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

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Decision

Matter of: Palmetto GBA, LLC

File: B-298962; B-298962.2

Date: January 16, 2007

W. Jay DeVecchio, Esq., Kevin C. Dwyer, Esq., Edward Jackson, Esq., and Sharmila Sohoni, Esq., Jenner & Block LLP for the protester.

Craig A. Holman, Esq., Kara L. Daniels, Esq., and David J. Craig, Esq., Holland & Knight, LLP, for CIGNA Government Services, LLC, an intervenor.

Jeffri Pierre, Esq., and Anthony Marrone, Esq., Department of Health and Human Services, for the agency.

Jonathan L. Kang, Esq., and Glenn G. Wolcott, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's cost realism and technical evaluations is denied where the record supports the reasonableness of the agency's determinations.

2. Protest that agency was required to amend solicitation to include performance of optional/specialty services is denied where solicitation did not require offerors to submit proposals for such services and the agency had not yet determined how the optional/specialty services will be obtained.

DECISION

Palmetto GBA, LLC protests the award of a contract to CIGNA Government Services, LLC, by the Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS), under request for proposals (RFP) No. CMS-2005-0012 to provide Medicare claims processing and services related to claims for suppliers and beneficiaries of durable medical equipment. Palmetto challenges the agency's cost realism and technical evaluations, and further argues that the agency was required to amend the solicitation to include what Palmetto asserts are changed requirements.

We deny the protest.

BACKGROUND

In December 2003, Congress enacted the Medicare Prescription Drug Improvement and Modernization Act of 2003 (MMA). Among other things, this legislation requires that CMS use competitive procurement procedures, pursuant to the Federal Acquisition Regulation (FAR), to replace the fiscal intermediaries and carriers on whom CMS has historically relied for claims processing services, and who have been selected under other than competitive procedures. The replacement contractors under the MMA are referred to as “Medicare Administrative Contractors” (MACs).¹

In April 2005, CMS issued RFP No. CMS-2005-0012, seeking proposals, for each of four geographic jurisdictions, to provide specified health insurance benefit administration services, including Medicare claims processing and payment services related to durable medical equipment, prosthetics, orthotics and supplies (DME).² RFP § B.1. The RFP anticipated the award of a cost-reimbursement plus award-fee contract, with a 1-year base performance period and four 1-year option periods.

The procurements for each jurisdiction were conducted as separate competitions, but offerors were permitted to submit proposals for any or all of the jurisdictions. The solicitation provided that the source selection decision for each jurisdiction would be made on the basis of the proposal offering the best overall value to the government, considering cost/price and the following non-cost/price factors, listed in

¹ In general, fiscal intermediaries have been responsible for processing Medicare payments for institutional providers, e.g., hospitals and skilled nursing facilities, under Part A of the Medicare program; carriers have been responsible for processing payments for professional providers (for example, physicians and diagnostic laboratories) under Part B of the Medicare program. More specifically, contractors known as “Durable Medical Equipment Regional Carriers” (DMERCs) have been responsible for processing Medicare claims for DME under Part B of the Medicare program. RFP, Statement of Work (SOW), at 11-12.

² The solicitation’s statement of work provided an overview of the required tasks, stating as follows:

The Contractor shall receive and control Medicare claims from [DME] suppliers and beneficiaries within its jurisdiction, as well as perform edits on these claims to determine whether the claims are complete and should be paid. . . . In addition, the Contractor calculates Medicare payment amounts and remits those payments to the appropriate party. . . . The Contractor also conducts a variety of different suppliers services, such as answering written inquiries, and educating them on Medicare’s rules and regulations and billing procedures.

RFP, SOW, at 14.

descending order of importance: offeror capability, implementation, quality control plan, corporate experience, past performance, and small disadvantaged business utilization plan.³ RFP § M.4. The solicitation provided that non-cost/price factors, when combined, were significantly more important than cost/price, and that cost/price would not be point scored but would be evaluated for cost realism. RFP §§ M.2, M.7.

In addition to the claims processing and contractor interface services described above, referred to in the solicitation as “core” services, the solicitation also outlined the following four “optional/specialty” services: data center; medicare electronic data interchange system (MEDIS); national supplier clearinghouse; and data analysis and coding. The solicitation provided that offerors for the DME contracts were required to submit proposals for the data center, and were permitted to submit proposals for any or none of the other optional/specialty services.⁴ RFP Cover Letter, April 15, 2005. As relevant here, the MEDIS option addressed the agency’s needs for electronic data interchange (EDI) services, which are integral to the “front end” of the claims submission process. Second Contracting Officer’s Statement ¶ 1. The agency has historically obtained EDI services on a “contractor-specific” basis, meaning that each of the various CMS contractors provided their own EDI services.⁵ Decl. of Medicare Contractor Management Group Director ¶¶ 8-9; Contracting Officer’s Second Statement ¶ 1. In seeking proposals for the MEDIS option, the agency sought to obtain a single contractor to provide standardized EDI services for each of the four DME MAC jurisdictions.⁶ The solicitation provided that the

³ For the technical evaluation, offerors’ proposals were evaluated on the basis of the six factors, for a total of 1000 points. The offeror capability factor was worth 545 points, and had subfactors for understanding the requirement (300 points), project management (75 points), key personnel (75 points), information security (50 points), and compliance plan (45 points). The implementation factor was worth 170 points, and had subfactors for implementation plan (70 points), key personnel (60 points), and implementation risk (40 points). The quality control plan factor was worth 100 points, the corporate experience factor was worth 80 points, the past performance factor was worth 80 points, and the small disadvantaged business utilization/ participation plan factor was worth 25 points. RFP § M.4.

⁴ The solicitation also provided that only a DME contractor in one of the four jurisdictions would be eligible for award of the contract to provide the optional/specialty services.

⁵ An early version of the RFP for the DME MACs required offerors to propose front-end EDI processing as part of the core services.

⁶ CMS states that it has a long-term goal of having one contractor to perform “front-end” EDI services for all Medicare contractors. Agency Report, Nov. 8, 2006, at 5.

evaluation for the core and optional/specialty services would be separate, referring to them as “mutually exclusive.” RFP § M.6.

In June 2005, CIGNA and Palmetto each submitted proposals to perform the “core” DME requirements in jurisdiction C. In addition, Palmetto submitted a proposal to perform the non-mandatory optional/specialty services, including MEDIS, in all four jurisdictions; CIGNA submitted a proposal to perform the “core” DME requirements in jurisdiction C, but not for the non-mandatory optional/specialty services.

In January 2006, the agency awarded Palmetto the DME MAC contract for performance of the “core” services in jurisdiction C; at that time Palmetto was also awarded the contract to perform the optional/specialty services in all four jurisdictions. Thereafter, CIGNA filed a protest, challenging the award of the DME contract to Palmetto for jurisdiction C.⁷ Our Office sustained that protest, concluding that the agency had conducted improper discussions with Palmetto regarding its price proposal. See CIGNA Gov’t Servs., LLC, B-297915.2, May 4, 2006, 2006 CPD ¶ 74.

CIGNA’s protest of the award to Palmetto resulted in a stay of performance with regard to Palmetto’s jurisdiction C DME contract; because of the requirement that the contractor for the optional/specialty services be one of the four DME MACs, performance of Palmetto’s contract for the optional/specialty services was also suspended. As relevant here, the stay of performance regarding Palmetto’s contract to perform optional/specialty services required the agency to make alternative arrangements to obtain EDI services in each of the four jurisdictions. Specifically, in jurisdictions A and B, the DME contracts were amended to require each DME MAC to provide their own EDI services. For jurisdiction D, CMS entered into a contract with CIGNA to provide EDI services for Noridian, the DME MAC in that jurisdiction. For jurisdiction C, the agency modified Palmetto’s incumbent DMERC contract to provide continued claims processing services, including the necessary EDI services. Agency Report, Nov. 8, 2006, at 22; Contracting Officer’s Second Statement ¶ 12.

Following our decision sustaining CIGNA’s protest, the agency implemented corrective action by reopening discussions with offerors and requesting the submission of final revised proposals for the “core” DME requirements in jurisdiction C. In response to a specific request by Palmetto, the agency advised offerors that it would not seek or accept proposal revisions regarding the optional/specialty services. AR, Nov. 8, 2006, at 13; AR, Tab 23J, Letter from Contracting Officer to Palmetto, May 11, 2006.

In May 2006, CIGNA and Palmetto each submitted revised cost and technical

⁷ At that time, CIGNA also protested the award of the DME contract in jurisdiction D to Noridian Administrative Services, LLC; our Office denied that protest. See CIGNA Gov’t Servs., LLC, B-297915, May 4, 2006, 2006 CPD ¶ 73.

proposals. Thereafter, the agency conducted several rounds of discussions with each offeror. For the recompetition, the agency did not conduct entirely new proposal evaluations, but rather updated the prior evaluations to reflect the revised or updated portions of the offerors' proposals, along with consideration of the offerors' responses to the agency's various discussion questions.

In its final proposal revision, CIGNA reduced its total proposed cost/price from \$[deleted] to \$143,568,466. AR, Tab 25A, Business Evaluation Panel (BEP) CIGNA Cost Realism Report, Attach. A, 1-4. Specifically, CIGNA proposed significant reductions to its direct labor costs and to its proposed general and administrative (G&A) rates. Id.

In evaluating the offerors' cost/price proposals, the agency performed a cost realism analysis which examined each offeror's proposed costs and prices with regard to the following categories: labor hours, labor rates, fringe benefits, indirect rates, other direct costs, travel, subcontract costs, general and administrative rates, and award fees. AR, Tab 25A, BEP CIGNA Cost Realism Report, at 1. As discussed in more detail below, the agency conducted discussions with CIGNA, during which the agency requested, and CIGNA provided, substantial information regarding the basis for its proposed cost/price reductions. In general, CIGNA stated that the reductions in its proposed cost/price reflected specific operational efficiencies that were incorporated in CIGNA's proposal which would result in reduction of direct labor through business process improvements and increased automation.

Based on all of the information CIGNA provided, the agency concluded that CIGNA had adequately supported most of its proposed cost/price reductions, including its proposed reductions of direct labor. AR, Tab 25A, BEP CIGNA Cost Realism Report, at 1-2. With regard to CIGNA's proposed reduction to its G&A rate, the agency concluded that CIGNA's proposal was too "aggressive," and upwardly adjusted CIGNA's proposed G&A costs by approximately \$4.1 million, thereby increasing its evaluated cost/price to \$147,691,661. Id. at 15. The agency made no cost realism adjustments to Palmetto's proposal. See AR, Tab 25B, BEP Palmetto Cost Realism Report.

As a result of the agency’s reevaluation, the offerors’ final revised proposals were scored as follows:

	Palmetto	CIGNA
Technical Score		
Offeror Capability	505	522
Implementation	155	146
Quality Control Plan	95	97
Corporate Experience	80	76
Past Performance	67	71
SB & SDP Participation Plan	17	19
Total Technical Score	919	931
Proposed Cost/Price	[\$[deleted]]	\$143,568,466
Evaluated Cost/Price	[\$[deleted]]	\$147,691,661

AR, Tab 23D, Source Selection Decision (SSD), at 3.

Based on its evaluation summarized above, the agency selected CIGNA for award of the contract for “core” DME services in jurisdiction C based on its higher technical rating and lower evaluated cost/price. *Id.* Thereafter, the agency terminated Palmetto’s contract for the jurisdiction C DME MAC “core” services, as well as Palmetto’s contract for the optional/specialty services. AR Tab 26A. At the time of award, the agency had not made a final determination as to how it will obtain the necessary EDI services for the jurisdiction C DME contract.⁸ *Id.* ¶ 50. The agency states that it may elect to modify CIGNA’s contract to include EDI services,⁹ but maintains it is “equally possible” it will contract for those services with a third party - similar to the approach CMS has taken with regard to EDI services in jurisdiction D. AR, Nov. 8, 2006, at 27-28.

DISCUSSION

Cost Evaluation

Palmetto first protests the agency’s cost realism evaluation, arguing that the agency failed to reasonably consider whether CIGNA adequately supported its proposed cost/price reductions. In sum, Palmetto maintains that the agency failed to perform

⁸ As noted above, the agency has made various, differing arrangements to obtain the necessary front-end services in each of the four jurisdictions.

⁹ Among other things, the RFP stated: “CMS reserves the right to exercise [the MEDIS option] at the time of contract award or at any time during the period of performance of the resultant contract.” RFP at 143.

a meaningful analysis of CIGNA's proposed cost/price. See National City Bank of Indiana, B-287608.3, Aug. 7, 2002, 2002 CPD ¶ 190.

When an agency evaluates a proposal for the award of a cost-reimbursement contract, an offeror's proposed estimated costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. FAR §§ 15.305(a)(1); 15.404-1(d); Tidewater Constr. Corp., B-278360, Jan. 20, 1998, 98-1 CPD ¶ 103. Consequently, the agency must perform a cost realism analysis to determine the extent to which an offeror's proposed costs are realistic for the work to be performed. FAR § 15.404-1(d)(1). An agency is not required to conduct an in-depth cost analysis, see FAR § 15.404-1(c), or to verify each and every item in assessing cost realism; 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. Further, 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. See SGT, Inc., B-294722.4, July 28, 2005, 2005 CPD ¶ 151 at 7; Metro Mach. Corp., B-295744; B-295744.2, Apr. 21, 2005, 2005 CPD ¶ 112 at 10-11. Because the contracting agency is in the best position to make this determination, we review an agency's judgment in this area only to see that the agency's cost realism evaluation was reasonably based and not arbitrary. Hanford Env'tl. Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 8-9.

Here, as noted above, the agency conducted several rounds of discussions with CIGNA, focusing in particular on the proposed operational efficiencies that CIGNA maintained will lead to lower costs. See, AR, CIGNA Discussions Responses, June 14, 2006, July 11, 2006, August 4, 2006, August 9, 2006. At the conclusion of these discussions, the agency's business evaluation panel (BEP) concluded that CIGNA's "level of effort hours proposed in its final proposal revision . . . (1) is deemed realistic for the work to be performed (2) reflects a clear understanding of the [SOW] requirements and (3) is consistent with the unique methods of performance described within its technical proposal." AR, Tab 25A, BEP CIGNA Cost Realism Report, at 2. In this regard, the BEP report references the research, review and analysis performed, and separately documented, by the BEP's technical advisor. Id.

In reviewing CIGNA's proposed cost/price reductions, the BEP technical adviser concluded that there were three primary factors that supported CIGNA's cost/price reductions: (1) CIGNA's adoption of a business management process known as [deleted],¹⁰ (2) CIGNA's historical experience with cost reductions, and (3) the input

¹⁰ [Deleted]. Id.

of agency subject matter experts (SMEs) who were consulted for their views regarding CIGNA's proposed operational efficiencies [deleted]. Decl. of BEP Technical Advisor ¶¶ 8-10. After considering these factors, the BEP technical advisor concluded that he could not reasonably question CIGNA's assumptions regarding operational efficiencies. AR, Tab 25C, BEP Technical Advisor Report for CIGNA, at 11.

With regard to the [deleted] business management process, CIGNA stated that it had, in 2006, "implemented [deleted] processes such as [deleted] and [deleted] as tools to solve systematic business problems." AR, Tab 27, CIGNA Discussion Questions Responses, July 11, 2006, at 52. The BEP technical advisor stated that his review of this aspect of CIGNA's proposal included consideration of a treatise--portions of which were provided for the record by the agency in its report responding to this protest. See [deleted]. During a telephone hearing conducted by this Office in connection with this protest,¹¹ the BEP technical advisor testified that he reviewed the treatise prior to drafting his final report on CIGNA's proposed costs. Hearing Transcript (Tr.) at 13:18-14:1. Among other things, the BEP technical advisor referred to the treatise's assertion that companies working towards the [deleted] "will experience . . . a 12 percent reduction in the number of employees."¹² [Deleted], *supra*, at 2; Tr. at 14:16-15:14.

Palmetto complains that the treatise referenced by the BEP technical adviser fails to specify whether the efficiencies contemplated are reasonably applicable to the particular type of labor at issue here, and that CIGNA's proposal did not clearly identify the manner in which its program will be implemented. In this regard, the BEP technical advisor testified that he understood [deleted] to refer to "general principles," which supported CIGNA's proposal in light of CIGNA's proposed approach to achieving generally-applicable efficiencies for all labor categories. Tr. at 15:6-14. Although Palmetto expresses disagreement with the agency's review and analysis regarding the potential for CIGNA to effect the efficiencies proposed, it has not established that the agency's consideration of this particular aspect of CIGNA's proposal was unreasonable.

¹¹ In resolving this protest, our Office conducted a telephone hearing, on the record, during which the BEP technical advisor provided testimony regarding the protest issues.

¹² CIGNA's final revised proposal was based on the premise that it could reduce labor costs by approximately [deleted] per year over the course of the contract. More specifically, CIGNA's proposal reflected a [deleted] increased efficiency during the base contract year and first, third and fourth option years, and a [deleted] increased efficiency during the second option year. AR, CIGNA Final Proposal Revision, Vol. II, Tab D, Cost Realism Narrative, at 8-9.

In addition, the BEP technical adviser considered the historical efficiencies CIGNA has experienced in connection with its prior performance of its DMERC contract for jurisdiction D. AR, Tab 25C, BEP Technical Advisor's Report, at 11. During discussions, in response to the agency's questions, CIGNA stated that during the period from December 2005 through May 2006, CIGNA has implemented various specified business methodologies,¹³ and successfully achieved reductions in full-time equivalent employee (FTE) workloads. AR, CIGNA Discussions Responses, Aug. 4, 2006, at 81-83. More specifically, CIGNA provided supporting data indicating that it had achieved an across-the-board workload reduction of [deleted] during those 6 months, and stated that, on an annualized basis, CIGNA's savings would exceed the approximately [deleted] operational efficiency [deleted] reflected in its cost/price proposal. *Id.* at 81.

The agency indicates that it understood CIGNA to be correlating the achievement of prior savings to its ability to achieve savings in the future, stating:

CIGNA data showed that in the first half of 2006 CIGNA, while implementing the business improvement models, was attaining reductions and efficiencies of [deleted]. I feel it was reasonable to assume that, based on the quality processes CIGNA was implementing, CIGNA could achieve its goal of [deleted].

Decl. of BEP Technical Advisor ¶ 8.

In his report, the BEP technical advisor stated that, although CIGNA's "support for historical efficiency improvements only indicates a recent (since late 05) focus on improvements," there was "no basis to question the basic assumption that these efforts will continue." AR, Tab 25C, BEP Technical Advisor Report for CIGNA, at 11.

In conjunction with his consideration of CIGNA's historical data regarding cost reductions during performance of its prior DMERC contract, the BEP technical adviser stated that he reviewed information from the agency's Contractor Administrative and Financial Management (CAFM) system, which the agency uses to monitor contractor cost and workload information, and concluded that the data supported CIGNA's claims regarding workload reduction. *See, e.g.*, Tr. at 25:18-26:1; 27:14-37:11; *see also*, AR, Tab 25A, BEP CIGNA Cost Realism Report, at 2.

Palmetto complains that the historical cost data provided by CIGNA reflected an insufficiently lengthy period to be meaningful, that the proposed cost reductions are

¹³ In addition to [deleted], CIGNA referenced ISO 9000:2001, the [deleted] and [deleted] as other examples of business process improvements, and provided specific examples regarding its experience in applying these programs. AR, CIGNA Discussion Response, June 14, 2006.

not tied to specific activities, and that the reductions identified may have been one-time achievements in efficiency. Nonetheless, the record shows that the agency consulted data that it believed were relevant to support CIGNA's contention that it had achieved cost efficiencies during the first half of 2006, and that those efficiencies reasonably supported CIGNA's assumptions for future operational efficiencies.

The FAR specifically provides that an agency's required cost realism analysis should consider the separate cost elements of an offeror's proposal, along with the agency's application of judgment, and provides that an agency may use various techniques and procedures, including consideration of actual/historical costs that have been incurred by the offeror or other contractors for the same or similar work. FAR § 15.404; see CIGNA Gov't Servs., Inc., B-297915, May 4, 2006, 2006 CPD ¶ 73; DATEX, Inc., B-270268.2, Apr. 15, 1996, 96-1 CPD ¶ 240. Accordingly, while recognizing that the efficiency information is for a relatively short period, we have no basis to question the agency's reliance on CIGNA's historical data in this matter.¹⁴

Finally, the agency states that it consulted several agency officials that were subject matter experts (SME) in areas related to performance of the contract requirements at issue, and who were knowledgeable of CMS activities. AR, Tab 25C, BEP Technical Advisor Report for CIGNA, at 11. The agency states that none of the SMEs consulted had any specific objection to CIGNA's proposed efficiencies.¹⁵ Id.

The agency's contemporaneous record further documents the agency's assessment of CIGNA's proposal. For example, the notes of a claims processing SME state that, based on her conversation with the BEP technical advisor, "I do think that these projections are reasonable." AR, Tab 26D, Note from Claims Processing SME to BEP

¹⁴ Palmetto argues that certain of the data analyses are flawed. For example, the protester argues that certain of the cost categories reviewed by the BEP technical advisor to analyze CIGNA's cost history relate to work that will no longer be provided by the DME MAC contractor. However, the BEP technical advisor did not suggest that his analysis was intended to mathematically prove that the cost efficiencies would equal [deleted], nor that CIGNA had historically achieved a particular level of efficiency. Rather, the agency states that the analysis provided general support for the efficiencies proposed. See Tr. at 37:5-22. In this context, the agency's review was reasonable and supportive of the cost realism analysis.

¹⁵ Specifically, the BEP technical advisor stated: "I also discussed CIGNA's responses to discussion questions regarding [deleted] and the [deleted] efficiency [deleted] both orally and in writing with several CMS Subject Matter Experts (SMEs) . . . [in the areas of] Contracting Operations . . . Claims Processing . . . MSP . . . Beneficiary Inquiries and . . . Provider Communications. None voiced any objections to the reasonableness of CIGNA's assumptions." Decl. of BEP Technical Advisor ¶ 10.

technical advisor. The claims processing SME further indicated that she believed the claims processing rates discussed in CIGNA's proposal appeared reasonable due, in part, to automation and electronic claims processing. *Id.* Similarly, an email from a contracting operations SME stated that she had reviewed CIGNA's discussion responses regarding its operational efficiencies [deleted], and concluded that "it seems reasonable that the operational efficiencies could be achieved if their [deleted] processes become '[deleted].'" AR, Tab 26D, Email from Contracting Operations SME to BEP Technical Advisor, Aug. 16, 2006. Although the protester argues that the views of the SMEs are conclusory, and do not reflect meaningful analysis, the record shows that the SMEs considered the relevant portions of CIGNA's proposal and discussions responses, and provided their views that specifically addressed issues relevant to the evaluation of the operational efficiency [deleted].

Overall, the record reasonably supports the agency's position that it properly considered, and reasonably understood, the basis for CIGNA's proposed cost/price reductions. *See* AR, Tab 25A, BEP CIGNA Cost Realism Report, at 5-7; Tab 25F, BEP Cost/Price Analyst Report for CIGNA, August 22, 2006, at 2-4; Tab 25F, BEP Cost/Price Analyst Report for CIGNA, August 18, 2006, at 1-2. Based on our review of the entire record, we cannot conclude that the agency's review, consideration, and analysis with regard to the realism of CIGNA's proposed cost/price was unreasonable. Palmetto's assertions to the contrary are an insufficient basis to sustain the protest.

Technical Evaluation

Palmetto next protests that the agency erred in its evaluation of CIGNA's technical proposal. As discussed above, the agency did not perform a complete reevaluation of offerors' technical proposals during the recompetition; rather, the agency evaluated the changes to offerors' proposals and determined whether any aspects of the previous evaluation required amendment.

The evaluation of technical proposals is a matter within the agency's discretion, since the agency is responsible for defining its needs and the best method for accommodating them. *U.S. Textiles, Inc.*, B-289685.3, Dec. 19, 2002, 2002 CPD ¶ 218 at 2. 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 Shumaker Trucking & Excavating Contractors, Inc.*, B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. A protester's mere disagreement with the agency's judgment in its determination of the relative merit of competing proposals does not establish that the evaluation was unreasonable. *C. Lawrence Constr. Co., Inc.*, B-287066, Mar. 30, 2001, 2001 CPD ¶ 70 at 4.

Here, Palmetto asserts that the agency failed to reasonably consider the effect of

CIGNA's proposed labor reductions in its evaluation of the final proposal revision. In this regard, Palmetto asserts that the agency's evaluation was cursory and failed to meaningfully assess whether CIGNA understood and could perform the solicitation requirements.

Contrary to the protester's assertions, the TEB's evaluation of CIGNA's final revised proposal specifically addressed CIGNA's ability to meet the solicitation's stated requirements, concluding that improvements to CIGNA's business processes allowed CIGNA to reduce the number of labor hours while still performing the solicitation requirements at the same, or a higher, level compared with CIGNA's previous proposal, stating:

The TEB also noted improvement in [CIGNA's] combined business standards and methods from three organizations: the International Standards Organization (ISO) (<http://www.iso.org>), [deleted]. Each of these companies has a specific focus that is briefly described as follows:

- ISO -- Concerned with "quality management" in what an organization does to fulfill its mission and goals.
- [Deleted] -- Helps businesses to maximize value and minimize waste.
- [Deleted] -- Provides a methodology and measurement-based strategy focused on process improvements and [deleted].

AR, Tab 24A, TEB Report at 2.

In documenting its evaluation, the agency cited several areas in which CIGNA had applied its new business standards and methods, including [deleted]. Id. at 2-3. With regard to these tools and their implementation, the TEB stated that it was satisfied that CIGNA could successfully perform with reduced personnel, stating:

The Panel was familiar with these business tools and strategies as other Medicare contractors use them, and efficiencies and savings are often found among these contractors. Furthermore, both the TEP and BEP consulted, separately, with CMS experts about the soundness of the [CIGNA] standards and methods, and resultant savings. There was agreement, among those consulted, and the two Panels on these points.

Id. at 3.

Finally, the agency's review addressed CIGNA's reductions in labor hours, stating:

The TEB would note that while the above discussion (regarding the technical approach in the May 15, 2006 proposal submission and subsequent responses to discussion questions) focuses on new

efficiencies presented by [CIGNA], the technical approach itself is the same as considered in December 2005. That is under the Corrective Action, [CIGNA] shows how it has improved the ways in which it will do the work required by the RFP. As noted above, both the TEB and BEP, along with other CMS experts, find that [CIGNA] continues to be responsive while becoming more efficient in its proposed work.

AR, Tab 24A, Technical Evaluation, at 4.

In sum, the agency's contemporaneous evaluation record demonstrates that the agency specifically considered the changes to CIGNA's technical proposal during the corrective action recompetition, and specifically concluded that CIGNA could perform the work notwithstanding the reduced level of personnel reflected in its cost/price proposal. Although Palmetto asserts that the level of detail in the TEB report is insufficient to support the agency's conclusions, the protester's disagreement with the agency's documented assessments in this regard does not provide an adequate basis to sustain the protest.

Palmetto next argues that the agency improperly credited CIGNA for cost savings under the technical evaluation. The protester argues that the RFP's instructions to offerors that "[t]he written Technical Proposal must NOT contain reference to price/cost," RFP § L.12.a, prohibited the agency from giving offerors credit regarding cost or price in the technical evaluation. As the protester notes, the TEB report contains numerous references to "efficiencies" and "savings" that the TEB indicated would result from CIGNA's business process techniques. Thus, Palmetto argues, the agency inappropriately "double counted" cost savings under the technical evaluation.

The agency's discussion of savings and efficiencies, however, addressed CIGNA's proposal in the context of its ability to perform the solicitation requirements: "The TEB also noted improvement in [CIGNA's] ability to execute CMS contract requirements. This is particularly true with regard to changes in business methods and standards intended for greater efficiencies and savings." AR, Tab 24A, TEB Report, at 2. The record shows that the agency considered the business management techniques as enhancements to CIGNA's ability to perform the work within the context of the offeror capability technical evaluation factor, citing the benefits of CIGNA's implementation of various business process improvement models. AR, Tab 24, TEB Report at 2-3. In this regard, an agency is not precluded from considering a proposal element, such as operational efficiencies, under more than one evaluation criterion when the element is, as here, relevant and reasonably related to each criterion under which it is considered. RAMCOR Servs. Group, Inc., B- 276633, et al., Mar. 23, 1998, 98-1 CPD ¶ 121 at 9.

Finally, the protester argues that the agency treated CIGNA and Palmetto unequally in the evaluation of the offerors' technical proposals. Specifically, the protester

argues that the agency gave CIGNA credit for being certified as ISO 9001:2000 compliant, but did not give Palmetto similar credit.¹⁶

CIGNA stated in its proposal that it had implemented the ISO 9001:2000 standard, and expected certification in 2006. The TEB report discussed CIGNA's implementation of the ISO business process in the context of CIGNA's operational efficiencies, and ability to perform the solicitation requirements. AR, Tab 24A, TEP Report, at 2. We believe that it was reasonable for the agency to do so because, as discussed above, this evaluation was within the scope of the offeror capability evaluation factor.

Contrary to Palmetto's assertion regarding allegedly unequal treatment, the agency's initial evaluation of Palmetto's proposal discussed Palmetto's ISO 9001:2000 certification, identifying it as a strength in the initial TEP report; because the TEB report for the recompetition only discussed changes to the score, there was no reason to readdress this issue in the new evaluation report. AR, Tab 5, TEB Report at 6 (Aug. 17, 2005); see decl. of TEB Chair, ¶ 13. In contrast, the agency noted that CIGNA had stated in its 2005 proposal that it would be certified for ISO 9001:2000 in 2006; thus, for the recompetition, the agency noted CIGNA's ISO status for the first time. AR, Tab 24A, TEP Report, at 2. On this record, there is no merit to Palmetto's assertion of unequal treatment.¹⁷

MEDIS Option

Palmetto argues that the agency was required to amend the solicitation to reflect

¹⁶ ISO standards, such as 9001:2000, are issued by the International Organization for Standardization. The 9000 series of standards relates to quality control.

¹⁷ The protester also argues that a comment by one of the technical evaluators in the context of the ISO certification indicated potential bias or undue pressure to increase CIGNA's rating. The evaluator referenced the fact that she had not previously credited CIGNA with ISO certification, and that as part of the recompetition evaluation, she was raising her score, stating: "At this time I could raise my score to 47 in each category giving a total of 94 due to having [deleted] and now that we are in 2006 Cigna should also be ISO 9001-2000 compliant. Not that I feel any pressure here to change my original score!" AR, Tab 26E, Email from TEB Evaluator to TEB Chair, June 28, 2006. The evaluator states in a declaration that the comment regarding pressure was a "joke," and that "[a]t no time during my service as a TEB member did I feel any pressure from anyone to increase my original score or otherwise change CIGNA's score." Decl. of TEB Evaluator ¶¶ 6-7. The record here does not provide sufficient support for Palmetto's allegation of bias to warrant sustaining the protest. In any event, as discussed above, the improvement in CIGNA's rating was supported by the evaluation record.

what Palmetto asserts were changed requirements with regard to performance of EDI requirements for jurisdiction C. Specifically, Palmetto asserts that the agency had determined, prior to award, that it will amend the jurisdiction C contract for “core” services to include the EDI services that would otherwise have been provided by the MEDIS option. The record is to the contrary.

As discussed above, the agency has taken differing approaches to providing the necessary EDI services for the DME contracts in the other three jurisdictions-- modifying the DME contract to include those requirements in two of the jurisdictions, and contracting with a third party to provide the services in the third jurisdiction. As also noted above, the agency has expressly stated that it has not yet determined what approach it will take with regard to the EDI requirements in the jurisdiction C. That is, the agency states that it may, in fact, modify CIGNA’s DME contract, but that it is “equally possible” it will contract for those services with a third party. See Decl. of Medicare Contractor Management Group Director ¶ 12; AR, Nov. 8, 2006, at 27. Palmetto’s protest does not establish that the agency’s representations in this regard are inaccurate. Accordingly, we cannot sustain the protest on the basis of allegedly changed requirements.¹⁸

The protest is denied.

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General Counsel

¹⁸ Palmetto separately complains that the agency stated, at various points during the competition, that it intended to award the MEDIS option at the time of the jurisdiction C contract award, but has not done so. It does not appear that Palmetto’s complaint regarding the decision not to award the MEDIS option constitutes a basis for protest or that the decision prejudices Palmetto. The RFP specifically stated that the proposal for the optional/specialty services would be evaluated separately from the proposals for DME “core” services. RFP § M.6. Accordingly, consistent with the express provisions of the solicitation, any agency evaluation of the MEDIS option would not properly affect the relative standings of Palmetto or CIGNA with regard to the jurisdiction C DME contract. 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. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1681 (Fed. Cir. 1996).