



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

Comptroller General
of the United States

Decision

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Matter of: WellPoint Military Care Corporation

File: B-415222.5; B-415222.8

Date: May 2, 2019

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Jason A. Carey, Esq., J. Hunter Bennett, Esq., Kevin T. Barnett, Esq., Bryan M. Byrd, Esq., and Kayleigh M. Scalzo, Esq., Covington & Burling, LLP, for Optum Public Sector Solutions, Inc., the intervenor.

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Uri R. Yoo, Esq., Charmaine A. Stevenson, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Admission of outside counsel to protective order will not be revoked based on an allegation of a conflict of interest where nothing about the conflict suggests that the admitted attorneys would fail to honor their commitments under the protective order; admission of additional counsel to a protective order was appropriate over the objection of the protester, where the record showed that the attorneys did not participate in competitive decisionmaking and there was not otherwise an unacceptable risk of inadvertent disclosure of protected information.
2. Protest challenging the agency's evaluation of offerors' technical proposals is denied where the evaluations and source selection decision were reasonable and consistent with the terms of the solicitation.
3. Protest that the agency engaged in disparate treatment is denied where the differences in the evaluation stemmed from actual differences between the proposals.
4. Protest that the agency failed to consider the cost to the government 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

WellPoint Military Care Corporation (WMC), of Indianapolis, Indiana, protests the award of a contract to Optum Public Sector Solutions, Inc. (OPSS) of Rockville, Maryland, under request for proposal (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 evaluation and source selection decision.

We deny the protest.

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 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. This protest relates to the contract awarded in region 3, which has a maximum ordering value of over \$21.5 billion.² Id. at 162.

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 Unless otherwise noted, citations to the RFP are to the conformed solicitation provided by the agency at Exhibit 3 of the agency report.

² 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. RFP at 5-6.

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

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Regarding price, the RFP proposal instructions stated: “Some [contract line item numbers (CLINs)] and SubCLINs are already priced by 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 price for the CLIN and the IGCE, 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 Team (PET) Report, 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.; Contracting Officer’s Statement and Memorandum of Law (COS/MOL) at 42. 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.

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at 189. For confidence assessment, the RFP stated that the following ratings would be used: substantial confidence, satisfactory confidence, neutral confidence, limited confidence, or no confidence. Id. at 190. The RFP further stated that the following ratings would be used to evaluate proposals under the socioeconomic concern factor: full credit, partial credit, minor credit, or no credit. RFP 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 \$19.08, for a CLIN where the IGCE unit price is \$23.70 and weight is 3.8 percent, would have a weighted score of 0.00740 (\$23.70-\$19.08= \$4.62; \$4.62/\$23.70 * 0.038=0.00740). AR, Exh. 167, CCN Price Evaluation Tool, Example Tab; see also AR, Exh. 47, Questions and Answers, No. 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 WMC and OPSS. COS/MOL at 4. After the initial evaluations, all offerors were assigned a technical rating of unacceptable. Id. at 5. The agency established a competitive range that included all three offerors, 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 “conduct[ed] reconciliation across the region[s] and across offerors to ensure consistency in the evaluation of FPR-1.” AR, Exh. 160, TET Report, at 1.

After its review, the SSAC recommended that the TET add or remove strengths or weaknesses from the technical evaluations of all offerors for FPR-1. 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) on October 9. 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, at 4; COS/MOL at 7.

In its final evaluation of WMC’s technical proposal, the agency identified 14 strengths and one weakness. AR, Exh. 173, Source Selection Decision Document (SSDD), at 8. In its final technical evaluation of OPSS’s technical proposal, the agency identified 19 strengths and one weakness. Id. The agency’s final evaluation of the proposals was as follows:

	WMC	OPSS
Technical	Acceptable	Good
Network Management and Claims Adjudication	Good	Good
Management Approach	Acceptable	Good
Corporate Experience/Capability	Acceptable	Outstanding
Past Performance	Somewhat Relevant / Satisfactory Confidence	Somewhat Relevant / Satisfactory Confidence
Socioeconomic Concerns	Partial and Minor Credit	Partial and Minor Credit
Price (Score)	0.24398	0.18968

Id. at 7. The SSA performed a best-value tradeoff and concluded that OPSS provided the best value to the government. Id. at 8-14.

On December 28, the agency awarded the contract for region 3 to OPSS. COS/MOL at 7. On January 17, 2019, WMC received a debriefing. This protest followed.

ADMISSION TO PROTECTIVE ORDER

As a preliminary matter, on January 25, our Office issued a protective order pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.4(a). Electronic Protest Docketing System (EPDS) Docket Entry No. 11. Without objections, nine outside counsel for the intervenor were admitted to the protective order. See EPDS Docket Entry Nos. 12 and 14. However, by letter dated February 6, the protester advised our Office that “[p]ending evaluation of a potential conflict of interest, [Protester] withdraws its earlier consent to the protective order applications of outside counsel for Intervenor.” Letter from Protester to GAO, Feb. 6, 2019.

According to the protester, the law firm of Covington & Burling (Covington) has represented an affiliate business unit, and WMC, on various matters for several years. Letter from Protester to Intervenor, Feb. 7, 2019, at 1. Specifically, Covington undertook work for WMC and entities within the affiliate, which included advice on contract drafting, intellectual property and data rights counseling, and bid protest litigation. Id. The protester stated that throughout this continued but episodic relationship, Covington never requested the affiliate execute a new engagement letter. Id. at 2. Further, the affiliate had, at one point, informed Covington that “if we continue to work with Covington, I’ll need to migrate you to our standard firm template agreement[.]” Id. According to the protester, from WMC’s perspective, it could still call upon Covington for legal services because the engagement remained operative. Id.

Covington asserted that there was no conflict of interest because it does not represent the protester or any of its affiliates. Specifically, the firm explained that a former partner departed the firm in February 2018, and one of the protester’s business affiliates directed Covington to transfer all files necessary for continued representation to the departed partner’s new law firm. Letter from Intervenor to GAO, Feb. 7, 2019 (enclosing Letter from Intervenor to Protester, Feb. 8, 2019). Further, the firm stated that, as noted by the protester, the protester’s business affiliate required Covington to enter into a new standard firm template agreement in order for Covington to continue representation of the affiliate. However, Covington never entered into such an agreement. Id. Finally, the firm argued that even if it was currently representing the protester’s affiliate, the terms of the prior engagement had already waived any conflict of interest that might possibly exist here. Letter from Intervenor to Protester, Feb. 13, 2019, at 1.

Subsequently, by letter dated February 11, the protester objected to additional applications submitted by the intervenor for two more outside counsel, stating that the intervenor already had nine attorneys admitted under the protective order, and that “[a]dding an eleventh and twelfth lawyer under the protective order for one party

needlessly increases the risk of inadvertent disclosure of protected material.”⁶ Letter from Protester to GAO, Feb. 11, 2019, at 1. The intervenor requested that these attorneys be admitted over the protester’s objection. Letter from Intervenor to GAO, Feb. 13, 2019. In this regard, we note that both attorneys represented that they had read the protective order issued by our Office, and would abide by its terms and conditions in handling any protected material produced in this protest. EPDS Docket Entry No. 24.

In considering the propriety of granting or denying an applicant admission to a protective order, we review each application in order to determine whether the applicant is involved in competitive decision-making and whether there is otherwise an unacceptable risk of inadvertent disclosure of protected information should the applicant be granted access to protected material. See Restoration and Closure Services, LLC, B-295663.6, B-295663.12, Apr. 18, 2005, 2005 CPD ¶ 92 at 4 (citing McDonnell Douglas Corp., B-259694.2, B-259694.3, June 16, 1995, 95-2 CPD ¶ 51 at 7-8).

Given the representations and explanations provided by the intervenor, our Office found no basis to revoke the admissions to the protective order for intervenor’s counsel. Nothing about the conflict, whether it exists and/or was waived, suggested that the attorneys would fail to honor their commitments under the protective order.⁷ In addition, based on the information provided in the applications by the two additional attorneys seeking admission, notwithstanding the objection of protester’s counsel, we concluded that the risk of inadvertent disclosure of protected material was sufficiently minimal to warrant providing access under the protective order. Accordingly, the intervenor’s attorneys were authorized to receive protected material. Amended Admission to Protective Order, Feb. 19, 2019.

DISCUSSION

Turning to the arguments raised by WMC, the protester challenges various aspects of the evaluations under all three technical subfactors. In addition, the protester alleges that the agency performed a disparate evaluation of proposals and held WMC to a different standard by which it was unduly prejudiced. The protester also challenges the best-value tradeoff decision, and argues that the SSA did not fully appreciate the price differences between the offerors. As discussed below, we find no basis to sustain the protest.⁸

⁶ A tenth attorney that serves as in-house counsel for the intervenor was also admitted to the protective order.

⁷ In addition, we note that our Office does not adjudicate allegations, such as those presented here, related to attorney rules of professional conduct, which is a matter for the relevant bar association.

⁸ WMC’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
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Technical Evaluation

Adjectival Ratings Across Regions

Throughout its protest, WMC argues that the agency unreasonably and inconsistently reconciled the technical evaluations across the three regions, which resulted in unjustified lower adjectival ratings for WMC in region 3. Protest at 13-16, 21-23, 30-31; Comments & Supp. Protest at 45-53. WMC argues that, because it “submitted nearly identical proposals in all three regions” and the agency assigned its proposals “identical strengths and weaknesses in all three regions,” it should have received equivalent adjectival ratings in all three regions. Protest at 11; see also Comments & Supp. Protest at 45-46. The agency argues that the TET for each region was comprised of different evaluators, and the region 3 evaluators reasonably applied the ratings differently from the TETs for the other regions. COS/MOL at 11-16. The agency further argues that the different adjectival ratings had no effect on the source selection decision because the SSAC and the SSA appropriately looked behind the ratings in each region, reconciled key differences, and considered the underlying merits of each proposal. Id.

As noted, the RFP contemplated the award of one contract for each region identified in the solicitation, for a total of three contract awards. RFP at 176. The RFP permitted offerors to submit a proposal for one or more regions and instructed offerors to submit a complete proposal for each region. Id. The record shows that both WMC and OPSS submitted nearly identical proposals for all three regions. AR, Exh. 172, Memorandum for Record--Reconciliation, at 1. The agency convened a different TET for each of the

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arguments, we have considered all of WMC’s assertions and find no basis to sustain the protest. For example, the protester challenges the agency’s assignment of a strength and a discriminating competitive advantage to OPSS for the size of its existing commercial network under the network management and claims adjudication subfactor. Protest at 16-21; Comments & Supp. Protest at 5-12. The RFP required offerors to describe an approach for developing and maintaining a provider network, differentiate between existing and targeted network capacity, and provide detailed information about current provider data within the offerors’ network (e.g., providers by region, state, county). RFP at 181. The RFP advised that the agency would evaluate offerors for the feasibility to meet the performance work statement requirements regarding a provider network. Id. at 189. Here, the agency found that OPSS’s proposed approach was to leverage its existing network, which increased “confidence in their proposal” and “probability of success” in maintaining a network for this requirement. AR, Exh. 171, SSAC Comparative Analysis, at 33; see Exh. 173, SSDD, at 9. We find that it was reasonable and consistent with the RFP for the agency to assess the extent of that existing network and find a competitive advantage based on that assessment.

three regions; the TETs for regions 1 and 2 differed by one person, the TET for region 3 was comprised entirely of different members. Id. All three TETs shared the same source selection evaluation board (SSEB) chair,⁹ who reported to the SSA. Id.

The TET evaluated proposals, conducted discussions for FPR-1, and evaluated the revised proposals; the SSAC reviewed the TET findings. AR, Exh. 160, TET Report, at 1. After its review, the SSAC recommended that the TET add or remove strengths or weaknesses from the technical evaluation of FPR-1. Id. The agency conducted further discussions and received FPR-2 submissions, which the TET then evaluated for its final report. Id. The record shows that in some instances, the TETs for the three regions assigned different adjectival ratings to the proposals.

The SSAC reviewed the final TET report and prepared its comparative analysis for submission to the SSA. AR, Exh. 171, SSAC Comparative Analysis, at 4; COS/MOL at 7. The SSAC reviewed the TET reports, including the assigned adjectival ratings and the findings that supported those ratings, and reconciled differences so that the findings were consistent from region to region. AR, Exh. 172, Memorandum for Record--Reconciliation, at 1. For example, in some instances, the SSAC added or removed strengths and weaknesses that had been assigned by the TET. See AR, Exh. 171, SSAC Comparative Analysis, at 30. To the extent that differences in the findings remained, the SSAC reviewed those findings and concluded that the differences were due to proposal variations from region to region, which supported the differing findings. AR, Exh. 172, Memorandum for Record--Reconciliation, at 1. The SSAC did not assign adjectival ratings or change the ratings assigned by the TETs. AR, Exh. 171, SSAC Comparative Analysis, at 29. Therefore, despite the change in the nature and number of strengths and weaknesses that resulted from the reconciliation process, the region 3 TET's final adjectival ratings remained unchanged. See AR, Exh. 160, TET Report, at 6; Exh. 171, SSAC Comparative Analysis, at 12.

The SSA reviewed the findings for each offeror in each region, as reconciled by the SSAC, and concurred with the findings. AR, Exh. 172, Memorandum for Record--Reconciliation, at 1. In those instances where there were different adjectival ratings for different regions for essentially the same proposal, the SSA "sought some sort of explanation" and concluded that it was "reasonable for different people to reach different conclusions based on their own independent application of the [ratings] definitions," and that "[w]hile the adjectival ratings differed from region to region, the vast majority of the underlying findings were consistent from region to region." Id. The SSA also noted that the differing adjectival ratings for the technical subfactors did not impact the award decision in any of the three regions. Id.

⁹ The SSEB chair was responsible for ensuring that the evaluation process followed the evaluation criteria outlined in the solicitation. AR, Exh. 140, Source Selection Plan, at 11. The combined technical, past performance, socioeconomic and price reports constituted the SSEB report. Id.

Our Office has recognized that it is not unusual for different evaluators, or groups of evaluators, to reach different conclusions and assign different scores or ratings when evaluating proposals, since both objective and subjective judgments are involved. Intercontinental Constr. Contracting, Inc., B-415040, B-415040.2, B-415041, B-415041.2, Nov. 8, 2017, 2018 CPD ¶ 82 at 8. Further, adjectival ratings are merely guides for intelligent decision-making in the procurement process. Automation Precision Technology, LLC, B-416078, June 5, 2018, 2018 CPD ¶ 203 at 4. Information regarding strengths and weaknesses of proposals is the type of information that source selection officials should consider, in addition to ratings, to enable them to determine whether and to what extent meaningful differences exist between proposals. Id.

The record shows that the SSAC and SSA attempted to reconcile the findings amongst the three TET reports. In addition, the SSA reviewed the different adjectival ratings and reasonably concluded that different evaluators, or groups of evaluators, can reach different conclusions and assign different scores or ratings when evaluating proposals. See Intercontinental Constr. Contracting, Inc., supra. Although the SSAC and SSA discussed the adjectival ratings assigned under each factor and subfactor in the reports, the record shows that both looked behind the adjectival ratings to the underlying merits of the proposals and the findings that supported those ratings. See Exh. 171, SSAC Comparative Analysis, at 16-19, 26-31, 33-42, 44-48; AR, Exh. 173, SSDD, at 8-12. Therefore, the lower adjectival ratings assigned by the region 3 TET did not impact the SSA's award decision. See id. Accordingly, we find no basis to sustain the protest.¹⁰

¹⁰ WMC, in challenging the agency's assignment of adjectival ratings for each of the three technical subfactors, also alleges that the number of strengths and weaknesses did not merit the particular adjectival rating assigned. Protest at 14-16, 23, 30; Comments & Supp. Protest at 48-49. As noted, adjectival ratings are merely guides to intelligent decision-making in the procurement process and the source selection officials must consider information behind identified strengths and weaknesses to discern meaningful differences between proposals. See Automation Precision Technology, LLC, supra. In addition, our Office has rejected arguments that essentially seek a mathematical or mechanical consideration of the number of strengths and weaknesses assessed against the offerors. See Enterprise Services, LLC, et al., B-415368.2, et al., Jan. 4, 2018, 2018 CPD ¶ 44 at 9. Here, the record shows that the SSA looked behind the adjectival ratings and meaningfully considered the differences between proposals in making the award decision. Accordingly, we find that the protester was not prejudiced by the particular adjectival rating assigned relative to the number of strengths and weaknesses identified.

Changes in Strengths and Weaknesses

The RFP required offerors to provide an approach for receiving and managing electronic data transfers to support multiple performance work statement sections related to electronic data. RFP at 181. In its initial evaluation, the TET identified a strength for WMC and stated as follows:

WMC states a commitment to reducing paper claims and has invested significant resources in providing online tools and provider education to drive providers to using a self-service web site for claim entry rather than submitting a paper claim. . . . The online tools is something the VA does not have today and represents a strength to provide an easier, more timely and better controlled process for providers to submit claims if the provider cannot send in an electronic 837 claims.

AR, Exh. 160, TET Report, at 88. However, the SSAC removed the strength because it concluded that WMC “does not state providers can enter claims data into a form to submit a claim thereby reducing paper claims.” AR, Exh. 171, SSAC Comparative Analysis, at 30.

The protester argues that the SSAC unreasonably removed this strength. Comments & Supp. Protest at 13-14. WMC argues that the SSAC misread its proposal and that the strength was properly identified because its proposal clearly stated that healthcare providers can submit claims online through WMC’s electronic data interchange gateway or WMC’s provider self-service website. Id. at 15. The agency argues that the SSAC properly distinguished between the capability for claims to be received via an electronic portal or website (for example, by uploading a scanned file) as compared to providing a means by which providers submit claims by entering data into a preexisting online claims form. Supp. COS/MOL at 4.

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.

In addition, offerors are responsible for submitting a well-written proposal with adequately detailed information that clearly demonstrates compliance with the solicitation and allows for meaningful review by the procuring agency. Raytheon Co., B-416578, B-416578.2, Oct. 22, 2018, 2018 CPD ¶ 376 at 12. Agencies are not

required to infer information from an inadequately detailed proposal, or to supply information that the protester elected not to provide. Id.

Here, the WMC proposal provides detailed information regarding electronic submission of claims and medical documents, specifically addressing conversion of paper claims to electronic data. The proposal, however, does not indicate that providers would be able to enter claims data into an online form to reduce paper claims. AR, Exh. 150, WMC Technical Proposal, at 150-152; id. at 151 (specifically discussing “conversion of paper claims into electronic format ready to process through our electronic claims intake application as any other electronically submitted claim.”). The SSAC concluded that a strength was not warranted because the capability for electronic claims submission did not necessarily equate to a reduction in paper claims, since paper claims can also be submitted electronically (e.g., scanned and uploaded). Based on our review of the record, we find the evaluation here to be reasonable.

Disparate Treatment

The protester argues that the agency engaged in disparate treatment and unequally applied solicitation requirements when evaluating proposals. Specifically, WMC alleges that the agency credited OPSS with strengths under the network management and claims adjudication subfactor, but failed to credit WMC with the same strengths when WMC proposed similar solutions. Comments & Supp. Protest at 16-17. In addition, regarding the corporate experience/capability subfactor, WMC alleges that the agency failed to credit WMC for the experience of its parent and affiliates, unequally penalized WMC for a lack of direct prime experience, and failed to also penalize OPSS for its lack of prime experience. Protest at 24-31; Comments & Supp. Protest at 17-34. The agency argues that the offerors’ proposals were reasonably and properly evaluated, consistent with the criteria set forth in the RFP. COS/MOL at 28-42; Supp. COS/MOL at 5-7.

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, WMC has not made the requisite showing that the agency treated the two proposals unequally.

Network Management and Claims Adjudication

The RFP required offerors to “describe how they will adjust provider networks and services to compensate for changes in VA Facility capabilities, changing Veteran needs and changes in required services, to include short notice changes, and how the Offeror intends to stay informed of potential changes to individual VA Facility requirements.” RFP at 181. The protester argues that the agency credited OPSS with a strength for its approach to short notice changes but did not give the same credit to WMC for its “identical approach.” Comments & Supp. Protest at 16. The agency argues that the

different evaluations stemmed from differences between the offerors' proposals with respect to short notice changes. Supp. COS/MOL at 5-6.

Here, the record shows that both WMC and OPSS offered solutions to address short notice changes to maintain network adequacy, but there was a substantive difference between the two proposals. OPSS proposed three options for responding to short notice changes, which included leveraging [DELETED] in addition to using [DELETED] and [DELETED]. See AR, Exh. 144, OPSS Technical Proposal, at 41-42. In its evaluation of OPSS's approach, the agency explained:

To maintain network adequacy, [OPSS] will leverage three (3) separate options for responding to short notice changes: 1) looking to [DELETED] for accessibility; 2) using [DELETED] to find necessary providers for the Deficiency; and 3) operating [DELETED]

AR, Exh. 160, TET Report, at 183. In its reconciliation of the proposal evaluations, the SSAC found that OPSS' ability to [DELETED] was a strength, since its approach exceeded the minimum requirements. Id. at 206; AR, Exh. 171, SSAC Comparative Analysis, at 17.

In contrast, WMC proposed to use [DELETED] and [DELETED]. See AR, Exh. 150, WMC Technical Proposal, at 109 ("In the unexpected and rare instance of an actual inadequacy and a delay in our recruiting a provider to be fully contracted into our network, we will [DELETED] with the identified community providers to correct the inadequacy."). The agency explained WMC's approach as follows:

WMC intends to make quick network adjustments using [DELETED] with specific providers while permanent network adjustments are being applied (Volume 1, page 85). WMC's approach to correct instances of network inadequacy include being able to assess and react to short notice changes; this approach is feasible because the network is able to expand when VA demand exceeds capacity.

AR, Exh. 160, TET Report, at 53.

The protester argues that its proposal also indicates its intent to use [DELETED] and its proposed approach would "result in the same desired outcome" for the government as the approach proposed by OPSS. Protester's Supp. Comments at 13. Specifically, the protester cites a statement in the WMC proposal that it would "deploy a multi-faceted strategy to constantly monitor adequacy and potential inadequacies" to include "knowledge of providers within the healthcare community, and their participation in other Anthem contracts." Id. at 12 (quoting AR, Exh. 150, WMC Technical Proposal, at 109). The agency disagrees and states that WMC's proposal did not assert anything about [DELETED] for short notice changes. Supp. COS/MOL at 6.

As noted, agencies are not required to infer information from an inadequately detailed proposal, or to supply information that the protester elected not to provide. Raytheon Co., B-416578, B-416578.2, supra. We find it was reasonable for the agency to not have inferred from WMC's proposal that WMC would [DELETED] to compensate for short notice changes in VA facility capabilities. Because the offerors proposed approaches were not identical, we find reasonable the agency's assignment of a strength to OPSS's approach for offering an additional option to address short notice changes.¹¹

Corporate Experience/Capability

The protester argues that the agency's evaluation of OPSS's proposal under the corporate experience/capability subfactor was unequal and inconsistent with the RFP. Specifically, the protester argues that the agency unequally credited only OPSS with the corporate experience of its parent and affiliates, while penalizing WMC for its lack of direct prime experience. Protest at 24-31; Comments & Supp. Protest at 17-34. The agency argues that it evaluated the proposals equally and consistent with the RFP criteria, and both OPSS's and WMC's proposals were properly credited for the experience and capability of their respective parents and affiliates who would provide resources during contract performance. COS/MOL at 28-35. The agency further argues that, while it properly identified a weakness for the dearth of information in WMC's proposal about the corporate experience and capability of the offeror entity, the discriminating advantage that the SSA ultimately identified in OPSS's proposal related to the depth and breadth of OPSS's organizational experience and capability. Id. at 35-42.

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

¹¹ The protester also alleges that the agency unequally assigned a strength to OPSS for its proposed pharmacy network while failing to assign a similar strength to WMC for its proposed pharmacy network under the network management and claims adjudication subfactor. Comments & Supp. Protest at 16-17. However, the protester also acknowledges that the source selection decision states that the SSA found "no specific discriminating factor for pharmacy networks in any of the offerors," and further notes that WMC's proposed pharmacy network is "one of the largest pharmacy networks in the U.S." Id. at 17 (quoting AR, Exh. 173, SSDD, at 9). In other words, the very record cited by the protester shows that the TET's allegedly unequal assignment of a strength for pharmacy networks had no effect on the SSA's source selection decision. Therefore, even if we were to find that this particular strength was disparately assigned, the protester cannot show that this disparate treatment prejudiced WMC. Raytheon Co., B-416211 et al., July 10, 2018, 2018 CPD ¶ 262 at 7 (finding no basis to sustain protest even where aspects of the agency's evaluation was unreasonable because the protester was not prejudiced by those errors).

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 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 further advised offerors that the proposals would be evaluated to determine whether the organization had 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, the agency rated WMC as acceptable and OPSS as outstanding under the corporate experience/capability subfactor. AR, Exh. 160, TET Report, at 6. The record shows that WMC was credited for the experience of its parent and affiliates as the TET specifically found that the "VA will benefit from WMC, its parent organization (Anthem) and affiliates by providing an established network of service providers and business operations capable of managing a large complex comprehensive healthcare network." Id. at 177. The agency also noted strengths for Anthem's organizational model and streamlined reporting process, as well as its affiliates' extensive "experience in managing pharmacy benefits" and "experience and network breadth provid[ing] for greater access to dental providers across the region." Id. at 178-181. The record shows that the agency recognized that WMC will "leverage Anthem's Government Business Division (GBD) to support implementation of CCN" and that WMC's "parent organization, Anthem, and affiliates provide a strength because they demonstrate the capability to manage a comprehensive healthcare network." AR, Exh. 171, SSAC Comparative Analysis, at 29. Contrary to the protester's allegation, the record shows that WMC was credited with the corporate experience of its parent and affiliates.

In the comparative analyses of proposals, however, the SSA considered the differences between the offerors' experience identified in the proposals, including the experience of their respective parents and affiliates, and concluded that OPSS had a competitive advantage over WMC. In this regard, 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, at 11. Regarding WMC, the SSA likewise found that its “general corporate background, experience, and qualifications in addition to those of its parent company, represent a benefit to the government related to managing a large complex healthcare network including dental and pharmacy benefits and payment of healthcare claims.” Id. at 12. The SSA specifically recognized that WMC’s parent “Anthem’s Blue Cross or Blue Shield affiliated plans, in some cases, have been providing networks and healthcare services for nearly 100 years,” but noted that “not all of [WMC’s] affiliates have been doing so for that long.” Id. Therefore, we find that the agency reasonably, and consistent with the RFP, accorded WMC due credit for the experience and capabilities of its parent and affiliates. Further, WMC has not made the requisite showing that the agency treated the two proposals unequally. See Paragon Sys., Inc.; SecTek, Inc., supra.

We also find no merit in the protester’s allegation that it was improperly and unequally penalized for its lack of prime experience.¹² As an initial matter, to the extent the protester argues that it was improper for the agency to evaluate the corporate experience of WMC apart from its parent and affiliates, we disagree. The RFP specifically advised that the agency would evaluate the experience of the offeror under the corporate experience subfactor when it instructed the offerors to “[p]rovide a general corporate background, experience, and qualifications of the Offeror” and “[d]escribe [the] organizational infrastructure, management practices, number of personnel currently employed by department and number of years the prime firm . . . has been in business of developing and maintaining a network of healthcare providers and processing healthcare claims.” RFP at 182-183.

In its evaluation, the TET identified one weakness under this subfactor as follows:

[W]hile WMC has managed a large healthcare network demonstrating some experience, with only three (3) years of business history overall WMC’s corporate background and qualifications demonstrate a Weakness without its affiliates because it has inadequate corporate depth to manage

¹² The protester claims that OPSS obfuscated its corporate identity and experience by purposely conflating the offeror entity with the “Optum family of companies,” and that the agency also failed to differentiate between them in its evaluation. Comments & Supp. Protest at 19-23. In multiple instances, however, the agency documents its understanding of OPSS’s relationship with its parent/affiliate entities as presented in OPSS’s proposal, and nothing in the record indicates that the agency did not understand OPSS’s organizational structure. See e.g., AR, Exh. 160, TET Report, at 319 (OPSS is part of the Optum Military and Veterans Group, which is part of UnitedHealth Group); AR, Exh. 171, SSAC Comparative Analysis, at 46-47; AR, Exh. 173, SSDD, at 11.

a large, complex and comprehensive healthcare network increasing the risk of unsuccessful performance.

AR, Exh. 160, TET Report, at 174. The TET also noted that WMC “only has three (3) years in operation as a healthcare network provider demonstrating limited corporate background,” and that it “fail[ed] to provide sufficient detail regarding the services and programs that it can currently provide to VA without its affiliates.” Id. at 175. In summarizing this weakness, the TET also noted that “WMC has managed a large healthcare network but demonstrates only three (3) years of business history,” as well as the fact its proposal showed that it “currently employs [DELETED] . . . [and] plans to [DELETED] upon award.” Id. at 10; see AR, Exh. 150, WMC Technical Proposal, at 376-377. In the comparative analysis, the SSAC acknowledged this weakness, but also noted the strengths of WMC’s parent and affiliates. See AR, Exh. 171, SSAC Comparative Analysis, at 29 (“WellPoint, standing alone, does not have adequate corporate depth to manage a large, complex and comprehensive healthcare network. WellPoint will leverage [its affiliates] to support implementation of CCN. WellPoint’s [affiliates] provide a strength because they demonstrate the capability to manage a comprehensive healthcare network. . . and the risk of unsuccessful performance is no worse than moderate.”).

As relevant here, the SSA made no mention of WMC’s lack of direct experience as a weakness in the final source selection decision. Rather, the discriminator between the two offerors under this subfactor was based on the difference in the offerors’ organizational experience and capabilities with regard to their respective parents and affiliates. The SSA noted as follows with respect to OPSS’s competitive advantage:

[OPSS’s] proposal is stronger in the area of General Corporate Experience/Capability. [OPSS’s] proposal 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 . . . [and] has also demonstrated experience with claims processing and adjudication by subcontracting with its two experienced subcontractors . . . and one experienced affiliate . . . to provide accurate and timely claims processing support necessary to maintain a high-quality network.

AR, Exh. 173, SSDD, at 11.

Based on these findings, the agency concluded that OPSS and WMC “each have prior experience managing large healthcare contracts; however [OPSS]’s breadth, depth and diversity of its corporate experience will provide VA with guidance and expertise to fulfill its mission. Therefore, [OPSS] has a competitive advantage.” Id. at 12. WMC’s disagreement with the SSA’s judgment here does not demonstrate that the agency evaluated the offers disparately. KSC BOSS Alliance, LLC, supra.

Best-Value Tradeoff

Finally, the protester argues that the agency's best-value tradeoff was flawed because the agency failed to meaningfully consider the actual difference in price--in terms of dollar values--between WMC's proposed price and OPSS's "[e]xtraordinarily [h]igher [p]rice." Comments & Supp. Protest at 41-44. The agency argues that the solicitation did not require a price evaluation using actual dollar figures, and the argument lacks merit as the record demonstrates that the SSA was well aware of the relative dollar value represented by the price premium associated with OPSS's proposal. Supp. COS/MOL at 7-14.

As noted, the RFP stated that "[s]ome CLINs and SubCLINs are already priced by the VA" and instructed offerors to "propose pricing for all non-prepriced CLINs." RFP at 185-186. The RFP provided weighted values for each of the non-prepriced CLINs and subCLINs, and the total weighting for all CLINs included in the price evaluation equaled 100 percent. Id. at 191-195.

The agency calculated OPSS' weighted score as 0.18968 and WMC's as 0.24398. The agency explains these scores, as follows:

A higher score is considered more favorable to VA, meaning the underlying prices are overall less than the prices in a proposal that resulted in a lower cumulative weighted score. A higher score represents lower prices from offerors. A score of .05, for example, indicates that an offeror's proposed prices are 5% less than what the Government has expected to pay. All offerors scores are greater than zero, indicating that all offerors provide cost savings to the Government. [WMC] submitted prices that resulted in the overall highest cumulative weighted score. This means that [WMC] submitted the overall lowest prices (as calculated by RFP Section E.5.10) for the CLINs and SubCLINs that were included in the calculation for the cumulative weighted score. [WMC's] prices are about 24.398% less than what the Government expects to pay. [OPSS] submitted prices that resulted in the next highest cumulative score of 0.18968, indicating their prices are 18.968% less than the Government expected to pay.

AR, Exh. 166, PET Report, at 13.

In the best-value tradeoff, the SSA noted that WMC's score represented a "5.430% additional cost savings over what [OPSS] proposed," and that OPSS's "score represents less cost savings resulting in a higher price over [WMC] as reflected by its lower cumulative weighted score." AR, Exh. 173, SSDD, at 13. Based on this assessment of the relative non-price merits of the competing proposals, the SSA concluded that OPSS's proposal represented the best value to the government, stating as follows:

Even though [WMC's] cumulative weighted score is the highest among all offerors, representing the most cost savings to the Government, I find that [OPSS's] advantages outweigh [WMC]'s lower prices and are worth the price premium. While [WMC] provides a viable proposal and solution for the VA, there are no advantages that separate it from [OPSS]. . . . Based upon the aforementioned, [OPSS's] superior network and corporate experience will provide the best value to the Government.

Id. at 14.

Where, as here, a solicitation contemplates award on a best-value tradeoff basis and provides that the non-price considerations are more important than price, agencies have discretion to make award to a concern that has submitted a higher-priced, technically superior offer; the agency's decision is governed only by the test of rationality and consistency with the solicitation's stated evaluation scheme. Addvetco, Inc., B-412702, B-412702.2, May 3, 2016, 2016 CPD ¶ 112 at 9. Further, while source selection decisions must be documented, and must include the rationale for any business judgments and tradeoffs made or relied upon by the source selection authority, there is no need for extensive documentation of every consideration factored into a tradeoff decision. Id. Rather, the documentation need only be sufficient to establish that the agency was aware of the relative merits and costs of the competing proposals and that the source selection was reasonably based. Id.

Here, the record does not support the protester's argument that the SSA was required to consider the actual dollar values represented by the weighted scores.¹³ As noted above, the RFP provided that the non-price evaluation factors, when combined, were significantly more important than price, and established a price evaluation scheme of weighted scores calculated against the reference rate (e.g., unit price that was used to develop the IGCE or the price the VA expects to pay for the service for each CLIN or SubCLIN, as applicable). RFP at 188, 191. The price evaluation report, upon which the SSA properly relied, explained the relative cost savings, in comparison to the reference rate, represented by the offerors' cumulative weighted scores. AR, Exh. 166, PET Report, at 13; see AR, Exh. 173, SSDD, at 1, 6. On this record, we find that the comparison of cumulative weighted scores allowed the agency to meaningfully assess the cost implications of awarding the contract to OPSS. Consistent with the RFP, the SSA considered the cumulative scores and the relative cost savings they represented to

¹³ To the extent the protester is challenging the solicitation's price evaluation scheme, it is raising an untimely protest based upon an alleged impropriety in a solicitation, which should have been raised prior to the closing time for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1); see AmaTerra Envtl. Inc., B-408290.2, Oct. 23, 2013 CPD ¶ 242 at 3.

the government, rather than the dollar figures they equate to, as the reference point for the price premium for the best-value tradeoff analysis.¹⁴

In addition, the protester argues that the agency's best-value tradeoff was flawed as a result of the underlying evaluation errors in the agency's evaluation of technical proposals, the agency's disparate treatment of proposals, and the agency's conclusion that OPSS's proposal was worth the price premium. Protest at 31-33. The agency argues that the best-value determination was proper because the technical evaluation protest grounds have no merit. COS/MOL at 42-45.

Based on our review of the record here, we find no basis to question the agency's judgments in performing the evaluation. Accordingly, we find that the record demonstrates that the agency fairly and reasonably evaluated proposals, and meaningfully considered the associated price premium in the selection of OPSS's proposal for award.

The protest is denied.

Thomas H. Armstrong
General Counsel

¹⁴ We also find that the protester overstates the dollar value represented by the price premium associated with the award to OPSS. Comments & Supp. Protest at 3 ("The SSA not only did not recognize and account for the magnitude of the cost savings, but there is nothing in the record to indicate any awareness on his part that this amounted to over \$1 billion."). As noted, only non-prepriced CLINs and subCLINs would be evaluated. RFP at 185-186. As established in the IGCE, the evaluated CLINs account for approximately \$2.47 billion of the \$21.5 billion maximum contract value. See AR, Exh. 175, IGCE, Weighting Region 3 Tab; Supp. COS/MOL at 11. Thus, as noted by the agency, the total dollar value of the 5.43 percent price premium associated with the OPSS proposal is less than \$140 million, not over \$1 billion as the protester claims. Supp. COS/MOL at 11.