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Decision

Matter of: TrailBlazer Health Enterprises, LLC

File: B-310801.6; B-310801.7; B-310801.10

Date: October 6, 2008

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DIGEST

Protest is sustained where agency treated offerors disparately in the conduct of discussions and the evaluation record does not support the source selection authority's findings of significant discriminators among competing proposals.

DECISION

TrailBlazer Health Enterprises, LLC protests the award of a contract to Pinnacle Business Solutions, Inc., under request for proposals (RFP) No. RFP-CMS-2007-0002 issued by the Department of Health & Human Services, Centers for Medicare and Medicaid Services, for the administration of Medicare claims.

We sustain the protest.

The RFP provided for the award of a cost-plus-award-fee contract for the combined administration of Part A and Part B Medicare fee-for-service claims to a "Medicare Administrative Contractor" (MAC). The MAC is to provide claims processing, payment, and other administrative services for "Jurisdiction 7," which consists of Arkansas, Louisiana, and Mississippi. RFP §§ B.1, B.2. The contract included a 12-month "implementation" period, a 9-month "base period," four 1-year option periods, and a 6-month period for "outgoing contractor workload transition activities." *Id.* § F.2.

The RFP provided that award of the contract would be made on a best-value basis, considering the equally weighted factors of technical approach, implementation, management controls, past performance, and corporate experience; when combined, these factors was said to be more important than cost, which was not a weighted factor. Id. §§ M.2(a), M.3(a). Each non-price evaluation factor included equally weighted subfactors and, where noted in the solicitation, equally weighted sub-subfactors within the subfactors. Id. § M.3(a). Risk was to be considered in the evaluation of each of the evaluation factors and subfactors, but was not a separately stated evaluation factor. Id. § M.2(b); Contracting Officer's Statement ¶ 15. The RFP announced that adjectival ratings of outstanding, very good, good, marginal, and poor would be used in evaluating the technical proposals. Id. § M.2(d).

Because the evaluation of key personnel and staffing are at issue here, we discuss in more detail those evaluation requirements. Personnel was one of three equally weighted subfactors considered under the technical approach factor. The personnel subfactor consisted of two equally weighted sub-subfactors: key personnel and staffing. The RFP announced that key personnel would be evaluated based on their technical qualifications and "immediate availability" to work on the contract, id. § M.3, Tab 1(C), at 141, and required that certain identified key personnel be "fully dedicated" to the MAC contract or to the Medicare lines of business. Id. § C.5.4. The solicitation also required that each offeror include in its proposal the resumes for all of the proposed key personnel, as well as letters of commitment for those key personnel that were not currently employed by the offeror or its subcontractor. Id. § M.3, Tab 1(C), at 142. The solicitation required that the staffing plan provide "qualified personnel in sufficient numbers for the duration of the contract and a team that has the skills to meet the requirements outlined in the [statement of work]." Id. § M.3, Tab 1(C), at 143.

Five offerors submitted proposals in response to the solicitation, and three proposals, including TrailBlazer's and Pinnacle's, were found to be in the competitive range. The proposals were evaluated by a technical evaluation panel (TEP), which consulted subject matter experts as necessary; a past performance evaluation panel (PPEP); and a business evaluation panel (BEP). After the evaluation of initial proposals, the contracting officer conducted multiple rounds of discussions with each of the offerors whose proposals were included in the competitive range. At the conclusion of discussions, the offerors submitted final proposal revisions, which were evaluated by the TEP, PPEP, and BEP. The summary findings of the evaluation panels were presented and discussed with the source selection board (SSB) and source selection authority (SSA). As is relevant here, the final evaluation ratings for TrailBlazer and Pinnacle were as follows:

		TrailBlazer	Pinnacle
Overall Rating		Very Good	Very Good
Technical Approach		Good	Very Good
	Project Management	Very Good	Very Good
	Technical Approach to Ongoing Operations	Good	Very Good
	Claims Processing	Very Good	Very Good
	Provider Customer Service Program	Very Good	Very Good
	Appeals	Good	Good
	Audit & Reimbursement	Good	Very Good
	Medical Review	Very Good	Very Good
	Comprehensive Error Rate Testing (CERT)	Good	Very Good
	Medicare Secondary Payer	Good	Good
	Unique Requirements	Good	Good
	Fraud & Abuse	Good	Good
	Personnel	Good	Very Good
	Key Personnel	Marginal	Very Good
Staffing Plan	Good	Very Good	
Implementation		Very Good	Very Good
Management Controls		Very Good	Very Good
Past Performance		Good	Very Good
Corporate Experience		Outstanding	Outstanding
Price		\$161,204,120	\$177,695,784

AR, Tab 37, Contracting Officer’s Award Recommendation to SSB, at 2, 21.¹

The contracting officer and SSB recommended award to Pinnacle, and the SSA agreed. In making this decision, the SSA focused on three specific areas in which discriminators favored award to Pinnacle: staffing, CERT, and the use of Pinnacle’s “Paperless Operational Workflow Electronic Routing” (POWER) tool for workflow management. AR, Tab 39, SSA Decision Memorandum, at 2.

With regard to staffing, the SSA found that TrailBlazer’s proposal “demonstrated potential efficiencies,” but that the firm’s proposal did not include a statement of availability for two of its proposed key personnel. In contrast, the SSA noted that Pinnacle proposed “highly qualified” staff that were “fully trained and will be

¹ Because they are not necessary for this decision, the above chart does not include the offerors’ evaluation ratings under evaluation subfactors, other than for the technical approach factor.

productive immediately with little to no learning curve.” Also, Pinnacle had entered into “contractor support agreements” with incumbent contractors and had included in its proposal “letters of commitment” from incumbent staff. In addition, the SSA favorably noted that Pinnacle proposed two additional key personnel that exceeded the RFP requirements: an additional [REDACTED] and a [REDACTED]. Id.

With regard to CERT, the SSA found Pinnacle’s proposal to be superior, in part, because Pinnacle’s approach included the capability to accurately project error rates on a monthly basis, and included “personal contact” with providers to highlight the importance of correct claims submission and reduced error rates. The SSA noted that these features of Pinnacle’s proposal “exceeded the requirements in the area of CERT.” In contrast, the SSA noted only that TrailBlazer’s proposal “provided reasonably sound responses to the requirements” and stated that the TEP had noted “no strengths or weaknesses” in TrailBlazer’s proposal. Id.

With regard to automated workflow management, the SSA positively considered Pinnacle’s proposed POWER tool, which is an automated workflow management tool that the SSA concluded would “increase accuracy and efficiencies over traditional manual handling of certain operational activities” and would result in cost savings. Id. at 2-3. The SSA’s decision did not note whether TrailBlazer offered to use a similar tool, or how the offerors’ workflow management tools compared.

The SSA concluded that Pinnacle’s proposal was “technically superior” to TrailBlazer’s because the Pinnacle proposal “exceed[ed] the requirements” in all non-price evaluation factors and was more advantageous in the areas of staffing, CERT, and the use of the POWER system. The SSA concluded that the technical benefits of Pinnacle’s proposal outweighed the \$16.5 million price premium and that Pinnacle’s proposal represented the “best value” to the government. Id. at 3. Award was made to Pinnacle and this protest followed.

TrailBlazer protests the evaluation of proposals under the technical approach and past performance factor, and asserts unequal treatment in the evaluation and in the conduct of discussions.

In reviewing an agency’s evaluation, we will not reevaluate proposals, but will examine the record to ensure that it was reasonable and in accordance with the stated evaluation criteria and applicable procurement statutes and regulations. PMC Solutions, Inc., B-310732, Jan. 22, 2008, 2008 CPD ¶ 20 at 2. As part of this review, we will consider whether discussions are meaningful, equitable, not misleading, and fair. DeLeon Tech. Servs., Inc.; TekStar, Inc., B-288811 et al., Dec. 12, 2001, 2002 CPD ¶ 10 at 6.

As noted above, under the personnel subfactor of the technical approach factor, where TrailBlazer’s proposal was rated “good” and Pinnacle’s proposal was rated “very good,” the SSA recognized only a few significant discriminators between

proposals, including that TrailBlazer “failed to provide” statements of availability for two of its key personnel and that Pinnacle proposed two additional key personnel. However, as discussed below, both of these evaluation conclusions were not reasonably based or were the result of prejudicially unequal discussions.

With regard to statements of availability, the agency explains that TrailBlazer’s proposal was assessed a weakness because of a proposal ambiguity. Although the proposal generally affirmed that “all” proposed key personnel “are current full-time TrailBlazer employees and [are] available to immediately begin work following contract award,” AR, Tab 73, TrailBlazer’s Final Revised Technical Proposal, at 122, and included additional statements of availability for specific key personnel elsewhere in the proposal, *id.* at 122-24; app. I, the agency found that an ambiguity existed because additional statements of availability were omitted for two of TrailBlazer’s proposed key personnel. HHS’s Memorandum of Law at 15-17. The agency did not hold discussions with TrailBlazer to clarify this perceived proposal ambiguity, *id.* at 17, which led to the assessed weakness that was one of only a few discriminators noted by the SSA in its decision and the only weakness mentioned by the SSA in the discussion of TrailBlazer’s key personnel.² The agency contends that discussions were not necessary because the availability concern was only considered to be weakness and not a significant weakness or deficiency. *Id.* at 17-18.

However, in contrast to the discussions accorded TrailBlazer, the record shows that during discussions the agency asked Pinnacle about similar availability issues that were not significant weakness or deficiencies. In this regard, the agency specifically requested that Pinnacle provide omitted letters of commitment for key personnel, provide an “update” of all letters of intent, and “[c]larify” whether key personnel satisfied the required levels of “dedication” to the contract or to the Medicare lines of business. AR, Tab 28, Pinnacle Discussion Questions, at 2. These concerns raised during discussions with Pinnacle were only identified as weaknesses (not significant weaknesses or deficiencies) in the evaluation of Pinnacle’s proposal and, in some instances, the issue was not identified as a weakness at all, but was merely a comment accompanying a rating of “meets” the requirement. *See* AR, Tab 17B, TEP Consensus Report for Pinnacle, at 10-11. As a result of these discussions and Pinnacle’s responses, the weaknesses were eliminated in the final TEP evaluation and Pinnacle received a higher rating for the personnel subfactor. AR, Tab 34, Final TEP Report, at 23. In fact, the source selection identified “staffing and letters of commitment” as one of the strengths of Pinnacle’s final revised proposal. AR, Tab 39, SSA Decision Memorandum, at 2. In our view, this evidences unequal

² In response to the protest, the agency argued that neither the SSA nor SSB “substantially rel[ie]d” on the assessed weakness concerning the availability of TrailBlazer’s key personnel in selecting Pinnacle for award. HHS’s Memorandum of Law at 19-20. However, as noted above, this issue was one of a relatively small number of discriminators cited in the award decision.

treatment in the conduct of discussions. See FAR § 15.306(e)(1); The Boeing Co., B-311344 et al., June 18, 2008, 2008 CPD ¶ 114 at 49-50 (procuring agencies may not conduct discussions in a manner that favors one offeror over another).

The agency also contends that TrailBlazer was not prejudiced by the agency's failure to hold discussions because discussions on this issue would not have had any impact on the evaluation. HHS's Memorandum of Law at 18. The agency asserts that the primary reason that TrailBlazer's proposal was rated "marginal" under the key personnel sub-subfactor and only "good" under the personnel subfactor was because TrailBlazer's proposed project manager failed to meet the RFP's education and experience requirements. Id. However, the contemporaneous record belies the agency's post-protest argument. In this regard, although the final TEP evaluation report indicated that the TEP regarded the project manager's failure to satisfy the education and experience requirements to be a "significant weakness" and the availability of key personnel to be only a "weakness," AR, Tab 34A, Final TEP Report, attach. A, at 15, the SSA did not mention the experience of TrailBlazer's project manager anywhere in her award decision. Based on the record, this suggests that, in the SSA's view, this was not a significant discriminator in the award selection, in contrast to the SSA's identification of TrailBlazer's failure to provide the additional statements of availability for key personnel.

In addition, the evaluation record suggests that the SSA may not have been provided an accurate assessment of this weakness. That is, the evaluation documentation provided to the SSA does not discuss the weakness as a proposal ambiguity, as the agency now asserts, but instead informed the SSA that TrailBlazer "did not provide" statements of availability for two of the key personnel without any reference to the proposal's general statement confirming availability of "all" proposed key personnel. AR, Tab 38, SSB Award Recommendation, at 6; see Tab 37, Contracting Officer Award Recommendation, at 23 (two key personnel "were not specifically identified as immediately available"); Tab 17A, TEP Consensus Report for TrailBlazer, at 7 ("no statement of availability in file"). This too undermines the reasonableness of this discriminator between the proposals.

Also, as noted above, the SSA found Pinnacle's proposal superior under the personnel subfactor of the technical approach factor, in part, because Pinnacle proposed two additional key personnel over and above those required by the RFP. However, as TrailBlazer correctly notes, one of these key personnel—an additional [REDACTED]—had been eliminated by Pinnacle in its final proposal revision. Compare AR, Tab 74, Pinnacle's Initial Technical Proposal, at 138 with AR, Tab 76, Pinnacle's Final Revised Technical Proposal, at 162. The final TEP report did not recognize this proposal revision, see AR, Tab 34, Final TEP Report, at 18-26, and the error was carried through the evaluation. In this regard, both the SSB Award Recommendation and the SSA Decision Memorandum stated that the additional [REDACTED] was one of the advantages that Pinnacle's proposal offered over TrailBlazer's. AR, Tab 38, SSB Award Recommendation, at 10; Tab 39,

SSA Decision Memorandum, at 2. The extra key personnel position is one of only a few discriminators recognized by the SSA, which suggests that it played an important role in her selection decision.

For these reasons, we find that the source selection was not reasonably based and we sustain the protest on these bases. We recommend that the agency reopen discussions with offerors, request and evaluate revised proposals, perform a new cost-technical tradeoff if necessary, and document the agency's analysis and conclusions. In implementing our recommendation, we believe the agency should consider some other areas where the agency may not have adequately considered TrailBlazer's and Pinnacle's proposals, and which may have affected the selection decision.

Two such areas relate to the only other discriminators, besides staffing, that are mentioned by the SSA in the source selection decision—CERT reports and automated workflow management tools. With regard to CERT testing, the SSA credited Pinnacle's proposal for offering monthly reports, but did not discuss the merits of TrailBlazer's offer to provide [REDACTED], which Trailblazer asserts is even more advantageous to the agency. In addition, the SSA credited Pinnacle's proposal for offering the use of its POWER tool, but did not discuss the merits of TrailBlazer's proposed automated workflow management tool, which Trailblazer asserts is similar to Pinnacle's POWER system. Because the contemporaneous evaluation record does not evidence any discussion of the relative comparison of proposals on these issues, we think that the agency should again review and document its evaluation conclusions in these areas.

In addition, the record indicated that the agency was concerned about the level of experience of TrailBlazer's staff that could be provided for the Jurisdiction 7 contract, given the agency's belief that TrailBlazer was performing work on MAC contracts for Jurisdictions 1 and 4. However, before the SSB made its recommendation to the SSA, it learned that TrailBlazer was no longer working on the Jurisdiction 1 contract, but that "[t]here were no discussions held regarding this issue at the SSB meeting and thus no conclusions documented." HHS's Response to GAO's Request for Information at 5. The agency should consider how this affects the agency's evaluation of TrailBlazer's staff.

Finally, the record also shows that the agency did not consider past performance that was assertedly adverse to Pinnacle, and favorable to TrailBlazer, with regard to the offerors' performance of Jurisdiction 4 work, and the agency provided conflicting responses to the protest allegations that the information was "too close at hand" to

ignore. The agency should review these allegations in implementing our recommendation.³

As stated above, we recommend that the agency reopen discussions with offerors, request and evaluate revised proposals, perform a new cost-technical tradeoff if necessary, and document the agency's analysis and conclusions consistent with our decision. We further recommend that the protester be reimbursed the reasonable costs of filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1) (2008). TrailBlazer should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Gary L. Kepplinger
General Counsel

³ TrailBlazer raised a number of other allegations, including that Pinnacle failed to provide an adequate cost accounting standard disclosure statement, which we need not address in our decision, given our recommendation discussed above.