



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

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

DOCUMENT FOR PUBLIC RELEASE

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

Decision

Matter of: Delta Dental of California

File: B-296307; B-296307.2

Date: July 28, 2005

Patricia A. Meagher, Esq., Neil H. O'Donnell, Esq., Thomas D. Blanford, Esq., Mark A. Kahn, Esq., and David F. Innes, Esq., Rogers Joseph O'Donnell & Phillips, and Robert S. Ryland, Esq., and Nicole E. Goldstein, Esq., Kirkland & Ellis, for the protester.

David P. Metzger, Esq., Michele Mintz Brown, Esq., Anand V. Ramana, Esq., and Stuart Turner, Esq., Holland & Knight, for United Concordia Companies, Inc., an intervenor.

Rhonda L. Bershok, Esq., and Kenneth Lieb, Esq., TRICARE Management Activity, Department of Defense, for the agency.

Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's allegation that the agency's evaluation of its proposal was unreasonable, unfair, and inconsistent with the stated evaluation criteria is denied where the record shows that the agency's evaluation was reasonable, and that the solicitation's evaluation criteria were fairly and consistently applied in the agency's assessment of both the protester's and the awardee's proposals.

DECISION

Delta Dental of California protests the award of a contract to United Concordia Companies, Inc. (UCCI), by the Department of Defense's (DOD) TRICARE Management Activity, pursuant to request for proposals (RFP) No. H94002-04-R-0002, issued to procure dental insurance services for eligible beneficiaries who volunteer to enroll in TRICARE's dental plan. Delta argues that the agency conducted a flawed evaluation of technical proposals, and failed to perform a reasonable price realism evaluation.

We deny the protest.

BACKGROUND

Under 10 U.S.C. § 1076(a) (Supp. II 2002) the Secretary of Defense is authorized to establish a voluntary enrollment dental plan (hereinafter, the TRICARE dental program) for eligible family members of active duty uniformed services personnel, members of the Selected Reserve and the Individual Ready Reserve (IRR), their eligible family members, and certain eligible survivors. Agency Report (AR) at 1. For some program participants the government pays a share of the premiums assessed for enrollment in the program; for others, the government does not pay a share. Specifically, the government pays 60 percent of the premium for family members of active duty personnel, Selected Reserve members and mobilized members of the IRR, and 100 percent of the premiums for eligible survivor beneficiaries, but pays no share of the premium charged to non-mobilized IRR members and eligible family members of Reservists. Contracting Officer's (CO) Statement at 2-3.

The RFP for a contractor to operate the TRICARE dental program was issued on September 15, 2004. The contractor will be required to provide dental insurance services, establish a network of participating dental providers, and provide claims processing and customer service functions. The RFP anticipated the award of a fixed-price plus award fee requirements contract for a base period followed by up to five 1-year options.¹ RFP at 2-8, 53, 72. The price for this contract, in essence, is the sum of the government's share of premiums charged by the contractor to enrolled beneficiaries.

The range of dental benefits to be provided to eligible beneficiaries who elect to enroll in the TRICARE dental program are not only set forth in the solicitation, but are prescribed by the statute and by the implementing regulation, which were incorporated by reference into section C of the RFP. RFP at 9. In addition, section C included a statement of objectives representing "the desired outcomes of this contract." *Id.* The introduction to the statement of objectives explained that "[t]he objectives are supported by technical requirements throughout section C." The objectives of this contract are described as follows:

Increase [TRICARE dental program] enrollment and increase utilization of diagnostic and preventive services by enrolled members.

Increase enrollment of Selected Reserve and Individual Ready Reserve (IRR) personnel in pay grades E-1 through E-4. The Government desires to increase access to dental care and to improve dental

¹ The RFP also included a small number of cost reimbursement contract line items that were neither priced nor evaluated; rather, the costs were estimated by the government and added to each offeror's proposed price. RFP at 3, 72.

readiness of Selected Reserve and IRR members in pay grades E-1 to E-4.

Establish and maintain enrollee and provider satisfaction at the highest level possible throughout the period of performance through the delivery of a world-class dental care program.

Use a cost-effective management approach to provide the necessary services, incorporating commercial practices, when practicable.

Provide ready access to data to support DOD's financial planning, health systems planning, medical resources management, clinical management, clinical research, and contract administration.

Id.

The solicitation advised that award would be made "to the offeror whose proposal represents the best overall value to the Government considering the evaluation criteria." Id. at 86. The evaluation criteria were: technical, performance risk/past performance, and price; the solicitation advised that the technical factor would be the most important, with the performance risk/past performance factor second, and the price factor third. Id. at 85.

The technical evaluation factor was divided into four equally-weighted subfactors: (1) participating provider network access, (2) claims processing, (3) quality management/quality improvement program, and (4) customer service. Id. The basis for assessing each of these subfactors was set forth in detail in the solicitation, and will be described, as needed, within this decision. The RFP also provided that the technical factor, and its subfactors, would be evaluated for proposal risk, which the solicitation defined in detail. Id. at 87.

Three proposals were received by the November 15 due date, one from Delta, one from UCCI, and one from a third offeror that is not a party to this protest. Each proposal was evaluated by three evaluation teams--the Source Selection Evaluation Team (SSET), the Performance Risk Assessment Group (PRAG), and the Price Evaluation Team (PET)--which, collectively, form the Source Selection Evaluation Board (SSEB). The SSET and the PRAG evaluated each offeror's proposal independent of the others and documented their findings in a separate report for each offeror. The PET analyzed the price proposals of all three offerors in a single report. AR at 2.

After holding discussions with each offeror, the agency asked for and received final proposal revisions (FPR) on February 7, 2005. Again, the SSET, PRAG, and PET evaluated the proposals and prepared reports to document their findings. In assessing technical merit, the SSET assigned color ratings with the following meanings: blue, exceptional; green, acceptable; yellow, marginal; and red,

unacceptable. These one-word adjectival ratings were supplemented with more detailed definitions, see CO's Statement at 8, which will be set forth as needed within the decision. The proposal risk ratings used by the SSET were high risk, moderate risk, and low risk. Id. at 8-9. Again, the more detailed definitions associated with the proposal risk ratings will be set forth below as needed.

With respect to the PRAG review, a series of different ratings were used. First, referenced contracts were rated as very relevant, relevant, semi-relevant, or not relevant. In addition, performance ratings were given for each referenced contract. The performance ratings were exceptional, satisfactory, marginal, or unsatisfactory. Finally, performance risk ratings of high confidence, confidence, little confidence, no confidence, or neutral, were assigned. Source Selection Decision Memorandum at 5-6.

With respect to the PET review, the total evaluated price was reviewed for reasonableness and for unbalanced pricing. In addition, the premiums charged for single and family enrollments in the dental plan were reviewed for price realism to determine whether the premium rates and assumptions used were realistic. CO's Statement at 10.

At the conclusion of the reviews of the FPR by the SSET, PRAG, and PET, an SSEB report was prepared for the source selection authority (SSA) that consolidated all of the reviews. This report included a recommendation to the SSA from the SSEB Chairman. The final assessments of the SSEB, which reflect input from the SSEB Chairman (who made certain changes to the ratings assigned by the underlying panels in certain areas), are as follows:

	DELTA	UCCI	OFFEROR A
TECHNICAL (Merit / Risk)	BLUE / LOW	BLUE / LOW	GREEN / LOW
-- Network Access	Blue/Low	Blue/Low	Blue/Low
-- Claims Processing	Green/Low	Green/Low	Green/Moderate
-- Quality Management	Blue/Low	Blue/Low	Green/Low
-- Customer Service	Blue/Low	Blue/Low	Green/Low
PERFORMANCE RISK	HIGH CONFIDENCE	HIGH CONFIDENCE	CONFIDENCE
TOTAL EVALUATED PRICE	[DELETED]	\$1.423 BILLION	[DELETED]

AR, Tab 20, SSEB Report, at 10, 12, 32, 57, 83; Source Selection Decision Memorandum at 26.

In his detailed review of the strengths of each of the offers under the technical subfactors, the SSEB Chairman decided that both Delta and UCCI had submitted exceptional technical proposals, but concluded that Delta's proposal was superior to UCCI's under the technical evaluation factor, the most important factor in this evaluation scheme. Id. at 84-88, 90 (conclusion at 88). After recognizing that Delta and UCCI were equal under the performance risk factor, id. at 89, the SSEB Chairman decided that the ways in which the Delta proposal was superior to the UCCI proposal offered "significant additional benefits to the government over UCCI's proposal" and recommended award to Delta on the basis that the additional benefits were worth the relatively small (**[deleted]** percent) price differential. Id. at 90.

In a similarly detailed decision document, the SSA elected not to adopt the view of the SSEB Chairman that the Delta proposal offered additional benefits that were worth the price differential. Source Selection Decision Memorandum at 1, 42-43. Specifically, the SSA did not agree with the SSEB Chair's view that Delta's proposal was superior to UCCI's proposal under the first technical subfactor, network access; he instead concluded that the proposals were essentially equal under this subfactor. Id. at 27-28. While the SSA agreed with the SSEB Chairman's view that Delta's proposal had an advantage under the third technical subfactor, quality management, he did not agree with the SSEB Chairman's view that the advantage was significant. Id. at 41. As a result, the SSA concluded as follows:

As stated above, I do not find the technical advantage of Delta's quality proposal (Subfactor 3), specifically ISO certification, to warrant the additional **[\$[deleted]** million and recognize that this is contrary to the recommendation made by the SSEB. . . . Given the relative small differences in technical merit and proposal risk between Delta and UCCI, and the **[\$[deleted]** million higher overall price for Delta, UCCI's proposal represents the best value to the Government.

Id. at 42.

On April 6, the contract was awarded to UCCI. This protest followed.

DISCUSSION

Delta challenges the evaluation of proposals in three areas—two regarding the technical evaluation and one regarding the price realism review.² First, Delta argues that the agency did not consider in its evaluation of proposal risk the extent to which an offeror's proposed approach would further the agency's objectives in awarding this contract. Second, Delta argues that it should have received a rating of blue, not green, under the second technical subfactor, claims processing. Finally, Delta argues that the agency failed to determine, as part of its price realism review, that each offeror's administrative costs were consistent with its stated approach.

Our standard in reviewing such challenges is to examine the record to determine whether the agency's judgment was reasonable and consistent with stated evaluation criteria, and with applicable statutes and regulations. ESCO, Inc., B-225565, Apr. 29, 1987, 87-1 CPD ¶ 450 at 7. For the reasons set forth below, we deny each of these bases for protest.

Evaluation of Proposal Risk

In its challenge to the evaluation of proposal risk, Delta argues that the evaluators failed to consider whether, and the extent to which, each offeror's proposed approach would help the agency meet the goals set forth in the solicitation's statement of objectives. In Delta's view, the evaluation criteria here advised offerors that the agency would consider this information in assessing proposal risk for each offeror. Delta argues that its proposal was prepared with the goal of demonstrating the ways in which its approach addressed the statement of objectives, and argues that if this information had been considered, its proposal would have been viewed as the best value to the government.

In response, TRICARE argues that there was no requirement in the evaluation scheme that the agency consider—either generally or as part of its assessment of proposal risk—an offeror's ability to meet the goals identified in the statement of objectives. Instead, the agency contends that the statement of objectives was used to develop the contract requirements identified in the statement of work, and that the evaluation scheme measured an offeror's plan for meeting, and its ability to meet, those requirements. In addition, the agency argues that the solicitation allows evaluators the discretion to consider an offeror's ability to meet the statement of objectives in assessing proposal risk, but does not require it.

² In its initial and supplemental protest filings Delta raised additional issues that have since been expressly withdrawn. Protester's Comments, June 6, 2005, at 27; Protester's Supplemental Comments, June 22, 2005, at 37, n.11.

As indicated above, section C of this solicitation opened with a statement of objectives representing “the desired outcomes of this contract,” and advised that the objectives are supported by the solicitation’s technical requirements. RFP at 9. As also set forth above (in full), these objectives included matters such as increasing enrollment in, utilization of the services of, and user-satisfaction with, the TRICARE dental program. See id. While there was no separate evaluation factor or subfactor dedicated to the assessment of proposals against the statement of objectives, there was a mention of the statement of objectives in the RFP’s guidelines on the review of proposal risk. Here, in its entirety, is the solicitation’s guidance in this area:

M.7.1.5. PROPOSAL RISK EVALUATION -- The Government will evaluate Factor 1, and the sub factors under Factor 1 for proposal risk. Proposal risk is the evaluation of risk and impact to the Government based on the proposed method of completing the task and the offeror’s demonstrated experience in performing that task. Proposal risk relates to the identification and assessment of the risks associated with an offeror’s proposed approach to performing the requirements of this solicitation and applies only to Factor 1 and each of its subfactors. Proposal risk may be associated with a particular approach, or proposed process, as it relates to the successful achievement of the Government’s requirements and the ability to meet the Statement of Objectives, or the degree to which the Government must expend resources to monitor or manage the risk to avoid unsuccessful performance. Proposal risk may also be impacted by the amount of experience in performing dental insurance related services demonstrated by the offeror. Proposal risk will be considered in making the best-value analysis for award. Proposal risk will be considered at the factor and sub factor level in evaluating trade-off possibilities and determining the best-value proposal.

Id. at 87 (emphasis added).

As the provision indicates, the evaluators made assessments about the risk of each offeror’s proposed approach under each of the technical subfactors--i.e., network access, claims processing, quality management, and customer service--and under the technical factor overall. These assessments are reflected, in detail, in the SSEB Report, AR, Tab 20, at 15-16, 18-19, 22, 26-27 (for UCCI), and at 61-62, 65, 69, 74-75 (for Delta). As also specified in the evaluation provision, these assessments were used by the SSA in making his award decision. Source Selection Decision Memorandum at 38-42. On the other hand, while there are occasional references in the evaluation materials to the relationship between the statement of objectives and certain features of the proposals, there is no evidence in the record that the evaluation of proposal risk included any consistent consideration of an offeror’s ability to meet the solicitation’s statement of objectives.

As a preliminary matter, we think the solicitation's stated requirements constitute the agency's detailed view of the kinds of services needed to achieve the contract's objectives. In this regard, and as quoted above, the introduction to the statement of objectives advised that the objectives were supported by the technical requirements identified throughout the statement of work. RFP at 9. In addition, section M of the solicitation, which contains the evaluation factors for award, explains that the government is seeking to evaluate the extent to which proposals demonstrate their ability "to meet or exceed the requirements defined in the statement of work and the quality of service that is likely to result from implementation of an offerors' proposed methods." RFP at 85. Moreover, the solicitation's instructions to potential offerors about how to structure and present their proposals to address each evaluation factor and subfactor reflect several of the stated objectives. Compare RFP at 77 (the instructions addressing the first technical subfactor, network access, which require offerors to describe how their "participating provider network sizing model is designed to maximize enrollee access") with RFP at 9 (the first objective identified is increased enrollment in the TRICARE dental plan).

As a result of our view that requirements in this solicitation are the agency's tangible definition of the services needed to achieve the contract objectives set forth at the beginning of the statement of work, we think the evaluation of each offeror's approach to meeting the requirements here, as measured by the evaluation factors and subfactors, implicitly captures an assessment of the way in which each proposal will achieve, or fail to achieve, the stated objectives. In this way, we read the solicitation as a whole, rather than as a disparate set of goals and requirements.

That said, we do not agree with the protester's assertion that the agency was required to expressly consider an offeror's ability to meet the statement of objectives as part of its assessment of proposal risk. As quoted above, the RFP, at section M.7.1.5, advises offerors that the agency "will" assess proposal risk for each technical subfactor, and for the technical factor overall. The provision then defines proposal risk as "the evaluation of risk and impact to the Government based on the proposed method of completing the task and the offeror's demonstrated experience in performing that task." Id. at 87. The fourth sentence of section M.7.1.5 contains the language that is the focus of Delta's arguments. This sentence reads:

Proposal risk may be associated with a particular approach, or proposed process, as it relates to the successful achievement of the Government's requirements and the ability to meet the Statement of Objectives, or the degree to which the Government must expend resources to monitor or manage the risk to avoid unsuccessful performance.

Id.

Our reading of this complex sentence is that it contains two major clauses presented as alternative scenarios of risks that may be associated with an offeror's approach or process; we read these examples as alternatives due to the separation of the clauses by a comma and the word "or." The protester argues that the word "and" in the first alternative--i.e., risk may exist "as it relates to the successful achievement of the Government's requirements and the ability to meet the Statement of Objectives"--has been used to set out an additional possibility. Put differently, the protester argues this clause means that the agency will consider whether risk exists with respect to successful achievement of the requirements, and, separately, whether risk exists with regard to the ability to meet the contract objectives.

We do not agree and do not think the context of this clause supports the protester's reading of the solicitation. As we indicated above, because the requirements and objectives are intrinsically related, the evaluation of each offeror's approach to meeting the requirements implicitly reflects the degree to which each proposal will achieve, or fail to achieve, the stated objectives. Thus, we read the language in section M.7.1.5 on which Delta relies as presenting a single scenario where risk might present itself--i.e., the agency will consider the risk that an offeror might not be able to meet the requirements, and in failing to do so, will affect the agency's ability to achieve its objectives.

Accordingly, we do not think the agency was required by this solicitation to assess each offeror's ability to meet the statement of objectives in evaluating proposal risk under each of the technical subfactors.³ Since we conclude that there was no such requirement in the evaluation scheme, we disagree with the protester's assertion that the agency erred in not making such an assessment as part of the evaluation of proposal risk.⁴ In addition, our review has shown nothing unreasonable, or

³ In contrast to the clause here, in cases where agencies anticipate the evaluation of an offer's ability to meet a solicitation's statement of objectives, the evaluation schemes have clearly indicated the agency's intent. See, e.g., Science Applications Int'l Corp., B-293601 et al., May 3, 2004, 2004 CPD ¶ 96 at 3; Raytheon Co., B-291449, Jan. 7, 2003, 2003 CPD ¶ 54 at 3.

⁴ Given our conclusion, we also disagree with the protester's assertion that its interpretation of the solicitation clause addressing the evaluation of proposal risk is buttressed by language it finds in the Acquisition Plan (AR, Tab 37, at 13) that is omitted from the Source Selection Evaluation Guide (AR, Tab 38, at 39). The protester's consultant points out that the language of the Acquisition Plan very nearly mirrors the solicitation language quoted above, while the language of the Source Selection Evaluation Guide omits the phrase "and the ability to meet the Statement of Objectives." This omission leads the consultant to opine that the evaluators may have relied upon the Source Selection Evaluation Guide, thus failing to recognize that the evaluation scheme in the solicitation called for a review of an

(continued...)

inconsistent with the solicitation's stated evaluation scheme, in the agency's evaluation of proposal risk.

Evaluation of the Claims Processing Technical Subfactor

Delta's second challenge to the evaluation focuses on the technical subfactor for claims processing, under which both Delta and UCCI received ratings of green, or acceptable, and low proposal risk. In essence, Delta argues that its proposal should have received a rating of blue under this subfactor, and that if it had, its proposal would have been evaluated as the proposal offering the greatest technical merit. Delta contends that its proposal was improperly evaluated because of unreasonable conclusions about the value to the agency of the ways in which Delta exceeded solicitation requirements, and because of unequal treatment of its and UCCI's proposals.

In response, TRICARE contends that Delta is merely disagreeing with the agency's evaluation conclusions, that the agency's evaluation conclusions have a reasonable basis, and that Delta has failed to show that the evaluation conclusions were irrational. In addition, TRICARE argues that the agency has not treated Delta unfairly, or unequally, in its application of the evaluation criteria. For the reasons set forth below, we agree with the agency.

Much of Delta's challenge in this area is based on the value agency evaluators placed on features in both Delta's and UCCI's proposals that exceeded certain minimum performance standards established in the RFP. Of relevance to this discussion are the minimum performance standards applicable to network access and claims processing, and certain performance guarantees set forth in section H of the solicitation. With respect to network access, the RFP required that

Ninety-five (95) percent of enrollees shall have access to a general dentistry participating provider within 35 driving miles of their primary residence, and be able to obtain an appointment within 21 calendar days of requesting an appointment.

RFP at 24. With respect to claims processing, the RFP required that

(...continued)
offeror's ability to meet the statement of objectives. Declaration of Protester's Consultant at 6. Since the agency has consistently argued that it had no such obligation, and since we agree, we think these arguments suggesting how the evaluators might have been misled into failing to follow the solicitation's evaluation scheme need no further consideration.

Claims processing standards, measured on a monthly basis, shall be as follows:

<u>CATEGORY</u>	<u>STANDARD</u>
Process Claim to Completion	90% within 14 calendar days of receipt
	98% within 30 calendar days of receipt
	100% within 60 calendar days of receipt

* * * * *

Payment and coding errors shall be corrected within 10 calendar days of identification of the error.

Id. at 25. In addition to these minimum performance standards, the RFP also required that offerors agree to certain performance guarantees. With respect to the minimum performance standard for claims processing, the RFP stated that the government would “withhold a performance guarantee”—in essence, require payment of a penalty—of \$1 per claim for every claim not processed in accordance with the standards requiring payment of 90 percent of claims within 10 days, and payment of 100 percent within 60 days. Id. at 43.

The RFP anticipated that offeror responses in these areas would be assessed under the first and second technical evaluation subfactors, network access and claims processing. Although the RFP’s section M evaluation guidance related to network access is not at issue in this protest, the guidance related to claims processing is relevant here. Specifically, the solicitation stated:

Proposals will be evaluated to determine the offeror’s ability to accommodate the anticipated [TRICARE dental program] claim volume, including the offeror’s proposed staffing. . . . Proposals will also be evaluated for supporting accurate and timely claims processing in accordance with the minimum claims processing standards specified in Section C. Proposals will also be evaluated to assess the efficacy of the offeror’s plan to identify problems and to implement corrective action. Plans guaranteeing standards superior to the minimum claims processing standards specified in Section C, without qualification, may receive higher merit ratings.

Id. at 87 (emphasis added).

In response to the claims processing requirement, Delta offered to process [~~deleted~~] percent of claims within [~~deleted~~] days of receipt, and 100 percent of

claims within **[deleted]** days. Delta offered a \$**[deleted]** per claim performance guarantee that it would process **[deleted]** percent of claims within **[deleted]** days. AR, Tab 22 at Bates p. 270.⁵ In contrast, UCCI offered to process **[deleted]** percent of claims within 14 days, and to meet the solicitation's requirement that it process 98 percent of claims within 30 days, and 100 percent of claims within 60 days. UCCI offered the required \$1 per claim performance guarantee that it would comply with the RFP's stated minimums. AR, Tab 24 at Bates p. 336.

Although both Delta and UCCI offered to exceed the minimum performance requirements for claims processing established in the RFP, both received a rating of acceptable, or green, under the claims processing subfactor. Moreover, despite the the SSEB's and the SSA's express recognition of the fact that both offerors proposed to exceed the minimum performance requirement in this area, neither proposal was assessed as providing additional benefit to the government. Source Selection Decision Memorandum at 10, 22-23; AR, Tab 20, at 17, 63. The basis for this judgment was set forth in detail in the SSEB's review of Delta's final proposal revision:

The SSET does not consider the proposed standards to be strengths. Given the fact that 3.3 million claims are processed annually, under the current standard of 90% within 14 days is [sic] 2.97 million claims. The proposed **[deleted]**% within **[deleted]** days equates to **[deleted]** million claims. The **[deleted]**% increase (from 90% to **[deleted]**%) would be approximately **[deleted]** additional claims processed per year and equates to approximately 2 additional claims processed per provider location per year given Delta's proposed number of provider locations.⁶ Given [that] many participating providers have 30 day billing cycles, the decrease from a 14 to **[deleted]** day timeframe would have minimal effect on the provider's practice. The SSET does not consider the percentage increase or the shortened time period to be significant enough to affect provider and beneficiary satisfaction. The SSET believes that the effect on providers and beneficiaries will be negligible.

AR, Tab 22 at Bates pp. 270-71. The SSET expressed similar views about Delta's offer to pay 100 percent of claims within **[deleted]** days rather than the 60 day period required by the RFP. Again, the SSET points out that this offer only involves the remaining 2 percent of claims that the RFP allowed to be paid between 30 and

⁵ For ease of reference, the citation here is to the sequential "Bates" numbers stamped on pages in the record.

⁶ Delta proposed a participating provider network of **[deleted]** general and specialty dentist locations. AR, Tab 22 at Bates p. 254.

60 days after receipt. As a result, “the SSET does not consider the increase to be significant enough to enhance provider and beneficiary satisfaction.” *Id.* at 271.

With respect to Delta’s first challenge in this area—that the agency’s evaluation conclusions about the value of its offer to exceed the minimum performance requirements for claims processing established in the RFP are irrational and unreasonable—we disagree. In support of its arguments, Delta offers the opinion of its expert that the timeliness of claims processing is a matter of significant concern for providers, and that slower payments can have an adverse impact on provider and enrollee satisfaction. Protester’s Comments, June 6, 2005, at 11. While we do not disagree with this proposition, the agency’s judgment is that the facts here do not support a conclusion that the extent to which Delta proposed to exceed the required claims processing times is sufficiently significant to provide a benefit to the government.

We note that this is not a situation where the agency has overlooked the benefits of an offeror’s proposal, or misunderstood them. The agency here expressly considered the value of these benefits and decided that they did not significantly enhance the value of the Delta’s proposal. In our view, Delta has offered little more than mere disagreement with the agency’s judgment about the value of the enhancements in its proposal; Delta has not established that these judgments are unreasonable. A protester’s disagreement with an agency’s evaluation does not establish that the evaluation was unreasonable. *The OMO Group, Inc.*, B-294328, Oct. 19, 2004, 2004 CPD ¶ 212 at 5, 8.

We also note that this is not a situation where the agency has rated the proposals inconsistently. As the agency points out, a rating of blue, or exceptional, was reserved for proposals that exceeded minimum requirements in a manner beneficial to the government. AR, Tab 20 at Bates p. 127. Given that the agency had a rational basis for its evaluation conclusion that neither of these proposals exceeded minimum requirements in a manner beneficial to the government, and, given that the agency consistently applied its evaluation methodology to both proposals, we think TRICARE reasonably evaluated both Delta and UCCI as acceptable under this subfactor. *Interlog, Inc.*, B-282139, Apr. 27, 1999, 99-1 CPD ¶ 87 at 3.

Delta also argues that its rating under the claims processing subfactor was otherwise unfair for two reasons. First, Delta argues that it was treated unfairly because, under a different subfactor, UCCI received a strength for exceeding the minimum performance requirements by **[deleted]** percentage points. Delta contends that it was unreasonable for the agency to value a **[deleted]**-percent increase in network access in UCCI’s proposal under the first technical subfactor, network access, and not to similarly value Delta’s **[deleted]**-percent increase in claims processing.

On this issue, the record shows that UCCI did, in fact, receive a strength—and subsequently, a rating of exceptional—for its proposal’s representation that **[deleted]**

percent of enrollees would have access to a participating provider within 35 driving miles of their primary residence, and would be able to obtain an appointment within 21 days of requesting an appointment. AR, Tab 24 at Bates pp. 333-34. As indicated above, the RFP required that offerors propose a network providing such access to at least 95 percent of enrollees. RFP at 24. Delta's proposal represented that **[deleted]** percent of enrollees would have such access; and Delta, too, received a strength for this enhancement, and a rating of exceptional. AR, Tab 22 at Bates p. 254.

In Delta's view, the fact that UCCI received a strength for exceeding Delta's proposed network access by **[deleted]** percentage points--and exceeding the RFP network access requirement by **[deleted]** percentage points--means that it was unreasonable for the agency not to accord Delta a strength for exceeding the RFP's claims processing performance requirement by **[deleted]** percentage points. We find this argument unpersuasive.

In analyzing the UCCI proposal under the network access technical subfactor, the SSET observed that:

With 1.7 million enrollees, a **[deleted]**% increase in the standard means that **[deleted]** additional enrollees shall have access to a participating provider within 35 driving miles. By proposing a higher access standard, a greater number of enrollees should have a greater choice of providers. This should increase the probability that a provider will be closer to the enrollee and therefore, should increase beneficiary satisfaction.

AR, Tab 24 at Bates p. 328. While Delta is correct that the difference between its proposed level of network access and UCCI's is only **[deleted]** percentage points--the same relative difference as existed between the proposals in the area of claims processing--we know of no reason why a **[deleted]** percentage point difference in two entirely different areas must be valued in the same way. Moreover, we find reasonable the agency's view that a slight increase in the speed with which a small number of claims gets paid is not equivalent to an increase in the number of enrollees who have easy access to a participating dental provider. Given this reasonable basis for treating the proposals differently in these two areas, we do not agree that Delta has been treated unfairly.

Delta's second contention that it was treated unfairly under the claims processing technical subfactor arises from its view that TRICARE considered quality aspects of UCCI's proposal under the claims processing subfactor, while it restricted consideration of Delta's favorable quality approach under the quality management subfactor. In this regard, Delta argues that the agency unfairly and unreasonably evaluated its certification as a high-quality contractor under the third subfactor, quality management, rather than under the claims processing subfactor. Supp. Protest at 33-37.

The record here shows that Delta received a strength, and a rating of exceptional under the third technical subfactor, quality management/quality improvement program, because of the certification of its subcontractor, Delta Dental of Michigan, as an ISO 9001 contractor—a rigorous certification program for contractors with state-of-the-art quality programs. AR, Tab 22 at Bates p. 275. Delta contends that this strength should have been reflected under the claims processing technical subfactor, rather than the quality management technical subfactor, and that if the agency had done so, its strength in this area would have merited an exceptional rating under the second technical subfactor. Under this scenario, Delta argues it would have been the highest-rated offerer under the technical evaluation factor.

A necessary component of Delta’s argument is its claim that the agency assessed UCCI’s quality approach under the second technical subfactor, claims processing. Thus, Delta contends that the agency’s failure to assess its quality approach under the second technical subfactor as well—and in so doing, accord it the same evaluation strength (resulting in an exceptional rating) it received for its ISO 9001 certification under the quality management subfactor—means that the agency has engaged in unequal treatment. We are, again, unpersuaded.

In our view, the record does not support Delta’s contention that the agency treated UCCI and Delta unequally in evaluating the claims processing subfactor. The RFP here advised offerors that its evaluation of the second technical subfactor, claims processing, would include an assessment of “the efficacy of the offeror’s plan to identify problems and implement corrective action” associated with processing claims. RFP at 87. As announced, the evaluation of both UCCI’s and Delta’s proposals included precisely this kind of review for both offers. Compare AR, Tab 24 at Bates p. 338 (the SSET assessed UCCI’s approach to identifying problems and correcting them) with AR, Tab 22 at Bates pp. 266-67 (same for Delta’s approach). We also agree with the agency’s assessment that Delta’s ISO 9001 certification is a company-wide quality program, and is not tied only to the smaller subset of activities that constitutes claims processing. See Supp. Report, June 15, 2005, at 39. Finally, the agency points out that Delta’s own proposal trumpets its ISO 9001 certification as part of its response to the quality management technical subfactor. Id. at 39-40. Under these circumstances, since the record shows that the agency did not evaluate UCCI’s and Delta’s proposals differently under the claims processing subfactor, we see nothing unfair or unreasonable about the fact that Delta’s state-of-the-art quality management plan was evaluated under the quality management subfactor.

Evaluation of Price Realism

In its third, and last, challenge to the evaluation here, Delta argues that the agency failed to determine, as part of its price realism review, that each offeror’s

administrative costs were consistent with its stated approach. TRICARE answers that no such review was required by the RFP.

The third evaluation factor under the evaluation scheme set forth in this RFP was total evaluated price. An offeror's evaluated price was calculated by multiplying each of the priced contract line items (CLIN) by the estimated quantities and adding all of the costs for each option period, including certain phase-in costs. RFP at 88. Among the CLINs were four requests for offerors to identify, as a unit price, the premium that would be charged for each enrollment in the TRICARE dental program. RFP at 2. These four premiums were for single enrollments, family enrollments, single survivor benefit enrollments, and family survivor benefit enrollments. Id.

The RFP's evaluation scheme advised that all priced CLINs would be reviewed for reasonableness and unbalanced pricing, and that there would be a limited review of price realism. In explaining the intended review of price realism, the RFP stated:

The premium build-up for the Single and Family enrollments (CLINs X001 and X002) provided by the offeror will be reviewed for price realism. This review will ascertain whether the proposed premium rates and the assumptions used in their build-ups are realistic. From an actuarial standpoint, the term "realistic," as it applies to an overall premium rate, means that the premium rate proposed is adequate to sustain the dental and administrative costs for the benefits proposed, given the offeror's approach. If the offeror's overall premium is determined to be unrealistic, the evaluator will calculate the net impact (dollar value) of the unrealistic assumption(s). The results of the price realism review will not be used to adjust the offeror's Total Evaluated Price. If the offeror's overall premium is determined to be unrealistic, the Government will assess price risk based on the net impact of unrealistic assumption(s), the financial strength of the offeror (and its parent or partner company(s) if applicable), and the source of the unrealistic pricing, i.e., network maintenance, claims processing, etc.

RFP at 88 (emphasis added). To assist in this review, the RFP's instructions to offerors required a description of the build-up of the monthly premium rates and of the assumptions underlying the development of those rates.⁷ Id. at 81.

⁷ Among other things, this provision required offerors to provide detailed information on: enrollee assumptions, by type of enrollee; utilization rates by type of service or procedure by participating providers and non-participating providers; unit costs by type of service or procedure by participating providers and non-participating providers; the impact of differences in assumption by region; the impact of benefit changes on the premium; administrative loading; and profit. RFP at 81.

Upon receipt of the proposals, the PET reviewed the proposed premium prices of all three offerors under 10 criteria to determine if the proposed premium rates and the assumptions used in their build-ups were realistic. First Declaration of the Chairman of the PET, May 24, 2005, at 2. These criteria (which closely track the categories of information requested from offerors in the RFP) were identified in the agency's internal Source Selection Evaluation Guide, AR, Tab 38 at Bates pp. 33-35; these criteria were not identified in the solicitation. Some of these criteria were:

Does the premium build-up method conform to the solicitation specifications?

Are the utilization rate assumptions realistic?

Are the unit cost assumptions realistic?

Are the proportion of participating and non-participating provider assumptions realistic?

Are administrative cost assumptions realistic?

Are the profit assumptions realistic?

Id. The consensus views of the PET about how Delta's and UCCI's proposed premium rates fared under each of these ten criteria, and whether the team viewed the premium rates as realistic overall, were memorialized and provided with the agency record in this protest. AR, Tab 30 at Bates pp. 220-27 (Delta's premium rates), 235-41 (UCCI's premium rates).

Of relevance to this dispute are the views of the PET about UCCI's proposal under one of the criteria identified above, specifically, the PET's consideration of whether an offeror's administrative cost assumptions were realistic. On this issue, the PET's final consensus views, in their entirety, are set forth below:

UCCI presents a great deal of data on administrative costs. A limited narrative is provided to describe the basis for these calculations. However, as the incumbent, the proposed administrative costs are based on actual costs under comparable circumstances. The premium load of about **[deleted]** percent is essentially the same as the IGCE load.

UCCI's phase-in costs are somewhat lower than the IGCE estimate. However, this is realistic and expected, as the incumbent should have lower start-up costs than a new contractor.

UCCI's administrative cost assumptions are realistic.

AR, Tab 34 at Bates pp. 330-31.

Delta contends that the agency cannot claim to have performed a reasonable evaluation of price realism because the analysis quoted above does not include evidence that the agency evaluated whether UCCI's "proposed administrative costs were consistent with the offeror's approach." Supp. Protest at 42. Delta argues that if the agency had performed this review properly, it would have realized that UCCI was "prepared to do far less than Delta Dental in attempting to meet the Government Objectives for this contract," and would have realized that Delta's higher administrative costs are tied to its effort to increase enrollment by reservists in the TRICARE dental program. Supp. Comments at 43.

As a preliminary matter, we note that the purpose of the limited price realism review anticipated here was not to make assessments about which of these offerors plans to expend greater effort increasing the enrollment of reservists in this program.⁸ Instead, the purpose of the review was to determine whether an offeror's premiums are adequate "to sustain the dental and administrative costs for the benefits proposed, given the offeror's approach." RFP at 88.

In our view, the agency's price realism review was adequate for this purpose, and consistent with the stated evaluation criteria. As set forth in the analysis quoted above, the agency reviewed UCCI's administrative cost data, and the limited narrative provided with that data. In addition, the agency noted that UCCI based its proposed administrative costs on the actual costs it has been experiencing as the incumbent, and noted that the level of administrative costs anticipated is essentially the same as those in the government's estimate. Given that UCCI has been able to perform these services in the past at these costs, and given that the protester has offered nothing about UCCI's proposed future performance that suggests that the company's future administrative costs will be higher, we think the price realism review was reasonably performed.⁹

⁸ In fact, this argument suggests that Delta, in essence, is asking for a review of the technical merit of its proposal as part of the price realism review--a matter limited by the terms of the RFP to determining whether the proposed premium rates appear realistic. Moreover, Delta is again seeking credit for the ways in which it proposed to meet the objectives of this contract. As set forth above, we think the evaluation of Delta's proposal was properly limited to an assessment of whether and how well Delta proposed to perform the requirements of the contract.

⁹ Delta's concern is that its higher administrative costs will result in its greater ability to achieve the solicitation's objectives, and that the agency failed to recognize this fact. This concern does not translate to a conclusion that UCCI's lower administrative costs will be inadequate to sustain the dental and administrative costs for the benefits proposed.

Finally, to the extent that Delta is arguing that the analysis under the above-quoted criterion used by the PET to assess the price realism of each offeror's premium build-up was inadequate, we note that these criteria were never set forth in the evaluation scheme. Instead, they were internal guidelines used by the PET to structure its detailed review of each offeror's premium build-up. As a result, Delta's contention that the agency failed to perform an adequate analysis under one of these 10 internal guidelines does not translate to an unreasonable evaluation, or to unfair treatment of Delta. It is the RFP, not internal evaluation materials, that forms the compact between the agency and offerors about how proposals will be evaluated. Lear Siegler Servs., Inc., B-280834, B-280834.2, Nov. 25, 1998, 98-2 CPD ¶ 136 at 6; Loral Aeronutronic, B-259857.2, B-259858.2, July 5, 1995, 95-2 CPD ¶ 213 at 9. Internal agency evaluation guidelines do not provide rights to outside parties. Mandex, Inc.; Tero Tek Int'l, Inc., B-241759 et al., Mar. 5, 1991, 91-1 CPD ¶ 244 at 7.

The protest is denied.

Anthony H. Gamboa
General Counsel