



Decision

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Matter of: AdvanceMed Corporation

File: B-414373.3

Date: January 10, 2018

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DIGEST

Protest alleging that agency unreasonably ignored likely costs stemming from the awardee's proposed technical approach is denied where the agency's cost evaluation reasonably considered the awardee's proposed technical approach and level of effort, and where the protester fails to demonstrate competitive prejudice with respect to any unaddressed adjustments.

DECISION

AdvanceMed Corporation, of Reston, Virginia, protests the issuance of a task order to Health Integrity, LLC, of Easton, Maryland, under request for proposals (RFP) No. HHSM-500-2016-RFP-0027, issued by the Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS), for Medicare and Medicaid program integrity services. The protester challenges the agency's cost realism evaluation of Health Integrity's proposal.

We deny the protest.

BACKGROUND

The agency issued the solicitation on July 13, 2016, to contractors holding one of CMS's Unified Program Integrity Contract (UPIC) indefinite-delivery, indefinite-quantity (IDIQ) contracts. The solicitation sought proposals to support the agency's

fraud, waste, and abuse detection, deterrence, and prevention activities for Medicare and Medicaid claims within the Western Jurisdiction.¹ RFP at 3; RFP, Attach. J.1, TO SOW, at 1. The solicitation contemplated the award of a cost-plus-award-fee (CPAF) task order for a base year and four 12-month options. RFP at 3; RFP, Amend. 2, at 1.

The solicitation provided for award on a best-value tradeoff basis consisting of cost and five non-cost evaluation factors. RFP at 33-34. When combined, the non-cost factors were significantly more important than cost. Id. at 34. In this respect, the solicitation provided that “the Government is more concerned with obtaining superior technical/management features than with making an award at the lowest overall cost to the Government.” Id. at 33. The solicitation also stated, however, that “the Government will not make an award at a significantly higher overall cost to the Government to achieve slightly or moderately superior technical or management features.” Id.

The non-cost factors were as follows, in descending order of importance:

(1) accomplishing and integrating functional requirements--scenario responses; (2) key personnel and staffing plan; (3) past performance; (4) small business utilization; and (5) Section 508 compliance. Id. at 34. In rating the non-cost factors, the solicitation provided that the agency would assign one of the following adjectival ratings: exceptional, very good, satisfactory, marginal, or unsatisfactory. Id. at 34-35. The solicitation further provided that the agency would assign an overall adjectival rating that would reflect how well the offeror’s technical proposal meets the solicitation requirements. Id. at 33-34.

In evaluating cost, the solicitation stated:

The business proposals will be analyzed and evaluated by the Government to determine the reasonableness and the realism of the proposed cost/price. The purpose of this cost realism analysis will be to determine if the Offeror’s proposed costs demonstrate the Offeror understands the Government’s requirements and if the proposed costs are consistent with the various elements of the Offeror’s technical proposal. The Offeror’s Business Proposal will also be evaluated based on the Offeror’s potential impact to the competitive pool and risk (financial, etc.).

¹ CMS currently relies upon a network of contractors under various contract vehicles to carry out program integrity work in the Medicare and Medicaid programs. RFP, Attach. J.1, Task Order Statement of Work (TO SOW), at 1; Contracting Officer’s Statement (COS) at 1. The UPIC IDIQ combines and integrates these functions into a single contract for each of the five geographically defined jurisdictions. RFP, Attach. J.1, TO SOW, at 1. The task order at issue here requires the provision of services within the Western Jurisdiction, which includes the states of North Dakota, South Dakota, Montana, Wyoming, Washington, Oregon, Idaho, California, Nevada, Utah, Arizona, Alaska, Hawaii, and the territories of American Samoa, Northern Mariana Islands, and Guam. Id.

Id. at 37.

The RFP required offerors to “provide all proposal assumptions in detail that are used in preparing their business proposal[.]” Id. at 26. This included the “rationale for all business proposal elements[.]” such as “why was the labor category chosen [or] why the number of [Full-Time Equivalents (FTEs) was] proposed for that labor category, etc.?” Id. These assumptions were to be included in a basis of estimate document. Id.

The solicitation required offerors to complete various business proposal spreadsheets to provide “the breakout of all cost elements in the prime and subcontractor’s proposals.” Id. at 23-24. The spreadsheets required a breakdown of proposed hours and costs by task. See, e.g., RFP, E.3.B. UPIC WJ Business Proposal Spreadsheet CLIN 0002.xlsx. There were ten enumerated tasks, which were derived from the functional requirements set forth in the underlying IDIQ Umbrella Statement of Work (USOW). USOW at 3-6. Those tasks were as follows: Investigations (C.5.4); Transition (C.4); Vulnerabilities (C.5.1); Data Analysis (C.5.2); Lead Management (C.5.3); Appeals Support; (C.5.4.4); Support to CMS (C.5.8); Support to Law Enforcement (C.5.10); Information Technology (C.7.5); and Quality Assurance (C.7.7). The RFP noted that offerors’ spreadsheets would take precedence over other cost information. See RFP at 24.

Four offerors, including AdvanceMed and Health Integrity, submitted timely proposals in response to the solicitation. Agency Report (AR), Tab 7, Source Selection Decision (SSD), at 1.

After conducting discussions with all four offerors, CMS evaluated the technical proposals of AdvanceMed and Health Integrity as follows:

	AdvanceMed	Health Integrity
Accomplishing & Integrating Functional Requirements-- Scenario Responses	Satisfactory	Satisfactory
Key Personnel and Staffing Plan	Very Good	Satisfactory
Past Performance	Very Good	Very Good
Small Business Utilization	Satisfactory	Satisfactory
Section 508 Compliance	Acceptable	Acceptable
Overall Technical Rating	Very Good	Satisfactory

Id. at 3. CMS evaluated the business proposals of AdvanceMed and Health Integrity as follows and concluded that both offerors’ probable costs were reasonable and realistic:

	AdvanceMed	Health Integrity
Final Proposal Revision	\$106,394,498	\$85,341,745
Cost Realism Adjustments	\$232	\$491,300
Difference From Lowest Offeror After Adjustments	\$21,004,864	\$443,179
Probable Total Cost-Plus-Award-Fee	\$106,394,730	\$85,833,045

Id. at 4.

After comparing the proposals of AdvanceMed and Health Integrity, the source selection authority (SSA) concluded that Health Integrity’s proposal offered the best value to the government. COS at 2. On February 7, 2017, CMS announced that the task order had been issued to Health Integrity. On February 15, AdvanceMed filed a protest of the task order award with our Office.

Our Office sustained the protest on the basis that the agency had failed to recognize and reasonably assess the likely costs stemming from the awardee’s proposed technical approach. See AdvanceMed Corp., B-414373, May 25, 2017, 2017 CPD ¶ 160 at 1. In this regard, our decision noted several inconsistencies between Health Integrity’s technical proposal, its bases of estimate, and its business proposal spreadsheets with regard to the Investigations task (C.5.4) and the proposed level of effort for administrative actions.²

For the Investigations task, our decision found that “the record before us does not establish that the agency performed any analysis of the most important performance/cost requirement under the solicitation--Investigations.” AdvanceMed Corp., supra, at 8. In this regard, we noted that Health Integrity’s basis of estimate provided calculations for how the offeror determined the number of FTEs, under each relevant labor category, that would be needed to perform such investigations. See id.

² Administrative actions are those actions that result from an investigation that uncovers fraud, waste, or abuse and includes the following actions: payment suspension, enrollment revocation or termination, program exclusion, additional payment review, or civil monetary penalties. USOW at 46-47. The UPIC contractor recommends the action, and CMS approves the action. Id. at 46. If no fraud, waste, or abuse is detected sufficient to justify an administrative action, the investigation is closed. Id. at 36. The USOW made clear that an investigation may not be closed until “all activities (e.g. CMS and state administrative actions are completed, law enforcement referrals are completed) are finalized.” Id.

at 8-9. We found, however, that the FTEs provided in Health Integrity's basis of estimate did not match the number of FTEs provided in Health Integrity's business proposal spreadsheet for the Investigations task (C.5.4). See id. at 9-13. The decision further found that there was no evidence CMS was aware of this inconsistency since the agency had not documented any analysis of the adequacy of the hours proposed by Health Integrity under the enumerated tasks, including the Investigations task (C.5.4). See id. at 13.

With regard to the proposed level of effort for administrative actions, our decision found that Health Integrity's technical proposal envisioned an "Administrative Action Team" that included several labor categories, including Nurse Auditors and Investigator/Auditors. Id. at 14. Despite the anticipated role of these two labor categories, however, we found that there was insufficient evidence in the record to demonstrate whether Health Integrity had proposed hours for these labor categories to perform administrative actions. Our decision further noted that there was no evidence that the agency's cost realism evaluation considered this inconsistency. Id. at 15.

In light of these findings, we recommended that CMS conduct and document a new cost realism evaluation and prepare a new source selection decision.³ See id. at 17.

In response to our decision, CMS conducted and documented a supplemental cost realism evaluation that examined the specific level of effort proposed by Health Integrity in its business proposal spreadsheets for the enumerated tasks under each contract line item number (CLIN). See AR, Tab 6c, Suppl. Business Proposal Evaluation. This new evaluation concluded that the labor mix proposed by Health Integrity was appropriate for the tasks at issue, and that the proposed level of effort aligned with Health Integrity's technical proposal and was adequate to complete the tasks. See id. at 1-6. The new evaluation did not make any further adjustments to Health Integrity's evaluated cost.

Following the new cost evaluation, the agency conducted a new best-value tradeoff determination and concluded that Health Integrity's proposal provided the agency with the best value. COS at 2. On September 29, the agency lifted the stop work order on the task order issued to Health Integrity. Id.

This protest followed.⁴

³ On June 5, Health Integrity filed a request for reconsideration of our decision in AdvanceMed, supra. On October 31, we dismissed the request as academic in light of CMS's new award decision. See Health Integrity, LLC—Recon., B-414373.2, Oct. 31, 2017 (unpublished decision).

⁴ The awarded value of the task order exceeds \$10 million. Accordingly, this procurement is within our statutory grant of jurisdiction to hear protests in connection with task and delivery orders valued in excess of \$10 million issued under civilian agency multiple-award IDIQ contracts. 41 U.S.C. § 4106(f).

DISCUSSION

The protester challenges the agency's cost realism evaluation. Specifically, AdvanceMed contends that CMS failed to adequately consider and evaluate Health Integrity's cost proposal in light of the inconsistencies noted by our Office in AdvanceMed, supra, with regard to the level of effort proposed for the Investigations task (C.5.4) and for administrative actions. In this regard, AdvanceMed argues that CMS's cost reevaluation failed to reconcile an inconsistency between the number of personnel envisioned by Health Integrity's basis of estimate for the Investigations task, and the actual number of personnel proposed by Health Integrity in its business proposal spreadsheets. With regard to administrative actions, the protester argues that CMS's cost reevaluation did not address the failure of Health Integrity's proposal to provide any level of effort to perform administrative actions.⁵

In conducting a cost realism analysis, an agency is not required to conduct an in-depth cost analysis, or to verify each and every cost item; rather, the evaluation requires the exercise of informed judgment by the contracting agency. Cascade Gen., Inc., B-283872, Jan. 18, 2000, 2000 CPD ¶ 14 at 8. Additionally, an agency's cost realism analysis need not achieve scientific certainty; rather, the methodology employed must be reasonably adequate and provide some measure of confidence that the rates proposed are reasonable and realistic in view of other cost information reasonably available to the agency as of the time of its evaluation. CSI, Inc.; Visual Awareness Techs. & Consulting, Inc., B-407332.5 et al., Jan. 12, 2015, 2015 CPD ¶ 35 at 6. Our review of an agency's cost realism evaluation is limited to determining whether the cost analysis is reasonably based and not arbitrary. Jacobs COGEMA, LLC, B-290125.2, B-290125.3, Dec. 18, 2002, 2003 CPD ¶ 16 at 26.

AdvanceMed contends that the agency failed to address an inconsistency in Health Integrity's business proposal with regard to the number of FTEs proposed for the Investigations task (C.5.4).⁶ In this regard, Health Integrity's business proposal included a basis of estimate that included a calculation of [DELETED] FTEs for the Investigator/Auditor labor category. AR, Tab 3b, Health Integrity Business Proposal, Basis of Estimate, at 8. The basis of estimate stated that, for such

⁵ While we do not address in detail every argument raised by AdvanceMed in its protest, we have reviewed each issue and do not find any basis to sustain the protest. For example, we considered the protester's contention that CMS improperly reopened discussions during the course of the agency's corrective action by crediting explanations of Health Integrity's proposal that were provided by Health Integrity's legal counsel during the prior protest, but concluded that there was insufficient evidence in the record to support this contention.

⁶ There are three types of investigations under the UPIC program: Medicare investigations, Medicare-Medicaid (Medi-Medi) Data Match program investigations, and Medicaid audits. RFP, Attach. J.2, Workload Projections, at 1; USOW at 34.

Investigator/Auditors, the “primary task is Investigations, with support to the Data Analysis team.”⁷ Id. at 7. AdvanceMed argues that despite this estimate, Health Integrity’s business proposal spreadsheets allocated only [DELETED] of the [DELETED] FTEs for the Investigations task, and allocated the remaining hours among the other enumerated tasks. AdvanceMed argues that this discrepancy was not addressed or resolved by CMS’s supplemental cost evaluation.

Our decision in AdvanceMed found that the above discrepancy was not explained by Health Integrity’s proposal and that there was “nothing in the contemporaneous record to suggest that CMS understood that the level of effort Health Integrity estimated for Investigator/Auditors to perform the primary task of ‘Investigations’ included not only the work required by the Investigations task (C.5.4) but also every other task in the statement of work.” AdvanceMed, supra, at 13. Our decision further noted that “we are unable to determine whether--armed with this knowledge--the agency would have determined Health Integrity’s level of effort to be sufficient to accomplish the Investigations task.” Id. Accordingly, we sustained this protest ground.

Following our decision, CMS conducted a supplemental cost realism evaluation that expressly considered the sufficiency of the hours allocated by Health Integrity for the Investigations task. The agency found that the hours proposed for the Investigations task in Health Integrity’s business proposal spreadsheets were “adequate and proportionate,” explaining that:

[Health Integrity’s] technical proposal indicates they will have [DELETED] Investigator/Auditors on staff. [Health Integrity] has allocated the hours for these Investigators/Auditors among all of the tasks and does not solely place Investigator hours within the Investigative task. This is appropriate as during the course of an investigation an Investigator will complete work within other tasks. The amount of Investigator/Auditor hours proposed under the Investigative Task at C.5.4 are consistent in both the business and technical proposal and are adequate to complete this task.

AR, Tab 6c, Suppl. Business Proposal Evaluation, at 2-3.⁸

⁷ The [DELETED] FTE figure was derived from CMS’s projected number of Medicare and Medi-Medi investigations to calculate a “rolling workload of approximately 493 investigations at any given time.” Id. at 7. This number was then divided by Health Integrity’s calculation of the “number of investigations per investigator FTE on a rolling basis,” which was [DELETED], to reach a quotient of [DELETED] FTE Investigator/Auditors.

⁸ Neither the cost evaluation completed by CMS nor the sections of Health Integrity’s proposal cited herein contain page numbers. Our Office assigned consecutively numbered pages to the unnumbered pages in these documents. The citations to these documents in this decision are to the page numbers assigned by our Office.

Based on our review of the evaluation record, we find CMS's cost realism evaluation to be reasonable. In this regard, we note that the agency conducted an extensive analysis of the labor hours and the labor mix proposed for each enumerated task, including the Investigations task, and found these to be adequate. See id. at 2. This included the labor hours for all of the labor categories proposed by Health Integrity under the Investigations task, including Investigator/Auditors. See id. at 2-3. In assessing the sufficiency of the [DELETED] hours proposed by Health Integrity for this task, CMS also considered the offeror's technical approach, including various technological tools and specializations and the impact of that approach on the anticipated workload. See id. at 2-3. Ultimately, the agency concluded that the staffing hours proposed were appropriate and that they aligned with Health Integrity's technical approach. See id.

While AdvanceMed argues that this approach did not resolve the inconsistency between Health Integrity's basis of estimate and its proposed level of effort, the agency's supplemental cost realism evaluation did resolve the issue that was of concern to our Office. Specifically, our prior decision noted concern that there was nothing in the contemporaneous record to suggest that CMS understood that the level of effort Health Integrity estimated for Investigator/Auditors to perform the primary task of "Investigations" included not only the work required by the Investigations task (C.5.4) but also work under many of the other enumerated tasks. AdvanceMed, supra, at 13. In our view, this concern has been adequately addressed by the task-level evaluation undertaken by CMS, which reasonably assessed the adequacy of the hours proposed for the Investigations task in light of Health Integrity's technical approach and concluded that such hours were adequate.

The protester additionally argues that the agency's supplemental evaluation failed to address the discrepancy found between Health Integrity's basis of estimate and its technical proposal with respect to administrative actions. In this regard, Health Integrity's technical proposal envisioned creating an "Administrative Action Team" consisting of various labor categories, including Investigator/Auditors and Nurse Auditors. See AR, Tab 3a9, Health Integrity Tech. Proposal Org. Chart, at 3, 7. The protester contends that, despite the envisioned role for Investigator/Auditors and Nurse Auditors, Health Integrity's basis of estimate did not contain any indication that these labor categories would perform administrative actions. According to the protester, Health Integrity's basis of estimate only estimated a level of effort for the 180-day period in which Investigator/Auditors would be conducting investigations, a calculation which necessarily failed to provide a level of effort for the subsequent period, which is when any resulting administrative action would be performed. See Comments at 5. In making this assertion, AdvanceMed relies on Health Integrity's basis of estimate, which estimated that "each investigation is expected to take 180 days to complete on average" and which formulated the number of Investigator/Auditor and Nurse Auditor FTEs based on this investigation period. AR, Tab 3b, Health Integrity Business Proposal, Basis of Estimate, at 7, 14-16.

As explained below, we find no reasonable possibility that any failure on the part of the agency to adjust Health Integrity's costs upward to account for the costs of performing administrative actions resulted in prejudice to the protester. In this regard, our Office will not sustain a protest absent a showing of competitive prejudice, that is, unless the protester demonstrates that, but for the agency's actions, it would have a substantial chance of receiving award. Ball Aerospace & Techs. Corp., B-402148, Jan. 25, 2010, 2010 CPD ¶ 37 at 6.

Following the agency's supplemental cost realism evaluation, CMS concluded that AdvanceMed's total probable cost was \$106,394,730, which is more than \$20.5 million higher than Health Integrity's probable cost, which was \$85,833,045. AR, Tab 7, SSD, at 6. In analyzing the technical differences in the two proposals, the SSA concluded that neither proposal was stronger than the other except in the key personnel and staffing plan factor, where AdvanceMed had proposed the use of more experienced and higher educated key personnel. See id. at 7-9. The SSA found that the overall result of this difference was that:

[T]he two proposals are very close in overall technical merit, with a slight edge to AdvanceMed. While the identified advantages of AdvanceMed's technical proposal would provide some benefit to the Government, this benefit is not very great, and any premium warranted by that benefit should not be a significant amount.

Id. at 9.

In the prior protest proceeding, the protester calculated the costs of the purportedly missing administrative action hours to be \$5.9 million.⁹ AdvanceMed, supra, at 16. Thus, even assuming for the sake of argument, that the agency should have upwardly adjusted Health Integrity's probable cost by this amount, that adjustment would still leave a significant cost difference (more than \$14.5 million) between the two proposals. The SSA expressly concluded, however, that the technical superiority of AdvanceMed's proposal was not worth a significant cost premium.¹⁰

⁹ This calculation was based on the level of effort that AdvanceMed's proposal estimated for administrative actions.

¹⁰ It also appears that any missing costs associated with administrative actions would actually be less than \$5.9 million. We note in this connection that in its comments filed during the earlier protest, the protester conceded that the agency might find a different level of effort--possibly something lower--to also be realistic. AdvanceMed, supra, at 16. Further, to the extent that AdvanceMed asserts that Health Integrity did not allocate hours beyond 180 days to perform administrative actions, it is worth noting that the RFP anticipated, based on UPIC performance standards, that 85 to 89.9 percent of investigations would be moved to administrative action, referral, or closure within 180 days. RFP, Attach. J.1, TO SOW, at 8-9. It is therefore likely that some portion of the administrative actions will be performed prior to 180 days.

In sum, we conclude that the task-level cost realism evaluation conducted by CMS was reasonable and that the agency reasonably determined that the hours proposed by Health Integrity for the enumerated tasks were adequate. Further, to the extent that the agency failed to upwardly adjust Health Integrity's costs to account for the costs of performing administrative actions, we conclude that the protester has not demonstrated that it suffered competitive prejudice from any such error.

The protest is denied.

Thomas H. Armstrong
General Counsel