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Decision

Matter of: First Coast Service Options, Inc.

File: B-409295.4; B-409295.5

Date: January 8, 2015

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Lucy G. Mac Gabhann, Esq., Department of Health and Human Services, for the agency.

Heather Weiner, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency evaluation of the protester's proposal is denied where the record shows that the agency's assessment of the protester's proposed staffing and technical approach was reasonable and in accordance with the solicitation.
 2. Protest challenging the agency's evaluation of the awardee's proposal is denied where the protester cannot demonstrate that it would have been prejudiced by the agency's actions.
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DECISION

First Coast Service Options, Inc., of Jacksonville, Florida, protests the award of a contract to Cahaba Government Benefit Administrators, LLC, of Birmingham, Alabama, under request for proposals (RFP) No. CMS-2013-0017, which was issued by the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), to obtain a Medicare Administrative Contractor (MAC) to provide services for the administration of Medicare Part A and Part B (A/B) fee-for-service benefit claims. First Coast challenges CMS's evaluation of First Coast's and Cahaba's technical proposals, cost proposals, and past performance, and argues that the best value tradeoff and source selection decision was unreasonable.

We deny the protest.

BACKGROUND

On January 24, 2013, CMS issued the solicitation for A/B MAC services¹--which include health insurance benefit administration services, such as Medicare claims processing and payment services, in support of the Medicare program--in Alabama, Georgia, and Tennessee (Jurisdiction J).² RFP at 2; Contracting Officer (CO) Statement at 2. The RFP anticipated a cost-plus-award-fee contract for a 5-month implementation period, a 7-month base period, four 1-year options, and an optional 6-month closeout option. RFP at 12.

The solicitation provided for award on a best-value basis, considering three factors: (1) past performance, (2) technical approach, and (3) price. Id. at 144. For purposes of award, the past performance factor and technical approach factor were of equal importance. Id. In addition, the solicitation stated that “[a]ll evaluation

¹ Pursuant to the Medicare Prescription Drug Improvement and Modernization Act of 2003 (MMA), 42 U.S.C. §§ 1395kk et seq., MACs perform the claims services that were previously performed by “legacy contractors” acting as “fiscal intermediaries” or “carriers” under the Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395c et seq. and 1395j et seq.. Prior to the enactment of the MMA, fiscal intermediaries were generally responsible for processing claims from institutional providers, such as hospitals and nursing facilities, under Part A of the Medicare program; carriers were responsible for processing claims from professional providers, such as physicians and diagnostics laboratories, under Part B of the Medicare program. The MMA “required the phase-out of the legacy contracting method,” which did not require that contracts for fiscal intermediary or carrier services be competitively awarded, and imposed competition requirements and the use of Federal Acquisition Regulation (FAR)-based contracting, with the intent of improving Medicare’s administrative services to both beneficiaries and providers. Highmark Medicare Servs., Inc., et al., B-401062.5 et al., Oct. 29, 2010, 2010 CPD ¶ 285 at 3 n.2

² In the first phase of its Medicare modernization program, CMS divided the United States into fifteen geographic jurisdictions (Jurisdictions 1 through 15) for the purposes of acquiring and providing MAC services. The agency has now combined certain of its legacy jurisdictions, resulting in ten separate jurisdictions (Jurisdictions E through N). Cahaba is the incumbent contractor for Jurisdiction J, which was previously Jurisdiction 10. Contracting Officer (CO) Statement, at 2-3. First Coast currently serves as the MAC services contractor for Jurisdiction N (formerly Jurisdiction 9). Protest at 5.

factors other than cost or price, when combined, are significantly more important than cost or price.” Id.

In evaluating proposals under the non-price factors, the technical evaluation panel (TEP) used a numeric scoring system, based on the following scale:

0.6 to 0.9 More likely to succeed than fail

0.5 Equally likely to succeed or fail

0.1 to 0.4 More likely to fail than succeed

Agency Report (AR), Tab 5A, Final TEP Report, at 7.

The RFP stated that an offeror’s technical approach would be evaluated based on whether the approach successfully addressed the following areas: (1) program management; (2) personnel; (3) innovations; (4) medical review strategy; (5) provider customer service program strategy; and (6) jurisdictional implementation project management approach. RFP at 145-46. As relevant here, in evaluating personnel, the RFP required that an offeror “submit a staffing plan that presents the Offeror’s staffing strategy for providing and retaining qualified personnel for the life of the contract across the prime and subcontractors.” Id. at 116. In addition, the solicitation advised that the evaluation may also assess the “reasonableness of the offeror’s proposed labor mix and/or level of effort (e.g., whether adequate staffing and other resources [are] proposed to perform the required work.)” Id. at 145.

CMS received proposals from six offerors, including First Coast and Cahaba, by the March 8, 2013, closing date. CO Statement at 3. Following an initial evaluation of proposals, the contracting officer established a competitive range of three companies, including Cahaba. Id. at 6. First Coast’s proposal was not included within the competitive range. Id.

On November 25, First Coast filed a protest with our Office. Id. First Coast challenged CMS’s decision to exclude First Coast from the competitive range, arguing that the agency conducted an unreasonable evaluation of First Coast’s technical proposal. After receipt of the agency report and the protester’s comments, the GAO attorney assigned to the protest conducted an outcome prediction alternative dispute resolution conference. During this conference, the GAO attorney stated that, in her view, our Office would likely sustain the protest with regard to the agency’s evaluation of First Coast’s staffing plan because the agency’s findings and concerns regarding First Coast’s staffing plan were either unsupported by, or conflicted with, the record.

Thereafter, CMS notified our Office of its intent to take corrective action. The agency stated that it would include First Coast in the competitive range, conduct discussions with the offerors, request final proposal revisions (FPRs), reevaluate proposals, and make an award decision. Email from CMS to GAO, (Feb. 12, 2014), at 1. In light of this information, our Office dismissed First Coast’s protest as academic on February 14.

After conducting three rounds of discussions with the offerors, CMS received timely FPRs from all four offerors in the competitive range. Id. As relevant here, the evaluation results were as follows:

	Cahaba	First Coast	Third Offeror
Technical Approach (50%)	0.80	0.60	0.80
Past Performance (50%)	0.70	0.80	0.80
Total Numeric Rating	0.75	0.70	0.80
Proposed Cost	\$287,847,141	\$314,828,522	\$306,759,847
Cost Realism Adjustment	\$787,254	\$14,636,749	\$1,761,137
Total Probable Cost	\$288,634,395	\$329,465,271	\$308,520,984

AR, Tab 8, Source Selection Decision Document (SSDD), at 50.

The TEP identified one strength for First Coast’s technical approach concerning key personnel. Id. at 44. The source selection authority (SSA) explained, however, that he placed less significance on strengths assessed for key personnel because this same strength was common to all proposals within the competitive range. Id. at 44-45. In addition, the SSA stated that, although First Coast’s proposal was not assessed any weaknesses, First Coast’s proposal, in all areas except key personnel, “merely met Government requirements and did not exceed expectations.” Id. at 45. Overall, the SSA stated: “Although [First Coast’s] proposal technical approach factor was rated the lowest of all Offerors[,] there is little performance risk associated with its approach because it met Government requirements; however, with little substance determined to be a benefit to the Government.” Id. With regard to Cahaba, the SSA concluded that, “Cahaba is the [o]fferor that presented the best combination of technical proposal and cost,” and awarded the contract to that firm. Id. at 57-58. This protest followed.

DISCUSSION

First Coast challenges CMS’s evaluation of the protester’s and awardee’s proposals, and the award decision. For the reasons discussed below, we conclude that the agency’s evaluation of First Coast’s proposal was reasonable and consistent with the RFP. With regard to the protester’s challenges to the evaluation of the awardee’s technical proposal, past performance, and cost, we do not address these arguments in detail because the protester fails to establish a reasonable

possibility that it could have been prejudiced by the alleged errors, in light of the higher technical evaluation ratings and lower cost of the third offeror.

In reviewing a protest against an agency's evaluation of proposals, our Office will not reevaluate proposals but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. See IPlus, Inc., B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7, 13; Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. A protester's mere disagreement with an agency's judgment in evaluating proposals is insufficient to establish that the agency acted unreasonably. See VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4; Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5.

Technical Approach Factor

First Coast challenges CMS's evaluation of its proposal under the technical approach factor, arguing that the agency improperly failed to recognize two strengths of its technical proposal: (1) its staffing plan, and (2) its proposed use of a web portal.³ The agency contends that it reasonably evaluated the information in First Coast's proposal, and concluded that, even after multiple rounds of discussions with First Coast, its proposal did not exceed the requirements of the RFP in a way beneficial to the government, and therefore, that First Coast was not entitled to a higher rating.

As discussed above, the RFP stated that the agency would evaluate an offeror's staffing plan as part of the technical approach evaluation factor. RFP at 116, 145.

³ First Coast's initial protest also asserted that the agency's evaluation failed to assess numerous strengths to First Coast's proposal under the technical acceptability factor relating to First Coast's proposed training program, medical review strategy, and provider customer service program. See Protest (Oct. 6, 2014) at 36, 38-40. In addition, First Coast's initial protest argued that the agency failed to conduct a proper cost realism analysis of First Coast' proposal. Id. at 46-52. Although CMS provided a detailed response to each of First Coast's arguments, the protester did not rebut or otherwise substantively address the agency's arguments in its comments. Accordingly, we conclude that the protester abandoned these protest grounds, and therefore dismiss them for this reason. Atmospheric Research Sys., Inc., B-240187, Oct. 26, 1990, 90-2 CPD ¶ 338 at 3; see Israel Aircraft Indus., Ltd.--TAMAM Div., B-297691, Mar. 13, 2006, 2006 CPD ¶ 62 at 6-7 (where protester either does not respond to the agency's position or provides a response that merely references or restates the original allegation without substantively rebutting the agency's position, we deem the originally-raised allegation abandoned).

As relevant here, First Coast's staffing plan proposed to staff [DELETED] percent of the contract positions with experienced First Coast and subcontractor staff from existing MAC contracts, and to fill the remaining [DELETED] percent of positions with new hires. AR, Tab 4A, First Coast FFR, Vol. 1, at 19.

Staffing Plan

With regard to First Coast's proposed use of experienced staff, the TEP found that First Coast's staffing plan "deploys a large mix of experienced J9 and J1 staff to seed the JJ operation," and that First Coast "report[s] a highly stable workforce, with a [DELETED] monthly retention rate." AR, Tab 5C(1), TEP Consensus Report, First Coast, at 3. Based on this, the evaluators concluded that "[t]his experience demonstrates [First Coast's] ability to staff JJ with experienced personnel in time for transition." Id. The TEP also noted that "all seeded employees will perform the same job function in JJ" as they perform in their existing contracts." Id. at 4.

With regard to First Coast's proposed new hires, the TEP stated that First Coast's recruitment strategy [DELETED] and that First Coast "has established sites with personnel in place" in these locations. Id. at 3. The TEP found that First Coast's proposed training plan was "reasonable, and provides information to show that new[ly] hire[d] and experienced staff will have sufficient training prior to day one of contract operations." Id. at 4. As such, the TEP concluded that First Coast's "training plan meets CMS requirements." Id. In addition, the TEP noted that First Coast's staffing plan included hiring [DELETED]. . . . will be in place for the first two months following implementation to handle call volume and workload increases associated with transition activities." Id. at 3.

The TEP concluded that the protester's staffing approach was "reasonable," because "the Offeror provided detail on its process with timeframes to support the assertion that all staff would be available and ready to perform on day one of contract operations." Id. The TEP also found, however, that First Coast's "staffing plan presents some risk if [DELETED] are not available as proposed and/or if the [DELETED] new hires are not recruited and trained timely." Id. The TEP did not assign any strengths or weaknesses to First Coast's staffing plan, stating: "[T]he TEP determined that the staffing strategy, as proposed, meets CMS requirements." Id.

First Coast disagrees with CMS's evaluation of its staffing plan, arguing that its staffing plan "deserved one or more [strengths]." Protester's Comments (Nov. 24, 2014), at 31. Specifically, the protester points to revisions First Coast made to its staffing plan during discussions to address concerns raised by the agency regarding the protester's ability to retain its incumbent staff--such as an increase in proposed staffing levels, and additional FTEs during transition--and asserts that these "robust enhancements" justify one or more strengths. Protest at 33-34.

CMS responds that the TEP considered the various elements of First Coast's revised staffing plan, and found that the staffing plan met the agency's requirements, but did not merit a strength. In this regard, the agency notes that the TEP found that First Coast's revised staffing plan still presented some risk "if [DELETED] are not available as proposed and/or if [DELETED] new hires are not recruited and trained timely." AR, Tab 5C(1), TEP Consensus Report, First Coast, at 3. Based on this record, we find nothing unreasonable regarding the agency's evaluation. The fact that First Coast revised its staffing plan during discussions to address the agency's earlier concerns does not necessarily mean that First Coast's final staffing plan merited a strength. While First Coast disagrees with the agency's position, such disagreement does not render the evaluation unreasonable, or provide a basis to sustain the protest. See Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7.

Web Portal

First Coast next asserts that its proposal merited a strength under the technical approach factor for its proposed innovation of First Coast's web portal, Secure Provider Online Tool (SPOT). As relevant here, CMS's initial evaluation of First Coast's initial proposal identified a strength under the technical approach factor for enhancements to First Coast's existing web portal, SPOT. Protest, exh. 7, Competitive Range Debriefing, at 9. In the agency's evaluation of First Coast's FPR, however, the TEP did not assess a strength for First Coast's SPOT web portal. First Coast contends it was unreasonable for the agency to remove the strength assessed during the initial evaluation from the final evaluation because First Coast's FPR "proposed [the] same enhancements to SPOT" as First Coast's initial proposal." Protester's Comments (Nov. 24, 2014), at 32.

The record reflects, however, that while First Coast's initial proposal and FPR both proposed the same enhancements to SPOT, the evaluators obtained additional information from First Coast during the intervening discussions, and in First Coast's FPR, regarding the timing and implementation of the proposed enhancements. AR, Tab 7B(1), First Coast Discussions Response Letter (Mar. 13, 2014), at 3-7.

As relevant here, First Coast's FPR stated: [DELETED]. AR, Tab 4A, First Coast FFR, Vol. 1, at 40.

The contracting officer explains that, although First Coast's FPR stated that "the JJ SPOT . . . will also have [DELETED]," the TEP verified with an agency subject matter expert that the only web functionality for the JJ SPOT portal at the beginning of contract performance would be "[DELETED]." CO Statement at 11. In addition, the TEP's FPR evaluation verified that First Coast "had not yet submitted its request to CMS for approval for additional/enhanced web portal functionality for '[DELETED].'" Id. The evaluators explained that "web portals with basic functionality are a standard application across all MAC contracts," and as such,

concluded that First Coast's proposed SPOT web portal "simply meets CMS requirements." AR, Tab 5C(1), TEP Consensus Report, First Coast, at 6.

In addition, the TEP found that First Coast "proposed unrealistic expectations for the adoption rate" at which billing providers would use the portal. Id. As the contracting officer explains, "[t]he TEP and I believed that [First Coast] . . . proposed unrealistic expectations for the high adoption rate [of billing providers using the portal], when considering [First Coast] only achiev[ed] a [DELETED] adoption rate during the first year of [First Coast's J9 web portal]." CO Statement at 11. In light of these considerations, the TEP determined that First Coast's proposed enhancements to SPOT "do not elevate this web portal to a strength." Id.

Based on our review of the record, we find nothing unreasonable about the agency's evaluation. First Coast does not disagree that its proposed web portal currently offers only basic functionality. See Protester's Comments (Nov. 24, 2014), at 32. Rather, the protester argues that the agency's evaluation was unreasonable because the TEP changed its evaluation after reviewing First Coast's FPR. As mentioned above, however, the evaluators obtained additional information through discussions and in First Coast's FPR, and ultimately concluded that the timing of the implementation of First Coast's proposed enhancements to its web portal were such that the enhancements did not merit a strength. To the extent First Coast disagrees with the agency's evaluation regarding the timing and implementation of the enhancements, the protester's disagreement fails to render the agency's evaluation unreasonable or provide a basis to sustain the protest. Ben-Mar Enters., Inc., supra. Accordingly, we conclude that CMS's evaluation of First Coast's proposal was reasonable and consistent with the solicitation.

Challenges to Evaluation of Cahaba

Next, First Coast challenges CMS's evaluation of Cahaba's proposal under the technical, past performance, and cost factors. As discussed above, we find that the agency's evaluation of First Coast's proposal was reasonable. Additionally, as discussed below, the record demonstrates that a third offeror had higher non-cost evaluation ratings, and a lower proposed and evaluated cost, as compared to First Coast. Because First Coast does not challenge the evaluation of the third offeror, we need not address the protester's arguments concerning the agency's evaluation of the awardee because, even if they had merit, the protester cannot demonstrate that it would have been prejudiced by the alleged errors. In this regard, our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions; that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. Armed Forces Hospitality, LLC, B-298978.2, B-298978.3, Oct. 1, 2009, 2009 CPD ¶ 192 at 9-10; McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3.

The TEP clearly rated the third offeror's technical approach superior to First Coast's, and under the past performance factor, the third offeror and First Coast received equal ratings. AR, Tab 8, SSDD, at 50. In addition, the agency concluded that the third offeror was lower-priced than First Coast, both in proposed costs and evaluated costs. Id. at 51-52; AR at 2. First Coast does not raise any challenges to the agency's evaluation of the third offeror, and First Coast abandoned its challenge to the evaluation of its own costs. Since the third offeror is in line for award ahead of First Coast, and First Coast has not challenged the evaluation of the third offeror, we conclude that, even if the agency conducted an improper evaluation of Cahaba, First Coast has not established any possibility of prejudice. See Federated IT, Inc., B-410208, Nov. 18, 2014, 2014 CPD ¶ 353 at 10 n.5; Paragon Sys., Inc.; SecTek, Inc., B-409066.2, B-409066.3, June 4, 2014, 2014 CPD ¶ 169 at 9-10.

The protest is denied.

Susan A. Poling
General Counsel