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**United States Government Accountability Office  
Washington, DC 20548**

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## Decision

**Matter of:** Humana Military Healthcare Services

**File:** B-401652.2; B-401652.4; B-401652.6

**Date:** October 28, 2009

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### **DIGEST**

Protest of award of contract for T-3 TRICARE managed health care support services for the South Region is sustained where evaluation did not adequately account for the network provider discounts associated with protester's existing TRICARE network.

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### **DECISION**

Humana Military Healthcare Services, of Louisville, Kentucky, protests the Department of Defense (DOD) TRICARE Management Activity's (TMA) award of a contract to United Military Veterans Services, Inc. (UMVS), of Minnetonka, Minnesota, under request for proposals (RFP) No. H94002-07-R-0007, for T-3 TRICARE managed health care support services for the South Region. Humana, the incumbent contractor, challenges the evaluation of proposals and resulting source selection decision.

We sustain the protest.

TRICARE is a managed health care program implemented by DOD largely for active-duty and retired members of the uniformed services, their dependents, and survivors. Managed Care Support (MCS) contractors assist the Military Health

System in operating an integrated health care delivery system combining the resources of the military's direct medical care system (largely government-operated military treatment facilities (MTF)) and the MCS contractor's network of civilian health care providers to provide health, medical and administrative support services to eligible beneficiaries. TMA is the DOD field activity responsible for procuring and managing these contracts.

Currently, the TRICARE program is divided into North, South, and West regions. The South Region, the subject of this protest, covers approximately 3 million TRICARE beneficiaries.<sup>1</sup> Under TRICARE, eligible beneficiaries have three health care options: TRICARE Standard (a standard fee-for-service plan), TRICARE Extra (a network of preferred providers for Standard beneficiaries), and TRICARE Prime (a health maintenance organization (HMO)-type plan, in which enrollees are required to use MTFs or network providers or pay higher out of network co-payments).

The RFP contemplated the award of three contracts, one for each region (North, South, and West), each with a base transition-in period, plus five 1-year option periods of actual health care delivery, and a 270-day transition-out option period. The solicitation set forth five overall objectives under the contracts: (1) optimization of the delivery of health care services using the direct military-provided health care system for all military health system beneficiaries; (2) beneficiary satisfaction at the highest level possible throughout the period of performance through delivery of world-class health care and customer friendly program services; (3) attainment of "best value health care" as defined in the TRICARE Operations Manual, which defined "best value health care" as "[t]he delivery of high quality clinical and other related services in the most economical manner for the [Military Health System] that optimizes the Direct Care (DC) system while delivering the highest level of customer service," TRICARE Operations Manual, 6010.56-M, Feb. 1, 2008, app. B, at 7; (4) provision of fully operational services and systems at the start of health care delivery with minimal disruption to beneficiaries and MTFs; and (5) full, real-time access to contractor maintained data to support DOD's financial planning, health systems planning, medical resource management, clinical management, clinical research, and contract administration activities. RFP § C.5.

Award was to be made "based on the proposal representing the best value (which will include the risk associated with the proposal) to the Government . . . to be consistent with furnishing high quality health care in a manner that protects the fiscal and other interests of the United States." RFP § M.2.1.1. In this regard, the

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<sup>1</sup> The South Region covers care for beneficiaries residing in the following areas: Alabama, Arkansas, Florida, Georgia, part of Kentucky, Louisiana, Mississippi, Oklahoma, South Carolina, Tennessee, and most of Texas. The South Region is the same as the current contract, except that Fort Campbell, Kentucky has been transferred from the North Region to the South Region.

RFP set forth three evaluation factors: (1) technical approach (with equally weighted subfactors for network development and maintenance, referral management, medical management, enrollment, beneficiary satisfaction/customer service, claims processing, and management functions); (2) past performance; and (3) price/cost. Technical approach was the most important factor, past performance the second most important, and price/cost the least important. The technical approach and past performance factors, combined, were significantly more important than the cost/price factor. RFP § M.4.

Regarding the evaluation under the technical approach factor, the RFP provided that “[p]roposals will be evaluated on the basis of how well an offeror’s proposed approach adequately describes their procedures, methods, and delivery of services that meet or exceed the Government’s minimum requirements. . . . The Government will consider offers that commit to higher performance standard(s) or requirements, if the offeror clearly describes the added benefit to the Government.” RFP § M.5.1. In this regard, the agency’s internal Source Selection Evaluation Guide (SSEG) defined a strength as “an aspect of an offeror’s proposal that exceeds specified requirements and is a clear benefit to the Government.” SSEG at 10. According to the SSEG, a strength was only to be assigned “when the offeror has proposed to exceed a minimum performance requirement and contractor performance at the proposed higher level is a clear benefit to the Government and/or the offeror proposes a superior method or process which results in a clear benefit to the Government,” with “a clear benefit to the government” defined to include, among other things, “cost savings.” *Id.* As part of the evaluation, the seven technical factors were to be assigned individual merit ratings (exceptional, acceptable, marginal, and unacceptable). SSEG at 11-12. In addition, the RFP provided for assigning a proposal risk rating under each technical subfactor based on an assessment of “the potential for disruption of schedule, increased cost, degradation of performance, the need for increased Government resources/oversight to monitor and manage risk, and the likelihood of unsuccessful contract performance.” RFP § M.6.

Regarding past performance, the RFP specified that the agency would “determine how well an offeror has performed in the past on similar relevant work and then assess a performance confidence rating relative to the offeror’s ability to successfully perform the requirements of this solicitation.” RFP § M.7.1. For the purpose of evaluating past performance, the RFP instructed offerors to provide a narrative describing relevant past performance, and to identify and furnish information and completed past performance questionnaires regarding their five largest relevant contracts concluded within the past 3 years. (These requirements also applied to first tier subcontractors.) The RFP further provided as follows:

If an offeror, with no relevant past performance, submits relevant past performance information from a predecessor company, or from a parent organization or consortium member, this information will be considered in rendering a performance confidence level rating. This

rating will be based on the amount of past performance, its relevance to providing the services required by this solicitation, and the amount of involvement the parent organization or consortium member will have in the daily operations of the offeror. As stated in Section L.7.10, an offeror shall submit past performance information on its key personnel where no other past performance information is available. The Government will evaluate the key personnel information and then determine to what extent, if any, it will affect the performance confidence rating. This rating will be based on considerations such as the employee's role in the company, the nature and quality of the services delivered, and the relevant amount of past performance the employee had related to providing the services required by this solicitation.

### RFP § M.7.3.

The SSEG indicated that in evaluating the past performance information submitted by offerors, TMA would consider how closely related an offeror's performance history was to the proposed functions and complexities under the solicitation; whether the work was recent; and the magnitude of the effort in terms of size. The SSEG further provided that, after assessing the degree to which the identified past performance was relevant, and assigning a relevance rating (relevant, somewhat relevant, or not relevant) to each contract, TMA would develop a qualitative assessment rating (exceptional, satisfactory, marginal or unsatisfactory) for the offeror's performance on each contract. The past performance evaluation was to culminate in an overall confidence rating for each offeror of high confidence (based on the offeror's performance record, no doubt exists that the offeror will successfully perform), confidence (little doubt), little confidence (doubt exists), no confidence (significant doubt), or not favorable/not unfavorable (no performance record). SSEG at 15-19.

With regard to price/cost, the RFP contemplated the award of a contract comprised of both cost-reimbursement and fixed-price contract line item numbers (CLIN), including: Transition In (fixed price), Underwritten Health Care Cost (cost plus fixed fee), Underwritten Health Care Fixed Fee, Disease Management Cost (cost plus fixed fee), Disease Management Fixed Fee, Electronic Claims Processing (per claim unit price), Paper Claims Processing (per claim unit price), Per Member Per Month (PMPM) (unit price),<sup>2</sup> TRICARE Service Centers,<sup>3</sup> Transition Out (cost plus fixed

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<sup>2</sup> The PMPM CLIN was a fixed-price line item intended to include any costs not otherwise identified under a separate CLIN. RFP § L.8.2.2.11.

<sup>3</sup> TRICARE Service Centers are facilities operated by the MSC contractor that allow beneficiaries to obtain walk-in customer service support in connection with their benefits under the TRICARE health program.

fee), and Transition Out Fixed Fee. For the Underwritten Health Care and Disease Management CLINs, TMA provided cost estimates offerors were required to use as “plug numbers,” which were not to be adjusted or evaluated. With the exception of the CLINs for Underwritten Health Care and Disease Management, the RFP provided that TMA would evaluate the CLINs for price and cost reasonableness and perform realism analyses, the results of which “may be used in the performance risk assessments.” RFP §§ L.8.2.2.6, L.8.2.2.8, M.8.

Humana, UMVS, and a third offeror submitted proposals by the closing time. After conducting discussions with all three offerors, TMA requested final proposal revisions (FPR). Humana’s and UMVS’s FPR technical proposals were evaluated as follows:

| <b>Technical Approach</b>         |                        |                      |                       |                        |                      |                       |
|-----------------------------------|------------------------|----------------------|-----------------------|------------------------|----------------------|-----------------------|
| <u>Subfactor</u>                  | <u>Humana</u>          |                      |                       | <u>UMVS</u>            |                      |                       |
|                                   | <u>Technical Merit</u> | <u>Proposal Risk</u> | <u>Strengths (15)</u> | <u>Technical Merit</u> | <u>Proposal Risk</u> | <u>Strengths (13)</u> |
| Network Development / Maintenance | Exceptional            | Low                  | 1                     | Exceptional            | Low                  | 2                     |
| Referral Mgmt.                    | Exceptional            | Low                  | 1                     | Exceptional            | Low                  | 1                     |
| Medical Mgmt.                     | Exceptional            | Low                  | 5                     | Exceptional            | Low                  | 6                     |
| Enrollment                        | Exceptional            | Low                  | 1                     | Exceptional            | Low                  | 1                     |
| Beneficiary Satisfaction          | Exceptional            | Low                  | 2                     | Exceptional            | Low                  | 1                     |
| Claims Processing                 | Exceptional            | Low                  | 3                     | Exceptional            | Moderate             | 1                     |
| Management Functions              | Exceptional            | Low                  | 2                     | Exceptional            | Low                  | 1                     |

Source Selection Decision (SSD) at 3.

In comparing strengths, and notwithstanding the fact that both Humana and UMVS received the same adjectival ratings for technical merit under each subfactor, TMA also considered which offeror, if either, had the advantage under each subfactor. In this regard, the Source Selection Evaluation Board (SSEB) gave Humana’s proposal an advantage over UMVS’s under four of the seven technical subfactors, including the Referral Management subfactor, based on its assessment of assigned strengths. SSEB Report at 36-39. The source selection authority (SSA), however, found the proposals equally advantageous under the Referral Management subfactor. In this regard, Humana’s proposal received a strength under the Referral Management subfactor on the basis that it proposed a plan [REDACTED]. Noting that [REDACTED], the SSA concluded that Humana’s strength was of no more benefit than UMVS’s strength (for [REDACTED]) under that subfactor. SSD at 4.

The SSA further concluded as follows:

While UMVS has fewer overall strengths than [Humana], the benefit of those strengths is essentially equal to the benefit of [Humana's] strengths. With respect to technical merit, UMVS and [Humana] have the advantage in three technical subfactors each, and are equal on one subfactor. . . . Proposal risk for [Humana] is "low" for all subfactors. UMVS has six "low" proposal risk ratings and one "moderate" rating, for subfactor 6, Claims Processing. UMVS has an established and proven claims processing system but has never processed TRICARE claims. I agree with the SSEB Chair that UMVS has a solid mitigation plan which diminishes this risk and it can be managed with appropriate contractor emphasis and Government monitoring. I have also taken into account that the risk attaches primarily to the transition schedule and not to claims processing throughout the life of the contract. I conclude this risk does not have an appreciable impact on UMVS' overall technical approach. . . .

All three offerors have the capability to perform the contract and meet the DOD's performance expectations. Overall, [Humana's] and UMVS's technical approaches are essentially equal . . . .

SSD at 4.

Regarding past performance, both Humana and UMVS received overall high confidence ratings. In this regard, while Humana was the current South Region contractor (the TNEX contract), the SSA noted that its performance on that contract, which was "very similar in scope and magnitude" to the contemplated T-3 contract here, was rated as only "satisfactory." SSD at 5. The SSA further noted that, in contrast, UMVS, a newly created company without past performance of its own, had cited to the performance of a related company, which included "exceptional" performance on a "relevant AARP [American Association of Retired Persons] contract [that] is more similar to T-3 in magnitude than in scope," and "satisfactory" performance on a "relevant CMS Medicare Advantage contract [that] is more similar to T-3 in scope than in magnitude." Id. The SSA concluded that

measuring UMVS' combined performance on their two most relevant contracts against [Humana's] TNEX performance would provide the most meaningful comparison. [Humana] was assessed a "satisfactory" rating for TNEX, and UMVS was assessed an "exceptional" rating for AARP and a "satisfactory" rating for CMS. Thus, [Humana] has relevant "satisfactory" performance, while UMVS has relevant "exceptional" performance and somewhat relevant "satisfactory" performance. Accordingly, as primes, [Humana's] TNEX contract has the advantage as to relevance, whereas UMVS['s] combined AARP and CMS performance ratings provide a performance rating advantage.

Each of the subcontractors for [Humana] and UMVS has relevant “exceptional” performance. Considering the [Performance Assessment Group’s] High Confidence assessments for [Humana] and UMVS, I find there is no doubt that either [Humana] or UMVS, along with their subcontractors, can successfully perform the required effort and meet the Government’s expectations as outlined in the RFP. Since [Humana] as a prime has the relevance advantage and UMVS the performance advantage, I find that their past performance is essentially equal.

Id.

The price/cost proposals were evaluated as follows:

|                                    | <u>Humana</u>    | <u>UMVS</u>      |
|------------------------------------|------------------|------------------|
| Transition In                      | \$(REDACTED)     | \$(REDACTED)     |
| Electronic/Paper Claims Processing | \$(REDACTED)     | \$(REDACTED)     |
| PMPM                               | \$(REDACTED)     | \$(REDACTED)     |
| TRICARE Service Centers            | \$(REDACTED)     | \$(REDACTED)     |
| Disease Management Cost            | \$78,945,417     | \$78,945,417     |
| Disease Management Fee             | \$(REDACTED)     | \$(REDACTED)     |
| Transition Out Cost/Fee            | \$(REDACTED)     | \$(REDACTED)     |
| Underwritten Healthcare Costs      | \$20,330,245,396 | \$20,330,245,396 |
| Underwritten Healthcare Fee        | \$(REDACTED)     | \$(REDACTED)     |
| Total Evaluated Price              | \$(REDACTED)     | \$21,747,886,065 |
| Evaluated Price/Cost Advantage     |                  | \$(REDACTED)     |

Price/Cost Team Report at 5.

Having found Humana’s and UMVS’s proposals to be “essentially equal” as to technical approach and past performance, the SSA determined that UMVS’s price/cost advantage of \$(REDACTED) over Humana became “paramount in considering the best value to the Government.” SSD at 6. According to the SSA,

[d]espite [Humana] having two additional strengths and UMVS receiving one moderate risk rating, I can find nothing in the [Humana] proposal that would be worth the \$(REDACTED) price difference between the proposals. Therefore, I find the UMVS proposal to be the best value to the Government in the TRICARE Region-South.

SSD at 7. Upon learning of the resulting award to UMVS, and after being debriefed, Humana filed this protest challenging the evaluation of proposals and resulting source selection.

In reviewing protests against allegedly improper evaluations, it is not our role to reevaluate proposals. Rather, we will examine the record only to determine whether the agency's judgment was reasonable and in accord with the evaluation factors set forth in the RFP and applicable procurement statutes and regulations. Hanford Env'tl. Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 4. Based upon our review of the record, we find that the technical evaluation and resulting source selection were unreasonable, and sustain the protest on this basis.

#### NETWORK PROVIDER DISCOUNTS

Humana, the South Region incumbent contractor, asserts that TMA's technical evaluation unreasonably failed to account for the advantages offered by its established TRICARE network of providers, particularly given its record of obtaining significant network provider discounts from members of its network. In this regard, Humana's FPR included a detailed description of its network, specifying [REDACTED]. In this latter regard, Humana's FPR indicated that it had obtained an average overall network provider discount of [REDACTED]% for its TRICARE network in the South Region [REDACTED], and informed TMA that, since it had negotiated [REDACTED]. Humana's FPR estimated the savings likely from the average [REDACTED]% percent network provider discounts it had obtained from its existing network [REDACTED] as totaling approximately \$[REDACTED] over the potential life of the contract. Humana Technical FPR at 26, 44-60, 74; Humana Price FPR at 27.

In addition, Humana proposed in its FPR generally to [REDACTED]. Humana Technical FPR at 57. (Humana specifically proposed [REDACTED].) Humana included in its FPR [REDACTED]. Id. at 57-59.

The agency's Technical Evaluation Team's (TET) Humana Subfactor Report for Network Development and Maintenance stated that Humana's proposal [REDACTED] represented a strength on the basis that it exceeded the requirement to [REDACTED], and

will positively impact beneficiary satisfaction and access to care. It will be particularly relevant for the Reserve and Guard populations. [REDACTED] Negotiated network discounts also create a cost savings for the Government.

TET Humana Subfactor Report for Network Development and Maintenance at 6, 11. Indeed, the TET indicated that "the potential net result . . . will be a significant cost savings for the Government." Id. at 11.

However, the TET did not refer to any costs savings that would result from the overall average network provider discount of [REDACTED]% available from Humana's existing network providers [REDACTED]. Nor did the TET Humana Consolidated Evaluation Report refer to any particular estimated level of savings in healthcare costs to the government that would result from Humana's proposal to [REDACTED]. Indeed, the Consolidated Evaluation Report described the TET's approach to awarding strengths as follows:

When a requirement was exceeded (not limited to those elements identified by an offeror), the TET determined whether there was a clear benefit to the Government. The determination of a clear benefit included, but was not limited to, whether there was cost savings . . . . For costs savings benefits, the team did not attempt to determine the monetary amount of the savings (including actual amounts claimed by offerors) due to, among other things, lack of available data to do so and/or the expertise required to accomplish this type of cost estimation.

TET Humana Consolidated Evaluation Report at 3. Likewise, the SSEB's report did not refer to the possibility of cost savings to the government resulting from the availability of Humana's discount for network providers [REDACTED]. Although the SSEB did refer to "significant cost savings for the Government" as a result of the negotiated network discounts available for network providers [REDACTED], the SSEB made no reference to any particular estimated level of healthcare cost savings resulting from those discounts. SSEB Report at 15. As for the SSD, the SSA made no reference to the likelihood of healthcare cost savings as a result of the availability of Humana's negotiated network provider discounts [REDACTED]; indeed, according to TMA's legal memorandum submitted in response to the protest, "TMA did not attempt to calculate or evaluate the *amount* of total healthcare cost savings asserted by an offeror." Legal Memorandum at 48 (emphasis in original).

Thus, the agency neither recognized nor took into account in the evaluation the potential healthcare cost savings from Humana's proposal to provide discounts [REDACTED], and while it awarded a strength based in part on the fact that Humana's proposal to [REDACTED] would result in healthcare savings from available network provider discounts, it did not meaningfully take into account in the technical evaluation the likely magnitude of those savings. We conclude that TMA's evaluation did not adequately account for the network provider discounts associated with Humana's existing TRICARE network.

As noted, the RFP generally provided that "[t]he Government will consider offers that commit to higher performance standard(s) or requirements, if the offeror clearly describes the added benefit to the Government." RFP § M.5.1. Although the SSEG provided that "cost savings" could provide a benefit to the government warranting

assignment of a strength, SSEG at 10, TMA asserts that these provisions are somehow limited by the solicitation's instructions to offerors, which provided as follows:

The Government has provided the estimated Underwritten Health Care Cost for Option Periods 1-5 for each region in Attachment L-10. Offerors shall propose in Section B the applicable region's Government estimate. The offeror will not propose their own estimated cost for any Option Period.

RFP § L.8.2.2.6. Likewise, the RFP instructed offerors to use TMA's estimate for Disease Management Cost in the schedule B prices/costs. RFP § L.8.2.2.8. However, while these provisions instructed offerors that they were required to use the Underwritten Health Care Cost and Disease Management Cost estimates in their schedule B pricing, nothing in these provisions, or elsewhere in the RFP, stated that an offeror could not receive credit in the technical evaluation for aspects of its technical approach reasonably likely to result in cost savings to the government, whether or not in the area of healthcare costs.

TMA asserts that, in its June 13, 2008, response to offeror Question No. 159, it advised offerors that cost benefits would not be considered. That question asked whether the "price impact or cost savings of [proposed] enhancements [will] be measured or evaluated." Question and Answer No. 159, June 13, 2008. The agency's answer was as follows:

The Government will consider offeror's proposed elements that exceed requirements as a part of the best value tradeoff between technical and price/cost. Price impacts will be not be calculated, measured or separately evaluated from the total evaluated price by the Government.

Id. We do not agree with the agency's reading of this language. Rather, we think that, reasonably read, the agency's answer to Question 159 was limited to disclaiming any impact from proposed enhancements on the evaluated price calculation. We find nothing in the language that can be read as stating that cost savings from proposed technical enhancements would not be considered in the technical evaluation. In fact, by its reference to consideration in the best value tradeoff, the agency's answer reasonably could be read as providing that the agency would consider the full benefit of proposed enhancements, including cost benefits, in the tradeoff.

Further, to the extent that there originally was any uncertainty as to this aspect of the evaluation approach, subsequent amendment of the solicitation and the evaluation itself indicated that the cost benefits from proposed features such as Humana's network provider discounts would be considered. In this regard, the instructions accompanying the agency's December 22, 2008 request for FPRs instructed offerors as follows:

Offerors who offer elements that are claimed to exceed minimum requirements should describe and demonstrate its benefit, monetary or otherwise, to the Government. In that regard, anticipated cost savings, including notional dollar amounts, may be presented in the technical proposal to assist the evaluators in determining the benefit to the Government of an offered element which exceeds requirements. However, actual cost/price information, including management reductions, must not be included in the technical proposal. Assertions regarding cost savings will be considered only in the technical evaluation, and will not impact the total evaluated price. These assertions should be fully demonstrated.

Request for FPRs, Dec. 22, 2008. These instructions clearly stated that cost savings derived from proposed technical elements would be considered in the evaluation. Since they were disseminated in writing to all offerors and were signed by the contracting officer, they constituted an amendment to the RFP. SelectTech Bering Straits Solutions JV; Croop-LaFrance, Inc., B-400964 et al., Apr. 6, 2009, 2009 CPD ¶ 100 at 5; Proteccion Total/Magnum Sec., S.A., B-278129.4, May 12, 1998, 98-1 CPD ¶ 137 at 3.

Furthermore, the actions of the evaluators, at least initially, appeared to acknowledge that the extent of potential savings from offered technical features was significant to the evaluation. Again, while the TET ultimately disclaimed any consideration of the magnitude of the savings associated with Humana's proposed [REDACTED], both the TET (in its subfactor report) and the SSEB reported on the magnitude of the potential savings, with the TET reporting that the potential "net result . . . will be a significant cost savings for the Government," TET Humana Subfactor Report for Network Development and Maintenance at 11, and the SSEB referring to the "significant cost savings for the Government" as a result of Humana's available negotiated network provider discounts. SSEB Report at 15.

TMA's evaluation did not adequately account for the network provider discounts associated with Humana's existing TRICARE network. First, the technical evaluation and resulting best value analysis failed to acknowledge the significant potential cost benefit from Humana's record of obtaining an average overall network provider discount of [REDACTED]% for its TRICARE network [REDACTED]. In this regard, while the solicitation required offerors to furnish a compliant network, and indeed included contract incentives encouraging network provider discounts through provisions for sharing resulting savings when the discounts exceeded 2%, RFP § H.2.3.1, as TMA recognizes, Agency Legal Memorandum at 39, 41, Hearing Transcript (Tr.) at 1298, nothing in the solicitation required offerors to propose a network that offered any particular level of provider discount. Thus, Humana's proposal of an existing network offering significant (average [REDACTED]%) network provider discounts exceeded the solicitation requirements.

TMA suggests that it was appropriate to disregard the magnitude of the discounts because Humana did not guarantee them. However, this position not only is inconsistent with TMA's awarding Humana a strength for the cost benefits (nonguaranteed) of proposing [REDACTED], it is inconsistent with TMA's approach of awarding UMVS strengths where the benefit included likely but not guaranteed savings to the government. For example, in this regard, UMVS's proposal was assigned a strength for its proposed [REDACTED], which were found to "have the potential" to [REDACTED], thereby "resulting in a significant cost savings for the Government." TET UMVS Subfactor Report for Network Development and Maintenance at 15. In the hearing our Office held in this matter, the chair of the SSEB testified both that she had no reason to question Humana's claim that it was obtaining an average [REDACTED]% network provider discount, and that "I think it's reasonable that Humana would in most cases be able to continue to receive the discounts they are receiving now." Tr. at 454-55, 1292. Likewise, the SSA testified that the agency's independent government estimate of healthcare costs for the South Region was based on TMA's cost experience, including Humana's average [REDACTED]% network provider discount. Tr. at 1275-76.<sup>4</sup>

Second, TMA unreasonably failed to factor into the technical evaluation and subsequent best value analysis the extent of the likely significant healthcare cost

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<sup>4</sup> UMVS stated in its proposal that over [REDACTED]% of current contracted TRICARE hospitals and over [REDACTED]% of current contracted TRICARE physicians in the South Region are part of its corporate parent UnitedHealth Group's provider network, and that UMVS "will make best efforts to contract with existing TRICARE contracted providers at substantially similar percentages of [discounts from] the TRICARE maximum allowable charge . . . as they are contracted at today." UMVS FPR Technical Proposal at 17, 23. TMA and UMVS cite these general statements from UMVS's proposal to suggest that UMVS was likely to obtain provider network discounts substantially similar to Humana's in South Region. However, while, as noted above, Humana's proposal included extensive, detailed information concerning the network provider discounts it had been obtaining from its network providers in the South Region, UMVS's proposal, as confirmed by the SSEB chair, did not specify the magnitude of discounts UnitedHealth had been obtaining from its providers in the South Region (or anywhere else). Tr. at 535-36, 1294-98. UMVS's failure to detail specific levels of network provider discounts UnitedHealth had been obtaining appears especially significant in view of testimony from the contracting officer that TRICARE's maximum reimbursement rates are lower than Medicare's rates and, indeed, "are already low by industry standards," thus making it "very difficult to attract providers in the first place" and "even harder to negotiate discounts" off the TRICARE rates. Tr. at 257-58. In any case, we would expect that this type of information, as well as consideration of the nonguaranteed nature of the discounts, would be considered in an evaluation.

savings to the government as a result of Humana's proposal to exceed the requirements by [REDACTED]. As discussed above, Humana included a detailed calculation in its FPR indicating that the savings resulting from reduced healthcare costs attributable to [REDACTED] could total approximately \$[REDACTED] over the life of the contract. Although the SSEB referred to "significant cost savings for the Government" as a result of the negotiated network discounts available with [REDACTED], the SSEB made no reference to any particular estimated level of savings, SSEB Report at 15, and the SSD made no reference to the likelihood of cost savings as a result of Humana's negotiated network provider discounts [REDACTED]. (Again, according to TMA's Legal Memorandum, "TMA did not attempt to calculate or evaluate the *amount* of total healthcare cost savings asserted by an offeror." Agency Legal Memorandum at 48 (emphasis in original).)

Competitive prejudice is an essential element of any viable protest, and we will sustain a protest only if there is a reasonable possibility that the protester was prejudiced by the agency's action, McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; that is, if it is apparent from the record that, but for the agency's actions, the protester would have had a reasonable possibility of receiving award. See Cogent Sys., Inc., B-295990.4, B-295990.5, Oct. 6, 2005, 2005 CPD ¶ 179, at 10. Here, the technical evaluation and resulting best value analysis failed to acknowledge the significant potential cost benefit--estimated by Humana as totaling approximately \$[REDACTED] in healthcare cost savings over the potential life of the contract--from Humana's record of obtaining an average overall network provider discount of [REDACTED]% for its TRICARE network [REDACTED]. In addition, TMA failed to meaningfully factor into the technical evaluation and subsequent best value analysis the extent of the likely significant healthcare cost savings to the government--estimated by Humana as totaling approximately \$[REDACTED]--as a result of Humana's proposal to [REDACTED]. Thus, the potential healthcare cost savings likely to be available to the government from application of Humana's network provider discounts from network providers [REDACTED] were likely to be significant. Since Humana's proposal already was considered in the SSD to be essentially equal to UMVS's under the most important technical approach and past performance evaluation factors, we conclude that there is a reasonable possibility that Humana would have been in line for award had TMA's best value analysis reasonably accounted for the likely cost savings associated with Humana's provider discounts. We sustain Humana's protest on this ground.

We have considered all of Humana's other arguments and find that none furnishes a basis for sustaining the protest. By way of example, we discuss the past performance issue below.

## PAST PERFORMANCE

Humana challenges TMA's evaluation of past performance, asserting that it was unreasonable to assign UMVS the same high confidence rating as assigned to Humana, the incumbent contractor.

Where a solicitation requires the evaluation of offerors' past performance, we will examine an agency's evaluation to ensure that it was reasonable and consistent with the solicitation's evaluation criteria. The MIL Corp., B-297508, B-297508.2, Jan. 26, 2006, 2006 CPD ¶ 34 at 10; Hanley Indus., Inc., B-295318, Feb. 2, 2005, 2005 CPD ¶ 20 at 4.

In its proposal, UMVS, a newly created company without past performance of its own, cited to the performance of Public and Seniors Market Group (PSMG), one of three business segments that comprise UnitedHealth Group, UMVS's parent. The two PSMG contracts that the SSA deemed most meaningful for purposes of comparing UMVS's performance with Humana's (the incumbent contractor), were: (1) PSMG's contract with AARP for a Supplemental Health Insurance Program to supplement Medicare coverage and several indemnity insurance plans, with approximately 4 million beneficiaries, under which UMVS provided such services as enrollment, billing, and claims processing; and (2) PSMG's contract with the Centers for Medicare and Medicare Services (CMS) for the Medicare Advantage and Medicare Advantage Special Needs Plans, with approximately 1.3 million beneficiaries, under which PSMG provided such services as a provider network, enrollment, billing, and claims processing. UMVS's performance under the evaluated "relevant" AARP contract was rated exceptional, while its performance under the evaluated "somewhat relevant" CMS contract was rated satisfactory. Humana asserts that it was improper to attribute PSMG's performance to UMVS.

An agency properly may attribute the experience or past performance of a parent or affiliated company to an offeror where the firm's proposal demonstrates that the resources of the parent or affiliate will affect the performance of the offeror. Perini/Jones, Joint Venture, B-285906, Nov. 1, 2000, 2002 CPD ¶ 68 at 4. The relevant consideration is whether the resources of the parent or affiliated company--its workforce, management, facilities or other resources--will be provided or relied upon for contract performance such that the parent or affiliate will have meaningful involvement in contract performance. Ecompex, Inc., B-292865.4 et al., June 18, 2004, 2004 CPD ¶ 149 at 5.

Here, UMVS's proposal indicated that resources of PSMG, as well as resources of UnitedHealth that had been used by PSMG in the performance of its contracts, will be provided to UMVS in performing the contemplated TRICARE contract. For example, UMVS's proposal indicated that management personnel from PSMG will be furnished to UMVS, including: (1) UMVS's Chief Executive Officer, who had served as vice president for the Ovations Business Unit within PSMG, which supports

government healthcare programs and services; (2) UMVS's vice president for Beneficiary Services, who had served as the Vice President of Service Operations for Medicare Part D within PSMG; (3) UMVS's vice president for Business Migrations (responsible for setting up UMVS's claims processing approach using an UnitedHealth system), who had supported Medicare and Medicaid operations, which come under PSMG's responsibility within the UnitedHealth organization; (4) UMVS's vice president for Medical Management, who had worked with Medicare and Medicaid operations, which come under PSMG's responsibility within the UnitedHealth organization; and (5) UMVS's chief information officer, who had focused on management of technologies for government groups, which come under PSMG's responsibility within the UnitedHealth organization. UMVS Technical FPR at 279-86; UMVS Past Performance Proposal at 1-8; Agency Post-Hearing Comments at 17-18. In addition, TMA read UMVS's proposal to indicate that PSMG, which had significant experience operating telephone call centers, would be contributing to the creation of call centers for UMVS's use on the TRICARE contract. UMVS Past Performance Proposal at 6; UMVS Technical FPR at 282; Tr. at 812.

The agency also found that proposed contributions of UnitedHealth to UMVS's performance previously had been successfully used by PSMG in performing its contracts. For example, TMA found that the UnitedHealth COSMOS claims processing system UMVS proposed to use (as modified to account for TRICARE's unique claims processing requirements), was the same system used by PSMG for its government contracts. UMVS Technical FPR at 237-39; UMVS Past Performance Proposal at 6; Tr. at 813; Agency Post-Hearing Comments at 19. TMA similarly concluded from UMVS's proposal that the UnitedHealth network development and management capabilities on which UMVS proposed to rely had been used by PSMG. UMVS Technical FPR at 9; UMVS Past Performance Proposal at 1-2; Tr. at 806-07; Agency Post-Hearing Comments at 19. We conclude that, since UMVS's proposal indicated that it would benefit from PSMG resources, as well as UnitedHealth resources that previously had been made available to PSMG, the agency reasonably attributed PSMG's past performance to UMVS.

Humana asserts that the two UMVS contracts were not comparable in scope to Humana's incumbent TRICARE contract, and thus did not support the same rating Humana received. However, TMA recognized in its evaluation that while the UMVS contracts had significant numbers of beneficiaries (4 million under the AARP contract and 1.3 million under the CMS contract), these contracts were less relevant than Humana's incumbent TRICARE contract. The agency nevertheless concluded that, in view of UMVS's overall performance advantage on its contracts, including exceptional performance on the AARP contract and satisfactory performance on the CMS contract—as compared to Humana's satisfactory performance on the TRICARE contract—UMVS's and Humana's past performance warranted essentially equal ratings. SSD at 5. Humana has not shown that this conclusion was unreasonable.

## CONCLUSION

We sustain Humana's protest on the basis that TMA's evaluation unreasonably failed to fully recognize and reasonably account for the likely cost savings associated with Humana's record of obtaining network provider discounts from its established network in the South Region. We recommend that TMA reevaluate proposals consistent with the discussion above and make a new source selection decision. In the event TMA determines that UMVS's proposal does not represent the best value, we further recommend that UMVS's contract be terminated for convenience and that a new award be made in accordance with the evaluation results. In any case, we recommend that the protester be reimbursed the costs of filing and pursuing the protest, including reasonable attorneys' fees, insofar as they concern its challenge under the technical factor. 4 C.F.R. § 21.8(d)(1) (2009). Humana should submit its certified claim for costs, detailing the time expended and cost 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.

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Acting General Counsel