a requirement that an offeror propose reimbursement at a rate in excess of Medicare. Within the context of this competitive procurement for fixed-price contracts, we do not find it reasonable to impose a requirement that an offeror propose to be reimbursed more than it expects to pay on a pass-through basis. This is true, especially where, as here, the RFP expressly provided that the contractor would only be reimbursed “the lesser of the value paid to the CCN community provider or the rate identified in the applicable CLIN” with documents supporting a request for higher than Medicare rates. RFP at 6, 7. Rather, as discussed, the RFP required only that an offeror propose a price for CLIN XXX2 and explain how the proposed rate was developed, and otherwise left to the discretion of the offeror to propose a rate, as a percentage of Medicare, that would operate as a price ceiling for reimbursement of CLIN XXX2 services. Since the protester’s interpretation is not reasonable, we find there is no ambiguity, latent or otherwise.

In addition, the protester argues that OPSS compensated for losses it would incur under CLIN XXX2 by proposing higher prices in the administrative CLINs. Protest (Region 2) at 27-30; Protest (Region 3) at 26-27. However, the agency’s evaluation of CLIN XX11 for administrative fees shows that OPSS’s proposed prices were either comparable to or significantly lower than TriWest’s proposed prices, and were also found by the agency to be fair and reasonable. AR, Exh. 166, Price Evaluation Team (PET) Report (Region 2) at 34-50; PET Report (Region 3) at 29-47. There is no evidence in the record to support the protester’s contention that OPSS shifted costs to administrative CLINs.

TriWest also argues that the agency should have rejected OPSS’s proposals, or at least rated them lower, for failing to comply with the material requirement of the RFP to provide an adequate network, because an adequate network cannot be provided if a contractor is not reimbursed in excess of Medicare for CLIN XXX2 services. Protest (Region 2) at 27-30; Protest (Region 3) at 27-29. The agency argues that it reasonably evaluated OPSS’s price proposals in accordance with the RFP criteria. COS/MOL (Region 2) at 15-26; COS/MOL (Region 3) at 14-26.

Essentially, TriWest is arguing that OPSS cannot perform at the prices proposed because they are too low. In the context of a fixed-price contract, a claim that a competitor submitted an unreasonably low price--or even that the price is below the cost

of performance--is not a valid basis for protest. Trinity Ship Mgmt., LLC, B-416167, B-416167.2, June 19, 2018, 2018 CPD ¶ 214 at 9. An offeror may, in its business judgment, decide to submit a price that is extremely low. Id. In such cases, the agency's determination that the contractor can perform the contract at the offered price is an affirmative determination of responsibility, which this Office will not review except in limited circumstances, see id., none of which have been alleged by the protester.

Further, as noted, the RFP stated that FAR part 15 price analysis techniques would be used to determine whether prices were fair and reasonable. RFP at 191. The record shows that the contracting officer selected a 20 percent variance between the three offerors as a threshold to determine whether prices were fair and reasonable, under the assumption that this variance reasonably would account for the offerors' use of different systems, approaches, and staffing models to perform the requirement. AR, Exh. 166, PET Report (Region 2), at 20; PET Report (Region 3), at 14. Based on the prices proposed, the agency concluded that OPSS's prices were fair and reasonable.⁷ Id. (Region 2), at 21; (Region 3), at 15-16. In addition, OPSS provided a narrative explaining its rationale for reimbursement of 100 percent of Medicare. AR, Exh. 151, OPSS Final Price Proposal (Region 3), at 21-22; see also Exh. 151, OPSS Final Price Proposal (Region 2), at 22. We find no basis to question the agency's conclusion. Accordingly, we deny this ground of protest.⁸

Best-Value Tradeoff

Finally, the protester argues that the agency failed to compute total evaluated prices as required by the RFP. Protest (Region 2) at 30-31; Protest (Region 3) at 29-30. The protester further argues that the best-value tradeoff did not compare the differences in real cost to the government, rendering the tradeoff meaningless, and was irrational and tainted by the errors in the underlying evaluation. Protest (Region 2) at 56-60; Protest (Region 3) at 64-69.

⁷ The record indicated that the historical price paid by the agency was "139.7% Medicare," and that all offerors proposed prices below the historical price. See AR, Exh. 166, PET Report (Region 2), at 21; PET Report (Region 3), at 15.

⁸ The protester also argues that the agency should have rejected OPSS's proposal because it failed to provide a narrative for how scarce medical specialist services were considered in the proposed rate for CLIN XXX2. Supp. Protest (Region 2), at 17-18; Supp. Protest (Region 3), at 17-18. While we recognize that CLIN XXX2 includes reimbursement for both highly rural care areas and scarce medical specialist services, the RFP did not require that offerors provide a narrative to explain how scarce medical specialist services were considered in CLIN XXX2 pricing, and the agency had no basis to penalize OPSS for failing to do so since nowhere in OPSS's proposal did it take exception to the RFP's reimbursement of scarce medical specialist services under CLIN XXX2. Accordingly, this challenge fails to state a legally sufficient basis of protest and is dismissed. 4 C.F.R. § 21.5(f); Access Interpreting, Inc., B-413990, Jan. 17, 2017, 2017 CPD ¶ 24 at 4.

The agency argues that the RFP did not require the agency to compute a total evaluated price, and TriWest's challenge to the price evaluation scheme established by the RFP is untimely. COS/MOL (Region 2) at 30-42; COS/MOL (Region 3) at 30-42. The agency further argues that the cumulative weighted score computed in the price evaluation provided a meaningful basis to assess the cost implications of making an award to one offeror over another and the evaluation of technical proposals was reasonable because the SSA considered the differences in proposals and identified discriminators providing competitive advantages under the factors and subfactors. COS/MOL (Region 2) at 33-35, 95-98; COS/MOL (Region 3) at 33-35, 102-106.

Here, as noted, the RFP included prepriced CLINs that established rates at which the contractor would be reimbursed, e.g., Medicare rates. For the non-prepriced CLINs, the RFP included three methods by which the agency would compute scores, dependent on the CLIN, and assigned factor weights for each non-prepriced CLIN with the weights for all CLINs totaling 100 percent. RFP at 191. For example, the RFP stated that the score for CLIN XXX2 would be found by determining the percent difference between the offeror's average price and the reference rates multiplied by the applicable factor weight. Id. The RFP assigned CLIN XXX2 a weight of 41.2 percent in region 2, and 30.5 percent in region 3. Id. at 193-194. The RFP stated that the contracting officer "may determine the proposed prices fair and reasonable based solely on an analysis of the cumulative weighted score," the sum of all scores for all CLINs, and a higher score would be considered more favorably. Id. at 185, 191.

Agencies are required by statute to consider the cost or price to the government of entering into a contract. 41 U.S.C. § 3306(c)(1)(B). In the context of awarding an IDIQ contract, this often is difficult because of uncertainty regarding what ultimately will be procured. Agencies have developed a variety of methods or strategies to address this difficulty, including the use of estimates for the various quantities of labor categories or units to be purchased under the contract, see Creative Info. Tech., Inc., B-293073.10, Mar. 16, 2005, 2005 CPD ¶ 110 at 3; the use of sample tasks, FC Bus. Sys., Inc., B-278730, Mar. 6, 1998, 98-2 CPD ¶ 9 at 3-5; hypothetical or notional plans that are representative of what requirements are anticipated during contract performance, Aalco Forwarding, Inc., et al., B-277241.15, Mar. 11, 1998, 98-1 CPD ¶ 87 at 11; and hypothetical pricing scenarios reflecting various cost or price eventualities, PWC Logistics Servs., Inc., B-299820, B-299820.3, Aug. 14, 2007, 2007 CPD ¶ 162 at 11-15.

Underlying each of these methods is the central objective of evaluating the relative total cost or price of competing proposals in order to provide the agency's source selection authority a meaningful understanding of the cost or price implications of making award to one or another concern. MAR, a Div. of Oasis Systems, LLC, B-414810.5, July 26, 2018, 2018 CPD ¶ 266 at 7. It is axiomatic that the agency's price evaluation method must produce results that are not misleading. Aalco Forwarding, Inc., supra. at 11.

Contrary to the protester's argument, the RFP did not require the agency to compute a total evaluated price. The RFP is clear that the agency intended to limit its price

evaluation to a fraction of the maximum ordering value, and evaluate only the CLINs for which offerors had the discretion to propose prices. Further, in response to a question and answer on the matter, the agency specifically stated as follows:

[Question:] Given the weighted methodology described by the Government, please clarify if the “total evaluated price” referenced in the Factor 4 evaluation language is intended to reflect the likely costs to be incurred under the CCN contract, or whether the “total evaluated price” is defined on some other basis for purposes of the Government’s price evaluation.

[Answer:] The total evaluated price for this acquisition will be a score based on the weights listed in Section E and the prices offered. The score will not equal the total expected price of the CCN contract(s) to VA.

AR, Exh. 47, Questions and Answers No. 34. The protester’s contention that the RFP required that the agency compute total evaluated prices in terms of dollar figures to perform the best-value tradeoff is tantamount to a challenge to the terms of the solicitation, which it was required to raise prior to proposal submission. 4 C.F.R. § 21.2(a)(1). Accordingly, we dismiss this allegation as untimely. See Nuclear Prod. Partners LLC; Integrated Nuclear Prod. Solutions LLC, B-407948 et al., Apr. 29, 2013, 2013 CPD ¶ 112 at 12-13 (dismissing challenge to agency’s failure to perform a cost realism analysis where RFP advised proposed fee would be evaluated and used in the best-value determination).

We further find that the agency’s comparison of cumulative weighted scores allowed the agency to meaningfully assess the cost implications of awarding the contracts to OPSS. In the comparative analysis of region 2 technical proposals, the SSA concluded that TriWest provided an advantage under the management approach subfactor and the past performance factor, and OPSS provided an advantage under the corporate experience/capability subfactor. AR, Exh. 173, SSDD (Region 2), at 8-12. As noted, for pricing, TriWest received a score of 0.13867 and OPSS received a score of 0.23898; the SSA recognized that these scores indicated that TriWest’s proposed prices were 13.867 percent less and OPSS’s prices were 23.898 less than what the government expected to pay, and that OPSS “represents a 10.031% additional cost savings over what TriWest proposed.” Id. at 12. However, the SSA concluded as follows:

I recognize that TriWest proposes [DELETED] and has demonstrated past performance with VA in the immediate CCN precursor; however, these are short term benefits that would only be realized during the transition into CCN. Having the advantages of TriWest’s approach does not justify higher total costs across the life of the contract, as reflected by their lower cumulative weighted score. By comparison, [OPSS’s] higher cumulative weighted score, which translates to lower pricing that will be realized over the life of the contract, significantly outweighs the advantage in TriWest’s proposal in past performance and to provide [DELETED]. Further,

TriWest's experience has been limited to Government programs, whereas [OPSS] has experience with both commercial and Government programs. Based upon the aforementioned, [OPSS's] corporate experience and overall lower price will provide the best value to the Government.

Id. at 13.

In his comparative analysis of region 3 technical proposals, the SSA concluded that TriWest provided an advantage under the management approach subfactor and the past performance factor, and OPSS provided an advantage under the network management and claims adjudication, and the corporate experience/capability subfactors. AR, Exh. 173, SSDD (Region 3), at 8-13. As noted, TriWest received a score of 0.13458 and OPSS received a score of 0.18968, which the SSA recognized indicated that OPSS's prices represented a 5.51 percent additional cost savings over what TriWest proposed. Id. at 13. The SSA again concluded that TriWest's advantages did not justify its higher price. Id. at 14.

Here, the SSA compared the offerors' technical proposals and advantages to each other, and then compared the offerors' scores to determine which offered the best value to the government. As noted, the price evaluation scoring isolated CLINs in which offerors had discretion to propose prices; the weights assigned to the CLINs correlated to what the agency expected to pay per CLIN based on the agency's IGCE. See RFP at 191; AR, Exh. 47, Questions and Answers No. 612. By comparing the computation of cumulative weighted scores, the agency was able to assess the difference between the offerors' unit prices in those contract CLINs where offerors could determine their own prices.⁹ Accordingly, we find that the record demonstrates that the agency meaningfully assessed the cost implications of awarding the contracts to OPSS.¹⁰

⁹ Indeed, had the agency computed a total evaluated price in terms of a dollar value, most of offerors prices would be exactly the same (because most of the CLINs were prepriced by the VA), which could have obscured the true measure by which one offeror provided a cost savings over another. For example, as established in the IGCE, the evaluated CLINs in region 3 account for approximately \$2.47 billion of the \$21.5 billion maximum contract value. See AR, Exh. 175, IGCE, Weighting Region 3 Tab.

¹⁰ To support their arguments, both TriWest and the agency cite our decision in Veterans Evaluation Services, Inc., et al., B-412940 et al., July 13, 2016, 2016 CPD ¶ 185. There, our Office sustained the protest, in part, because the agency's price evaluation was unreasonable and failed to provide any insight into the likely cost of awarding a contract to one offeror versus another. Specifically, neither of the two methods used by the agency to evaluate proposed prices, which varied widely between offerors, accounted for variations in the quantities the agency expected to order under each CLIN. Id. at 18-19. As discussed, the price evaluation methodology used by the agency here was limited to the CLINs where offerors' prices would differ, and provided a logical basis for the agency to compute a weighted cumulative score that indicated the cost savings that could result in making award to one offeror over another.

Finally, as discussed above, we find no merit to TriWest's objections to the agency's technical evaluation of the offerors' proposals and no basis to question the judgments made by the SSA in his comparative assessment of offerors. The protester's disagreement does not establish that the agency acted unreasonably or provide a basis to sustain the protest. KSC BOSS Alliance, LLC, supra.

The protests are denied.

Thomas H. Armstrong
General Counsel