



GAO

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: Highmark Medicare Services, Inc.; Cahaba Government Benefit Administrators, LLC; National Government Services, Inc.

File: B-401062.5; B-401062.6; B-401062.7; B-401062.8; B-401062.9; B-401062.10; B-401062.11; B-401062.12

Date: October 29, 2010

Paul F. Khoury, Esq., Daniel P. Graham, Esq., Brian G. Walsh, Esq., Kathryn Bucher, Esq., and Craig Smith, Esq., Wiley Rein LLP, for Highmark Medicare Services; Eric J. Marcotte, Esq., William Y. Durbin, Esq., and Scott A. Schipma, Esq., Winston & Strawn LLP, for Cahaba Government Benefit Administrators, LLC; and Barbara A. Duncombe, Esq., and Suzanne Sumner, Esq., Taft Stettinus & Hollister LLP, for National Government Services, Inc., the protesters.

Thomas P. Humphrey, Esq., Shauna E. Alonge, Esq., John E. McCarthy, Jr., Esq., Peter Eyre, Esq., Tony G. Mendoza, Esq., Jonathan M. Baker, Esq., Puja Satiani, Esq., and Adelecia R. Cliffe, Esq., Crowell & Moring LLP, for CIGNA Government Services, LLC, the intervenor.

Jeffri Pierre, Esq., Catherine Graf, Esq., Douglas Kornreich, Esq., and Jamie Insley, Esq., Department of Health and Human Services, for the agency.

John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Exchanges between an offeror and an agency after the agency's receipt of final revised proposals were not discussions where the agency requested only that the offeror confirm an aspect of its proposal and the offeror did so.
2. Agency reasonably relied on representations in the awardee's proposal regarding the availability of staff where there was no significant countervailing evidence reasonably known to the agency evaluators that should or did create doubt as to whether the proposal's representations were accurate.
3. Agency's evaluation of proposals and determination that the proposals were essentially technically equal was reasonable where the agency provided a comprehensive and detailed record that supports the agency's evaluation and demonstrates that the agency conducted the evaluation consistent with the terms of the solicitation.

4. Protest challenging the agency's cost realism analysis is denied where the agency performed a relatively comprehensive analysis of the awardee's proposed costs and reasonably determined that they were consistent with the awardee's technical approach and realistic.

5. Agency properly treated the awardee's proposed "corporate investment" as a matter of responsibility in awarding a cost reimbursement contract for certain services.

6. Contracting officer's determination that there was no organizational conflict of interest that would preclude an award to the awardee was not unreasonable where the contracting officer engaged in an extensive investigation to see if an award would present any organizational conflict of interest issues and reasonably found that it would not.

DECISION

Highmark Medicare Services, Inc., of Camp Hill, Pennsylvania; Cahaba Government Benefit Administrators, LLC, of Birmingham, Alabama; and National Government Services, Inc., (NGS) of Indianapolis, Indiana, protest the award of a contract to CIGNA Government Services, LLC (CGS), of Nashville, Tennessee, under request for proposals (RFP) No. RFP-CMS-2007-0013, issued by the Center for Medicare and Medicaid Services (CMS), Department of Health and Human Services (HHS), to obtain a Medicare Administrative Contractor (MAC) to provide certain health insurance benefit administrative services. The protesters argue, among other things, that the agency conducted improper discussions with only CGS, and that the agency's evaluation of technical and cost proposals, and selection of CGS's proposal for award, were unreasonable.

We deny the protests.

BACKGROUND

The RFP, issued August 31, 2007, provided for the award of four cost-plus-award-fee contracts, each with a base period of 1 year with four 1-year options, for four geographic areas, or "jurisdictions," in the United States for MAC services.¹ In performing the contracts, the MACs will, among other things, "receive and control Medicare claims from institutional and professional providers (including home health agencies and hospices), suppliers, and beneficiaries" within their respective jurisdictions, and "will perform standard or required editing on these claims to

¹ The agency has divided the United States into 15 separate jurisdictions for the purposes of acquiring and providing these services, with this RFP pertaining to Jurisdictions 6, 11, 14, and 15.

determine whether the claims are complete and should be paid.”² RFP attach. J-1, Statement of Work (SOW), at 1. The MACs will also “calculate Medicare payment amounts and arrange for remittance of these payments to the appropriate party,” “enroll new providers,” “operate a Provider Customer Service Program . . . that educates providers about the Medicare program and responds to provider telephone and written inquiries,” respond “to complex inquiries from Beneficiary Contact Centers,” and “make coverage decisions for new procedures and devices in local areas.” *Id.* at 2. This protest concerns the award of a contract to CGS for Jurisdiction 15 (J15), which includes the administration of Medicare Part A and Part B services for Kentucky and Ohio, as well as the administration of Home, Health and Hospice (HH&S) services for Colorado, Delaware, the District of Columbia, Iowa, Kansas, Maryland, Missouri, Montana, Nebraska, North Dakota, Pennsylvania, South Dakota, Utah, Virginia, West Virginia, and Wyoming. RFP at 7.

The solicitation stated that the agency would award a contract for each jurisdiction to the offeror submitting the proposal determined to provide the best value to the government, considering the evaluation factors of technical understanding (30 percent), personnel (25 percent), implementation (20 percent), past performance (15 percent), and information security plan (10 percent).³ RFP at 139, 142. The solicitation also stated that the non-cost evaluation factors, “when combined, are

² Pursuant to the Medicare Prescription Drug Improvement and Modernization Act of 2003 (MMA), 42 U.S.C. §§ 1395kk *et seq.* (2006), 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.* (2000). Agency Post-Hearing Comments at 1-2; Hearing Transcript (Tr.) at 44. Prior to the enactment of the MMA, fiscal intermediaries were generally responsible for processing Medicare claims from institutional providers, such as hospitals and nursing facilities, under Part A of the Medicare program, and carriers were responsible for processing Medicare 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 FAR [Federal Acquisition Regulation]-based contracting,” with the intent of improving “Medicare’s administrative services to beneficiaries and providers by bringing to Medicare the standard contracting principles which have long applied to other federal programs operating under the FAR.” Agency’s Post-Hearing Comments at 1-2; see *Palmetto GBA, LLC*, B-298962, B-298962.2, Jan. 16, 2007, 2007 CPD ¶ 25 at 2 (fiscal intermediaries and carriers historically relied upon were selected under other than competitive procedures).

³ Each of the evaluation factors, with the exception of the information security plan factor, was comprised of specified subfactors as detailed below.

more important than cost or price,” and that “cost reasonableness and realism will be considered.” RFP at 138.

The RFP included detailed proposal preparation instructions, which requested the submission of a technical proposal consisting of sections addressing, among other things, the technical understanding, personnel, implementation, past performance, and information security plan factors, as well as a business proposal addressing, in essence, the offeror’s proposed costs for performing the contract. RFP at 123-33. The solicitation stated that the agency “reserve[d] the right to award without holding discussions.” RFP at 138.

The agency received proposals from five offerors for J15, and the proposals of CGS, Highmark, Cahaba, and NGS were included in the competitive range. The agency conducted three rounds of discussions, and on November 6, 2008, received final proposal revisions (FPR) from CGS, Highmark, Cahaba, and NGS. The FPRs were evaluated, and on January 7, 2009, the agency awarded the MAC J15 contract to Highmark. Contracting Officer’s Statement at 2.

NGS and CGS filed protests on January 27 and February 2, 2009, respectively, challenging the propriety of the award to Highmark.⁴ Our Office issued a decision sustaining CGS’s protest on May 6, finding that the agency had failed to conduct meaningful discussions with CGS regarding its proposed costs for printing and postage services and had improperly considered one of Highmark’s proposed subcontractor’s past performance in its evaluation of Highmark’s proposal under the solicitation’s past performance factor, and that the source selection authority (SSA) had otherwise acted unreasonably in selecting Highmark’s proposal for award. CIGNA Gov’t Servs., LLC, B-401062.2; B-401062.3, B-401062.3, May 6, 2009, 2010 CPD ¶ ____. We recommended that the agency reopen discussions, request and review revised proposals, evaluate those submissions consistent with the terms of the solicitation, and make a new source selection. Id. at 14.

On May 18, the agency notified CGS, Highmark, Cahaba, and NGS that the agency was reopening discussions on a limited basis pertaining only to the proposed costs for the printing and postage services, and that proposal revisions in response to discussions would be limited to proposed printing and postage costs. CGS filed a protest with our Office on May 21, challenging the adequacy of the agency’s proposed corrective action. The agency responded by informing our Office and the protester that the agency was “still evaluating the full range of corrective actions required by the decision” issued by our Office sustaining the protest, and that “the scope of discussions has not yet been definitively established.” CIGNA Gov’t Servs., LLC, B-401062.4, June 9, 2009. In light of the agency’s representation that it was still

⁴ NGS withdrew its protest on March 3, 2009.

considering the corrective action to be taken, including the appropriate scope of discussions, we dismissed the protest as premature on June 9. Id.

The agency subsequently determined that it would conduct discussions addressing “all open weaknesses, and significant weaknesses,” as identified during the previous evaluation, and allow CGS, Highmark, Cahaba, and NGS to submit revised proposals. Agency Report (AR) at 1-2. Discussions were conducted, and the agency, on August 13, requested the competitive range offerors to submit revised final proposal revisions (RFPR). In this request, the agency posed additional discussion questions and provided the offerors with certain revised sections to the RFP. Contracting Officer Statement at 3-4; AR, Tab 20, Requests for RFPR. On August 26, 2009, the agency received RFPRs (August 2009 RFPR). The RFPRs were evaluated as follows:⁵

⁵ The proposals were assigned an adjectival rating as well as a risk rating under each evaluation subfactor, factor (except cost), and overall. The possible adjectival ratings were “outstanding,” “very good,” “good,” “marginal,” and “poor.” AR, Tab 38, Technical Evaluation Panel Chairperson (TEPC) Report, at 5-6. Risk was defined as “the likelihood that the Government will be negatively impacted by the offeror’s failure to meet the negotiated business, technical, management, and schedule performance and cost,” and the possible risk ratings were “low,” “medium,” and “high.” RFP at 116; AR, Tab 38, TEPC Report, at 5. With regard to risk, each proposal received a rating of “low” risk under the evaluation subfactors, factors, and overall, with the exception of Cahaba’s proposal, which received a rating of “moderate” risk under the staffing plan subfactor to the personnel factor.

	CGS	NGS	Cahaba	HMS
Technical Understanding	Very Good	Very Good	Very Good	Very Good
-Program Management	Very Good	Very Good	Very Good	Very Good
-Claims Processing	Outstanding	Outstanding	Outstanding	Outstanding
-Provider Customer Service Program	Very Good	Very Good	Outstanding	Outstanding
-Audit & Reimbursement	Very Good	Very Good	Very Good	Good
-Provider Enrollment	Very Good	Good	Very Good	Very Good
-Fraud & Abuse	Good	Good	Good	Good
Personnel	Outstanding	Outstanding	Very Good	Very Good
-Key Personnel	Outstanding	Outstanding	Outstanding	Very Good
-Staffing Plan	Very Good	Very Good	Good	Very Good
Implementation	Very Good	Very Good	Very Good	Very Good
-Jurisdiction Implementation Project Management Approach	Very Good	Very Good	Very Good	Very Good
-Jurisdiction Implementation Project Plan	Very Good	Good	Very Good	Very Good
-Implementation Personnel	Good	Very Good	Very Good	Outstanding
-Implementation Risk Management Plan	Good	Good	Very Good	Good
Past Performance	Good	Good	Very Good	Very Good
-Quality of Service	Very Good	Good	Very Good	Very Good
-Cost Control	Good	Very Good	Very Good	Very Good
-Timeliness of Performance	Good	Very Good	Good	Good
-Business Relations	Good	Good	Very Good	Good
Information Security Plan	Very Good	Very Good	Very Good	Outstanding
Overall	Very Good	Very Good	Very Good	Very Good
Proposed Costs	\$243.3 Million	\$270.7 Million	\$256.3 Million	\$263.7 Million
Most Probable Costs	\$248 Million	\$270.7 Million	\$262.2 Million	\$268.4 Million

AR, Tab 49, Source Selection Decision, at 4-21. The contracting officer, who also served as the SSA here,⁶ “concluded that the J15 offerors are essentially technically equal,” and that as such, “the most probable cost and fee becomes the deciding factor in determining who offers the best value.” *Id.* at 30. The contracting officer determined that CGS’s proposal, with an evaluated cost that was more than \$14 million lower than that of the next lowest cost proposal, appeared to be in line

⁶ On April 28, 2010, the Acting Administrator of CMS approved the appointment of the contracting officer to serve as the SSA. AR, Tab 36, Memorandum from the Acting Administrator of CMS, at 1-2.

for award. Contracting Officer Statement at 17. The agency, after engaging in a lengthy examination of whether an award to CGS would pose an organizational conflict of interest (OCI), ultimately selected CGS's proposal for award. The agency awarded a contract to CGS for the J15 MAC services on July 8, 2010, and after requesting and receiving debriefings, HMS, Cahaba, and NGS filed these protests.

DISCUSSION

Post-RFPR Exchanges Between the Agency and CGS

The protesters argue that certain exchanges between the agency and CGS in May 2010 that were related to CGS's staffing plan, which was evaluated under the staffing plan subfactor of the personnel evaluation factor, constituted discussions, thereby requiring discussions with Highmark, Cahaba, and NGS.

The solicitation informed offerors that their proposals would be evaluated under the staffing plan subfactor to determine "the degree to which the staffing plan demonstrates the offeror's ability to provide qualified personnel in sufficient numbers to perform the work under the MAC contract." The RFP specifically provided here that the agency would evaluate the degree to which "the offeror demonstrates its ability to assemble a team with the appropriate skills to meet the requirements of the SOW," whether the "offeror's proposed labor mix accurately reflects the offeror's technical understanding of the SOW," and whether the "proposal presents and describes its rationale and method for staffing the MAC contract that can be accomplished quickly and with the least disruption of Medicare operations." RFP at 125.

The solicitation included detailed proposal preparation instructions, and, as relevant here, stated that each offeror "shall submit a staffing plan that presents its methodologies for providing qualified personnel in sufficient numbers for each CLIN [contract line item number] of the contract and for ensuring its proposed team, including subcontractors, has the skills to meet the requirements stated in the SOW." The staffing plans were to provide, among other things, a "proposed labor mix that demonstrates an accurate and effective understanding of the technical requirements of the SOW," as well as a description of "the method of staffing that can be accomplished quickly and cause the least amount of disruption to the Medicare . . . program." RFP at 126-27.

The agency's August 13, 2009 request for RFPRs issued to CGS, Highmark, Cahaba, and NGS informed the offerors that they were to assume a contract award date of October 1, 2009, and included the following discussion question:

Given the period of time that has elapsed from the submission of the [November 8, 2008] Final Proposal Revision and given the fact that recently awarded Medicare Administrative Contract contracts have

begun implementation and operational activities, please update/revise your proposed Staffing Plan and Key Personnel as necessary.

AR, Tab 20, Requests for RFPRs.

CGS timely submitted its RFPR on August 26, 2009. With regard to its proposed staffing plan, CGS's RFPR stated:

The CGS Team⁷ will utilize Medicare experienced resources to fill [DELETED] of the staffing requirements, ensuring the highest amount of knowledge and skill transfer to the J15 A/B MAC contract. This staffing methodology provides qualified personnel fully versed in the Medicare technical requirements and demonstrates our understanding of the contract workload.

AR, Tab 22, CGS RFPR, vol. I, Technical Proposal, Staffing Plan, at 4. CGS's RFPR continued by identifying the sources from which it would "secure appropriate personnel," noting here that [DELETED] of its staff would be comprised of "CGS Team Title XVIII Employees." Id. CGS's proposal added that

CGS's Staffing Plan has been updated to reflect the recent J10 A/B MAC workload transition and the related impact to staffing levels at CGS and Riverbend. Due to additional workload being assumed by CGS in August 2009 related to CIGNA Corporation's Private Fee-for-Service Medicare Access product, as well as the placement of the vast majority of Riverbend personnel within BlueCross BlueShield of Tennessee, the J10 transition impact to our Staffing Plan is minimal. The CGS Team will be able to assume the J15 A/B MAC workload with [DELETED] Medicare experienced personnel, ensuring that we will be successful in our efforts to meet the needs of the J15 provider community from day one.⁸

⁷ The "CGS Team" is comprised, in part, of the prime contractor CGS, which is a wholly owned subsidiary of CIGNA Corporation, and Riverbend Government Benefits Administrator, the subcontractor that will perform all MAC Part A services and which is a wholly owned subsidiary of BlueCross BlueShield of Tennessee. AR, Tab 22, CGS RFPR, vol. I, Technical Proposal, Staffing Plan, at 1.

⁸ The record reflects that Riverbend had been performing as a Medicare Part A "fiscal intermediary" in Tennessee under the previous legacy contract, and that this work had transitioned as of August 3, 2009, from Riverbend to Cahaba for performance under Cahaba's Jurisdiction 10 MAC contract. Contracting Officer's Statement at 16; AR, Tab 49, Source Selection Decision, at 28.

Id. at 2-3.

Although offerors had been told to assume a contract award date of October 1, 2009, the TEPC did not complete his report until May 18, 2010.⁹ The TEPC evaluated CGS's RFPR under the staffing plan subfactor as "very good" with "low risk," specifically noting that CGS's "J15 staffing plan relies on the utilization of experienced resources, many of whom are current or prior Title XVIII staff readily available to transition to the MAC contract." The TEPC added here that "[t]he high percentage of experienced Medicare staff that will comprise the J15 staffing approach is a strength." AR, Tab 38, TEPC Report, at 61.

The record reflects that the contracting officer, while reviewing the TEPC report, became "concerned about whether aspects of CGS' staffing plan were still accurate" given that more than 8 months had passed since the submission of the August 2009 RFPRs. AR, Tab 49, Source Selection Decision, at 28; see Contracting Officer's Statement at 16; Tr. at 32, 67, 88, 97, 99, 134, 136, 138. Specifically, the contracting officer explains that he became "concerned that [CGS's proposed staffing plan] relied on staff that may no longer be available." Contracting Officer's Statement at 16; see AR, Tab 49, Source Selection Decision, at 28; Tr. at 88. This was so because CGS's proposed staffing plan, as set forth in its August 2009 RFPR, "relied heavily on having experienced Part A staff from Riverbend," and the contracting officer was aware, from conversations with an agency contracting officer involved with certain of the legacy contracts, as well as from CGS's August 2009 RFPR, that "Riverbend had transitioned its last piece of Part A work in August 2009." Contracting Officer's Statement at 16.

Accordingly, by letter dated May 27, 2010, the contracting officer notified CGS that "CMS seeks clarification to confirm information provided by CGS" in its August 2009 RFPR "regarding CGS's proposed staffing plan." This letter noted that it was for purposes of "clarification only, and should not be viewed as discussions, or an opportunity to revise or modify [CGS's] proposal." The letter continued by quoting from CGS's August 2009 RFPR explaining that CGS's staffing plan had been "updated to reflect the recent J10 A/B MAC workload transition and the related impact to staffing levels at CGS and Riverbend," and asked CGS to confirm the representation in its August 2009 RFPR that "the vast majority of Riverbend personnel are still placed within [Riverbend's parent corporation] BlueCross and BlueShield of

⁹ The TEPC did not reconvene the technical evaluation panel to evaluate the August 2009 RFPRs. The record reflects that the TEPC, with the approval of the contracting officer, determined that, with the exception of certain subject matter experts, "additional resources were not necessary to ensure continuity and consistency in the treatment of proposals." AR, Tab 25, TEPC Memorandum (Aug. 28, 2009). Contrary to the protesters' allegations, there was nothing improper in this action.

Tennessee and available to staff the J15 contract.” The letter further stated that CGS’s “response should merely confirm ‘yes, the above statement is still accurate’ or ‘no, the statement is no longer accurate’” and that “[n]o additional explanations, rationale, or narrative should be provided with [CGS’s] response.” AR, Tab 45, Contracting Officer Letter to CGS (May 27, 2010), at 1.

On that same day, CGS responded as follows:

In response to the referenced request for clarification to “please confirm that the vast majority of Riverbend personnel are still placed within BlueCross or BlueShield of Tennessee and available to staff the J15 contract.” [CGS] is please to provide the following response.

Yes, the above statement is still accurate.

AR, Tab 46, CGS Letter to the Contracting Officer (May 27, 2010).

The protesters argue that the agency’s May 2010 exchange with CGS did more than “confirm” the representation in CGS’s August 2009 RFPR that “the vast majority of Riverbend personnel” remained “available to staff the J15 contract.” In support of this assertion, the protesters first point out that CGS’s August 2009 RFPR’s Implementation Risk Management Plan detailed the following as a “risk” with a “high” probability of occurrence that would have a “significant impact to the overall implementation goals if not mitigated”:

Staffing attrition due to postponed implementation start date reduces the number of experienced employees available to work on new contract

AR, Tab 22, CGS RFPR, vol. I, Technical Proposal, Implementation Risk Management Plan, at 51, 57. CGS’s August 2009 RFPR described this risk as follows:

CGS and/or Riverbend attrition levels rise to higher rates than anticipated because of uncertainty regarding contract award or implementation start date[.]

and stated that the impact of this risk, should it be realized, would include the “[d]isruption to claims processing activities and Medicare operations.” Id. at 57. The protesters thus argue that given that the date of contract award (and as a result, the implementation start date) had been delayed for a minimum of 8 months at the time of the May 2010 exchanges between the agency and CGS, the exchanges allowed CGS to effectively modify or amend its proposal by providing that the foregoing risk CGS had identified in its RFPR had not been realized.

FAR § 15.306 describes a range of exchanges that may take place between an agency and an offeror during negotiated procurements. Clarifications are “limited exchanges” between an agency and an offeror for the purpose of eliminating minor uncertainties or irregularities in a proposal, and do not give an offeror the opportunity to revise or modify its proposal. FAR § 15.306(a)(2); Lockheed Martin Simulation, Training & Support, B-292836.8 *et al.*, Nov. 24, 2004, 2005 CPD ¶ 27 at 8. Discussions, on the other hand, occur when an agency communicates with an offeror for the purpose of obtaining information essential to determine the acceptability of a proposal, or provides the offeror with an opportunity to revise or modify its proposal in some material respect. Gulf Copper Ship Repair, Inc., B-293706.5, Sept. 10, 2004, 2005 CPD ¶ 108 at 6; *see* FAR § 15.306(d). When an agency conducts discussions with one offeror, it must conduct discussions with all other offerors whose proposals are in the competitive range. Gulf Copper Ship Repair, Inc., *supra*. It is the actions of the parties that determine whether discussions have been held and not the characterization of the communications by the agency. *Id.* In situations where there is a dispute regarding whether communications between an agency and an offeror constituted discussions, the acid test is whether an offeror has been afforded an opportunity to revise or modify its proposal. *Id.* Communications that do not permit an offeror to revise or modify its proposal, but rather request that the offeror confirm what the offeror has already committed to do in its proposal, are clarifications and not discussions. Environmental Quality Mgmt., Inc., B-402247.2, Mar. 9, 2010, 2010 CPD ¶ 75 at 7; United Med. Sys.-DE, Inc., B-298438, Sept. 27, 2006, 2006 CPD ¶ 148 at 4.

Here, the agency requested that CGS confirm that a statement made in its RFPR remained accurate, and nothing more. The agency’s communication with CGS specifically requested that CGS provide a “yes” or “no” answer, which CGS did. That is, the agency’s communication did not permit a revision or modification by CGS of its RFPR, nor did CGS respond with anything other than a confirmation of its RFPR. We are unaware of any authority for the proposition that a confirmation of a proposal, absent more, constitutes discussions. The fact that the response mitigated a possible risk in implementing the contract that CGS had identified in its proposal did not make this exchange discussions, given that during the exchange CGS provided what was in essence a one word response that only confirmed, and did not modify or amend, its RFPR.¹⁰

¹⁰ NGS argues that the agency was required to reopen discussions and request new RFPRs prior to making an award given the “significant passage of time” from the agency’s receipt of the August 2009 RFPRs. NGS Protest at 9. We are unaware, and the protester has not pointed to, any authority that requires an agency to reopen discussions merely because of the passage of time. System Planning Corp., B-244697.4, June 15, 1992, 92-1 CPD ¶ 516 at 5.

Evaluation of Proposals under the Non-Cost Factors

The protesters challenge the propriety of the agency's evaluation of CGS's proposal as well as their own proposals under the non-cost (technical understanding, personnel, implementation, past performance, and information security plan) evaluation factors. Each protester makes multiple challenges to evaluation of their and CGS's proposals under the various non-cost factors and subfactors.

The evaluation of proposals, including the determination of the relative merits of proposals, is primarily a matter within the contracting agency's discretion, since the agency is responsible for defining its needs and the best method of accommodating them. Federal Env'tl. Servs., Inc., B-260289, B-260490, May 24, 1995, 95-1 CPD ¶ 261 at 3. In reviewing an agency's evaluation, we will not reevaluate the proposals, but will examine the record of the evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria as well as with procurement law and regulation. Id. A protester's mere disagreement with a procuring agency's judgment is insufficient to establish that the agency acted unreasonably. See Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5.

In response to the protests, the agency has provided a detailed record documenting its evaluation of the proposals and the source selection. The record includes a 67-page TEPC report summarizing the evaluation of proposals under the solicitation's non-cost factors, a 34-page Past Performance Evaluation Panel (PPEP) "Final Summary Report," a 31-page source selection decision, as well as numerous other documents submitted by the agency in support of its evaluation and source selection. AR, Tab 37, PPEP Report; Tab 39, TEPC Report; Tab 49, Source Selection Decision. Additionally, our Office conducted a 3-day hearing, during which a representative of the PPEP testified, and the TEPC and contracting officer testified at length regarding their determinations as to the merits of the competing proposals.

We have reviewed all of the protesters' numerous general and specific arguments regarding the propriety of the agency's evaluation of the protesters' and awardee's proposals under the non-cost evaluation factors. We do not find the agency's evaluation of proposals under the non-cost factors to be unreasonable or inconsistent with the solicitation's evaluation scheme. We discuss some examples below.

Evaluation of CGS's proposal under the Staffing Plan Subfactor

The protesters argue that the agency's evaluation of CGS's RFPR as "very good" with "low" risk under the staffing plan subfactor of the personnel factor was unreasonable. The protesters point out, as mentioned above, that this rating was based in large part upon the TEPC's conclusion that CGS, as reflected in its staffing plan, would provide a "high percentage of experienced Medicare staff." AR, Tab 38, TEPC Report, at 61; see Tab 49, Source Selection Decision, at 11. The protesters

argue that this conclusion was unreasonable, given that the agency knew or should have known that many of the CGS and Riverbend personnel that CGS had relied upon when preparing its August 2009 RFPR may no longer be available in May and June 2010. In this regard, the protesters question how the agency could reasonably justify CGS's very good, low risk rating under this subfactor, in light of the questionable continued availability of Riverbend's Tennessee Part A/B workforce given the passage of time since when they were transitioned out of Riverbend's Medicare A contract, and of certain CGS personnel, who the protesters assert were relied upon by CGS in preparing its staffing plan, given CGS's continued performance under a legacy contract for Medicare Part B work in Idaho.

As a general matter, in evaluating proposals an agency may reasonably rely as accurate upon information provided by an offeror in its proposal. Able Bus. Techs., Inc., B-299383, Apr. 19, 2007, 2007 CPD ¶ 75 at 5; NCR Gov't Sys. LLC, B-297959, B-297959.2, May 12, 2006, 2006 CPD ¶ 82 at 8-9. On the other hand, an agency may not accept representations in a proposal at face value where there is significant countervailing evidence reasonably known to the agency evaluators that should or did create doubt as to whether the representations are accurate. See Alpha Marine Servs., LLC, B-292511.4, B-292511.5, Mar. 22, 2004, 2004 CPD ¶ 88 at 4; Maritime Berthing, Inc., B-284123.3, Apr. 27, 2000, 2000 CPD ¶ 89 at 9.

As noted above, the agency record reflects that the agency had long been aware of the effect that the award of other MAC contracts may have upon the offerors' staffing plans, as evidenced by the previously cited discussion question the agency provided to CGS, Highmark, Cahaba, and NGS, in August 2009, that requested that the offerors update their staffing plans as necessary. AR, Tab 20, Requests for RFPRs (Aug. 13, 2009). The record further reflects that the agency remained cognizant in May and June 2010 of the effect that the continued award of, or failure to award, MAC contracts, as well as the passage of time since the receipt of the August 2009 RFPRs, may have on CGS's proposed staffing plan. Again, the agency's concerns here are evidenced by the statements in the source selection decision that, in the agency's view, "it was important to know whether or not Riverbend personnel were still placed within BlueCross and BlueShield of Tennessee" and remained available to "staff the J15 contract." AR, Tab 49, Source Selection Decision, at 28. That concern led to the previously discussed exchange between the agency and CGS, where CGS confirmed the continued availability of the Riverbend personnel to staff the contract. AR, Tab 45, Contracting Officer Letter to CGS (May 27, 2010); Tab 46, CGS Letter to Contracting Officer (May 27, 2010).

While we agree with the protesters that the agency's actions prior to making the award to CGS do not answer each question now posed by the protesters regarding the continued viability of CGS's proposed staffing plan, such as the effect of CGS's continued performance of Medicare Part B services in Idaho, we cannot find the agency's actions here or ultimate conclusions to be unreasonable. As set forth above, the record reflects that the agency, rather than simply relying on the

representations in CGS's proposal, sought confirmation from CGS regarding these representations, and reasonably considered the effects that certain events, including the passage of time (which would be applicable to all proposals), may have on these representations. Under these circumstances and in the absence of significant countervailing evidence, we cannot find unreasonable the agency's reliance on CGS's representations in its August 2009 RFPR and May 2010 exchanges with the agency, and ultimate conclusion that CGS's RFPR merited, and continued to merit, a "very good" with "low" risk rating under the staffing plan evaluation subfactor.¹¹

Evaluation of Cahaba's Proposal under the Staffing Plan Subfactor

Cahaba argues that the agency's evaluation of its proposal under the staffing plan subfactor of the personnel factor was unreasonable and evidenced unequal treatment. Specifically, Cahaba points out that in its November 2008 FPR it "proposed to fill [DELETED] of the J15 positions with 'current associates.'" Cahaba Comments at 16; AR, Tab 21, Cahaba RFPR With Highlighted Changes, Vol. I, Technical Proposal, Staffing Plan, at 4-3. Cahaba explains that prior to submitting its August 2009 RFPR, it had been awarded the MAC contract for Jurisdiction 10, and "[b]ecause some of its workforce was now committed, it could no longer commit to fill [DELETED] of the positions with current personnel." Cahaba Comments at 16. As such, Cahaba's August 2009 RFPR, rather than proposing "to fill [DELETED] of the J15 positions with 'current associates' and "[DELETED] experienced staff," stated that the "majority of our positions are current associates with experience processing [Medicare] Part A, Part B, and HH&H claims." *Id.*; AR, Tab 21, Cahaba RFPR With Highlighted Changes, Vol. I, Technical Proposal, Staffing Plan, at 4-3.

Cahaba next points to the TEPC report, which states that Cahaba's August 2009 RFPR's "lack of specificity regarding the method of staffing (*i.e.*, the number of incumbent staff vs. new hires) is a weakness that increases the level of risk associated with Cahaba's staffing approach." Cahaba Comments at 17; AR, Tab 38, TEPC Report, at 16. This determination resulted in Cahaba's August 2009 RFPR being rated as having "moderate" risk under the staffing plan subfactor, as opposed to the "low" risk rating that had been previously assigned to Cahaba's November 2008 FPR. Cahaba argues that the agency's determination here was inconsistent with the RFP, given that "nothing in the Solicitation required offerors to 'quantify' the proposed number of new hires versus incumbent staff over the life of the contract."

¹¹ NGS further argues that the agency's evaluation of CGS's RFPR as "good" with "low" risk under the implementation personnel subfactor to the implementation factor was unreasonable because the agency knew or should have known that the Riverbend personnel described in CGS's proposal may no longer be available for contract performance. Given our conclusions above, we disagree with NGS's assertion here, and find the agency's evaluation of CGS's proposal under the implementation personnel subfactor to the implementation factor to be reasonable.

Cahaba Comments at 17. Cahaba further asserts that this aspect of the agency's evaluation evidences unequal treatment, given that Cahaba's assurance that a "majority" of its personnel would have experience was found to be too imprecise, whereas CGS's assurance that the "vast majority" of experienced Riverbend personnel remained available was not. Cahaba Comments at 18.

Based upon our review of the record, we find that the agency's evaluation here was reasonable. As conceded by Cahaba, it was no longer able to commit to proposing a very high percentage of experienced personnel given its recent award of the Jurisdiction 10 MAC contract, and we cannot find the agency's view that Cahaba's RFPR evidenced a "lack of specificity" given Cahaba's substitution of the word "majority" for "[DELETED]" to be unreasonable. Additionally, we do not agree that the agency's differing views regarding Cahaba's and CGS's RFPRs evidenced unequal treatment or was unreasonable, given the context here, that is, Cahaba's substitution of "[DELETED]" with "majority" as compared to CGS's assurance that the "vast majority" of Riverbend personnel remained available.¹²

We also note here that even if we were to agree with Cahaba, it would be--similar to certain of the remainder of Cahaba's and the other protesters' arguments regarding the evaluation of proposals under the non-cost factors--at best unclear whether the alleged errors prejudiced any of the offerors. In this regard, and by way of an example, we note that Cahaba's November 2008 FPR was rated as "low" risk under the staffing plan subfactor, and its August 2009 RFPR was rated as "medium" risk under the same subfactor. However, its August 2009 RFPR received the same "low" risk rating under the personnel factor as had Cahaba's November 2008 FPR. As such, the "weakness" noted by the TEPC due to Cahaba's RFPR's "lack of specificity" appeared to have had very little, if any, effect on the agency's consideration of the merits of Cahaba's RFPR under the personnel factor or overall. As such, we cannot see, how Cahaba was prejudiced by the allegedly unreasonable evaluation of its

¹² Although CGS's RFPR provided that [DELETED] percent of its staff would have Medicare experience, and that [DELETED] percent of its staff would be "CGS Team Title XVIII Employees," it did not specifically state what fraction of the [DELETED] percent would be Riverbend staff. AR, Tab 22, CGS RFPR, vol. I, Technical Proposal, Staffing Plan, at 4. That said, our conclusion here would not differ had the Riverbend personnel comprised most or all of the "CGS Team Title XVIII Employees."

proposal under the staffing plan subfactor to the personnel factor.¹³ CAE USA, Inc., B-293002, B-293002.2, Jan. 12, 2004, 2004 CPD ¶ 25 at 16.

Evaluation of Highmark's Proposal under the Quality of Service Subfactor

Highmark argues that the agency's evaluation of its proposal under the quality of service subfactor of the past performance factor was unreasonable. Highmark contends that the agency, in evaluating both Highmark's and CGS's RFRPs as "very good" with "low" risk under the quality of service subfactor to the past performance factor, failed to reasonably consider Highmark's allegedly superior "comprehensive error rate testing" (CERT) rates. Highmark specifically argues in this regard that the record does not adequately explain why Highmark's allegedly superior CERT rates, which under the initial evaluation had been mentioned as a "discriminator" with regard to Highmark's past performance, are not mentioned in the evaluation record here as a discriminator. Highmark Supp. Comments at 11. The protester also argues that the agency erred in not considering the offerors' respective 2009 CERT rates, and unreasonably ignored the offerors' Medicare Contractor Provider Satisfaction Survey (MCPSS) results when evaluating the offerors' RFRPs under the quality of service subfactor to the past performance factor.¹⁴

Where a protester challenges an agency's past performance evaluation, we will examine the record to ensure that the evaluation was reasonable and consistent with

¹³ Highmark similarly spends considerable time arguing that the agency was required to inform Highmark during the discussions that occurred as the result of the agency's corrective action that the past performance of one of its subcontractors, which was proposed to perform [DELETED] percent of the total costs associated with Highmark's performance if awarded the contract, would not be considered by the agency in evaluating Highmark's RFP under the past performance factor because that subcontractor could not reasonably be considered "significant" or "critical" as required by the RFP. See CIGNA Gov't. Servs., LLC, *supra*, at 8-11 (sustaining prior protest because the agency should not have considered this subcontractor's past performance). We note that while Highmark's past performance rating under the business relations subfactor to the past performance factor changed from "very good" to "good" as the result of the subcontractor's past performance no longer being considered, Highmark's rating under the past performance factor remained the same, that is, "very good." As such, and notwithstanding Highmark's failure to point to any authority that would require such discussions under the circumstances here, we fail to see how Highmark was prejudiced by the allegedly inadequate discussions.

¹⁴ As explained by the agency, the CERT rates provide a measure of the rate of errors in claims processing. The agency adds that "[l]ower rates are a benefit to the government, and demonstrate an offeror's effective performance." AR at 44. The MCPSS is a survey in which randomly selected Medicare fee-for-service providers voluntarily participate. AR at 21.

the solicitation's stated evaluation factors and applicable statutes and regulations. Although an agency is not required to identify and consider each and every piece of past performance information, it must consider information that is reasonably available and relevant as contemplated by the terms of the solicitation. Where an agency has considered reasonably available and relevant past performance information, its judgments regarding the relative merits of competing offerors' past performance are primarily matters within the contracting agency's discretion, and the protester's mere disagreement with such judgments does not establish a basis for our Office to sustain a protest. Pemco Aeroplex, Inc., B-310372, Dec. 27, 2007, 2008 CPD ¶ 2 at 7-8; recon. denied, Pemco Aeroplex, Inc., B-310372.2, Feb. 1, 2008, 2008 CPD ¶ 24.

The RFP provided that the agency's evaluation under the past performance factor would "be a subjective assessment based upon the contact references of those projects identified by the offeror in its proposal and information obtained independently by CMS from a variety of public or private sources." The solicitation added here that the past performance evaluation would "be based on the extent to which the offeror has demonstrated, under contracts of similar nature, scope, and complexity as the MAC contract, its ability to successfully meet the requirements of the SOW in this solicitation." With regard to the quality of service subfactor to the past performance factor, the solicitation provided that the evaluation would include the agency's consideration of, among other things, the offeror's compliance with contract requirements; customer satisfaction; proactive effective and efficient contractor-recommended solutions; and effective and prompt responses to technical, service, and administrative issues. RFP at 130.

The agency explains, and the record reflects, that in performing its past performance evaluation, the agency considered the information set forth in the sections of the offerors' RFPs addressing their relative past performance, which for Highmark and CGS, totaled 54 and 58 pages, respectively. The record further reflects that in performing its past performance evaluation the agency also considered the offerors' CERT rates, and collected past performance information from a number of other sources, including reports of contractor performance, contractor performance evaluation reports, corrective action plan reports, previous past performance interview data on file with CMS, quality assurance surveillance plan review reports, award fee plan performance evaluation board reports, and contractor performance reports in the National Institutes of Health Past Performance database. In addition, the record reflects that the agency conducted interviews with "several CMS business functional area representatives," Medicare Part A and Part B MAC and legacy contract contracting officers and their technical representatives, legacy contract managers, and "senior agency leadership having knowledge about all aspects of the Medicare program." As stated in the PPEP Final Summary Report, the PPEP also "reexamined [its] past performance evaluation procedures," and "reviewed for reasonableness" and updated its previous findings as part of the corrective action taken in response to our Office's previous decision sustaining CGS's protest of the

award of this contract. AR, Tab 37, PPEP Final Summary Report, at 2. The resultant 34-page PPEP Final Summary Report sets forth the agency's determinations regarding the merits of each offerors' past performance in detail.

The agency explains that the fact that Highmark's allegedly superior CERT rates were not mentioned in the May 18, 2010 TEPC report or source selection decision was simply the result of a new report and determination being written and the volume of material being considered. With regard to the 2009 CERT rates, the agency explains that it had "decided to revise the error rate measurement methodology for the [fiscal year] 2009 report, in response to recommendations from the HHS Office of the Inspector General in a report of their review of the CERT program calculation methodology." The agency determined that because "these revisions were made 'mid-stream' during the [fiscal year] 2009 CERT measurement period," it would be "possible that one contractor's lower CERT rate [could be] attributable to the fact that a larger percentage of its claims were sampled prior to the strict guidelines being put in place." The agency concludes here that because of their unreliability, it determined that the 2009 CERT rates should not be used in evaluating the offerors' past performance under this solicitation. Agency Supp. Report at 9-10.

With regard to the MCPSS, the agency explains that the MCPSS is a "voluntary survey" that "has never achieved a 100 percent response rate." Agency Supp. Report, attach. 3, Decl. of Director of the Medicare Contactor Management Group of CMS, at 1. The agency adds that the MCPSS "not only rates a particular contractor, but CMS delivery of administrative services as a whole." Agency Supp. Report at 64. The agency concludes that because of the voluntary nature of the survey "and the broad use the survey seeks to accomplish," as well as the fact that, as indicated above, the agency "has a number of tools . . . for assessing past performance" of Medicare contractors, the MCPSS data was also not used in assessing the offerors' past performance under this solicitation. Agency Supp. Report, attach. 3, Decl. of Director of the Medicare Contactor Management Group of CMS, at 1.

In our view, the agency has reasonably explained why Highmark's allegedly superior CERT rates were not specifically mentioned in the 2010 TEPC report and source selection decision, and why the agency chose not to use either the 2009 CERT rates or MCPSS data in performing its past performance evaluation. Given the apparent reasonableness of the agency's explanations and the well-documented past performance evaluation based on numerous other sources of past performance information, we have no basis to object to this aspect of the agency's evaluation.

Agency's Alleged Failure to Account for Proposal Strengths

The protesters contend that the TEPC and the contracting officer, in making the source selection decision, failed to account for various evaluated "strengths" in the protesters' proposals in determining what ratings the proposals should receive under

certain of the non-cost evaluation factors and subfactors. That is, the protesters all point to a subfactor or a number of subfactors under which their RFPRs received the same rating as one or more of the other offerors. The protesters then point out that the TEPC had identified more strengths in their respective approaches as evaluated under that subfactor than the TEPC had identified in another offeror's RFPR, with each protester concluding from this that the evaluation of its respective proposal was unreasonable.¹⁵

With regard to the protesters' general assertions regarding the numbers of evaluated strengths, weaknesses, or other discriminators identified by the agency during its evaluation of proposals, our Office has consistently recognized that ratings, be they numerical, adjectival, or color, are merely guides for intelligent decision-making in the procurement process. Where the evaluation and source selection decision reasonably consider the underlying basis for the ratings, including the advantages and disadvantages associated with the specific content of competing proposals, in a manner that is fair, and equitable, and consistent with the terms of the solicitation, the protester's disagreement over the actual numerical, adjectival, or color ratings is essentially inconsequential in that it does not effect the reasonableness of the judgments made in the source selection decision. Similarly, the evaluation of proposals and consideration of their relative merit should be based upon a qualitative assessment of proposals consistent with the solicitation's evaluation scheme, and should not be the result of a simple count of the relative strengths and weaknesses assigned to the proposals during the evaluation process. ITT Corp., Syst. Div., B-310102.6 et al., Dec. 4, 2009, 2010 CPD ¶ 12 at 10; Kellogg Brown & Root Servs., B-298694.7, June 22, 2007, 2007 CPD ¶ 124 at 5.

Thus, Cahaba's representation that the offerors' RFPRs' differing numbers of evaluated strengths and weaknesses, and its allegation that this undermines the reasonableness of the agency's determinations that all four RFPR's received overall ratings under the non-cost factors of "very good" with "low" risk by the TEPC and were considered essentially equal by the contracting officer in making the source selection determination, are not the operative considerations in our review of the

¹⁵ Cahaba has provided a table of its own creation that lists the number of strengths and weaknesses evaluated by the agency under each subfactor, factor, and overall, with Cahaba ultimately concluding that its proposal was unreasonably evaluated under seven of the non-cost subfactors and each of the non-cost factors. The table indicates that the offerors received the following total number of strengths/weaknesses: Cahaba--46 strengths/6 weaknesses; CGS--35 strengths/5 weaknesses, Highmark--34 strengths/3 weaknesses, and NGS--58 strengths/13 weaknesses. Cahaba Comments at 28. We note that the accuracy of Cahaba's table has not been challenged by any party to this protest, and we have not verified that Cahaba's count of strengths and weaknesses for each offeror is accurate, given our view that this table has limited probative value.

reasonableness of the agency's evaluation and source selection decision. Rather, the primary consideration for our Office is whether the agency's evaluation under the non-cost factors, and ultimate conclusion that the proposals of CGS, Highmark, Cahaba, and NGS were essentially technically equal overall, were reasonably based and consistent with the terms of the solicitation.

Determination that the Proposals were Technically Equivalent

Besides the contentions regarding the counting and consideration of proposal strengths, the protesters point to the differing ratings their RFPRs received under the evaluation factors and subfactors, and argue that the contracting officer's conclusion in the source selection decision that the RFPRs of CGS, Highmark, Cahaba, and NGS were "essentially technically equal" was unreasonable. For example, Highmark argues that, in its view, the contracting officer's source selection statement "is comprised of conclusory statements that lump together multiple strengths and weaknesses [in Highmark's RFPR], collapse the analyses of various factors and subfactors on top of one another, and provide no qualitative comparison of the relative merits of the offerors' proposals." Highmark Comments at 8. Cahaba similarly argues that, in finding the RFPRs "essentially technically equal," the SSA "effectively disregarded the ratings, down-played the strengths, and ignored the underlying information that supported them." Cahaba Comments at 9.

Section 15.308 of the FAR requires, in the context of a negotiated procurement, that a source selection decision be based on a comparative assessment of proposals against all of the solicitation's source selection criteria. The FAR further requires that while the SSA "may use reports and analyses prepared by others, the source selection decision shall represent the SSA's independent judgment." Source selection decisions must be documented, and include the rationale and any business judgments and tradeoffs made or relied upon by the SSA. FAR § 15.308.

In determining which proposal represents the best value to the agency, an agency may reasonably determine that the benefit of specific features set forth in a proposal are not worth any additional cost associated with the proposal, as long as that determination remains consistent with the solicitation's evaluation and source selection criteria. Johnson Controls World Servs., Inc., B-289942; B-289942.2, May 24, 2002, 2002 CPD ¶ 88 at 10. In reviewing an agency's source selection decision, our Office examines the supporting record to determine whether the decision was reasonable, consistent with the stated evaluation criteria, and adequately documented. Id. at 6.

The 31-page source selection decision, prepared by the contracting officer in his role as the SSA, begins by describing, the various evaluated strengths and weaknesses of each offerors' RFPR under each of the evaluation factors and subfactors. AR, Tab 49, Source Selection Decision, at 4-25. The source selection decision continues by explaining the basis for the contracting officer's agreement with the TEPC's conclusion that the offerors' RFPRs "are essentially technically equal" in that "no

proposal contains a meaningful advantage that was not otherwise balanced by, encompassed in, or provided for in the other offerors' proposal[s]." Id. at 26. The contracting officer's source selection decision notes in this regard that while "each proposal may be superior to the others in one or more areas, and that the proposals offer different advantages, overall there is essentially no meaningful difference in what they have to offer." Id.

The contracting officer testified at length during the hearing held by our Office about the process by which he concluded that these proposals--with their disparate evaluated strengths and weaknesses--were essentially technically equal. In this regard, the contracting officer first explained that he first set forth in detail the relative merits of the four offerors' RFPRs, in order "to capture the findings by factor and subfactor," and to "look[] at those individual findings to . . . see whether there were areas of differences" among the competing proposals. Tr. at 257; see AR, Tab 49, Source Selection Decision, at 4-25. In completing this process, the contracting officer explained that he reviewed the TEPC report as well as the underlying documentation regarding the specifics of the evaluation, "which had a little bit more of each finding."¹⁶ Tr. at 257.

The contracting officer also testified that he performed his comparative analysis, set forth in the second section of his source selection determination, by "walking through what [he] believed to be the areas of similarity within the proposals, the areas of difference, and looking to see whether [he] found any meaningful difference within the offerors." Tr. at 260; see AR, Tab 49, Source Selection Decision, at 26-30. The contracting officer explains here that a "meaningful difference" between the RFPRs would equate to something "that was worth paying a premium."¹⁷ Tr. 263.

The contracting officer testified that in preparing the source selection decision he found that certain advantages associated with a higher-rated RFPR under one subfactor were effectively offset by the advantages of another offeror's higher-rated RFPR under another subfactor. Tr. at 264. For example, the contracting officer

¹⁶ The underlying evaluation documentation provided by the agency during this protest and referred to by the contracting officer here consists of evaluation spreadsheets documenting the evaluated strengths and weaknesses of the RFPRs of CGS, Highmark, Cahaba, and NGS under each of the evaluation factors and subfactors. See AR, Tab 38, TEPC Report, at 3-4; Tr. at 427.

¹⁷ We note that the contracting officer's explanation of what constitutes a "meaningful difference" is consistent with our Office's view that in determining which proposal represents the best value to the agency, an agency may reasonably determine that the benefit of specific features set forth in a proposal are not worth any additional cost associated with the proposal, as long as that determination remains consistent with the solicitation's evaluation and source selection criteria. Johnson Controls World Servs., Inc., supra, at 11.

explained here that although he noted that CGS, Cahaba, and NGS all received ratings of “very good” under the audit and reimbursement subfactor of the technical understanding factor, due to the evaluated features of their RFPRs that the agency found “would reduce administrative costs,” such as the use of certain “[DELETED],” these advantages were effectively offset by HMS’s evaluated superiority within the customer service subfactor of the technical understanding factor. Tr. at 264. In addition to providing some examples of his thought processes as he conducted his comparative analysis of the RFPRs, the contracting officer testified that he ultimately concluded, as reflected in his source selection statement, that while “all the strengths” associated with the offerors’ RFPRs “weren’t the same, they were different,” they overall “were either balanced by strengths other offerors had in other elements or didn’t rise to the level of being a meaningful advantage.” Tr. at 265; see Tr. at 267. The contracting officer added that a “meaningful difference” found in one offerors’ RFPRs was also, at times, found to be offset by a “meaningful difference” in another offeror’s RFPR as evaluated under a different factor. Tr. at 347-50.

Based upon our review of the record, including the testimony of the contracting officer, we find reasonable the contracting officer’s ultimate conclusion that the RFPRs of CGS, Highmark, Cahaba, and NGS were essentially technical equal, and the protesters’ views to the contrary to reflect nothing more than their disagreement with the contracting officer’s judgment. Our Office has recognized that competing proposals that are evaluated as having common, as well as unique and different strengths and weaknesses, may reasonably be found by the source selection authority to be essentially equivalent technically overall. Korreck Optical, Inc., B-299582.4; B-299582.5, Sept. 7, 2007, 2007 CPD ¶ 177 at 5. In this regard, a finding that proposals are essentially equivalent technically means that overall there is no meaningful difference in what the proposals have to offer; it does not mean that the proposals are identical in every respect. Dorado Servs., Inc., B-401930.3, June 7, 2010, 2010 CPD ¶ 134 at 5.

Moreover, the contracting officer’s source selection decision as well as the contracting officer’s testimony reflect that the contracting officer’s ultimate determination—that while the RFPRs of CGS, Highmark, Cahaba, and NGS each presented common as well as different strengths and weaknesses, they were essentially equal overall—was thoughtful, adequately documented, and consistent with the terms of the solicitation. While Highmark and Cahaba complain that contracting officer’s determinations that certain evaluated “meaningful differences” in one RFPR were effectively offset by the evaluated “meaningful differences” in another RFPR were imprecise, we do not agree that the degree of precision which these protesters assert should be part of the source selection process is required. See KRA Corp., B-278904, B-278904.5, Apr. 2, 1998, 98-1 CPD ¶ 147 at 14 (there is no requirement that a source selection authority dollarize the process by making a precise calculation that an additional dollar will be paid only if there is a corresponding technical advantage).

Cost Evaluation

The protesters contend that the agency's evaluation of CGS's and the protesters' cost proposals was unreasonable. These protest grounds span a variety of cost elements and proposals, such as labor costs and printing and postage costs. We have reviewed all of these contentions and find that they do not provide a basis for finding the cost evaluation unreasonable, or that they are insufficient individually or collectively to offset CGS's evaluated cost advantage. We discuss an example below.

The protesters argue that CGS's proposed labor costs are significantly understated. For example, Highmark argues that the agency "failed to recognize, let alone evaluate, numerous instances in which [CGS] proposed a fraction of the level of effort necessary to perform the J15 MAC Contract." Highmark Protest at 27. Highmark primarily argues in this regard that the claims processing rates set forth in CGS's RFPR for Riverbend, which will process the Medicare Part A claims, and for CGS, which will process the Medicare Part B claims, and upon which certain of its proposed labor hours and thus costs were based, are far faster than CGS's or Riverbend's claims processing rates as calculated from their legacy contract data. Highmark Comments at 40-43. Highmark contends that the agency's acceptance of the claims processing rates set forth in CGS's RFPR was thus unreasonable, and calculates that CGS's proposed costs are understated in this regard by \$72 million. Highmark Comments at 46.

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 at 4. 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.

By way of background, the record reflects that the agency, in preparing its cost realism analysis, received and considered audit reports from the Defense Contract Audit Agency, prepared separate, lengthy, and detailed Business Evaluation Reports regarding the proposals submitted by CGS, Highmark, Cahaba, and NGS, and prepared a 61-page Business Proposal Evaluation Report, summarizing the agency's cost realism analysis of the proposals considered. AR, Tab 39, Business Proposal Evaluation Report; Tab 40, Business Evaluation Report-Cahaba; Tab 41, Business Evaluation Report-CGS; Tab 42, Business Evaluation Report-Highmark; Tab 43, Business Evaluation Report-NGS. The record reflects that in performing its cost realism analysis, the agency analyzed "the labor hours, labor mix, subcontractors, travel and other direct costs proposed by each offeror to determine whether the proposed costs are necessary and reasonable for efficient contract performance." AR, Tab 39, Business Proposal Evaluation Report, at 1. In evaluating the offerors' proposed direct labor hours, the agency states that it focused on the claims processing, provider customer service, provider enrollment, and audit and reimbursement tasks set forth in the solicitation's SOW. The record reflects that the agency focused on these areas when analyzing the proposed direct labor hours and full time equivalents (FTE) proposed, as these areas were the same areas that the offerors addressed in their technical proposals under the technical understanding evaluation factor.¹⁸ Contracting Officer's Statement at 11; Tab 40, Business Evaluation Report-Cahaba, at 8; Tab 41, Business Evaluation Report-CGS, at 10; Tab 42, Business Evaluation Report-Highmark, at 7; Tab 43, Business Evaluation Report-NGS, at 9.

The protesters primarily argue here that the agency should not have accepted as realistic CGS's proposed claims processing rates given the legacy contract data that the agency reviewed. In response, the agency explains that in performing its cost realism evaluation of CGS's proposal, it first noted that because neither Riverbend nor CGS had performed or were performing a MAC contract, the agency lacked historical MAC data to be used in assessing the realism of the direct labor hours proposed by Riverbend and CGS for Medicare Part A and Part B claims processing.¹⁹ AR, Tab 39, Business Proposal Evaluation Report, at 48; Tr. at 34. The record

¹⁸ For CLIN 3, which related to the first full year of contract performance, CGS proposed [DELETED] FTEs, HMS proposed [DELETED] FTEs, Cahaba proposed [DELETED] FTEs, and NGS proposed [DELETED] FTEs. AR, Tab 39, Business Proposal Evaluation Report, at 3, 20, 30, 46. Only Cahaba's FTEs were found unrealistically low by the agency, and were adjusted upwards to [DELETED] FTEs, with a corresponding upwards adjustment in Cahaba's evaluated costs for cost realism purposes. *Id.* at 3. The agency states that it generally focused in CLIN 3 in performing its cost realism analysis. Agency Supp. Report at 39 n.20.

¹⁹ In contrast, because of their performance of MAC contracts, MAC claims processing data was available for Highmark, Cahaba, and NGS.

reflects that because of this, an agency subject matter expert calculated, for both Riverbend and CGS, an “hours per claim” figure using legacy contract data. AR, Tab 39, Business Proposal Evaluation Report, at 48-49; Tr. at 973-74. The agency next compared these figures to CGS’s and Riverbend’s “hours per claim,” as proposed in CGS’s FRPR for Medicare Part A and Part B claims processing, and found that the “legacy data doesn’t support/validate” the “hours per claim” proposed. AR, Tab 39, Business Proposal Evaluation Report, at 48-49. Specifically, while CGS’s FRPR set forth an hours per Part A claim of [DELETED] and an hours per Part B claim of [DELETED], the legacy data provided an hours per Part A claim of .00315, and an hours per Part B claim of .00380. Id.

The agency determined, after conducting this analysis, that although the Riverbend/CGS proposed hours per claim could not be validated by the hours per claim figures derived from the Riverbend/CGS legacy contract data, neither could the proposed hours per claim be found invalid or unrealistic based upon the legacy contract derived data. The agency explains that it concluded that the hours per claim figures derived from the legacy contract data simply were not suitable for use here, because the legacy and MAC contracts have different requirements and different cost reporting structures. Agency Supp. Report at 28; AR, Tab 39, Business Proposal Evaluation Report, at 48-49; Tr. at 975. In this regard, during the hearing, an agency subject matter expert explained that because of the differing manner in which data is/was captured under the legacy contracts and MAC contracts, there is not a direct correlation between hours recorded in the legacy contract system and the hours recorded in the MAC contract system. Tr. at 1020. Although a second agency subject matter expert conceded that in the past the agency has used legacy contract data to assist in a cost realism analysis related to the award of a MAC contract, he explained that the agency did so only because at the time there was no other data available, such as that from a MAC contract. Tr. at 1021-24. The agency subject matter expert concluded that because there is no way to validate a comparison between the hours per claim figures derived from Riverbend’s and CGS’s legacy contract data and CGS’s hours per claim to perform the MAC contract, it would be inappropriate to use the legacy data in assessing the realism of the proposed claims processing rates. Tr. at 977. In this regard, the agency subject matter expert added that even with months of “technical accounting review,” it may not be possible to develop comparable data for use here from the legacy contract data. Tr. at 987-89.

Although Highmark maintains that the record, including the testimony of the agency personnel elicited at the hearing, demonstrates that the agency could and should have used the legacy contract data in assessing the realism of the proposed claims processing rates set forth in CGS’s FRPR, we cannot find the agency’s view to the contrary unreasonable. In our view, the agency has reasonably explained why the use of the claims processing rates derived from Riverbend’s and CGS’s legacy contract data in the manner argued for by Highmark, that is, to essentially establish a

baseline for CGS's proposed claims processing rates, would be inappropriate under the circumstances here.

Additionally, we do not agree with Highmark's contention that the agency, lacking historical data to compare with the claims processing rates set forth in CGS's RFPR, "simply dropped the issue and moved on." Highmark Comments at 41. That is, the record shows that the agency considered certain "process improvements and business efficiencies" set forth in CGS's RFPR which CGS provided in support of its proposed claims processing rates. AR, Tab 41, Business Evaluation Report-CGS, at 12. For example, the approach to claims processing set forth in CGS's RFPR described a proprietary [DELETED] that the agency agreed would lead to improvement in claims processing efficiencies. Tr. at 463; Agency Supp. Report at 30; AR, Tab 41, Business Evaluation Report-CGS, at 14. The agency also noted certain other claims processing improvements set forth in CGS's RFPR that would result in "[a]dditional productivity increases," such as "[DELETED]." AR, Tab 41, Business Evaluation Report-CGS, at 13. The agency also found that CGS's RFPR provided for a "productivity improvement resulting from CGS's decision to [DELETED] for J15." Id.

The record also reflects that the agency questioned this aspect of CGS's proposal by posing the following discussion question to CGS when it reopened discussions in July 2009 as part of its corrective action:

Meeting the higher productivity rates over the life of the J15 contract is seemingly dependent upon CGS's ability to [DELETED]. The TEP[C] believes the likelihood of either happening is not reasonable or realistic and that the recalculated Part B productivity rates are overly optimistic. Please comment.

AR, Tab 14, Agency's Discussions with CGS (July 8, 2009), at 2.

CGS explained in response that its "current productivity rates include [DELETED] as part of the overall calculation," and that because it would "[DELETED]," it would eliminate its "[DELETED]." CGS added here that it would [DELETED] for J15," and that "[DELETED]."²⁰ With regard to its ability to [DELETED], CGS explained that

²⁰ Highmark contends that it was unreasonable for the agency to consider this aspect of CGS's proposal with regard to claims processing efficiencies, arguing as it did with regard to the agency's evaluation of CGS's RFPR under the staffing subfactor to the personnel factor that these personnel may no longer be available to CGS. We essentially addressed this issue in the context of the agency's evaluation of CGS's RFPR under the staffing subfactor to the personnel factor, finding the agency's reliance on the representations made regarding staff in CGS's RFPR to be reasonable, and need not address it again here.

“[DELETED],” and that “[DELETED].” CGS stated that “[DELETED].” AR, Tab 15, CGS Responses to Discussion Questions, at 11.

Thus, the record reflects that the agency reasonably considered CGS’s RFPR, and after analyzing CGS’s proposed approach and direct hours, and raising a question during discussions regarding the agency’s concern over CGS’s offered productivity rates based on the use of [DELETED] and analyzing CGS’s response, ultimately accepted CGS’s proposed claims processing hours, and the attendant proposed direct costs, without adjustment. Although Highmark clearly disagrees with this aspect of the agency’s evaluation, we cannot find it to be unreasonable.

Consideration of CGS’s Proposed Corporate Investment

The record shows that CGS proposed a “corporate investment” in its cost proposal consisting of a reduction to its and Riverbend’s indirect rates. As proposed by CGS and Riverbend and determined by the agency, CGS’s corporate investment totaled \$[DELETED], whereas Riverbend’s proposed corporate investment totaled \$[DELETED]. The agency further determined CGS’s proposed fee of \$[DELETED] “could in theory, serve to offset the \$[DELETED] total proposed corporate investment of CGS and Riverbend,” leaving a “net total of approximately \$[DELETED].”²¹ The agency treated this issue as a matter of responsibility, and found “that CIGNA (CGS’s parent company) and Blue Cross and Blue Shield of Tennessee (Riverbend’s parent company) have the financial capability to fund the proposed corporate investment.” AR, Tab 41, Final Business Evaluation Report-CGS, at 58.

Highmark and Cahaba argue that the agency erroneously considered CGS’s proposed \$[DELETED] “corporate investment” as a matter relating to responsibility. The protesters contend that CGS’s proposed corporate investment, which as evaluated by the agency will cause CGS to perform the J15 MAC contract at a loss, should have been considered as a “risk” and taken into account in some manner when the agency rated CGS’s RFPR under the technical understanding evaluation factor.

In support of their argument that the agency erred in treating the matter of CGS’s proposed corporate investment as one of responsibility, the protesters point to our decision in MCT JV, B-311245.2; B-311245.4, May 16, 2008, 2008 CPD ¶ 121; recon. denied, Metro Mach. Corp.–Recon., B-311245.5, Aug. 4, 2008, 2008 CPD ¶ 167. In MCT JV, the awardee had capped its indirect rates at levels that the agency

²¹ Highmark proposed [DELETED]. AR, Tab 42, Final Business Evaluation Report-Highmark, at 31-33. Cahaba also proposed a “corporate investment” of approximately \$[DELETED] for its implementation effort, which would not result in Cahaba performing at a loss given its proposed fee. AR, Tab 40, Final Business Evaluation Report-Cahaba, at 39-41.

concluded were significantly below its costs despite the solicitation's instruction that offerors not propose unrealistically low costs due to concerns about their negative effect on contract performance. Our Office sustained the protest because of the solicitation's express and unique warning to offerors not to propose unrealistically low costs, that was followed by a warning that proposals that were unrealistically low in cost may be rejected regardless of their technical merit or evaluated cost.

We find nothing improper in the CMS's actions here. The record reflects that the agency understood the potential impacts of CGS's proposed corporate investment, and reasonably considered the matter as one of responsibility. As clearly set forth in MCT JV, our Office has long held that as a general matter, a decision about an awardee's ability to perform a contract at rates capped below actual costs is a matter of an offeror's responsibility. MCT JV, *supra*, at 13 (citing Vitro Corp., B-247734.3, Sept. 24, 1992, 92-2 CPD ¶ 202 at 7 and Halifax Tech. Serv., Inc., B-246236.6 *et al.*, Jan. 24, 1994, 94-1 CPD ¶ 30 at 9). The solicitation at issue here, while providing that "risk" would be assessed in evaluating proposals, did not contain any of the express and unique warnings and language set forth in the solicitation at issue in MCT JV. As such, we disagree with Highmark and Cahaba regarding the application of MCT JV here, and find that the agency properly treated the matter of CGS's proposed corporate investment as a matter of responsibility.²²

Organizational Conflict of Interest

Highmark argues that the award to CGS "created an impaired objectivity" OCI that the contracting officer "never attempted to address or mitigate."²³ Highmark Protest at 46. Highmark explains here that "[t]his OCI evolves from Riverbend's affiliate," which has been performing as a national "qualified independent contractor" (QIC), and in that role "has been responsible for independently reviewing appeals of Medicare claims denied, in full or in part, by CIGNA" in CIGNA's role as the durable

²² To the extent the protesters argue that CGS should not have been found responsible because of concerns regarding this corporate investment, we will not consider these argument because our Bid Protest Regulations provide that our Office generally will not consider a protest challenging such an affirmative determination of responsibility, absent certain limited exceptions that are not applicable here. 4 C.F.R. § 21.5(c) (2010).

²³ An "impaired objectivity" OCI as addressed in FAR subpart 9.5 and the decisions of our Office, and as applicable to this protest, consists of a situation where a firm's ability to render impartial advice to the government would be undermined by the firm's competing interests. FAR § 9.505-3; Aetna Gov't Health Plans, Inc.; Foundation Health Fed. Servs., Inc., B-254397.15 *et al.*, July 27, 1995, 95-2 CPD ¶ 129 at 13.

medical equipment (DME) MAC for Jurisdiction C.”²⁴ Id. at 46-47. Highmark, while not claiming that an OCI is created within J15 by the award of the J15 MAC contract to CGS, alleges that the award here will create an OCI in Jurisdiction C. In this regard, Highmark claims that the objectivity of Riverbend’s affiliate in its performance as a QIC will be impaired by its knowledge that Riverbend is a subcontractor to CGS as the awardee of the J15 MAC contract.

The responsibility for determining whether a conflict exists rests with the procuring agency. Aetna Gov’t Health Plans, Inc.; Foundation Health Fed. Servs., Inc., supra, at 12. In making this determination, the FAR expressly directs contracting officers to examine the particular facts associated with each situation, paying consideration to the nature of the contracts involved, and further directs contracting officers to obtain the advice of counsel and appropriate technical specialists before exercising their own sound discretion in determining whether an OCI exists. FAR §§ 9.504, 9.505. In reviewing bid protests that challenge an agency’s conflicts determinations, the Court of Appeals for the Federal Circuit has mandated application of the “arbitrary and capricious” standard established pursuant to the Administrative Procedures Act. See Axiom Res. Mgmt, Inc. v. United States, 564 F.3d 1374, 1381 (Fed. Cir. 2009). In Axiom, the Court of Appeals noted that “the FAR recognizes that the identification of OCIs, and the evaluation of mitigation proposals are fact-specific inquiries that require the exercise of considerable discretion.” Id. The standard of review employed by this Office in reviewing a contracting officer’s OCI determination mirrors the standard required by Axiom. In this regard, where an agency has given meaningful consideration to whether an OCI exists, we will not substitute our judgment for the agency’s, absent clear evidence that the agency’s conclusion is unreasonable. CIGNA Gov’t Servs., LLC, B-401068.4; B-401068.5, Sept. 9, 2010, 2010 CPD ¶ __ at 12.

The RFP required that the offerors’ proposals include, in addition to technical and business proposal volumes, a “Conflict of Interest and Compliance Program” (CICP) volume. RFP at 85. The RFP provided detailed instructions regarding the preparation of the CICP volume that included a “Conflict of Interest” tab in which “the offeror is required to submit the disclosure of information” concerning OCIs and potential OCIs, and cautioned that the “[f]ailure to submit the required information may deem an offeror’s proposal to be non-responsive to the solicitation.” RFP at 111.

The record reflects that the contracting officer, prior to his receipt of the TEPC report or preparing his source selection statement, conducted and documented an OCI analysis on each offeror. Contracting Officer’s Statement at 15; AR, Tab 44, OCI

²⁴ DME MACs process Medicare claims for DME, prosthetics, and orthotics. There are four DME MAC jurisdictions known as Jurisdictions A, B, C, and D. AR at 40 n.24.

Analysis (Apr. 13, 2010). The scope of the OCI analysis included “the performance or participation by offerors, offerors’ ownership, offerors’ affiliates or offerors’ successors in interest as a prime contractor, subcontractor, co-sponsor, joint venture, consultant, contractor team arrangement member, or in any similar capacity.” AR, Tab 44, OCI Analysis, at 3. The OCI analysis reflects that the Conflict of Interest volumes of the offerors’ proposals were reviewed, and that the contracting officer did his own research “to account for potential unknown/undisclosed subsidiaries, ownerships, prime contracts or subcontracts, or other rel[evant] financial information (i.e. mergers and acquisitions) not already known to the [contracting officer] by means of the offeror’s [Conflict of Interest] proposal or CMS first-hand knowledge.” *Id.* The contracting officer concluded as a result of this analysis that no OCIs existed that “were either significant or would preclude the award of the J15 contract to any of the offerors.” Contracting Officer’s Statement at 15; AR, Tab 44, OCI Analysis, at 11.

The record further reflects that once the contracting officer identified CGS as the apparent awardee, he “conducted a further analysis of CGS, and its successful subcontractor Riverbend, to ensure that there were not OCI considerations that needed to be resolved prior to award.” AR, Tab 44, Update to OCI Analysis (June 18, 2010), at 1. In performing this further OCI analysis, the contracting officer states that he “consulted with CMS MAC Program Management staff, the [Office of Acquisition and Grants Management] OAGM Compliance Office staff and the Office of General Counsel.” Contracting Officer’s Statement at 17. The record reflects that the contracting officer reviewed a number of concerns pertaining to CGS and Riverbend, and that the contracting officer was aware and considered the issue presented by the protester here concerning Riverbend’s affiliate’s performance as a DME QIC. The contracting officer determined that this situation did not preclude the award of the J15 MAC contract to CGS because the J15 MAC contractor does not process DME claims and the affiliate will not be conducting reviews involving the J15 MAC contract. *Id.*; AR, Tab 44, Update to OCI Analysis, at 3. The contracting officer then prepared another memorandum documenting the OCI analysis, in which he determined “that there were no OCIs that would preclude CGS from receiving” the J15 MAC award. Contracting Officer’s Statement at 18-19; *see* AR, Tab 44, Addendum to OCI Analysis.

As indicated above, the record reflects that the agency performed a comprehensive OCI analysis. The contracting officer, as well as the agency’s MAC Program Management staff, OAGM Compliance Office, and Office of General Counsel, all participated in the OCI analysis, and clearly gave “meaningful consideration to whether an OCI exists” with regard to CGS’s performance of the J15 MAC contract. Based on our review of the record, we cannot conclude that the contracting officer’s OCI analysis was unreasonable or reflected an abuse of discretion.

CONCLUSION

In sum, we find the agency's evaluation of proposals and determination that the proposals submitted by CGS, Highmark, Cahaba, and NGS were essentially technically equal to be reasonable and consistent with the RFP's evaluation scheme. Nor can we find unreasonable the agency's evaluation of CGS's proposed costs, determination that there were no OCIs that precluded an award to CGS, or treatment of CGS's corporate investment as a matter of responsibility. Given this, and the fact that Highmark's, Cahaba's, and NGS's proposed costs were \$6 million to \$22 million higher than CGS's most probable costs as calculated by the agency, we find the selection of CGS's proposal for award based upon its lower evaluated costs was reasonable and consistent with the RFP's evaluation scheme.²⁵

The protests are denied.

Lynn H. Gibson
Acting General Counsel

²⁵ As indicated above, Highmark, NGS, and Cahaba have made numerous other contentions concerning the evaluation of proposals under both the non-cost and cost factors, and the agency's source selection decision. Although these contentions are not all specifically addressed in this decision, each was considered, including the protesters' general and specific assertions that the conduct of the agency reflected unequal treatment in a number of ways, and found either to be insignificant in view of our other findings, or without merit based upon record as a whole.