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Decision

Matter of: IntegriGuard LLC

File: B-401626; B-401626.2

Date: October 20, 2009

Alexander J. Brittin, Esq., Brittin Law Group, PLLC, and Jonathan D. Shaffer, Esq., and Mary Pat Gregory, Esq., Smith Pachter McWhorter PLC, for the protester. Barbara A. Duncombe, Esq., Suzanne Sumner, Esq., and Thomas J. Menza, Esq., Taft Stettinius & Hollister LLP, for the intervenor. Rhonda Bershok, Esq., Office of TRICARE Management Activity, for the agency. Eric M. Ransom, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's technical evaluation is denied where evaluation results were reasonably based on the technical evaluators' relevant expertise.
 2. Protest that agency's evaluation unreasonably ignored key elements of protester's proposal is denied where protester's proposal failed to adequately describe alleged approach.
 3. Protest that agency failed to conduct meaningful discussions is denied where agency specifically highlighted aspects of protester's proposal that agency found inadequate.
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DECISION

IntegriGuard LLC, of Omaha, Nebraska, protests the award of a contract to Meridian Resource Company (MRC), of Waukesha, Wisconsin, by the TRICARE Management Activity (TMA) under request for proposals (RFP) No. H94002-08-R-0003 for TRICARE claims review services.

We deny the protest.

BACKGROUND

TRICARE is a regionally managed healthcare program for specified persons connected with the uniformed services who are entitled to government-provided medical and dental care. Because the military direct care system does not have the capacity to provide such care to all eligible beneficiaries, TRICARE brings together the healthcare resources of the Army, Navy, and Air Force, and supplements them with networks of civilian healthcare professionals. TMA, a Department of Defense Field Activity, procures and administers contracts for TRICARE healthcare support services. The healthcare support contractors process TRICARE claims and pay care providers/beneficiaries the allowable amounts.

On May 5, 2008, TMA issued the RFP seeking a contractor to provide claims review services, specifically, independent audits of the TMA healthcare support contractors' reimbursement determinations and healthcare claims processing services. The contractor would be responsible for reporting on claims processing procedures, reimbursement methodologies, and payment recording and coding procedures utilized by the various TRICARE programs.

TMA anticipated the award of a requirements-type contract for a base phase-in period and 5 one-year option periods. The RFP provided that award would be made to the offeror with the lowest-priced, technically acceptable proposal, and set forth two evaluation factors, technical and price. The technical evaluation factor consisted of six subfactors: quarterly/semi-annual/annual healthcare cost audits; rebuttals; management; quality control; transition; and past experience and performance. RFP at § M.5. The RFP explained:

The Government will evaluate each subfactor under [the technical evaluation factor] to determine if they [the proposals] are technically acceptable. Each technical proposal will be evaluated against evaluation criteria relating to the requirements of the RFP and a pass/fail rating will be assigned. Failure to address or demonstrate the ability to meet one or more requirements will result in a "fail" rating. Proposals will be evaluated on the basis of whether or not an offeror's proposed procedures, methods, and delivery of service meet the Government's minimum requirements. Each proposal will be evaluated separately and will be evaluated solely on its own merits.

RFP at § M.6.

The RFP set forth sub-subfactors under each technical subfactor. As relevant to the protest here, the first sub-subfactor under the management subfactor, "staffing plan," stated that "[t]he Government will evaluate the technical adequacy of the proposed staffing plan to include the type of staffing and its management support services, to comply with and meet the requirements of this contract." RFP at § M.6.3.1.

Three offerors responded to the RFP, including IntegriGuard and MRC. After the initial evaluation, the agency concluded that none of the offerors was technically acceptable. The contracting officer then established a competitive range consisting of the proposals of IntegriGuard and MRC, and entered into two rounds of discussions. The offerors submitted proposal revisions on January 20, 2009, after the first round of discussions, and final proposal revisions (FPR) on April 10, after the second round.

Upon receiving IntegriGuard's January 20 revised proposal, the source selection evaluation team (SSET) reviewed IntegriGuard's proposed staffing and determined that it was inadequate. In the second round of discussions, the agency informed IntegriGuard that its proposed staffing was considered inadequate and that, accordingly, its proposal was technically unacceptable. Agency Report (AR), Tab 107, Discussion Questions, at 12. The agency further identified for IntegriGuard several staffing positions in its proposal that the agency considered to have inadequate full-time equivalent (FTE) personnel, including the claims review analyst (CRA) staffing position.¹ *Id.* The agency also informed IntegriGuard that, due to the determination that IntegriGuard's proposed staffing was inadequate, IntegriGuard's price was considered too low. *Id.* at 17.

Despite having been informed that the agency considered its proposed CRA staffing to be inadequate, IntegriGuard's FPR reduced the CRA FTEs for four of the five option periods. AR, Tab 114, FPR, at 236-238. Therefore, IntegriGuard's technically unacceptable rating was not changed, and its \$16,534,292 proposed price, substantially below the government estimate, \$26,044,778, and MRC's proposed price, \$37,189,411, was again considered too low. AR, Tab 122, SSET Report, at 46; AR, Tab 133, Price Evaluation, at 27.

After the evaluation of the FPRs, the source selection evaluation board (SSEB) chairperson documented her concurrence with the SSET's conclusions and recommended award to MRC, the only technically acceptable offeror. AR, Tab 137, SSEB Report, at 6. The contracting officer, acting as the source selection authority, concurred with the determination that MRC was the only technically acceptable offeror, determined that MRC's price was reasonable, and sent MRC notice of award on June 30. AR, Tab 138, Award Determination, at 20.

IntegriGuard requested a post-award debriefing on June 30, and received that debriefing on July 10. This protest followed on July 15.

¹ IntegriGuard's proposal referred to claims auditors as CRAs, and proposed two categories of CRA: CRA-I and CRA-II.

DISCUSSION

While IntegriGuard presents numerous challenges to the agency's conduct of this procurement, we consider IntegriGuard to have raised three principal arguments: first, that the agency unreasonably found IntegriGuard's proposal technically unacceptable under the staffing plan sub-subfactor on the basis of an unsupported productivity estimate; second, that the agency ignored the "team approach" to claims auditing presented in IntegriGuard's proposal; and third, that the agency failed to conduct meaningful discussions. We address these arguments in turn.

Productivity Estimate

IntegriGuard's FPR included an estimate of the number of claims to be processed by each CRA per day. The estimate indicated that, given IntegriGuard's proposed CRA staffing levels, each CRA would be required to audit as many as [deleted] claims per day in option period 1, increasing to as many as [deleted] claims per day by option period 5. In analyzing IntegriGuard's proposal, the SSET explained that, in its experience with TRICARE claims audits, a "seasoned" claims reviewer can accurately audit [deleted] claims per day. AR, Tab 122, SSET Report, at 57. On the basis of its productivity estimate of [deleted] claims per day, the SSET concluded that IntegriGuard's proposal of "such an aggressive productivity level demonstrates a misunderstanding of the complexity of the TRICARE audit process and the minimum requirements of the TCRS RFP." *Id.* at 58. Accordingly, the SSET determined that IntegriGuard's proposal was technically unacceptable due to failure to propose sufficient CRA FTEs. *Id.* at 1, 39.

IntegriGuard asserts that the agency's evaluation was unreasonably based on the conclusion that a "seasoned" claims review analyst could review only [deleted] claims per day, and contends that this productivity estimate is unsupported, undocumented, and merely anecdotal. IntegriGuard also argues that historical data support its much higher productivity estimate, that the agency's technical evaluators had significantly less experience with claims auditing than the experts involved in developing IntegriGuard's staffing assumptions, and that the agency's evaluators overstated the complexity of the TCRS claims review process.

The evaluation of technical proposals is a matter largely within the agency's discretion. In reviewing protests against allegedly improper evaluations, it is not our role to reevaluate proposals. Rather, our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the RFP criteria. Abt Assocs. Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. The protester bears the burden of proving that an evaluation was unreasonable, and mere disagreement with the agency does not render the evaluation unreasonable. Ogden Support Servs., Inc., B-270354.2, Oct. 29, 1996, 97-1 CPD ¶ 135 at 3.

Here, we see no basis to question the productivity estimate on which the agency based its conclusion that IntegriGuard's staffing plan was unacceptable. The record

demonstrates that the SSET was composed of three members with extensive knowledge of the TRICARE program and relevant experience in auditing TRICARE claims. The SSET chairperson (who also chaired the SSEB) is the contracting officer representative on the current TRICARE claims audit contract and has served in that position for 6 years. AR, Tab 151, Resumes, at 394-395. As the subject matter expert, she developed the contract requirements set forth in the RFP here. Id. The record further demonstrates that the chairperson has years of experience in performing TRICARE review audits, has trained new TRICARE auditors, and has extensive knowledge of feasible daily workloads for TRICARE auditors, both new and experienced. Id.; AR, Chairperson Declaration, July 31, 2009, at 1. The record also shows that the second SSET member has over 20 years experience in auditing TRICARE claims and healthcare contractors, and is very knowledgeable regarding current TRICARE audit requirements. AR, Tab 151, Resumes, at 382-386; AR, Evaluator 2 Declaration, Aug. 3, 2009, at 1-3. Finally, the record shows that the third SSET member also has extensive TRICARE experience, and has served as the alternate contracting officer representative on the current TRICARE claims review contract. AR, Tab 151, Resumes, at 389-390; AR, Evaluator 3 Declaration, August 3, 2009, at 1-2.

As a part of their analysis of the technical proposals, these evaluators, acting as the SSET, determined a reasonable daily workload for claims analysis. In declarations filed with the AR, the evaluators state that this productivity estimate was based on careful consideration of the RFP requirements, as well as the combined TRICARE auditing experience of the SSET members. E.g., AR, Evaluator 3 Declaration, supra, at 2. Specifically, the evaluators state that, in calculating this productivity rate, they accounted for the scope of the RFP requirements, the relative difficulty levels of the various types of claims reviews, the availability of automated tools, the evaluators' personal claims auditing experience, and their knowledge of contractor auditing performance. Id.; AR, Evaluator 2 Declaration, supra, at 3; AR, Chairperson Declaration, supra, at 3. This process of determining the productivity estimate for CRAs is reflected in the SSET's report, in which the evaluators unanimously concluded that a seasoned CRA could audit [deleted] claims per day, that IntegriGuard's proposed rate of [deleted] claims per day was unrealistic, and that, as a result, IntegriGuard proposed CRA staffing that was inadequate to meet the RFP requirements. AR, Tab 122, SSET Report, at 57-58.

Given the extensive relevant experience of the evaluators and their reasoned explanation, in the SSET Report and their individual declarations, of the considerations involved in determining the productivity rate of [deleted] claims per day, we cannot conclude that the estimate was unreasonable or that the basis for the estimate was insufficiently documented. It is not improper for agency evaluators to base their evaluation conclusions on their personal experience where that experience is relevant, as clearly was the case here. See Precision Lift, Inc., B-310540.4, June 26, 2008, 2008 CPD ¶ 166 at 7-8 (evaluation was reasonable where evaluator determined, based on his experience, that items under prior contract were similar in scope and complexity to those under the protested solicitation); Coastal

Maritime Stevedoring, LLC, B-296627, Sept. 22, 2005, 2005 CPD ¶ 186 at 8 (given the expertise of the technical evaluators, there was no basis to question their rating of the proposal).

In support of its challenge to the productivity estimate the evaluators used, the protester cites two documents in the record that contain productivity estimates that are higher than the estimate developed by the SSET. Based on our review of the record, we conclude that these documents fail to show that the SSET's determination was unreasonable.

IntegriGuard first cites a May 2003 Standard Form 98 (SF-98) used to obtain a Department of Labor wage rate determination for MRC's prior TRICARE claims review contract. The SF-98 described an "Audit Analyst I" staffing position under that contract as "maintaining an average daily production rate of [deleted] claims." AR, Tab 170, Wage Determination, at 100. However, IntegriGuard fails to acknowledge that the SF-98 covers a TRICARE claims review effort relating to fewer TRICARE contracts and a different set of audit criteria. For example, the SF-98 states that the Audit Analyst I position "monitors and evaluates the information reported in approximately sixty different fields per claim," *id.*, while under the current RFP, a CRA is responsible for auditing "at least 86 data fields for each institutional claim." AR, Evaluator 2 Declaration, *supra*, at 3. Further, given that the members of the SSET have been significantly involved in the administration of the current TRICARE claims review contract, we think that the SSET's experience represents a more timely, relevant, and reliable guide to likely productivity under the RFP than the 2003 SF-98 cited by IntegriGuard.

The second document cited by IntegriGuard is the Independent Government Cost Estimate (IGCE) for this RFP. The IGCE includes a productivity estimate for each type of audit required under the RFP, developed by an independent contractor with input from the incumbent contractor and TMA personnel. AR, Tab 146, IGCE, at 7. The estimates range from [deleted] claims per hour/[deleted] claims per day for the most time-intensive audits, to [deleted] claims per hour/[deleted] claims per day for moderately time-intensive audits, to [deleted] claims per hour/[deleted] claims per day for the least time-intensive audits. IntegriGuard asserts that its proposed productivity rates, which it cites as [deleted] claims per hour for the moderately time-intensive audits and [deleted] claims per hour for the least time-intensive audits, were comparable. As a preliminary matter, our review of the record indicates that the rate IntegriGuard cites in its protest filings--[deleted] claims per hour for moderately time-intensive claims--is not the rate in its proposal, but instead apparently reflects a mathematical error appearing in the SSET Report and the debriefing. *See* AR, Tab 122, SSET Report, at 57; AR, Tab 142, Debriefing Slides, at 28. Expressed in hourly terms, IntegriGuard's actual lowest proposed productivity rate was [deleted] claims per hour ([deleted] claims per day) for moderately time-intensive claims, while for the least time-intensive claims, IntegriGuard's proposed rate ranged as high as [deleted] claims per hour ([deleted] claims per day). AR, Tab 114, FPR, at 235-238. Moreover, the SSET's productivity estimate of [deleted] claims

per day represented an average rate.² Considering the estimated number of each type of audit set forth in the RFP (moderately time-intensive claims constitute over 60 percent of the total), the weighted average of the productivity estimates in the IGCE comes to [deleted] claims per hour, or [deleted] claims per day. See RFP, Amendment 6 Attachment J-10, Audit Schedule. In our view, the marginally higher overall rate reflected in the IGCE does not show that the rate relied on by the SSET was unreasonable.³

Team Approach

IntegriGuard next asserts that the agency ignored various aspects of the “team approach” to claims auditing set forth in IntegriGuard’s proposal and, as a result, incorrectly calculated the number of FTEs IntegriGuard proposed for that function. For example, IntegriGuard argues that the agency erroneously assumed that only IntegriGuard’s CRAs would perform claims audit work when in fact IntegriGuard specified that it would use a claims review team of approximately [deleted] FTEs, including [deleted]. IntegriGuard contends that in applying its productivity assumptions to IntegriGuard’s proposal, the agency should have considered all [deleted] FTEs, and, had it done so, each member of IntegriGuard’s claims audit team would be expected to perform [deleted] audits per day, consistent with the SSET’s experience.

Offerors bear the responsibility to submit an adequately written proposal with sufficiently detailed information to establish that their proposals will meet the solicitation requirements. G&M Indus., B-290354, July 17, 2002, 2002 CPD ¶ 125 at 4. An offeror is responsible for affirmatively demonstrating the merits of its proposal and risks the rejection of its proposal if it fails to do so. Knoll, Inc.; Steelcase, Inc., B-294986.3, B-294986.4, Mar. 18, 2005, 2005 CPD ¶ 63 at 3. Based on our review of the record here, we conclude that the agency properly evaluated IntegriGuard’s proposed “team approach.”

Although IntegriGuard’s FPR identifies a “claims review team of approximately [deleted] FTEs,” the FPR does not propose that all FTEs will participate in performing initial claims review audits. Rather, in the audit process section of the

² The SSET members state that in formulating their estimate they considered that some audits may take as little as [deleted] minutes while other audits may take [deleted] minutes, and concluded that the average time required to audit a claim was [deleted] minutes. AR, Chairperson Declaration, supra, at 4; AR, Evaluator 3 Declaration, supra, at 3.

³ We recognize that IntegriGuard presented other arguments in support of its own, much higher, proposed productivity rate. Based on our review of the record, we conclude that the arguments amount to mere disagreement with the agency’s estimate, which, as explained above, we have found reasonable.

FPR, IntegriGuard proposes [deleted]. AR, Tab 114, FPR, at 192. The [deleted]. Id. The proposal indicates that the [deleted]. Id. at 205.

IntegriGuard's proposal also specifically identifies the duties and responsibilities of each staffing position in the staffing plan section of its proposal. In this section, the proposal states that the CRA-I staffing position [deleted], while the CRA-II position [deleted]. Id. No other staffing position in the staffing plan is listed as having initial claims review audit duties.

In sum, given that IntegriGuard's proposal identifies the CRA staffing position as responsible for conducting initial claims review audits and fails to specify any other labor category as sharing this responsibility, we think that the SSET reasonably concluded that only CRA FTEs were devoted to initial claims review.⁴

Discussions

IntegriGuard asserts that the agency failed to conduct meaningful discussions, in that the agency posed only "general questions regarding staffing levels," and failed to place IntegriGuard on notice of its true concerns. Protest at 24. IntegriGuard states that, among other things, the agency did not inform IntegriGuard that it was relying on a productivity estimate of [deleted] claims per day. In its comments, IntegriGuard alleges that "TMA advised IntegriGuard that TMA thought its '*staffing*' was insufficient, not that it had proposed insufficient CRAs. *Nowhere in TMA's discussion letter or anywhere else does TMA ever state that IntegriGuard's number of CRAs is insufficient.*" Comments at 7 (emphasis in original). IntegriGuard also states that the agency report incorrectly characterized what occurred during discussions, for example, by claiming that IntegriGuard was informed that its [deleted] CRA FTEs were inadequate, when "IntegriGuard was never told that the number of CRAs it proposed was inadequate." Id. at 7 n.2.

The Federal Acquisition Regulation (FAR) requires agencies conducting discussions to inform offerors of deficiencies, significant weaknesses, and adverse past

⁴ We also note that IntegriGuard's argument that it proposed a "cross-trained" team and that employees in staffing positions other than CRA would assist with initial audit work is unsupported by the staffing plan, in that none of the non-CRA staffing categories are identified as having the responsibility to assist with initial audits, on an as-needed basis or otherwise. Similarly, to the extent that IntegriGuard asserts that its non-CRA staff constitute a "ready reserve" team available to assist with CRA audit work, we think this position is inconsistent with the fact that in its proposal IntegriGuard specified situations where it would assign non-CRA staffing positions to assist with specific initial audit requirements, such as [deleted]. In our view, this suggests that when IntegriGuard intended to use non-CRA staff to perform CRA duties, IntegriGuard specifically so indicated in its proposal.

performance information to which the offeror has not had the opportunity to respond. FAR § 15.306(d)(3). Although discussions must address deficiencies and significant weaknesses identified in proposals, the precise content of discussions is largely a matter of the contracting officer's judgment. Honeywell Tech. Solutions, Inc., B-400771, B-400771.2, Jan. 27, 2009, 2009 CPD ¶ 49 at 9. An agency satisfies the requirement to conduct meaningful discussions where it leads offerors into the areas of their proposals that require amplification. New Breed, Inc., B-400554 et al., Dec. 5, 2008, 2009 CPD ¶ 4 at 6. Here, the record clearly demonstrates that IntegriGuard was informed that its CRA staffing was inadequate, and thus we conclude that the agency conducted meaningful discussions.

In the second round of discussions, the agency expressly informed IntegriGuard that "IntegriGuard failed subfactor 3" and stated the reasons for that conclusion. AR Tab 107, Discussion Questions, at 12. Among these reasons, the agency explained that "based on the revised proposal, the Government concluded that IntegriGuard's proposed staffing is inadequate." Id. The agency continued:

- a. The Government could not conclude you proposed adequate staff in the following positions:
 - o Project Director [deleted]
 - o Quality Assurance Auditors [deleted]
 - o Claims Review Analyst [deleted]
 - o Claims Review Assistants [deleted]
 - o Trainer [deleted]

Id. The agency concluded, "Given the schedule and estimated volume of claims to be reviewed . . . the above staffing levels are inadequate to accomplish the audit process." Id.

This discussion question was clearly sufficient to put IntegriGuard on notice that the agency considered the [deleted] FTEs proposed for the CRA positions to be inadequate. Thus, the record does not support IntegriGuard's contention that the agency failed during discussions to adequately advise IntegriGuard of its concerns with the firm's staffing plan.

Other Allegations

In its various protest filings, IntegriGuard raises numerous other allegations concerning the agency's conduct of this procurement. We have reviewed all of IntegriGuard's allegations and find that none provides a basis to sustain the protest. We discuss a representative selection of these issues below.

IntegriGuard asserts that the agency improperly introduced a risk assessment into the evaluation under the management subfactor, when it concluded that IntegriGuard's proposed staffing was insufficient to meet the requirements of the

RFP. IntegriGuard argues that the RFP did not include a risk assessment under the management subfactor and that, in any event, because the RFP was for a fixed-price contract, IntegriGuard would be obligated to perform as set forth in the statement of work.

The RFP expressly called for the evaluation of staffing, and the agency's finding that IntegriGuard's proposed staffing was inadequate was directly related to the definition of the staffing plan sub-subfactor, "technical adequacy of the proposed staffing plan." RFP at § M.6.3.1. Furthermore, even if the evaluators had expressed their concerns in terms of risk, an agency is not precluded from considering proposal risk arising from an offeror's approach or demonstrated lack of understanding that, as in this case, is intrinsic to the stated evaluation factors. 4th Dimension Software, Inc.; Computer Assocs. Int'l, Inc., B-251936, B-251936.2, May 13, 1993, 93-1 CPD ¶ 420 at 8. Accordingly, this argument provides no basis on which to sustain the protest.

IntegriGuard also alleges that the agency conducted an inconsistent evaluation by assigning IntegriGuard a "pass" rating under subfactor M.6.1 and a "fail" rating under sub-subfactor M.6.3.1. Specifically, IntegriGuard points to the agency's statement that IntegriGuard "demonstrated a fundamental understanding of the requirements" under subfactor M.6.1, which called for evaluation of the offeror's proposed procedures and processes for performing the audits. AR, Tab 122, SSET Report, at 3. IntegriGuard argues that it was illogical for the agency to conclude, on the one hand, that IntegriGuard understood the requirements under the procedures and processes subfactor (M.6.1), but, on the other hand, had proposed inadequate staff to accomplish those requirements under the staffing plan sub-subfactor (M.6.3.1). We disagree. Under the procedures and processes subfactor (M.6.1), the RFP stated that the agency would evaluate the technical adequacy of the offeror's proposed procedures and processes to ensure, for example, that "all errors assessed during the payment and occurrence audits are legibly annotated . . . and that the assessed errors are correctly entered" RFP at § M.6.1.3. In contrast, sub-subfactor M.3.6.1 stated, "The Government will evaluate the technical adequacy of the proposed staffing plan to include the type of staffing and its management support services, to comply with and meet the requirements of this contract." We conclude that the RFP's evaluation scheme and the agency's evaluation appropriately treated these areas as distinct elements of the evaluation, and we do not view the evaluation results as in any way inconsistent. See VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 10.

CONCLUSION

In sum, we conclude that the agency reasonably determined that IntegriGuard's proposed staffing was inadequate to successfully meet the requirements of the RFP, reasonably evaluated IntegriGuard's FPR, and conducted meaningful discussions with IntegriGuard. With regard to the various other arguments presented in

IntegriGuard's protest filings, we have reviewed all the allegations presented, and conclude that none provides a basis for our Office to sustain the protest.

The protest is denied.

Lynn H. Gibson
Acting General Counsel