



DOCUMENT FOR PUBLIC RELEASE

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

Decision

Matter of: American Correctional Healthcare, Inc.

File: B-424391

Date: July 6, 2026

H. Todd Whay, Esq., and Ian Cronogue, Esq., Baker, Cronogue, Tolle & Werfel, LLP, for the protester.

Loneryl Burns, Esq., William D. Robinson, Esq., Kristina Sullivan, Esq., Clint Gerdine, Esq., and David M. Tatarsky, Esq., Department of Justice, for the agency.

Michael Willems, Esq., and Evan D. Wesser, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging solicitation pricing benchmark is denied where the benchmark is reasonably related to the services to be procured, and the protester cannot articulate a reasonable possibility of competitive prejudice.

DECISION

American Correctional Healthcare, Inc., a small business of Fort Worth, Texas, challenges the terms of request for proposals (RFP) No. 15BFA025R00000055 issued by the Department of Justice, Federal Bureau of Prisons, for medical services at a federal correctional institution (FCI) located in Cumberland, Maryland. The protester argues that the solicitation's pricing terms are unreasonable.

We deny the protest.

BACKGROUND

The agency issued the solicitation on March 9, 2026, seeking to award a single contract for comprehensive medical services for the FCI at Cumberland, which principally includes specialized medical services that cannot be provided on site. Memorandum of Law (MOL) at 1, 9. The protester is the incumbent contractor providing medical services at FCI Cumberland. Protest at 2. Under the incumbent contract, the protester provides medical services to the FCI using hospitals located in Maryland, Pennsylvania, and West Virginia, but 90 percent of the services provided by the incumbent are provided at Maryland hospitals. Protest at 5-6; *but see* Agency Report (AR), Tab 17,

RFP, attach. 6, Technical Proposal Summary Sheets by Hospital Networks (requiring each offeror to propose the specific provider network(s) it would use in performance of the contract).

Prior to issuing the solicitation in this case, the agency conducted significant market research and issued a sources sought questionnaire (SSQ) on SAM.gov to prospective offerors.¹ MOL at 6-9. Relevant to this protest, the SSQ included estimated medical service types and quantities based on incumbent contract performance. *Id.* The SSQ also explained that, at the time it was issued, the agency anticipated that the solicitation would require price proposals to be calculated based on Medicare benchmarks for Core-Based Statistical Area² (CBSA) 21, Maryland. *Id.* The SSQ explained that the use of Medicare benchmarks for pricing neither represented an intention to participate in the Medicare program nor to restrict offerors' pricing approaches, but rather to provide a common benchmark for comparison in the agency's price evaluation. *Id.*

Following additional market research, the agency determined that the solicitation would instead use CBSA 51, West Virginia, for its Medicare benchmark. *Id.* The agency contemporaneously explained that it chose to shift the benchmark because Maryland uses an idiosyncratic Medicare reimbursement formula different from every other state, and that using a CBSA that relied on a conventional Medicare reimbursement formula would facilitate the agency's ability to analyze the pricing it received. AR, Tab 8, Market Research Memorandum at 3. Additionally, the agency explained that West Virginia hospitals have been historically used to provide services to FCI Cumberland, and Cumberland's location is directly on the West Virginia border with Maryland. MOL at 6-8.

Subsequently, the agency issued the solicitation, which explained that offerors were required to express their pricing as a discount from, or premium to, the Medicare rates for CBSA 51, but that the Medicare benchmark was not intended to restrict any offeror's actual pricing. AR, Tab 17, RFP at 48. Specifically, the solicitation provided that:

For each category of service to be provided, Offerors will be allowed to propose a variance from the benchmark Medicare rate in the form of a discount from or a premium to Medicare rates established by the Centers

¹ SAM.gov is the current governmentwide point of entry which serves as the single point where government business opportunities greater than \$25,000, including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public. Federal Acquisition Regulation 2.101; *Navarre Corp.*, B-423602, Aug. 14, 2025, at 1 n.1.

² A CBSA is a statistical geographic entity established by the Office of Management and Budget beginning in 2000 to provide a nationally consistent set of standards for federal geographic statistical information. See GAO-04-758, *Metropolitan Statistical Areas: New Standards and Their Impact on Selected Federal Programs* (June 2004) at 2.

for Medicare and Medicaid Services. The rates established in the resulting contract shall not be construed as participation in the Medicare program; contract rates will merely be equated to Medicare rates of reimbursement without reductions for deductibles, copayments, or coinsurance [. . .] This structuring of the pricing methodology is not intended to be restrictive of any offeror; offerors need only to propose that percentage discount from or premium to the Medicare benchmark rate which will reflect the desired level of payment for the category of services rendered.

Id.

Further, the solicitation provided that the CBSA 51 Medicare rates would provide a common benchmark for comparison of pricing. *Id.* at 46. This protest followed.

DISCUSSION

The protester challenges the agency's decision to use rural West Virginia Medicare rates for CBSA 51 as the pricing benchmark for this procurement.³ Protest at 7-10. In this regard, the protester argues that, as the incumbent, it knows firsthand that 90 percent of the services provided under this contract are provided at Maryland hospitals, which use a different, typically higher, rate-setting mechanism for Medicare than other states. *Id.* Further, the protester explains that even the portion of the incumbent services provided by West Virginia hospitals were provided at a hospital in Morgantown, West Virginia, which is in a different CBSA than CBSA 51, which covers rural West Virginia. *Id.* Accordingly, the protester contends that the agency's decision to use CBSA 51 as the cost benchmark is irrational, because the rural West Virginia Medicare rate is no more relevant to this procurement than the Fairbanks, Alaska Medicare rate.⁴ Comments at 2.

³ Initially the protester also challenged the agency's decision not to set aside this procurement for small businesses, but subsequently withdrew that protest allegation. See Comments at 1 n.1.

⁴ The protester also argues that the agency's decision to use a Medicare reimbursement rate as a benchmark is contrary to customary commercial practice, and the protester contends that the agency did not adequately consider customary commercial practices. Protest at 8-10. We acknowledge that, given Maryland's unique rate-setting arrangement, it is possible that the agency's pricing benchmark could be contrary to customary commercial practice for a contract that required medical services from only Maryland hospitals, but that is not this case. Offerors on this procurement have a choice to provide services using hospitals in three different states, two of which do not set hospital rates in the manner that Maryland sets hospital rates. More significantly, the protester does not contend that using Medicare rates as a benchmark for pricing is *per se* contrary to customary commercial practice, but rather that the specific CBSA chosen for this procurement is inappropriate. See Comments at 7

(continued...)

In response, the agency explains that Maryland's unusual Medicare rate-setting structure is precisely the reason it declined to use it as a benchmark because it would be inconsistent with the pricing analysis methodology typically used by the agency's contracting section. MOL at 15-18. The agency also explained that, given the geographic position of Cumberland, Maryland, it expects that the services will be provided by some combination of hospitals in Pennsylvania, West Virginia, and Maryland, and so the solicitation required all offerors to use a single CBSA as a benchmark to ensure comparable pricing was received. *Id.* The agency selected CBSA 51 on the basis that it used the conventional Medicare rate setting process, and the incumbent contract involved provision of services in at least one West Virginia hospital. *Id.*

More significantly, the agency explains that the solicitation provides that the benchmark rates do not constrain the offerors' proposed pricing, they simply provide a benchmark for comparison. MOL at 15-18. While the solicitation provides that offerors should express their pricing in terms of discounts or premiums to the relevant Medicare rates, the solicitation is also clear that the use of Medicare rates as a price benchmark should not be construed as participation in the Medicare program, and that the pricing methodology is not intended to restrict any offeror's pricing. RFP at 48. Rather the solicitation provides that offerors should propose the discount from or premium to the benchmark rates that reflect the desired level of payment for the category of services. RFP at 48. In short, the agency argues that even were the benchmark unreasonable, which it does not concede, the protester cannot establish competitive prejudice where the benchmark does not constrain the protester's pricing strategy. *Id.*

In response, the protester argues that it will be competitively prejudiced because, as discussed above, Maryland--where the majority of the protester's provider network services were provided on the incumbent contract--uses a different rate-setting methodology than West Virginia, and the Medicare rates for those two CBSAs may change in inconsistent ways. Comments at 8. That price drift could expose offerors to significant and unnecessary pricing risk. *Id.* Because the protester argues that

(...continued)

(conceding that the use of Medicare rates for CBSA 51 as a pricing benchmark for a procurement of medical services in rural West Virginia was "appropriate"). In short, this argument merely repackages the protester's primary argument that the agency's selection of CBSA 51 was unreasonable in a different form, and we reject it for the same reasons discussed below. Additionally, the agency is not imposing the CBSA 51 rates as the applicable contractual reimbursement rates, but, rather, is merely requiring offerors to express their proposed pricing relative to the challenged rates for the purposes of providing a reasonable common basis of comparison. Thus, the protester's allegation that the agency is imposing contractual terms inconsistent with customary commercial practice is legally and factually insufficient because the proposal instruction is not a contractual term or condition.

90 percent of the services are likely to be performed in Maryland, the protester maintains that its exposure to this pricing risk competitively prejudices it for no real agency benefit. *Id.*

Agency acquisition officials have broad discretion in the selection of evaluation criteria that will be used in an acquisition, and we will not object to the absence or presence of a particular criterion as long as the method chosen reasonably relates to the agency's needs in choosing a contractor and is not otherwise contrary to law or regulation. *J.E. Fed. Enters., LLC*, B-422916, Dec. 4, 2024, at 4. A protester's disagreement with the agency's judgment concerning the agency's needs and how to accommodate them, without more, does not show that the agency's judgment is unreasonable. *Id.*

Additionally, as a general rule, a solicitation must be drafted in a fashion that enables offerors to intelligently prepare their proposals and must be sufficiently free from ambiguity so that offerors may compete on a common basis. *Raymond Express Int'l*, B-409872.2, Nov. 6, 2014, at 9. However, there is no requirement that a competition be based on specifications drafted in such detail as to completely eliminate all risk or remove every uncertainty from the mind of every prospective offeror; to the contrary, an agency may provide for a competition that imposes maximum risks on the contractor and minimum burdens on the agency, provided the solicitation contains sufficient information for offerors to compete intelligently and on equal terms. *Phoenix Env't. Design, Inc.*, B-411746, Oct. 14, 2015, at 3.

On the facts present here, it is not clear that the agency's use of CBSA 51 solely for purposes of creating consistency between proposals is unreasonable. The solicitation provides that offerors are each responsible for selecting their own medical service providers, and the location of Cumberland directly on the border between Maryland and West Virginia permits offerors to propose facilities in multiple jurisdictions. Indeed, the incumbent contract relied on hospitals in Maryland, Pennsylvania, and West Virginia. Contracting Officer's Statement at 4-5. While the protester correctly notes that the incumbent contract primarily relied on Maryland hospitals--and on a West Virginia hospital located in a different CBSA--the solicitation does not require offerors to propose only those hospitals or only those service providers relied on in the incumbent contract. Notably, the protester has not argued that it would be impossible for an offeror to satisfy the requirements of the contract, in whole or in part, through hospitals or service providers located in CBSA 51. Rather, the protester argues only that it has not done so to any material extent on the incumbent effort. See Protest, exh. 8, Decl. of President of American Correctional Healthcare. While the protester might prefer that the agency select a different CBSA more in line with its own incumbent performance and preferred pricing strategy, we cannot conclude that the agency's selection of a West Virginia CBSA for the sole purpose of establishing a comparative benchmark is irrational on these facts.

Moreover, even if we agreed with the protester that the agency's selection of CBSA 51 was irrational--which we do not--the protester cannot articulate competitive prejudice on these facts. In this regard, competitive prejudice is an essential element of every viable

protest, and where none is shown or otherwise evidence, we will not sustain a protest, even where a protester may have shown that an agency's actions arguably were improper. *Interfor US, Inc.*, B-410622, Dec. 30, 2014, at 7. The agency has explained that it intends to use the CBSA 51 rates solely as a benchmark for comparison, and the solicitation is clear that, other than expressing their pricing as a premium or discount to the CBSA 51 rates, offerors are free to price their proposals in whatever manner they choose. RFP at 48. Further, we note that the protester does not argue (and the solicitation does not provide) that the CBSA 51 rates will be used to assess price reasonableness, which would make the specific benchmark rate chosen more significant. Against that background, the benchmark is solely an organizing principle and basis for comparison and it is unclear what possible competitive prejudice there could be given that the choice of the specific benchmark appears largely inconsequential to the evaluation of proposals except as a matter of administrative convenience for the agency.

We are likewise unpersuaded by the protester's argument that the West Virginia and Maryland rates may vary in inconsistent ways. Even viewing that argument in the light most favorable to the protester, we cannot conclude that this is inappropriate. Agencies are not required to eliminate all pricing risk, and indeed as noted above, the agency may impose maximum risk on offerors provided that they have a mutually intelligible basis to compete. Here, the agency provided significant data in the solicitation concerning the quantities and types of services to be procured, as well as previously disclosing additional information about incumbent performance in the SSQ. Moreover, the location of Cumberland and the various nearby hospitals are all public information. Accordingly, all offerors are on an equal footing concerning the nature of the requirement and the potential service providers available. Likewise, all offerors are on an equal footing regarding the use of CBSA 51 as a benchmark for pricing. That is, to the extent offerors intend to provide services using Maryland hospitals they will each equally need to price their proposals to account for the risk the protester describes. In short, the protester has not established that it is uniquely or unfairly competitively prejudiced by the agency's choice of benchmark, or that the agency has prevented offerors from intelligently competing for the requirement. *Cf. DNC Parks & Resorts at Yosemite, Inc.*, B-410998, Apr. 14, 2015, at 12-13 (finding the protester, who was the incumbent contractor, was not an interested party to allege that the solicitation was ambiguous with respect to the potential valuation of incumbent property that would need to be acquired by a successor contractor where the protester would not need to acquire its own property if it won the follow-on contract).

The protest is denied.

Edda Emmanuelli Perez
General Counsel