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# Decision

**Matter of:** Integrated Medical Solutions, LLC

**File:** B-418754; B-418754.2

**Date:** August 20, 2020

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## DIGEST

1. Protest challenging the agency's conduct of discussions is denied where the discussions were meaningful and equal, tailored to each offeror's proposal, and led offerors into the general areas of their proposals requiring amplification or revision.
  2. Protest challenging agency's evaluation of technical proposals and source selection decision is denied where the record shows that the evaluation and selection decision were reasonable and consistent with the terms of the solicitation.
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## DECISION

Integrated Medical Solutions, LLC (IMS), of Mansfield, Texas, protests the award of a contract to NaphCare, Inc., of Birmingham, Alabama, under request for proposals (RFP) No. 15B31719R00000001, issued by the Department of Justice, Bureau of Prisons (BOP), for comprehensive medical services for the federal correctional institution at Bennettsville, South Carolina (FCI Bennettsville). IMS argues that the agency conducted misleading and unequal discussions. IMS also argues that the agency failed to evaluate proposals pursuant to the solicitation criteria and that the award decision was unreasonable.

We deny the protest.

## BACKGROUND

The BOP manages a nationwide system of prisons and detention facilities and provides for the custody and care of approximately 185,000 inmates, which includes furnishing essential medical, dental, and mental health services. Agency Report (AR), Tab 5, RFP at 47.<sup>1</sup> When a medical need arises that the BOP cannot address through its own resources or within a prison's walls, the BOP makes referrals to community-based providers. *Id.*

The RFP was issued on an unrestricted basis on March 6, 2019, pursuant to Federal Acquisition Regulation (FAR) parts 12 and 15 procedures.<sup>2</sup> See AR, Tab 6, RFP amend. 1 at 5, 25; Contracting Officer's Statement (COS) at 11. The solicitation contemplated the award of a single indefinite-delivery, requirements contract under which fixed-price task orders would be placed during a 1-year base period with four 1-year options. AR, Tab 6, RFP amend. 1 at 17; AR, Tab 5, RFP at 58-59.

Contract award would be made on a best-value tradeoff basis, considering three evaluation factors: technical criteria, past performance, and price. AR, Tab 6, RFP amend. 1 at 46. Together, the non-price factors, technical and past performance, were equal to price; however, the solicitation advised that if proposals were considered approximately equal under the non-price factors, "price could be paramount in the selection decision." *Id.* Price proposals would be evaluated based on the discount from, or premium added to, the Medicare rate for each price category. The agency also assigned a price score based on a comparison of each proposal's discount/premium proposed for each category to the most favorable discount/premium proposed for that category. COS at 5-6; AR, Tab 6, RFP amend. 1 at 47; AR, Tab 19, RFP amend. 2 at 3.

The technical factor was comprised of the following subfactors of equal importance, which would be assigned adjectival ratings.<sup>3</sup> AR, Tab 6, RFP amend. 1 at 47.

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<sup>1</sup> References to AR page numbers correlate to the .pdf page numbers.

<sup>2</sup> The agency amended the RFP twice. Amendment 1 added FAR clauses to the solicitation and revised attachment 4, Submission and Evaluation of Proposals. AR, Tab 6, RFP amend. 1 at 5. Amendment 2 revised estimated quantities and removed price categories in attachment 4. AR, Tab 19, RFP amend. 2 at 1-2.

<sup>3</sup> Adjectival ratings for the technical and past performance factors were: exceptional, very good, satisfactory, marginal, and unsatisfactory. AR, Tab 15, Revised Source Selection Plan at 5-7. Evaluators were also afforded the ability to assign an intermediate rating by appending either a plus (+) or minus (-) to the ratings given to technical proposals that do not fully comply with all the criteria for a rating category. *Id.* at 4-5.

1. Level of diversity of services proposed;
2. Accreditation status of the proposed contract facility(ies);
3. Enhancements to the basic contract requirements proposed by the offeror which will facilitate FCI Bennettsville's ability to conform to the BOP's stated mission; and
4. Driving distance/conditions to and from the community-based providers.

*Id.* Offerors were encouraged to propose enhancements to the basic contract requirements that would assist FCI Bennettsville in implementing BOP's mission, and the RFP specifically noted that offers that aided FCI Bennettsville in mitigating security concerns would be considered beneficial to the government.<sup>4</sup> AR, Tab 5, RFP at 56. The solicitation further advised, however, that enhancements were not additional line items and any associated costs had to be absorbed in the line items set forth in the solicitation. *Id.* The BOP reserved the right to reject any enhancement it determined was not in the government's best interest. *Id.*

Three offerors, including IMS and NaphCare, submitted proposals by the May 8 closing date. AR, Tab 33, Source Selection Decision (SSD) at 1. Following the initial evaluation, the agency established a competitive range that included all three proposals and entered into discussions with the offerors. AR, Tab 18, Competitive Range Determination. On October 8, the agency provided offerors with discussion notices advising them of weaknesses and areas of concerns. COS at 3; see e.g., AR, Tab 21, IMS Discussion Notice; Supp. AR, Tab 3, NaphCare Discussion Notice. The discussion notices also included amendment 2, which deleted requirements for all outpatient institution services. COS at 3; AR, Tab 19, RFP amend. 2.

After receiving and reviewing the offerors' proposal revisions, the BOP conducted another round of discussions with final proposal revisions (FPRs) due by December 4. COS at 3.; see e.g., AR, Tab 25, IMS Req. for FPRs; Supp. AR, Tab 4, NaphCare Req. for FPRs; Supp. AR, Tab 5, NaphCare Revised Req. for FPRs. The agency evaluated IMS and NaphCare as follows:<sup>5</sup>

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<sup>4</sup> The agency indicates that because there are security concerns inherent in transporting an inmate into the community for medical care, it is FCI Bennettsville's preference to treat inmates within the confines of a secure perimeter whenever possible. AR, Tab 5, RFP at 56.

<sup>5</sup> The agency evaluated the third offeror; however, as its proposal was higher-priced and lower-rated technically, the agency eliminated it from the competition and focused its tradeoff analysis on the proposals submitted by IMS and NaphCare. AR, Tab 33, SSD at 8.

	IMS	NaphCare
<b>Technical</b>	Satisfactory Plus	Very Good
<b>Past Performance</b>	Very Good	Very Good
<b>Price<sup>6</sup></b>	110.00	105.86

AR, Tab 33, SSD at 8.

The contracting officer reviewed the proposals and conducted a tradeoff analysis. *Id.* at 2-11; COS at 3-11. He determined that NaphCare's technical proposal had a clear advantage over IMS's technical proposal with respect to NaphCare's proposed diversity of services and enhancements. AR, Tab 33, SSD at 9-10. Consequently, although IMS had a price advantage of approximately four percent over NaphCare, NaphCare's better technical proposal merited paying a price premium of approximately \$41,000 per year. *Id.* at 10.

On May 6, 2020, the BOP notified IMS that the contract had been awarded to NaphCare for an estimated \$5,475,852. COS at 11; AR, Tab 37, Contract Award Document at 2. After receiving a written debriefing, IMS filed this protest. COS at 11.

## DISCUSSION

IMS raises several arguments challenging its evaluation and the award to NaphCare. The protester argues that the BOP engaged in unequal and misleading discussions, which led to a flawed evaluation of its technical proposal. IMS also challenges the agency's evaluation of the proposals and the tradeoff decision. As discussed below, we have considered IMS's protest grounds and find that none furnish a basis to sustain the protest.<sup>7</sup>

### Conduct of Discussions

IMS argues the discussions conducted by the BOP were not meaningful because the agency failed to apprise IMS that its proposal lacked adequate security enhancements and detail about its proposed [DELETED]. IMS contends that these assessments ultimately played a significant role in the BOP's assignment of a rating of satisfactory plus to IMS's proposal. Protest at 27-29; Comments & Supp. Protest at 24-25. In the protester's view, if the agency had properly identified these issues during discussions, it would have revised its proposal to resolve the BOP's concerns. Comments & Supp. Protest at 25. IMS also argues that the BOP's discussions were unequal because it

<sup>6</sup> According to the contracting officer, the maximum possible price score was 110. COS at 5.

<sup>7</sup> While our decision does not address every argument raised, we have considered all IMS's allegations, and based on our review of the record, we find no basis to sustain the protest.

advised NaphCare of both technical and price concerns, which it was not required to do, and only advised IMS of technical concerns. *Id.* at 25-26.

Agencies have broad discretion to determine the content and extent of discussions, and we limit our review of the agency's judgments in this area to a determination of whether they are reasonable. *InfoPro, Inc.*, B-408642.2, B-408642.3, Dec. 23, 2014, 2015 CPD ¶ 59 at 9. Discussions must be meaningful, equitable, and not misleading. *International Dev. Group Advisory Servs., LLC*, B-416551, B-416551.2, Oct. 15, 2018, 2018 CPD ¶ 358 at 6. At a minimum, the agency must discuss deficiencies, significant weaknesses, and adverse past performance information to which an offeror has not yet had an opportunity to respond. FAR 15.306(d)(3). Additionally, the agency may, at its discretion, inform an offeror that the proposed price appears high in comparison to other offerors' prices. FAR 15.306(e)(3); *Bannum, Inc.*, B-409831, July 30, 2014, 2014 CPD ¶ 232 at 4.

Meaningful discussions must be sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision in a manner to materially enhance the offeror's potential for receiving the award; however, that does not obligate an agency to spoon-feed an offeror or to discuss every area where the proposal could be improved. FAR 15.306(d)(3); *Management Scis. for Health*, B-416041, B-416041.2, May 25, 2018, 2018 CPD ¶ 197 at 9. Moreover, although discussions may not be conducted in a manner that favors one offeror over another, discussions are not required to be identical among offerors and need only be tailored to each offeror's proposal. FAR 15.306(d)(1), (e)(1); *HP Enter. Servs., LLC; Aon Nat'l Flood Servs.*, B-413967 *et al.*, Jan. 17, 2017, 2017 CPD ¶ 26 at 9.

Here, the record shows that the agency's discussions were meaningful. The BOP did not identify any deficiencies or significant weaknesses in IMS's proposal; however, the BOP identified IMS's proposed diversity of services as a weakness or area of concern in two rounds of discussions. In addition, the BOP notified IMS that its technical proposal would be improved with the addition of a specific hospital, and asked IMS to discuss how one of its proposed hospitals would be utilized as a secondary facility and what services would be provided that are not available at one of the other hospitals that IMS proposed. AR, Tab 21, IMS Discussion Notice at 1; AR, Tab 25, IMS Req. for FPRs at 1. Moreover, in its request for FPRs, the BOP informed IMS that although it had acknowledged an amendment removing outpatient institution services, IMS had not revised its technical proposal to reflect the change. AR, Tab 25, IMS Req. for FPRs at 1.

Although IMS asserts discussions were required with regard to its lack of security enhancements and its lack of detail regarding its proprietary [DELETED] (which was proposed as an enhancement), we disagree. Neither of these enhancements involved a solicitation requirement. The agency did not find that IMS had a deficiency, significant weakness, or weakness in these areas; instead, the agency concluded that the so-called enhancement did not merit a more favorable assessment. It is well-settled that agencies are not required to advise offerors of weaknesses that are not significant,

even if those weaknesses later become the determinative factor in the award. *Management Scis. for Health, supra*. In this case, IMS's lack of security enhancements or detail about [DELETED] in its proposal did not even rise to the level of a weakness; therefore, discussions were not required. FAR 15.306(d)(3).

Furthermore, the record demonstrates that the BOP did not conduct unequal discussions; rather, the BOP tailored its discussions to each offeror's proposal. As detailed above, the BOP identified a weakness and other areas of concern in IMS's technical proposal, and provided this information to IMS in the discussion notice and request for FPRs. IMS also proposed the lowest price and therefore, the agency did not discuss pricing with IMS. Tab 2, Supp. COS at 2.

The record also shows that BOP provided NaphCare with a discussion notice and request for FPRs, which identified a weakness and other areas of concern in NaphCare's technical proposal. See AR, Tab 16, Initial Technical Evaluation Report at 9; AR, Tab 24, Pre-Negotiation Memo. for FPRs at 3; Supp. COS at 2. Additionally, because NaphCare was not the lowest-priced offeror, the BOP notified it that its proposed pricing for each line item was high. AR, Tab 3, NaphCare Discussion Notice at 1; Supp. AR, Tab 4, NaphCare Req. for FPRs at 2; Supp. AR, Tab 5, NaphCare Revised Req. for FPRs at 2.

The agency contends that discussions were tailored specifically to each offeror's proposal. In addition, although the discussions with NaphCare included elements of its proposed pricing, similar discussions with IMS were not required because IMS proposed the lowest prices. Supp. Memorandum of Law at 5. Our review of the record gives us no basis to question the agency's actions. It is clear from the record that differences in the proposals, and not disparate treatment, led to the difference in discussions. We conclude that the BOP did not conduct unequal discussions.

#### Technical Evaluation and Tradeoff Analysis

IMS also argues that the BOP's technical evaluation of proposals was unreasonable and failed to follow the solicitation criteria. Protest at 17-24. IMS contends that its proposal should have been given a very good rating rather than satisfactory plus, and that NaphCare's proposal did not merit a rating of very good. *Id.* at 17-21. IMS also contends that the BOP used a different evaluation standard than the one specified in the solicitation and that the tradeoff decision was improper. *Id.* at 21-26, 29-30.

It is well-established that the evaluation of proposals is a matter within the discretion of the contracting agency. *Vectrus Sys. Corp., B-412581.3 et al.*, Dec. 21, 2016, 2017 CPD ¶ 10 at 3. An offeror's disagreement with an agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. *Id.* In reviewing an agency's evaluation, we will not substitute our judgment for that of the agency, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's evaluation criteria and with procurement statutes and

regulations. *MicroTechnologies, LLC*, B-413091, B-413091.2, Aug. 11, 2016, 2016 CPD ¶ 219 at 4-5.

Here, the record demonstrates that the agency's evaluation is reasonable. The source selection plan clearly defined the basis for the ratings of very good and satisfactory. AR, Tab 15, Revised Source Selection Plan (SSP) at 5. As relevant to this protest, the primary difference between the two ratings is that a rating of very good was reserved for a proposal that offers security-related enhancements, whereas a rating of satisfactory was reserved for a proposal that "offers enhancements but none of which are security-related." *Id.*

NaphCare offered same-day consultations and procedures for urology and gastroenterology services that the BOP deemed a security-related enhancement because this feature would reduce the number of trips from the FCI Bennettsville facility. AR, Tab 33, SSD at 7-8. NaphCare also offered other enhancements that the BOP valued, such as its patient management system, which it calls TechCare Online, and centralized administrative functions, which the BOP determined would improve the coordination of patient care. *Id.* at 7-8. Accordingly, we find the agency's assignment of a rating of very good to NaphCare's proposal to be reasonable.

IMS's proposal, on the other hand, did not include security-related enhancements and therefore, did not warrant a rating of very good. IMS's offered enhancements included [DELETED], additional services that referenced the Federal Detention Center (FDC) in Houston, [DELETED], and institutional on-site clinics.<sup>8</sup> *Id.* at 7. The BOP did not conclude that any of IMS's proposed enhancements, except for [DELETED], provided a benefit to the government. Specifically, the proposed services referencing FDC Houston were viewed as additional items, but IMS's reference to another facility raised questions regarding IMS's intent. *Id.* Also, the BOP did not regard the on-site clinics as a security-related enhancement because demand and volume for the proffered clinical services was low, and the agency removed any requirement for these services from the solicitation by an amendment. *Id.* at 5-6. The BOP also did not view IMS's proposal to use [DELETED] as providing a benefit to the government because [DELETED]. *Id.* at 7. On this record, we find that the BOP reasonably decided to assign IMS's proposal a rating of satisfactory plus.

The protester also challenges the agency's evaluation as failing to follow the ratings scheme set forth in the solicitation. Specifically, the protester alleges that the adjectival ratings used in the agency's evaluation are different from the ratings set forth in the solicitation. According to the protester, the RFP provided only for ratings of outstanding and mediocre; in support of its argument, the protester cites solicitation language providing that: "[a] technical proposal deserving of an outstanding rating shall receive a higher rating than that of a mediocre proposal, as compared to the technical evaluation criteria." AR, Tab 6, RFP amend. 1 at 45.

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<sup>8</sup> [DELETED].

As an initial point, we do not agree that the solicitation only provided for ratings of outstanding or mediocre. Rather, the RFP simply stated that better proposals would be rated higher than lower quality proposals. Furthermore, adjectival ratings are merely guides for intelligent decision-making in the procurement process, and the relevant inquiry is whether the agency's evaluation of the relative merits of each proposal was reasonable. *Right Direction Tech. Sols., LLC*, B-414366.2, June 13, 2017, 2017 CPD ¶ 202 at 5; *Centerra-Parsons Pac., LLC*, B-414686, B-414686.2, Aug. 16, 2017, 2020 CPD ¶ 249 at 8-9.

In response to the protest, the BOP provided a detailed record of its evaluation and source selection decision. This analysis shows that the agency evaluated the relative merits of the proposals and assessed ratings in a fair and impartial manner, consistent with both the RFP and the source selection plan ratings definitions. Based on this reasonable discussion and assessment of the relative advantages and disadvantages associated with the specific content of the proposals, we find that the protester's disagreements with the actual ratings are inconsequential, given that they do not affect the reasonableness of the judgments made in the source selection decision. See *Centerra-Parsons Pac., LLC*, *supra* at 8-9 (stating that where the record shows the agency reasonably considered the underlying basis for the evaluator's ratings, a protester's disagreement over the actual ratings is essentially inconsequential in that it does not affect the reasonableness of the agency's judgments).

Finally, IMS challenges the BOP's price/technical tradeoff and complains that the agency did not follow the evaluation criteria because the technical factor by itself was less important than price and the agency does not have adequate documentation to support its selection decision. Protest at 21-26, 29-30.

Source selection officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results, and their judgments are governed only by the tests of rationality and consistency with the stated evaluation criteria. *Client Network Servs., Inc.*, B-297994, Apr. 28, 2006, 2006 CPD ¶ 79 at 9. Where, as here, a solicitation provides for a tradeoff between price and non-price factors, the agency retains discretion to make award to a firm with a higher technical rating, despite the higher price, so long as the tradeoff decision is properly justified and otherwise consistent with the stated evaluation and source selection scheme. FAR 15.101-1(c), 15.308; *ADNET Sys., Inc.*, B-413033, B-413033.2, Aug. 3, 2016, 2016 CPD ¶ 211 at 17. In reviewing an agency's source selection decision, we examine the supporting record to determine if it was reasonable and consistent with the solicitation's evaluation criteria and applicable procurement statutes and regulations. *The SI Org., Inc.*, B-410496, B-410496.2, Jan. 7, 2015, 2015 CPD ¶ 29 at 14.

We find that the agency's best-value tradeoff was reasonable, consistent with the solicitation, and well-documented. The record demonstrates that the agency documented its consideration of the proposals, and the source selection decision includes a detailed comparison of the advantages of these proposals under each factor and subfactor.



In its tradeoff summary, the agency articulated a slight technical advantage for NaphCare's proposal under the diversity of services subfactor, noting that NaphCare offered a 116 bed acute care facility/level III trauma center when compared to IMS's proposed 72 bed acute care facility. AR, Tab 33, SSD at 9. The contracting officer also determined that NaphCare's proposal, which included both security-related and other enhancements, was more advantageous to the government than IMS's proposal, which only included [DELETED], as a non-security-related enhancement. *Id.* With regard to the other two subfactors, driving distance and accreditation, neither NaphCare nor IMS had an advantage. *Id.* Thus, the contracting officer determined that NaphCare had a "clear advantage" over IMS for the technical factor.<sup>9</sup> *Id.* at 9-10.

The contracting officer explained that although IMS had a price advantage over NaphCare, NaphCare's proposed technical solution was worth an annual price premium of \$41,410. *Id.* at 10. Based on this record, the agency's tradeoff analysis and selection of the technically superior, higher-priced proposal was reasonable.

The protest is denied.

Thomas H. Armstrong  
General Counsel

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<sup>9</sup> NaphCare and IMS both received a rating of very good for past performance; therefore, past performance was not a factor in the tradeoff analysis. See AR, Tab 33, SSD at 10.