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Decision

Matter of: PMSI, LLC d/b/a Optum Workers' Compensation Services of Florida

File: B-417237.2; B-417237.3; B-417237.4

Date: January 29, 2020

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DIGEST

Protest challenging agency's evaluation of proposals and source selection decision is sustained where record shows that agency miscalculated proposals and made an unreasonable source selection decision.

DECISION

PMSI, LLC d/b/a Optum Workers' Compensation Services of Florida, of Tampa, Florida, protests the award of a contract to Coventry Health Care Workers' Compensation, Inc., of Downers Grove, Illinois, under request for proposals (RFP) No. 1605DC-18-R-00020, issued by the Department of Labor (DOL) for pharmacy benefits management services. Optum maintains that the agency miscalculated proposals and made an unreasonable source selection decision.

We sustain the protest.

BACKGROUND

The RFP contemplates the award, on a best-value tradeoff basis, of a fixed-price contract to be performed over a base year and four 1-year options. The RFP seeks pharmacy benefits management services to provide pharmacy benefits to federal employees with work-related injuries or illnesses that have accepted workers' compensation. Offerors were advised that DOL would evaluate proposals considering

price and two non-price considerations, technical and past performance. RFP at 107.¹ The technical factor² was significantly more important than past performance and price collectively, as well as significantly more important than price alone; the past performance factor was more important than price; and the technical and past performance factors collectively were significantly more important than price.³ Id. The RFP further provided that the agency would evaluate prices for reasonableness.⁴

The agency received a number of proposals and, after evaluating proposals, engaging in discussions, and soliciting, obtaining and evaluating final proposal revisions, DOL assigned the following ratings to the Coventry and Optum proposals:

	Optum	Coventry
Technical	Outstanding	Outstanding
Understanding the Requirement	Outstanding	Outstanding
Corporate Experience	Outstanding	Outstanding
Start-Up/Phase Out	Outstanding	Outstanding
Key Personnel	Good	Outstanding
Quality Control	Good	Acceptable
Past Performance	Low Risk	Low Risk
Price⁵	\$595,267,161	\$613,688,454

¹ All references to the RFP are to the conformed version of the solicitation issued with amendment No. 0005 found in the agency report (AR), exh. 12a.

² The technical factor included five subfactors listed in descending order of importance: understanding of the requirement, corporate experience, start-up plan/phase-out plan, key personnel, and quality control plan. RFP at 107-108.

³ In evaluating proposals under the technical factors and subfactors, DOL assigned adjectival ratings of outstanding, good, acceptable, marginal or unacceptable. AR, exh. 34, Technical Evaluation Report, at 2. DOL assigned low risk ratings to Coventry and Optum under the past performance factor (which is not at issue here). AR, exh. 35, Source Selection Decision Document (SSDD), at 13.

⁴ The principal products to be provided under the resulting contract are prescription drugs and medical equipment. Offerors were required to negotiate pricing with pharmacies, drug manufacturers and other entities, and their pricing took the form of net proposed prices/discounts charged to the government. RFP at 106. (The revenue generated for the contractor is comprised of the difference between the prices negotiated with pharmacies, drug manufacturers and other entities, and the net proposed prices/discounts charged to the government. Id.) To arrive at total prices, DOL used the net proposed prices/discounts and multiplied those figures by estimated monetary amounts. See RFP at 56; AR, exh. 12d, Discount Calculation Workbook.

⁵ The record shows that the agency applied two adjustments to the offerors's prices. First, both offerors' total evaluated prices were reduced by approximately \$6.9 million to

AR, exh. 35, SSDD, at 13. Based on these evaluation results, DOL selected Coventry, concluding that the technical superiority of its proposal merited the price premium associated with award to that firm. Id. at 21-23. After being advised of the selection decision and requesting and receiving a debriefing, Optum filed the instant protest.

DISCUSSION

Additional Background on DUR Services

Before discussing Optum's allegations in detail, we provide some background relating to the provision of drug utilization review (DUR) services. These services are at the heart of Optum's principal argument. As part of contract performance, the RFP contemplates that the successful contractor will provide DUR services during three broad phases of drug therapy: prospective (DUR services to be provided in advance of medication being dispensed); concurrent (ongoing DUR services aimed at monitoring a patient's drug therapy while it is being administered); and retrospective (DUR services provided after the patient has received their drug therapy). Contracting Officer's Statement of Facts (COSF) at 5-10.

The agency further explains that there are two broad types of DUR services, "automated" DUR services, which principally involve, for example, making software adjustments to ensure optimal prescribing outcomes; and "clinical" DUR services, which principally involve interaction between contractor nurses, pharmacists and doctors on the one hand, and agency claims examiners or prescribing physicians on the other hand. COSF at 5-10. This protest involves clinical--as opposed to automated--DUR services.

For ease of reference, we set out the applicable sections of the solicitation. The pertinent section of the performance work statement (PWS) calling generally for DUR service provides as follows:

The contractor shall implement a Drug Utilization Review (DUR) Program and must include at least the following:

- a. Detection of fraud, waste, and abuse patterns by providers or employees
- b. Screening for drug/drug contraindications, drug/pregnancy contraindications

account for peer-to-peer physician services that would be provided outside of the contract. AR, exh. 33, Price Discount Evaluation Report, at 25-26. This adjustment is not at issue in the protest. In addition, the agency added approximately \$[deleted] to Optum's total evaluated price to account for certain drug utilization review services that the agency determined had not been included in Optum's net proposed price discount. Id. at 24, 26. This second adjustment is discussed in detail below.

- c. Duplicate prescriptions
- d. Therapeutic overlap
- e. Brand name versus generic usage by drug category
- f. Early refill
- g. Prospective, concurrent, and retrospective DUR program specific to, but not restricted to, opioids, letters of medical necessity, and excessive costs.
- h. Require the use of generic equivalents where they are available, upon OWCP's [Office of Workers' Compensation Program] request.

RFP at 35 (PWS section 5.1.4.4.1). In describing retrospective DUR services, the RFP provides:

The contractor shall employ retrospective DUR tools, which identify and provide data on prescribers and pharmacies that prescribe or dispense in a manner outside the norm, present safety concerns, or might be engaged in potential waste, fraud, or abuse. Examples include, but are not limited to the prescribing and dispensing excessive quantities of controlled substances, and unusually high rates of compounded or brand name drug prescriptions with instructions to dispense as written.

Id. (RFP PWS section 5.1.4.4.4).⁶

Finally, the RFP also specifically calls for providing “physician outreach” services (which fall into the category of clinical DUR services) when there is an issue relating to patient safety. RFP at 35-36. That portion of the RFP states: “The contractor shall provide physician outreach, such as ‘academic detailing,’ when potential claimant safety concerns with prescribed drugs are noted in order to encourage safe prescribing practices.”⁷ RFP at 35-36 (PWS section 5.1.4.4.1).

⁶ The RFP, PWS section 5.1.4.4.3, also includes a description of prospective DUR services to be provided. Those services are automated DUR services that, as noted, are not at issue in the protest. The RFP does not include any descriptive language relating to the provision of concurrent DUR services.

⁷ “Academic detailing” refers to providing information to a prescribing physician that is based on objective scientific academic literature as opposed to information provided by pharmaceutical drug manufacturers. COSF at 9.

The record shows that, during its evaluation of proposals, DOL credited Coventry with providing what amounts to full-scale clinical DUR services (i.e. a full complement of clinical DUR services, both where patient safety is involved, and also where patient safety is not at issue).⁸ The record shows that Optum also was credited with proposing such a program. In addition, the record shows that the agency added approximately \$[deleted] to Optum's total evaluated price to account for the cost associated with providing full-scale clinical DUR services.

Optum's Arguments

Optum makes three arguments in connection with the agency's actions. First, Optum argues that the RFP only required clinical DUR services in cases where patient safety was at issue, and did not call for providing full-scale clinical DUR services. Second, Optum argues that the agency erred in crediting both Coventry and Optum with offering full-scale clinical DUR services. According to Optum, both it and Coventry only proposed clinical DUR services in cases where patient safety was at issue, but did not otherwise propose to provide clinical DUR services. Third, Optum argues that the agency erred in adding the approximately \$[deleted] to its total evaluated price. According to Optum, had it actually been proposing full-scale clinical DUR services, it would have priced them in a manner that differed substantially from the agency's calculations.

As will be discussed below, we conclude that Optum is correct in all three respects: the RFP did not call for full-scale clinical DUR services, neither firm actually proposed full-scale DUR services, and DOL unreasonably added the sum of \$[deleted] to Optum's total evaluated price in a manner that was both inconsistent with the terms of the solicitation and not contemplated under applicable law. We therefore sustain Optum's protest.

⁸ We interchangeably use the terms "full-scale clinical DUR services" and "full-scale clinical DUR program" in this decision to denote a program that offers clinical DUR services that go beyond the "physician outreach" services specified in PWS section 5.1.4.4.4.1 quoted immediately above. The services contemplated under PWS section 5.1.4.4.4.1 amount to clinical (as opposed to automated) DUR services to be provided only in those instances where patient safety is at issue.

As discussed at length below, the record shows that both firms proposed clinical DUR services that satisfy the RFP's requirement for such services in cases involving patient safety. Full-scale clinical DUR services (or a full-scale clinical DUR program), on the other hand, denotes interactions between a contractor's healthcare professionals (such as qualified nurses, pharmacists and physicians, and either agency personnel (such as claims examiners) or the prescribing physician), in situations that go beyond those called for under PWS section 5.1.4.4.4.1. Such "full-scale" services would involve clinical DUR services in situations where patient safety is not involved, and may include clinical DUR services provided in situations where, for example, there could be an improvement in the cost of providing prescription services to a given patient.

We note at the outset that, in reviewing protests challenging an agency's evaluation, we do not independently evaluate proposals. Rather we review the record to determine whether the agency's evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. McCann-Erickson USA, Inc., B-414787, Sept. 18, 2017, 2017 CPD ¶ 300 at 3. While we will not substitute our judgment for that of the agency, we will sustain a protest where the agency's conclusions are inconsistent with the solicitation's evaluation criteria, inadequately documented, or not reasonably based. Id. We discuss our conclusions below.

Solicitation Requirements for DUR Services

Optum argues first that the RFP did not call for the provision of full-scale clinical DUR services, and instead only required the provision of clinical DUR services in situations where patient safety is at issue. The agency disagrees with Optum's position. While the contemporaneous record appears to show that DOL acknowledged that the RFP did not expressly call for the provision of full-scale clinical DUR services--AR, exh. 33, Price Evaluation Report, at 24; exh. 34, Technical Evaluation Report, at 15--DOL maintains that such services were "reasonably encompassed" by the terms of the PWS. Agency Legal Memorandum at 10-14. In support of its position, the agency directs our attention to the language found in PWS sections 5.1.4.4.1, 5.1.4.4.4, and 5.1.4.4.4.1, which are quoted in their entirety above.

With respect to PWS section 5.1.4.4.1, the agency notes that this section requires offerors to provide a DUR program that includes "at least" the elements listed in the lettered subsections, and also that subsection "g" calls for offerors to provide a prospective, concurrent and retrospective DUR program that is specific to "but not restricted to" opioids, letters of medical necessity and excessive costs. According to the agency, while this language did not actually specify a full-scale clinical DUR program, it left the offerors to decide the extent of their proposed DUR program.

With respect to PWS section 5.1.4.4.4, the agency points out that it calls for the provision of retrospective DUR services and also includes a non-exhaustive list of examples of situations where retrospective DUR services could detect a problem. (The language at issue provides: "Examples include, but are not limited to the prescribing and dispensing excessive quantities of controlled substances, and unusually high rates of compounded or brand name drug prescriptions with instructions to dispense as written." PWS Section 5.1.4.4.4 (emphasis supplied).) According to the agency, this language, while once again not actually specifying a requirement for full-scale clinical DUR services, nonetheless alerted offerors to the fact that the listed considerations were not exhaustive.

Finally, with respect to PWS section 5.1.4.4.4.1, DOL notes that the language of that section actually does specify a requirement for clinical DUR services, because it

explicitly calls for “physician outreach” services in cases where patient safety is at issue.⁹

The agency’s position reflects a fundamental misunderstanding of the law. DOL is correct that agencies properly may apply evaluation considerations that are not expressly articulated in the solicitation, provided that those considerations are reasonably related to, or encompassed by, the stated criteria. Ascella Technologies, Inc., B-412679, B-412679.2, Apr. 27, 2016, 2016 CPD ¶ 123 at 3. However, no such rule applies in the case of a solicitation’s specifications of an agency’s requirements. While it is true that agencies need not draft specifications in such detail as to eliminate completely any risk on the part of the contractor, agencies nonetheless are required to draft specifications in a manner that enables offerors to compete intelligently and on a common, relatively equal basis. See Costal International Security, Inc., B-411756, B-411756.2, Oct. 19, 2015, 2015 CPD ¶ 340 at 4. A solicitation that contains a latent ambiguity (that is, one where the terms of the RFP are susceptible to two or more reasonable interpretations) fails to provide a common basis for competition. Id.

None of the provisions identified by DOL convey its apparent requirement for full-scale clinical DUR services. In fact, none of these sections, and no other provision of the RFP, actually uses the phrase “clinical DUR services.” In addition, notwithstanding its position during the protest, as noted earlier, the contemporaneous record reflects the agency’s apparent understanding that full-scale clinical DUR services were not contemplated under the terms of the RFP.¹⁰

For example, in its price evaluation report, DOL effectively concedes that these services were not expressly stated in the RFP. The price evaluation report states as follows:

Both Optum and Coventry proposed certain DUR tools which, though not specifically prescribed in the Solicitation, the Government intends to implement as part of the DUR capability requirement. Those DUR tools are Nurse Telephonic Services, Comprehensive Pharmacist Drug Utilization Review, and Peer-to-Peer Physician Services.

AR, exh. 33, Price Evaluation Report, at 24 (emphasis supplied).

⁹ As discussed below, the record shows that both Optum and Coventry offered to provide clinical DUR services in those instances where an issue of patient safety is involved.

¹⁰ Here, while we cannot conclude that there is a latent ambiguity in the RFP--principally because the agency’s current interpretation of the specifications is inconsistent with a reasonable reading of the solicitation--the record nonetheless shows that the agency appears to want full-scale clinical DUR services, but has failed adequately to articulate its requirements.

Similarly, in its technical evaluation report, the agency appears to recognize that a full-scale clinical DUR program was not contemplated by the PWS. In describing what the agency thought Coventry was offering in its proposal (we discuss the agency's apparent reading of the Coventry proposal below), the agency evaluators stated:

The offered services go above and beyond the requirements of the PWS—that is, these offered services transcend the basic (and required) clinical guidance to the claims examiner and add a clinical aspect to the services that specifically targets not only improved medication management, but improved patient care and clinical outcomes as well.

AR, exh. 34, Technical Evaluation Report, at 15 (emphasis supplied).

Based on the foregoing considerations, we find that the RFP did not require offerors to propose full-scale clinical DUR services, and that the agency's current position regarding the requirements of the RFP is unreasonable, and inconsistent with its apparent contemporaneous understanding of the terms of the RFP. However, even leaving these considerations aside, the record shows that, in fact, neither offeror proposed full-scale clinical DUR services, thereby demonstrating that neither offeror read the RFP as calling for such services. We discuss the proposals in detail below.

The Contents of the Coventry Proposal

Optum next argues that the agency erred in crediting the Coventry proposal with offering full-scale clinical DUR services. According to the protester, Coventry only offered to provide clinical DUR services in those cases where patient safety was at issue, but did not, as the agency contends, offer to provide a full-scale clinical DUR program. Our review of the record confirms Optum's position.

Before discussing the Coventry proposal in detail, we note that DOL and Coventry point to different portions of Coventry's proposal to demonstrate that Coventry offered clinical DUR services. For its part, Coventry directs our attention generally to pages 44-50 of its proposal in support of its claim that it proposed to provide clinical DUR services. In contrast, the agency directs our attention to pages 87-90 of the Coventry proposal in support of its position that Coventry proposed full-scale clinical DUR services.

With respect to Coventry's reliance on pages 44-50 of its proposal, most of the cited material addresses Coventry's proposal as it relates to performing automated--as opposed to clinical--DUR services. AR, exh. 26, Coventry Final Proposal Revision, at 44-50. However, page 50 of the Coventry proposal actually does describe the provision of clinical DUR services in those situations where patient safety is at issue. Specifically, in responding to PWS section 5.1.4.4.4 of the PWS (which calls for providing retrospective DUR tools) Coventry proposed as follows:

Yes. Coventry agrees to meet the requirements of Section 5.1.4.4.4. Our DUR programs evaluate a prescription against a patient's prescription

history and evidence-based guidelines to alert the prescribing physician to important, drug-specific, patient-specific health and safety issues and are also a standard part of our quarterly stewardship reporting.

AR, exh. 26, Coventry Final Proposal Revision, at 50. Nothing in this section of Coventry's proposal identifies clinical DUR services, although it does generically refer to Coventry's "DUR programs." In addition, to the extent this portion of the Coventry proposal can be read as proposing clinical DUR services, the "DUR programs" referenced relate only to circumstances where important drug-specific, patient-specific health and safety issues are involved.

Elsewhere in its proposal, Coventry separately details one of these "DUR programs" in its response to the requirement for clinical DUR services that were required when patient safety is involved. Specifically, Coventry's proposal includes a response to the requirements of PWS section 5.1.4.4.1, which, again, relates only to providing clinical DUR services where patient safety is at issue. The proposal states as follows:

Yes. Retrospective DUR can positively influence prescriber behavior by notifying them of clinical considerations. First Script pharmacists review the injured worker's medical history, including medication utilization, and assess appropriateness of the medication therapy. Findings and recommendations are documented along with appropriate clinical citations. Upon the claims examiner's approval, a peer-to-peer discussion will occur between a First Script medical consultant and the injured worker's prescriber to obtain agreements to the recommended changes.

AR, exh. 26, Coventry Final Proposal Revision, at 50. This portion of the Coventry proposal does, in fact, offer peer-to-peer discussions between Coventry's medical consultant and the prescribing physician, which amounts to a clinical DUR service. However, those clinical DUR services are confined to instances where patient safety is at issue, as dictated by the terms of the PWS section 5.1.4.4.1.

Our reading of the Coventry proposal is confirmed in an affidavit submitted by a senior Coventry employee responsible for preparing the firm's proposal. He states as follows:

Coventry understood the requirement for providing "academic detailing" to mean that it was required to explain in its response how it would provide that peer-to-peer educational outreach services including Nurse Telephonic Services, Comprehensive Pharmacist Drug Utilization Review, and Peer-to-Peer Physician Services. Therefore, in its response to Section 5.1.4.4.1 Coventry specifically agreed to provide these required services that are part and parcel of academic detailing. See Coventry Proposal, p. 50.

Coventry Comments, Affidavit from Coventry's Senior Employee, at 2.

Most significantly, Coventry's employee does not describe any other clinical DUR services in his affidavit; does not describe the clinical DUR services the agency claims were offered by Coventry; and does not reference the portions of the Coventry proposal relied on by the agency for its claim that Coventry offered a full-scale clinical DUR program, despite the fact that the matter was directly at issue during the protest. We conclude from the contents of this affidavit and from the Coventry proposal itself, that Coventry's offer of clinical DUR services was confined to those instances identified in PWS section 5.1.4.4.1; that is, only those situations where patient safety was at issue.

In addition to these considerations, a review of those portions of Coventry's proposal that the agency apparently relied on to find that Coventry offered full-scale clinical DUR services demonstrates that Coventry was only describing programs it had provided to other, third-party entities. A reading of these portions of the Coventry proposal demonstrates that Coventry was not proposing to provide those services to the agency.

For example, starting on page 87 of the Coventry proposal, the firm is responding to an agency discussion question relating to its provision of DUR services as identified in PWS section 5.1.4.4 (the PWS section calling only generally for the provision of DUR services). Coventry's response outlines only its automated DUR services in detail, principally describing the software edits that are available. AR, exh. 26, Coventry Final Proposal Revision, at 87. Coventry's proposal then goes on to describe possible clinical DUR services that it potentially could make available, and outlines some examples of clinical DUR services being provided to other customers. Coventry's proposal states:

Coventry has many choices for clients seeking to positively impact injured workers['] use of medications. These are presented in the form of fraud, waste and abuse detection, screening at the point of sale and reviews that are prospective (early and preventative), concurrent (effective during the course of treatment) and retrospective (review of treatment prescribed in the past) to provide recommendations to prescribers on a more efficient course of care. We believe these align with your vital initiatives.
Some successful Federal and commercial program clinical solutions in place include the following:

Id. at 87-88 (emphasis supplied). Following this language is a list of examples of programs or services being performed by Coventry under other contracts. In each example, Coventry refers to the programs or services in the plural, clearly demonstrating that these are only examples of multiple services or programs that Coventry provides to other federal and commercial customers. For example, in describing retrospective DUR services, the Coventry proposal states:

These programs evaluate a prescription against a patient's prescription history and evidence-based guidelines to alert . . . pharmacies and prescribers that are providing medications in a manner outside established

clinical best practice, present safety concerns, and/or are engaged in possible fraud, waste and abuse.

Id. at 89 (emphasis supplied).

In sum, the language that the agency claims to have relied upon is describing possible solutions that could be made available that were being provided elsewhere, to other customers, by Coventry. Based on these considerations, we find that the agency unreasonably credited the Coventry proposal for offering a full-scale clinical DUR program when, in fact, no such program was actually offered.

The Contents of the Optum Proposal

The record shows that Optum also did not consider the RFP as requiring a full-scale clinical DUR program, and actually stated as much in its proposal. For example, in discussing the possible provision of retrospective clinical DUR services, the Optum proposal states as follows:

Intensive intervention programs and services are used to help ensure injured workers receive the right medication at the right time, in the right dose and for the right duration regardless of whether their prescriptions were filled at a retail pharmacy or through home delivery. Once Optum's Clinical team has identified candidates for in-depth clinical intervention, DOL/OWCP may choose to perform them through their own Clinical staff, utilize a contracted third party, or select Optum for these services. Please reference the fees associated with these optional clinical intervention services in the Pricing Volume to this solicitation should DOL/OWCP elect to utilize Optum for these services outside of the scope of this SOW [statement of work].

AR, exh. 18, Optum Final Proposal Revision, at I-59 (emphasis supplied); See also, AR, exh. 24, Optum Price Narrative Final Proposal Revision, at III-12 to III 14 (detailing unit prices for various clinical DUR services, but expressly noting that those services are outside the scope of the RFP). Optum's proposal therefore is explicit in stating that it did not view these services as contemplated under the terms of the RFP, and that it was not proposing such services as part of its offer. Optum's proposal also is explicit in detailing the clinical DUR services it did intend to propose in those limited circumstances where patient safety is concerned. Optum's proposal states as follows:

Physician Outreach (5.1.4.4.1). Optum has a suite of clinical letters and other types of outreach to prescribers when potential claimant safety concerns with prescribed drugs are noted in order to encourage safe prescribing practices which include:

AR, exh. 18, Optum Final Proposal Revision, at I-60. Following this language is a list of the various clinical DUR services Optum offered to satisfy this requirement, including

outreach by clinical nurses and physician peer-to-peer outreach between Optum physicians and the prescribing physician. Id. At I-60 to I-61.

In sum, it is clear from a reading of the Optum proposal that it did not consider the RFP to require a full-scale clinical DUR program and, like Coventry, Optum offered clinical DUR services only in those instances where patient safety was at issue, as required by the RFP.

Evaluation of the Proposals for Full-Scale Clinical DUR Programs

Notwithstanding the clear terms of the proposals discussed above, the record shows that the agency, in effect, sought to include the provision of full-scale clinical DUR services as part of the Optum proposal, and also gave Coventry credit for offering such services, even though neither firm actually offered those services. Optum argues generally that the agency erred in its technical and price evaluation of the two proposals in the area of offering clinical DUR programs.

The agency claims to have given Optum “credit” for having offered what amounts to full-scale clinical DUR services in its technical evaluation, but the record shows that the two firms were treated disparately, with the agency assigning a significant strength to the Coventry proposal based on the agency’s erroneous conclusion that it had offered full-scale clinical DUR services, while at the same time assigning only a strength to the Optum proposal. The record also includes an extensive narrative description of the full-scale clinical DUR services it erroneously thought it would be receiving from Coventry, while at the same time making only passing reference to clinical DUR services in evaluating the Optum proposal. As neither firm offered full-scale clinical DUR services, there was no rational basis for the agency’s disparate evaluation of the proposals.

In this connection, the record shows only that the agency mentioned such services in passing in its technical evaluation of the Optum proposal, but it is not clear what “credit” was assigned to the Optum proposal in this area. The agency did assign Optum’s proposal a strength for its DUR program overall, but it is not clear that this strength was assigned based on the availability of full-scale clinical DUR services. After assigning a strength and describing Optum’s overall DUR services, the agency’s technical evaluation report states as follows:

Beyond that, the offeror indicates that additional services including, medication review, peer-to-peer outreach, drug testing/monitoring, and nurse or physician peer-to-peer review reviews, which would be extremely valuable to the government, are available to OWCP, but are an extra fee.

AR, exh. 34, Technical Evaluation Report, at 29.

In contrast, the record shows that the agency assigned the Coventry proposal a significant strength in this same area, and spent several pages describing at length the full-scale clinical DUR services that it erroneously thought it would be receiving if the

contract were awarded to Coventry. AR, exh. 34, Technical Evaluation Report, at 13-15. However, as discussed, neither offeror proposed full-scale clinical DUR services, and both offered clinical DUR services, but only in instances where patient safety was involved; in effect, both offerors proposed the same thing. Thus, to the extent there were differences in the agency's technical findings relating to the provision of a full-scale DUR program, those differences were irrational.

Upward Adjustment to Optum's Price

As discussed above, Optum--like Coventry--offered clinical DUR services, but only in those instances where there was a question of patient safety. Optum did not propose full-scale clinical DUR services, but the record shows that, Optum provided the agency with what amounted to courtesy unit pricing for clinical DUR services should DOL decide to acquire those services.

That pricing took the form either of hourly rates for various clinical professionals (for example, qualified nurses and physicians), or flat-rate fees for performance of specific services (for example, performance of a medication review by a pharmacist). AR, exh. 24, Optum Price Narrative Final Proposal Revision, at III-12 to III-13. Even though Optum did not read the RFP as requiring these services, and even though Optum did not actually propose these services, the record shows that the agency nonetheless concluded that such services were available from Optum at an additional cost.

The record shows that the agency used the rates provided by Optum as a courtesy and added approximately \$[deleted] to Optum's total evaluated price, which the agency claims constitutes its calculation of the likely cost of such services. AR, exh. 33, Price Evaluation Report, at 24, 26. The record also shows that the agency used the upwardly-adjusted Optum price in its source selection decision. AR, exh. 35, SSDD, at 13.

Optum argues that it was improper for the agency to have added any costs to its proposed price because doing so is inconsistent with the express terms of the RFP, which provides that the agency will arrive at total evaluated prices for the offerors:

The Government will also calculate the aggregate savings under each Offerors' proposal considering every CLIN [contract line item number] and every period, by applying the proposed net discounts to the estimated monetary amounts (as set forth in Technical Exhibit 4 above). The Government will thus generate a total estimated cost for each Offeror over the life of the contract.

RFP at 108.

We agree with Optum. Simply stated, nothing in the RFP contemplates the agency making any adjustments to the offerors' proposed prices, and the agency's actions in doing so were improper, and violated the express terms of the RFP. Moreover, use of

the inflated figure in its source selection decision was also clearly not contemplated by the terms of the RFP.

In addition, we are unaware of any legal basis for an agency to make upward adjustments to the prices offered in a fixed-price setting. In this connection, the Federal Acquisition Regulation (FAR) § 15.404-1(d)(3) expressly prohibits agencies from making such adjustments in the context of a fixed price contract. See also Alamo City Eng'g Services, Inc., B-409072, B-409072.2, Jan 16, 2014, 2014 CPD ¶ 32 at 5-6.

Summary

In conclusion, we find that the RFP did not call for the provision of full-scale clinical DUR services. The record shows that both offerors understood this, and as a consequence neither offered a full-scale clinical DUR program. The record also shows that the agency gave one offeror (Coventry) considerable credit in its technical evaluation for offering something that it did not offer, while mentioning only in passing that the other offeror (Optum) was, apparently, offering the same program, but that it was separately priced. Based on this last finding, the agency increased the price offered by Optum, despite the fact that the RFP did not contemplate such an adjustment, and despite the fact that such an adjustment is expressly prohibited by the FAR.

In light of these considerations, we sustain Optum's protest.¹¹

RECOMMENDATION

We recommend that the agency amend the RFP to clarify its requirements for DUR-related services to reflect its actual requirements. After revising the RFP, we recommend that the agency solicit, obtain and evaluate revised proposals, and make a new source selection decision. Should the agency select another concern for award, we recommend that the agency terminate the contract awarded to Coventry for the convenience of the government, and make award to the newly-selected offeror, if otherwise proper. Finally, we recommend that the agency reimburse Optum for the costs associated with filing and pursuing its protest, including reasonable attorneys'

¹¹ As a final matter, we note that Optum raised another argument relating to the provision of "prior authorization" solutions, and maintains that the record shows that the agency's needs relating to that requirement have materially changed. We need not discuss this aspect of Optum's protest in any detail. Inasmuch as we recommend that the agency amend the RFP, the agency also may wish to revisit its requirements relating to the "prior authorization" solutions, and amend the RFP to clarify those requirements to accurately reflect the agency's actual needs, if appropriate.

Optum also raised two minor issues relating to the agency's evaluation of the Coventry proposal in the areas of prescription cards and welcome packets services, and transition-in services. We also need not consider these allegations in any detail since we recommend that the agency solicit and evaluate revised proposals.

fees. Optum's certified claim for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Thomas H. Armstrong
General Counsel