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Decision

Matter of: ACS State Healthcare, LLC; PharmaCare Government Services, Inc.; PGBA, LLC; Humana Military Healthcare Services, Inc.

File: B-292981; B-292981.2; B-292981.3; B-292981.4; B-292981.5; B-292981.6; B-292981.7; B-292981.8; B-292981.9 B-292981.10

Date: January 9, 2004

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DIGEST

1. In negotiated procurement under which the contractor will acquire pharmaceuticals for Department of Defense (DoD) using DoD funds, and where solicitation requests offerors to propose discount rates and dispensing fees for pharmaceuticals in addition to their fixed prices, and provides for evaluation of government's projected future costs for pharmaceuticals ("Total Expected Government Cost" (TEGC)) as a technical factor, agency reasonably assessed likelihood that offerors could provide pharmaceuticals at their proposed discount rates and dispensing fees; cost realism analysis of offerors' TEGCs was not required, where solicitation did not require such an analysis.

2. Source selection authority (SSA) performed reasonable cost/technical tradeoff in determining the awardee's proposal for supporting pharmaceutical program represented best value, where the SSA's judgment, based upon the results of a reasonable, well-documented technical evaluation, is set forth in a detailed decision document that demonstrates the SSA's understanding of the evaluated strengths and weaknesses of the respective proposals, and that shows a reasonable weighing of the offerors' respective technical and price advantages consistent with the solicitation's evaluation criteria.

DECISION

ACS State Healthcare, LLC; PharmaCare Government Services, Inc.; PGBA, LLC; and Humana Military Healthcare Services, Inc. protest the award of a contract to Express Scripts, Inc. (ESI), under request for proposals (RFP) No. MDA906-03-R-0002, issued by the TRICARE Management Activity, Department of the Defense (DoD), for support of the TRICARE Retail Pharmacy (TRRx) program.

We deny the protests.

BACKGROUND

The TRICARE program is a managed health care program implemented by DoD for active duty and retired members of the uniformed services, their families, and survivors. 32 C.F.R. § 199.17 (2003). TRICARE is a blend of the military's direct care system of hospitals and clinics (known as Military Treatment Facilities) and the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). The TRICARE program includes pharmacy benefits, which were being provided as part of TRICARE's Managed Care Support (MCS) contracts until the award under this RFP was implemented.¹

¹ There were seven MCS contracts with four different companies covering various regions. The seven MCS contracts have been or will be replaced by the "next generation" of TRICARE contracts (frequently referred to as "T-Nex" contracts). In replacing the expiring contracts, and as a part of a broader transformation of DoD's military health care system, DoD has made various program changes, including the consolidation of its current 11 TRICARE regions into 3 regions. Further, unlike the prior MCS contracts that incorporated various unique services performed by specialized subcontractors, DoD has elected to "carve out" such services for separate, nationwide contracts. One of these specialized services was for the provision of pharmacy benefits, which is the subject of this RFP. Mail order pharmacy services were also originally part of the MCS contracts, but were removed in 1997. A separate TRICARE Mail Order Pharmacy contract was awarded to ESI in 2002. (Mail order pharmacy services are not included in this RFP.)

Solicitation

This RFP was to obtain a contractor to support the TRRx program, which provides for the acquisition, delivery and distribution of prescriptions to beneficiaries. The contractor will be the Pharmacy Benefits Manager (PBM) for the TRRx program and will use its own retail pharmacy network to support the TRRx program nationwide (including Puerto Rico, Guam, and the U.S. Virgin Islands).² The RFP contemplated the award of a fixed-unit price, incentive contract for a 6-month base period with 5 option years. The contractor will use DoD funds to pay for each prescription after receiving government verification of an individual beneficiary’s eligibility and authorization for payment, and provide other services to support the program. The contractor will operate a pharmacy help desk, verify beneficiary eligibility, process claims, provide clinical services (processing prior authorization and medical necessity determination requests), provide information technology services, perform marketing and education services, process appeals, and perform record management services.

The RFP provided for award on the basis of a cost/technical tradeoff, and stated that the agency intended to evaluate proposals and make award without conducting discussions. The RFP identified the following six evaluation factors and associated subfactors:

(1) Network Access	
(2) Network Reimbursement	
(3) PBM Services	
	Claims Processing
	Quality Assurance Plan
	Disaster Recovery Plan
	Phase-in Plan
(4) PBM Operations	
	Pharmacy Help Desk
	Prior Authorization
	Medical Necessity Determination
	Management
	Beneficiary Services
(5) Past Performance	
(6) Price	

² The contract will provide for the delivery of retail pharmacy benefits to an estimated 8.9 million eligible beneficiaries in the United States, Guam, Puerto Rico, and the U.S. Virgin Islands. It was estimated that 2.5 million beneficiaries currently use retail pharmacy services.

Offerors were informed that factors (1) and (2) were of equal weight and individually were the most important non-price evaluation factors.³ Factor (5) was stated to be next in importance and equal in weight to the combination of factors (3) and (4), which were of equal importance.⁴ Offerors were also informed that factors (1) through (5) combined were significantly more important than price. Proposals were to be evaluated under each factor and subfactor to determine the extent to which they exhibited a clear understanding of the work requirements and the means required to fulfill the requirements, and the extent to which they demonstrated an ability to meet or exceed the RFP requirements. RFP amend. 4, § M.2.2.

The RFP also provided for an assessment of proposal risk associated with an offeror's technical approach and ability to meet the RFP requirements. The assessment of proposal risk could be affected by the amount of the offeror's experience in performing PBM-related services. Proposal risk was to be evaluated at the factor and subfactor level. Id. § M.5.

With respect to factor (1), Network Access, offerors were informed that "the offeror must have an established network in place, at the time of submission of the technical proposal, sufficient to meet the minimum access standards" stated in the RFP. Id. § L.8.2. These minimum access standards required for an urban setting a pharmacy within 2 miles estimated driving distance of 90 percent of the beneficiaries; for a suburban setting a pharmacy within 5 miles estimated driving distance of 90 percent of the beneficiaries; and for a rural setting a pharmacy within 15 miles estimated driving distance of 70 percent of the beneficiaries. Id. § C.7. The RFP also required that offerors provide a plan to minimize the impact of any disruption or inconvenience to beneficiaries caused by changes to the network structure.

With respect to factor (2), Network Reimbursement, offerors were informed that a written proposal was not necessary. Under this evaluation factor, the agency was to assess an offeror's projected program pharmaceutical costs based upon the offeror's proposed guaranteed network reimbursement rates and the total expected government cost (TEGC) for reimbursement of network retail pharmacy costs.⁵ The proposal risk associated with the offeror's ability to obtain and maintain the proposed TRRx network at the offeror's guaranteed average discount percentage and guaranteed average dispensing fee was also to be assessed under this factor.

Under this factor, offerors were directed to complete the solicitation's Table L-1, which would detail the offeror's pricing structure for pharmaceutical items. Specifically, this table, for each option year, identified estimated quantities of brand

³ Offerors were informed that factor (1) would be first evaluated on a pass/fail basis.

⁴ The subfactors within factors (3) and (4) were stated to be of equal importance.

⁵ The RFP also provided that the TEGC was not a priced contract line item and would not be part of the evaluation under the price evaluation factor.

name and generic pharmaceuticals, and for each group an associated “average wholesale price” (AWP) was identified.⁶ Offerors were required to provide their “guaranteed average discount percentage” (the offeror’s reimbursement discount factor) and “guaranteed average dispensing fee” (the offeror’s fee for each prescription filled). The table then required each offeror to use algebraic formulae to derive the offeror’s “average drug cost” and “estimated total drug costs” for each option period.⁷ The TEGC was the sum of the offeror’s estimated total drug costs for the 5 option years.

The RFP required offerors to provide supporting documentation evidencing their ability to deliver at the guaranteed average discount percentages and average dispensing fees. Offerors were informed that such supporting information might include identifying the average discount percentage and dispensing fee by brand and generic drug categories “for its currently existing network that is closest in size and scope to the network required under this RFP.” RFP amend. 4, § L.8.3.3.1.1.

The RFP provided that the offerors’ guaranteed average discount percentage and guaranteed average dispensing fee for brand name and generic drugs for each of the 5 option years would be included in the contract for the purpose of determining incentive payments or deductions from the contract price. That is, the contractor could earn an “incentive” up to 5 percent of the difference between the actual costs and expected costs (applying the contractor’s guaranteed discount percentage and dispensing fee to the prescriptions filled during that contract period), up to a stated maximum amount for each contract period (from \$1.5 million in the first option year to \$2.5 million in the fifth option year). RFP amend. 1, § H.2.2. Conversely, the RFP provided that

⁶ An AWP is established by drug manufacturers for each drug. For the first option year, the average AWP reflects a weighted average of the AWP’s of all drugs in each group in effect as of January 2003, rounded to the nearest whole dollar. The remaining option years were escalated using a 5 percent factor. RFP amend. 4, Table L-1, note (b).

⁷ For the first option year, Table L-1 appeared as follows:

Type of Rx	Estimated Quantity	Average AWP	Guaranteed Average Discount Percentage	Guaranteed Average Dispensing Fee	Average Drug Cost	Estimated Total Drug Cost
	(a)	(b)	(c)	(d)	(e) = [(b) x (1-(c))]+d)	(f) = (a) x (e)
Brand	20,441,546	\$111				
Generic	16,724,901	\$41				
Subtotal Option 1						

RFP amend. 4, Table L-1.

the Government will assess a Negative Incentive if the total actual network reimbursement cost in a contract option period exceeds the [TEGC] for Reimbursement of Network Pharmacy Costs that would have resulted from applying the Guaranteed Average Discount Percentage and the Guaranteed Average Dispensing Fee Per Prescription to the prescriptions filled in the network during the contract option period. The difference between the actual costs and Government calculated costs will be deducted from future payments to the contractor.

RFP amend. 1, § H.2.3.

With respect to factor (3), PBM Services, offerors were informed that, among other things, the agency would assess whether each offeror's proposed claims processing met or exceeded the minimum processing standards stated in the RFP's statement of work for electronic and beneficiary submitted claims.⁸ The RFP also provided for the evaluation of the offerors' proposed quality assurance plan, disaster recovery plan,⁹ and phase-in plan under this evaluation factor.

The RFP provided that offerors were to address factor (4), PBM Operations, only in an oral presentation.¹⁰ Among other things, offerors were required to address their proposed hours of operation for their pharmacy help desk and to provide data demonstrating call access standards (*e.g.*, average wait times and call abandonment rates) for their existing pharmacy help desks. The RFP also required under this factor that offerors detail their plans to process prior authorization¹¹ and medical

⁸ The RFP provided that, as measured on a monthly basis, 99 percent of electronic claims must be processed to completion within 5 seconds of receipt and 100 percent of electronic claims must be processed to completion within 5 working days of receipt. With respect to paper claims, 95 percent of paper claims must be processed to completion within 10 working days of receipt and 100 percent of paper claims must be processed to completion within 20 working days. RFP amend. 4, § C.8.8.

⁹ The RFP required that, effective with the beginning of the first option year, the contractor must ensure that services would not be disrupted for more than 24 consecutive hours throughout the life of the contract. RFP amend. 4, § C.16.3.3. Offerors were required to provide in their proposals a detailed disaster recovery plan that discussed staffing, processes, facilities, testing redundancy, and back-up hardware and that addressed the continuity of beneficiary service functions in the event of a disaster. RFP amend. 4, § L.8.4.3.

¹⁰ The oral presentations included up to 50 PowerPoint slides that were submitted by the offerors with their written proposals.

¹¹ The RFP provided that the agency might designate certain drugs as requiring prior authorization before being dispensed and that the contractor would, based upon
(continued...)

necessity determination¹² requests to completion, including identifying the frequency and number of follow-up attempts with a prescriber. Under this factor, offerors were also required to describe their proposed management structure and to “describe [their] systems of management controls for internal and external business processes.” RFP amend. 4, § L.8.5.4. Offerors were also required to describe under this factor their current beneficiary services operations, their plans to accommodate increased beneficiary inquiry volume resulting from the TRRx contract, and their guaranteed performance standards relating to telephone inquiries and written correspondence.¹³ RFP amend. 4, § L.8.5.5.

With respect to factor (5), Past Performance, offerors were required to submit performance data from each of their five largest current customers to whom the offeror or its first-tier subcontractor was providing PBM or PBM-related services, and to identify all federal, state, and local government contracts for the provision of PBM services. Offerors were informed that the agency would assess the past performance data to determine performance confidence.

Evaluation of Proposals

Proposals were received from seven offerors, including ESI, ACS, Humana, PGBA, and PharmaCare.¹⁴ The proposals were evaluated by the agency’s source selection evaluation board (SSEB), which was comprised of a technical evaluation team (TET), performance risk assessment group (PRAG), and price evaluation team (PET). All of the offerors’ technical proposals received a “pass” grade under the

(...continued)

government-established criteria, approve or disapprove prior authorization requests from beneficiaries. RFP amend. 4, § C.11.

¹² The RFP provided that upon the request of a beneficiary, the contractor would use government-provided criteria to determine whether medical necessity substantiated “the need to provide the beneficiary with a non-formulary drug at the formulary co-pay.” RFP amend. 4, § C.12.

¹³ The contractor is required to implement a beneficiary services unit to respond to beneficiary inquiries. The RFP provided that if the contractor used an automated response unit to answer beneficiary calls, 100 percent of all telephone calls must be acknowledged within 20 seconds and that the first menu choice presented to a caller must allow the caller to be transferred to a customer service representative. Requests to speak with a customer service representative were required to be connected within 30 seconds, 95 percent of the time. RFP amend. 4, § C.19.

¹⁴ PharmaCare also submitted an alternate proposal. Because the RFP did not permit alternate proposals, the agency did not consider PharmaCare’s alternate proposal. PharmaCare originally challenged the agency’s decision not to consider the firm’s alternate proposal, but later withdrew this protest ground.

network access evaluation factor. The awardee’s and protesters’ proposals were evaluated as follows:

Offeror	(1) Network Access	(2) Network Reimbursement		(3) PBM Services		(4) PBM Operations		(5) Past Performance ¹⁵	(6) Price
	Merit/Risk Disruption	TEGC	Risk ¹⁶	Merit ¹⁷	Risk	Merit	Risk		
ESI	Green/Low 10,757 (.36%)	\$15.7B	Low	Green	Low	Green	Low	High Confidence	\$245.4M
ACS	Green/Low 20,711 (.68%)	\$15.6B	Low	Yellow	Mod.	Green	Mod.	Satisfactory Confidence	\$138.0M
Humana	Green/Low 16,173 (.54%)	\$16.1B	Low	Green	Low	Blue	Low	High Confidence	\$186.2M
PGBA	Green/Low 46,957 (1.56%)	\$15.8B	Low	Green	Low	Green	Mod.	Satisfactory Confidence	\$211.1M
Pharma Care	Green/Low 25,736 (.85%)	\$15.9B	Low	Green	Low	Green	Low	Satisfactory Confidence	\$264.3M

Agency Report, Book 15, Tab 37, SSEB Evaluation Report, at 10.

The other two offerors’ proposals were assessed as having significant deficiencies or weaknesses that could not be corrected without proposal revisions and unreasonable proposed prices; these proposals were not considered for award.

¹⁵ Past performance was assessed as either high confidence, satisfactory confidence, marginal confidence, no confidence, or, if an offeror had no past performance history, neutral. “High confidence” reflected the PRAG’s judgment that no doubt existed that the offeror will successfully perform the required effort, while “satisfactory confidence” reflected that there was some doubt that the offeror will successfully perform the required effort. Agency Report, Book 15, Tab 55, Source Selection Evaluation Guide, at 452-53.

¹⁶ “Low” risk reflected the evaluators’ judgment that little doubt existed that the offeror could execute the requirements of the evaluation factors and subfactors using the methods and/or techniques proposed. “Moderate” (Mod.) risk reflected the judgment that some doubt existed regarding the offeror’s performance, which could potentially cause disruption of schedule, increase in cost, or degradation of performance, although special contractor emphasis or government monitoring could alleviate the difficulties. Agency Report, Book 15, Tab 37, SSEB Evaluation Report, at 8.

¹⁷ A “blue” rating reflected the evaluators’ judgment that the proposal exceeded minimum requirements in a manner beneficial to the agency and contained no weaknesses. A “green” rating reflected that the proposal met the minimum requirements and that any requirements exceeded in the offer were offset by one or more weaknesses, but that the weaknesses were readily correctible. A “yellow” rating reflected that the proposal failed to meet minimum requirements and contained significant weaknesses that were not correctible without a major proposal revision. Agency Report, Book 15, Tab 37, SSEB Evaluation Report, at 7.

ESI's Proposal

Under factor (1), Network Access, ESI proposed a network of 55,402 retail pharmacies and was determined to offer the lowest disruption rate of the five proposals under consideration for award. Although the TET found that ESI's proposal exceeded the solicitation's "blue level" access standards for two of the three categories, the proposal was rated green with low risk under the factor.¹⁸ Id. at 54.

Under factor (2), Network Reimbursement, ESI offered the second lowest TEGC. The TET compared ESI's guaranteed discount percentages and dispensing fees to industry norms (as identified by the Pharmacy Benefit Management Institute (PBMI), the agency's consultant), and to the rates and fees that ESI was currently achieving in a commercial pharmacy network of similar size and scope; the TET concluded that there was little doubt that ESI would be able to enroll and retain pharmacies in its proposed network at its proposed guaranteed average discount rates and dispensing fees. Id. at 55-56.

The TET noted no strengths or weaknesses in ESI's proposal under factor (3), PBM Services, and rated it green with low risk. Under factor (4), PBM Operations, ESI's proposal also received an overall green with low risk rating. However, the TET noted that ESI's commitment to processing prior authorization and medical necessity determination requests in 2 working days as compared to the minimum requirement of 5 working days warranted blue ratings under the prior authorization and medical necessity determination subfactors to factor (4); the TET noted that there was little proposal risk in this regard, inasmuch as ESI's proposal demonstrated substantial experience related to processing prior authorization and medical necessity determination requests. The TET also found two strengths and a weakness under the beneficiary services subfactor to factor (4), which was rated green; the TET noted that ESI's offer to provide beneficiary services 24 hours per day/365 days per year exceeded in a beneficial way the minimum requirements and that ESI's proposal to provide a beneficiary service center that was exclusively dedicated to the TRRx program also exceeded the minimum requirement to provide personnel that were primarily responsible for beneficiary support. The weakness noted under this subfactor was that ESI failed to propose minimum performance standards for telephone call blockage and call abandonment rates. Id. at 61-67.

¹⁸ Under factor (1), Network Access, proposals were first evaluated as to whether they satisfied the minimum access standards for each of three categories (urban, suburban, and rural) on a pass/fail basis. Proposals were then evaluated under each category as to whether offerors' proposed standards exceeded the RFP's minimum standards by certain percentages (called "blue levels"), which levels were not disclosed to the offerors. Under the undisclosed evaluation scheme, if a proposal exceeded the "blue level" percentage under each of the three categories, it would receive a blue rating.

ESI received a “high confidence” rating under factor (5), Past Performance. This rating reflected the PRAG’s judgment that there was “no doubt in [ESI’s] ability to successfully perform the required effort in the TRRx solicitation.” Id. at 67. The PRAG noted that ESI’s past performance data established strengths in a number of areas, including “meeting the terms and conditions of the contract” and “performance in a timely manner.” Id. at 69. Although the PRAG identified no weaknesses, it noted that three of ESI’s references “indicated that, at one time or another, ESI experienced problems satisfactorily providing members services,” but that each reference stated that ESI “had made performance improvements in this area.” Id. at 70. The PRAG also noted that ESI had served as a PBM, providing retail pharmacy services “commensurate with the scope of the functions required by the TRRx solicitation” under a subcontract with the TRICARE managed care contractor for the central region and that the contractor had provided a “stellar recommendation.” Id.

ESI proposed the second-highest price of the offerors whose proposals were considered for award.

ACS’s Proposal

ACS proposed a network of [Deleted] retail pharmacies and was determined to offer the third lowest disruption rate of the five proposals under consideration for award. Like ESI’s proposal, ACS’s proposal was found to exceed the “blue level” access standards for two categories and it received a green rating under factor (1), Network Access. Id. at 13-14.

Under factor (2), Network Reimbursement, ACS offered the lowest TEGC, approximately \$75 million lower than the TEGC offered by ESI. The TET compared ACS’s proposed discount percentages and dispensing fees to the discounts and dispensing fees that ACS reported for its other pharmacy networks and found that ACS’s proposed discounts and fees were very similar. Here too, the TET concluded that there was little doubt that ACS could enroll and retain pharmacies in the TRRx network at the guaranteed average discount rates and dispensing fees. Id. at 14-15.

The TET assessed a significant weakness in ACS’s proposal under factor (3), PBM Services, which resulted in an overall yellow with moderate proposal risk rating. Specifically, the TET found that ACS’s proposed disaster recovery plan only partially supported ACS’s ability to resume services within 24 hours following a catastrophic event; the TET found that ACS’s plan was

inadequate in regard to beneficiary services and pharmacy help-desk operations because the [Deleted] locations proposed for the TRRx beneficiary call center and pharmacy help desk call center . . . are not sufficiently dispersed to minimize the likelihood that a single catastrophic event could render all [Deleted] proposed sites inoperable. The TET identified this flaw in the disaster recovery plan

as a significant weakness because it appreciably increases the risk of unsuccessful contract performance.

Id. at 18-19.

ACS's proposal was rated as green with moderate proposal risk under factor (4), PBM Operations, with moderate risk being assessed under four of the five subfactors of this factor. Specifically, under the prior authorization and medical necessity determination subfactors, the TET found inadequate ACS's approach of limiting follow-up on incomplete prior authorization and medical necessity determination requests to only [Deleted], which the TET found increased the probability that these requests would be inaccurately or prematurely denied. Under the management subfactor, the TET assessed as a moderate risk ACS's proposed use of [Deleted] because it found that ACS had not provided information demonstrating that it had experience providing PBM services in concert with subcontractors in general or these subcontractors in particular. ACS's proposal was also assessed as moderate risk under the beneficiary services subfactor based on two evaluated weaknesses: (1) an apparent inconsistency between ACS's proposed guarantee to answer [Deleted] of beneficiary calls within [Deleted] and its reported less timely performance for two of ACS's three current clients; and (2) ACS's proposed use of a proprietary call documentation system for the beneficiary services center. Id. at 21-29.

ACS was assessed a satisfactory confidence rating under the past performance factor. This rating was based upon the PRAG's assessment that strengths identified by some references for ACS's "responsiveness to solving problems" and management were counterbalanced by weaknesses identified by other references for "performing in a timely manner," electronic claims processing, management, disaster recovery, and phase-in. Id. at 30-33. ACS was provided with an opportunity to address the adverse past performance information, and ACS provided an explanation, which the PRAG concluded generally did not refute the existence of the identified weaknesses. See Contracting Officer's Statement at 24; Agency Report, Book 28, Tab 83, Clarification of ACS's Past Performance, at 38-42. The PRAG concluded that "ACS's past performance weaknesses, coupled with its limited prior authorization and medical necessity determinations and member (beneficiary) services performance history, create some doubt that ACS will be able to successfully perform the effort required in the TRRx." Agency Report, Book 15, Tab 37, SSEB Evaluation Report, at 60.

ACS proposed the lowest price of the offerors whose proposals were considered for award.

Humana's Proposal

Under factor (1), Network Access, Humana proposed a network of [Deleted] retail pharmacies and was determined to offer the second lowest disruption rate of the five proposals under consideration for award. Like ESI's and ACS's proposals, Humana's

proposal was found to exceed the “blue level” minimum access standards for two categories and it too received a green rating. Id. at 71-72.

Under factor (2), Network Reimbursement, Humana offered the highest TEGC; the TET found that Humana’s guaranteed discount rates and average dispensing fees varied somewhat from industry norms, but were consistent with Humana’s existing pharmacy network agreements, “though not as aggressive.” The TET concluded that there was little doubt that Humana would be able to enroll and retain pharmacies in the TRRx pharmacy network at Humana’s guaranteed average discount percentages and dispensing fees. Id. at 72-73.

The TET assessed no strengths or weaknesses in Humana’s proposal under factor (3), PBM Services, which was rated green with low risk. Humana’s proposal was assessed as blue overall for factor (4), PBM Operations. This rating reflected the TET’s assignment of blue with low risk ratings for three of the five subfactors: prior authorization, medical necessity determination, and beneficiary services. Specifically, the TET found that Humana’s proposed processing of prior authorization and medical necessity determination requests exceeded the RFP requirements in a beneficial way, and that there was low proposal risk for achieving these strengths because, based upon its experience as a TRICARE managed care support contractor for five regions, Humana’s plans for processing prior authorization and medical necessity determination requests were currently functional “to a large degree.” With respect to the beneficiary services subfactor, the TET noted that Humana proposed to provide beneficiary services [Deleted], and guaranteed to [Deleted] required telephonic and written inquiry response standards. Id. at 79-85.

Humana received a “high confidence” rating under factor (5), Past Performance. The PRAG noted that there were positive performance comments and information from references, particularly in the areas of electronic and paper claims processing, disaster recovery, phase-in, pharmacy and beneficiary services, and prior authorization and medical necessity determinations. No weaknesses were noted. Moreover, the PRAG noted that the

performance history provided, especially Humana’s current performance as a TRICARE managed care support contractor for five TRICARE regions and specifically its delivery of the TRICARE retail pharmacy benefit in the five regions, is commensurate to the size, scope, and complexity for all functions required by the TRRx solicitation.

Id. at 87.

Humana proposed the second lowest price of the offerors whose proposals were considered for award.

PGBA's Proposal

PGBA proposed a network of [Deleted] retail pharmacies and was determined to offer the highest disruption rate of the five proposals under consideration for award. The TET found that PGBA's guaranteed minimum access standards exceeded the "blue level" minimum access standards for one category and that its proposal warranted a "green" rating under factor (1), Network Access. Id. at 106-07.

Under factor (2), Network Reimbursement, the TET found that PGBA offered the third lowest TEGC. The TET noted that PGBA had proposed [Deleted] than normal discount rates but [Deleted] than normal dispensing fees; the TET concluded that PGBA would be able to enroll and retain pharmacies in the TRRx pharmacy network at PGBA's guaranteed average discount rates and dispensing fees. Id. at 107-08.

PGBA's green low risk rating under factor (3), PBM Services, reflected the TET's assessment that there were no strengths or weaknesses in PGBA's proposal under this factor. PGBA's proposal was assessed as having an overall moderate risk under factor (4), PBM Operations, and under four of the five subfactors of this factor, primarily because of its lack of pharmaceutical experience. The TET expressed concern under two of the subfactors with PGBA's lack of experience in processing prior authorization and medical necessity determination requests as a PBM;¹⁹ the TET also doubted that PGBA had proposed sufficient staff to process these requests. Id. at 115-19. Moderate risk was also assessed in PGBA's proposal under the management subfactor; specifically, the TET noted that it had

some doubt that PGBA [could] effectively manage the TRRx contract based on the management structure proposed. PGBA demonstrated an existing management structure with substantial experience related to health care and claims processing for health care contracts. However, PGBA demonstrated no management experience related to managing Pharmacy Benefit Management functions or managing subcontractors performing complex portions of the contract.

Id. at 121. PGBA's proposal was also assessed as having a moderate risk under the beneficiary services subfactor due to PGBA's lack of experience in providing beneficiary services relative to pharmacy services and based upon the TET's judgment that significant modifications would be required in PGBA's processes and procedures for its beneficiary services center to become operational under the contract. Id. at 122-23.

¹⁹ The TET noted that PGBA had extensive experience processing prior authorization and medical necessity determination requests for medical purposes, but no experience relative to processing these requests for pharmaceuticals. Agency Report, Book 15, Tab 37, SSEB Evaluation Report, at 117, 119.

PGBA received a “satisfactory confidence” rating under factor (5), Past Performance. Specifically, the PRAG noted that based upon the information provided by their references, it appeared that PGBA and its subcontractor, [Deleted], had performed satisfactorily.²⁰ Furthermore, the PRAG noted that PGBA had extensive TRICARE and CHAMPUS experience, but that experience was primarily related to providing medical claims processing and not providing pharmacy services. Id. at 123-25. The PRAG was concerned that

[l]imited information was provided on PGBA’s performance history on phase-in and member services and no information was provided for prior authorization/medical necessity determinations and pharmacy audits. The PRAG considered PGBA’s past performance history to be of limited relevance due to the absence of pharmacy/PBM performance history. Limited information was provided on [Deleted] performance history relative to electronic claims processing. Given the lack of performance history and the relative importance of network access, prior authorization/medical necessity determinations, and pharmacy audits in the evaluation, the PRAG has some doubt that PGBA and [Deleted] can perform these functions as required in the TRRx solicitation.

Id. at 125.

PGBA proposed the third lowest price of the offerors whose proposals were considered for award.

PharmaCare’s Proposal

PharmaCare proposed a network of [Deleted] retail pharmacies and was determined to offer the second highest disruption rate of the five proposals under consideration for award. The TET found that PharmaCare’s proposal also warranted a green rating under factor (1), Network Access. Id. at 126-27.

Under factor (2), Network Reimbursement, the TET found that PharmaCare offered the second highest TEGC. The TET noted that PharmaCare’s proposed guaranteed discount rates and dispensing fees varied somewhat from industry norms, but concluded that the “[Deleted].” This, combined with PharmaCare’s evidence of existing networks and contracts in place to support the TRRx network, led the TET to conclude that there was little doubt that PharmaCare would be able to enroll and retain pharmacies in the TRRx pharmacy network at PharmaCare’s guaranteed average discount percentages and dispensing fees. Id. at 127-28.

²⁰ [Deleted] was proposed to perform electronic claims processing.

The TET assessed no strengths or weaknesses in PharmaCare's proposal under factor (3), PBM Services, which was rated green with low risk overall, although PharmaCare's proposal was assessed as a moderate risk under the quality assurance subfactor because PharmaCare did not detail the experience, credentials and training of its quality assurance staff. Id. at 129-30.

PharmaCare's proposal was also rated as green with a low risk under factor (4), PBM Operations. However, the TET noted a weakness under the beneficiary services subfactor that warranted a moderate risk rating. Specifically, the TET was concerned that PharmaCare's proposed telephone response time of [Deleted] was less stringent than the RFP requirement that "[w]hen a caller requests to speak with a beneficiary service representative, the connection will be made within 30 seconds, 95 [percent] of the time." Id. at 138-39; see RFP, amend. 4, § C.19.4. The TET concluded that an "[Deleted] may result in significant periods of time throughout the year when the contractor is not compliant with its guaranteed standards, requiring more intensive Government monitoring." Agency Report, Book 15, Tab 37, SSEB Evaluation Report, at 140.

PharmaCare received a "satisfactory confidence" rating under factor (5), Past Performance. The PRAG noted that information provided by PharmaCare's references was generally positive. However, the PRAG was concerned by the lack of performance history identified for PharmaCare for processing electronic and paper prescription claims volumes commensurate with the claims volumes that are projected for the TRRx program and by the lack of any beneficiary services performance history as reported by PharmaCare's largest clients. These concerns led the PRAG to have some doubt about PharmaCare's ability to successfully perform the TRRx contract. Id. at 140-42.

PharmaCare proposed the second highest price of the offerors whose proposals were considered for award.

Cost/Technical Tradeoff Analysis

Following the completion of the technical and price evaluations, the SSEB performed a cost/technical tradeoff analysis to make a best-value recommendation to the source selection authority (SSA). The SSEB first determined which proposals clearly represented less value to the government as compared to the other proposals and eliminated those proposals from its review. The SSEB concluded that only the proposals of ESI, ACS and Humana should be included in the cost/technical tradeoff analysis. Based upon its detailed tradeoff analysis, the SSEB recommended to the SSA that ESI's proposal be selected as reflecting the best value to the government.²¹ Id. at 143-64.

²¹ The contracting officer concurred in this recommendation. Agency Report, Book 15, Tab 41, Contracting Officer's Award Memorandum (Sept. 25, 2003).

The SSA received and reviewed the SSEB's evaluation report and award recommendation. In a detailed 25-page decision document, the SSA explained her review of the evaluation results and independent assessment of the strengths and weaknesses of the respective proposals under the stated evaluation factors and subfactors. In performing this review, the SSA did not agree with the SSEB in all respects. For example, the SSA did not agree with the SSEB that PGBA's proposal should not be included in the cost/technical tradeoff analysis, and she therefore included the proposals of ESI, ACS, Humana, and PGBA in her best value analysis. See Agency Report, Book 15, Tab 36, Source Selection Decision, at 16. PharmaCare's proposal was not included in the SSA's cost/technical tradeoff assessment because she agreed with the SSEB that PharmaCare's proposal "clearly represents less value to the Government than ESI[s] and [Humana's] because of its lower ratings in Factors 3, 4, and 5 (including subfactors), and PharmaCare's higher Total Evaluated Price." Id. at 16. The SSA then compared ESI's highest priced proposal to ACS's, Humana's, and PGBA's proposals, in turn. As explained below, the SSA agreed with the SSEB that ESI's proposal reflected the best value to the government.

ESI/ACS Tradeoff

Comparing ESI's and ACS's proposals, the SSA noted that under factor (1), Network Access, although ESI's proposal reflected a lower beneficiary disruption rate than did ACS's, this was not a discriminator between any of the proposals, given the low number of beneficiaries disrupted in each proposal. ACS was found to be have a "slight advantage" under factor (2), Network Reimbursement, based upon its lower proposed TEGC, which was approximately \$75 million (or .48 percent) lower than ESI's. ACS was also found to have a "significant advantage" in proposed price (approximately \$107 million lower than ESI's proposed price). Id. at 19, 21.

ESI's proposal was found by the SSA to offer significant technical advantages over ACS's under factors (3), (4), and (5). Under factor (3), PBM Services, ESI's better disaster recovery plan was considered to be a distinguishing feature between the firms' proposals; the SSA found that ACS's disaster recovery plan, as evaluated by the SSEB, did not ensure that beneficiary services and the pharmacy help desk would be operational within 24 hours following a catastrophic event, and would have to be modified to meet the RFP's minimum requirements. Id. at 20-22. Under factor (4), PBM Operations, the SSA noted that ACS received moderate risk ratings for four of the five subfactors, whereas ESI received all low risk ratings; discussed in detail the significant discriminators between ACS's and ESI's approaches under these subfactors; and concluded that ESI had the better technical proposal under this factor. Under factor (5), Past Performance, the SSA noted that ESI had received a higher confidence rating than ACS's satisfactory confidence rating, which reflected the PRAG's judgment that although ACS had received a number of positive comments from its references, there were multiple comments reflecting poor performance in functional areas required for the TRRx program, which were not assuaged by ACS's comments regarding this adverse information. Id. at 22-23.

Weighing the two firms' respective advantages, the SSA concluded that ESI's proposal reflected the better overall value to the government, finding that the

superior technical approach demonstrated by ESI in Factors 3 and 4 and their significantly better Past Performance (Factor 5) outweighs the advantage ACS has in Factor 2 for network reimbursement costs. Except for Factor 2, for which ACS has a slight advantage, ESI has the best technical approach to accomplish the objectives of this solicitation. The advantages presented by ESI in Factors 3 and 4, combined with their outstanding record of past performance (Factor 5), justify the higher price in ESI's proposal.

Id. at 25.

ESI/Humana Tradeoff

Comparing ESI's and Humana's proposals, the SSA noted that ESI's and Humana's proposals were essentially equal under factors (1), Network Access; (3), PBM Services; and (5), Past Performance. However, ESI's proposal was found to have a significant advantage under evaluation factor (2), Network Reimbursement, based upon its nearly \$360 million (or 2.3 percent) lower TEGC. Both firms were found to have "very similar" technical approaches under evaluation factor (4), PBM Operations; however, Humana's proposal was found to have a slight advantage under this factor, as indicated by its five strengths and no weaknesses as compared to ESI's proposal, which had four strengths and no weaknesses.²² Humana's proposal's advantage under this factor was based upon the SSA's conclusion that Humana offered better guaranteed telephone call blockage and call abandonment rates and commitment to exceeding the minimum requirement for responding to routine written beneficiary inquiries. The SSA also found that Humana also had an advantage under the price factor, offering a price that was \$59.2 million lower than that offered by ESI. Weighing ESI's and Humana's proposals, the SSA found that Humana's slight technical advantage under factor (4) and price advantage were outweighed by ESI's substantial network reimbursement advantage. Id. at 17-19.

²² As indicated above, the TET assessed a weakness in the ESI proposal under the beneficiary services subfactor of factor (4) based on the TET's finding that ESI had not provided a guaranteed standard for telephone call blockage and call abandonment rate, as contemplated by the RFP. The SSA disagreed with this assessment, noting that ESI had provided information addressing these requirements in its oral presentation. Agency Report, Book 15, Tab 36, Source Selection Decision, at 18; see Agency Report, Book 3, Tab 8, ESI Technical Proposal, Oral Presentation Slide 37.

ESI/PGBA Tradeoff

Comparing ESI's and PGBA's proposals, the SSA noted that ESI's proposal was assessed as more advantageous than PGBA's proposal under factors (4), PBM Operations, and (5), Past Performance. In this regard, the SSA accepted the TET's assessment of a moderate risk in PGBA's proposal under factor (4) related to PGBA's lack of experience in processing prior authorization and medical necessity determination requests and proposed low staffing for those functions, and lack of PBM experience. With respect to the past performance factor, ESI received a high confidence rating and PGBA received only a satisfactory confidence rating. ESI was also found to offer a lower TEGC than PGBA (approximately \$58.2 million lower), while PGBA proposed a lower price than ESI (approximately \$34.4 million lower). Id. at 16-17.

Weighing ESI's and PGBA's proposals, the SSA concluded that ESI's proposal offered a significant technical advantage based upon the firm's experience in processing prior authorization and medical necessity determination requests and having sufficient staff to process these requests, its higher past performance rating, and lower TEGC. Noting that technical factors were more important than price, the SSA determined that ESI's significant technical advantage outweighed PGBA's price advantage. Id. at 17.

In sum, the SSA concluded that ESI's proposal offered the best value to the government. ESI was awarded the contract, and these protests followed.

DISCUSSION

The protesters raise numerous objections to TRICARE's evaluation of proposals and source selection decision. In reviewing protests against allegedly improper evaluations and source selection decisions, 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. A protester's mere disagreement with the agency's judgment does not establish that an evaluation was unreasonable. UNICCO Gov't Servs., Inc., B- 277658, Nov. 7, 1997, 97-2 CPD ¶ 134 at 7.

ACS, Humana and PGBA challenge the specific color ratings assigned by the agency to various factors and subfactors based on asserted strengths and weaknesses in the proposals. More specifically, the protesters assert that the agency failed to award blue and yellow ratings in a manner consistent with the RFP. Citing section M.2.2.2 of the RFP, the protesters assert that even though the RFP required the agency to evaluate whether a proposal exceeded the RFP requirements, the agency, in determining what color rating to assign under a particular factor or subfactor, evaluated only those requirements that identified numeric performance standards and ignored all other requirements, and that under a proper evaluation, their proposals would have received a greater number of strengths and blue ratings under the various factors and subfactors. The protesters also argue that ESI's proposal did

not receive yellow ratings for subfactors, where it failed to satisfy the subfactor's minimum requirements.

It is well established that ratings, be they numerical, adjectival or color, are merely guides for intelligent decision-making in the procurement process. Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 11. Where the evaluators and the source selection decision reasonably consider the underlying bases for the ratings, including 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 protesters' disagreement over the actual adjectival or color ratings is essentially inconsequential, in that it does not affect the reasonableness of the judgments made in the source selection decision. See id.; National Steel and Shipbuilding Co., B-281142, B-281142.2, Jan. 4, 1999, 99-2 CPD ¶ 95 at 15.

In response to the protests, TRICARE provided a voluminous and detailed record of its evaluation and source selection decision.²³ This extensive analysis shows that the agency evaluated the relative merits of each aspect of the proposals, including essentially all of the examples cited by the protesters, and assessed ratings in a fair and equitable manner, consistent with both the RFP and the color definitions. That is, consistent with section M.2.2.2, the record confirms that the agency evaluated the extent to which the proposals met or exceeded the solicitation requirements. Although not every advantageous feature of each proposal was formally labeled a strength and the source selection decision may not have discussed each and every asserted strength and weakness, as the protesters would have liked, the record demonstrates that the SSEB and SSA considered all of the information available, and issued a well-reasoned and rational SSEB report and source selection decision that highlighted the key discriminators among offerors' proposals. Based on this reasonable discussion and assessment of relative advantages and disadvantages associated with the specific content of proposals, we find that the protesters' disagreements with the actual color ratings to be inconsequential, given that they do not affect the reasonableness of the judgments made in the source selection decision.²⁴ See Citywide Managing Servs. of Port Washington, Inc., supra, at 11.

²³ In response to our request, TRICARE provided the protesters under our protective order with the core documents of its evaluation and source selection in advance of the date for filing its agency report. This allowed the protesters to expeditiously supplement their protest grounds and the agency to address all of the protest grounds in a single comprehensive report.

²⁴ ACS identifies a number of instances of asserted unequal treatment in the agency's evaluation of ACS's proposals and the proposals of Humana and PharmaCare. TRICARE's evaluation of Humana's and PharmaCare's proposals is not relevant to ACS's challenge to the evaluation of its proposal vis-à-vis ESI's proposal. ACS's initial protest also asserts that ESI had an unmitigated organizational conflict of interest. Since the agency responded in detail to ACS's assertions in this regard and
(continued...)

Factor (1) Network Access

PGBA and ACS complain that TRICARE did not credit their proposals for exceeding the minimum access standards stated in the solicitation, arguing that they should have received blue ratings for proposing to exceed the RFP's minimum access requirements.

As indicated above, although it was not disclosed in the RFP, the record shows that to warrant a blue rating the evaluators required that an offeror exceed each of the minimum access standards for the urban, suburban, and rural categories by a particular specified amount. Agency Report, Book 15, Tab 37, SSEB Evaluation Report, at 106. The RFP did state, however, that the agency would evaluate the extent to which an offeror's proposal demonstrated the ability to meet or exceed the RFP requirements. RFP amend. 4, § M.2.2.2.

The SSEB's evaluation report provided to the SSA reflects that ACS's and ESI's proposals offered "blue level" access standards for the suburban and rural categories, but did not meet the "blue level" standard for the urban category, and that PGBA's proposal offered "blue level" access standard only for the suburban category.²⁵ Thus, under the evaluation plan employed by the SSEB (which was not disclosed to the offerors),²⁶ these proposals were rated only green overall under this factor because they did not meet or exceed the "blue levels" for all three categories. Agency Report, Book 15, Tab 37, SSEB Evaluation Report, at 13, 54, 106.

Although PGBA and ACS assert that their proposals should have received blue ratings under this factor for exceeding some of the minimum and "blue level" standards, the protesters' disagreement with their assigned color ratings under this factor is essentially inconsequential. This is so because these aspects of the protesters' proposals were accurately described in the evaluation narrative provided to the SSA and did not affect the reasonableness of her source selection decision. See Citywide Managing Servs. of Port Washington, Inc., *supra*, at 11. In any case, we see nothing in the RFP that required the agency to assign the highest rating whenever a firm offered to exceed the minimum access standards by any amount.

(...continued)

ACS provided no further comments, we consider this argument to be abandoned. Atlantic Coast Contracting, Inc., B-291893, Apr. 24, 2003, 2003 CPD ¶ 87 at 4 n.3.

²⁵ The precise access standards proposed by the offerors was also reported in the SSEB's report.

²⁶ Although PGBA states that the agency's failure to identify the particular access levels that would warrant a blue rating constituted an improper unstated evaluation factor, it does not allege that it would have modified its proposal in a manner that would be superior to ESI's under this factor had it known of the precise "blue levels."

Moreover, since ESI's proposal exceeded the "blue level" for two of the three access standards and only received a green rating, the record shows that the offerors were treated equally, and does not evidence that either ACS's or PGBA's proposal was superior to ESI's under this factor.

Factor (2) Network Reimbursement

Humana and PGBA challenge the evaluation of factor (2), Network Reimbursement, on several grounds, including that the agency evaluated this factor as a price factor in a manner inconsistent with the RFP, failed to perform a cost realism analysis, and failed to properly evaluate risk.

The assertion that the agency improperly evaluated factor (2) as a price factor, rather than solely as a technical factor as required by the RFP, stems from the fact that the agency compared the offerors' TEGCs in performing its best value analysis. However, this approach was entirely consistent with the RFP's evaluation scheme. Although the RFP did provide that factor (2) would be evaluated as a technical factor and not as a price factor, it also instructed that the agency would consider the "projected program pharmaceutical costs" (i.e., the TEGC) under this factor in the agency's best-value analysis and in its tradeoff analysis "against other technical factors, past performance, and price." RFP amend. 4, § M.6.2. As described elsewhere in this decision, the TEGC was consistently treated as a non-price factor in the source selection decision's weighing of the technical and price factors.

We also find that a cost realism analysis of the offerors' proposed TEGCs was not required. Where, as here, an RFP contemplates the award of a fixed-price contract, a cost realism analysis is not required, absent a solicitation provision requiring such an analysis. FAR § 15.404-1(d)(3); WorldTravelService, B-284155.3, Mar. 26, 2001, 2001 CPD ¶ 68 at 3. Here, not only does the RFP not provide for a cost realism analysis, but it specifically precluded factor (2) from being evaluated as a price factor.

Humana nevertheless argues that factor (2) is inherently a cost-reimbursable item that required the agency to perform a cost realism analysis, even in the absence of a solicitation provision requiring such analysis.²⁷ That is, Humana argues that because the RFP calls for the evaluation of "projected program pharmaceutical costs," the evaluation must necessarily include a cost realism analysis in order to ascertain the probable cost to the government of the pharmaceuticals. However, the RFP stated precisely how these pharmaceutical costs would be evaluated—using a formula based

²⁷ The cases cited by Humana in support of its position are distinguishable in that, in those protests, all of the solicitations contained provisions requiring that a cost realism analysis be performed. See, e.g., Foundation Health Fed. Servs., Inc.; Humana Military Healthcare Servs., Inc., B-278189.3, B-278189.4, Feb. 4, 1998, 98-2 CPD ¶ 51 at 9; KPMG Peat Marwick, LLP, B-259479.2, May 9, 1995, 95-2 CPD ¶ 13 at 4.

on offerors' fixed, guaranteed average discount rates and dispensing fees--and this approach did not contemplate the performance of a cost realism analysis. Moreover, we fail to see how a detailed cost realism analysis could have been performed (or how offerors could have reasonably expected one to be performed), given that the RFP did not require the submission of detailed cost information to enable the agency to perform such an analysis.

Humana also complains that the agency failed to adequately evaluate the risk of whether ESI could maintain its proposed pharmacy network at the proposed guaranteed average discount rates and dispensing fees. Judging an offeror's performance risk is a matter committed to the contracting agency's discretion, subject to the tests of reasonableness and conformance with the RFP's evaluation criteria; a protester's mere disagreement with the agency's judgment does not establish that the judgment was unreasonable or inconsistent with the evaluation criteria. GTE Gov't Sys. Corp., B-260022, B-260022.2, May 16, 1995, 95-1 CPD ¶ 245 at 6-7.

As described above, in evaluating risk, the TET compared each offeror's proposed guaranteed average discount rates and dispensing fees with those of its existing pharmacy network closest in size and scope to that of the RFP (*i.e.*, comparable network), as well as to industry norms identified by PBMI. For its comparable network, ESI identified in its proposal discount rates and dispensing fees for a commercial network slightly larger than its proposed network under the TRRx solicitation;²⁸ in contrast, Humana identified rates and fees from its existing TRICARE retail pharmacy network, which is significantly smaller in size than that proposed under the TRRx solicitation.²⁹ The comparable rates and fees of these offerors were as follows:³⁰

²⁸ ESI's proposed TRRx network contains 55,402 participating pharmacies; its comparable commercial network contains 56,224 participating pharmacies. Agency Report, Book 15, Tab 37, SSEB Evaluation Report, at 55; Book 3, Tab 8, ESI Technical Proposal, at 75.

²⁹ Humana proposed a network of [Deleted] participating pharmacies; its comparable commercial network consists of [Deleted] participating pharmacies. Agency Report, Book 15, Tab 37, SSEB Evaluation Report, at 71; Book 9, Tab 21, Humana Technical Proposal, Factor 2, at 9-10.

³⁰ Over the 5-year option period, Humana's proposed discount rates [Deleted] while its dispensing fees [Deleted]. ESI's proposed discount rates and dispensing fees remained the same over the 5-year period.

	Brand		Generic	
	Rate	Fee	Rate	Fee
ESI Proposed Network	[Deleted]	[Deleted]	[Deleted]	[Deleted]
ESI Comparable Network	[Deleted]	[Deleted]	[Deleted]	[Deleted]
Humana Proposed Network	[Deleted]	[Deleted]	[Deleted]	[Deleted]
Humana Comparable Network	[Deleted]	[Deleted]	[Deleted]	[Deleted]
PBMI (Industry Norm)	[Deleted]	[Deleted]	[Deleted]	[Deleted]

Agency Report, Book 15, Tab 37, SSEB Evaluation Report, at 55, 73; Book 3, Tab 8, ESI Technical Proposal, at 75; Book 9, Tab 21, Humana Technical Proposal, Factor 2, at 10.

The TET recognized that ESI’s proposed discount rates were “somewhat larger” and its proposed dispensing fees were “somewhat smaller” than the industry norms, but also found that they were “consistent with” the rates and fees in ESI’s comparable commercial network; ESI’s resulting TEGC, although not the lowest, was found to be competitive with the other offerors’ TEGCs. Agency Report, Book 15, Tab 37, SSEB Evaluation Report, at 55-56; Book 15, Tab 36, Source Selection Decision, at 15. The TET noted that Humana’s proposed discount rates and dispensing fees were “close to” industry norms and “consistent” with its comparable network, “though not as aggressive.” Agency Report, Book 15, Tab 37, SSEB Evaluation Report, at 73. In both instances, these comparisons led the TET to conclude there was “little doubt” that the offerors would be able to enroll and retain pharmacies in their TRRx network at their guaranteed average discount rates and guaranteed average dispensing fees. Thus, both offerors’ proposals were rated low risk under factor (2). Id. at 56, 73.

Humana contends that the agency was unreasonable in concluding that both offerors’ proposals were low risk under this factor for several reasons. First, Humana argues that ESI’s comparable network discount rates are not as “predictive” of rates obtainable under the TRRx program as are Humana’s, because Humana’s rates were based on a TRICARE pharmacy network similar to that required under the TRRx solicitation, whereas ESI’s rates were based on a commercial network that is, according to Humana, different from that required under the RFP. Humana contends that discount rates obtainable under a commercial pharmacy network, such as ESI’s, are typically greater due to larger co-pays and rebates that are not available under the TRRx solicitation, and that this should have been considered in the evaluation of risk.

As recognized by Humana, this procurement was structured to recognize the similarities between commercial and TRRx pharmacy practices, and in fact the acquisition was intended to be “as close to commercial practices as possible.” Agency Report, Book 2, Tab 2, Pre-Proposal Questions and Answers, at 19; see Book 15, Tab 52, Acquisition Plan (Change 2, Apr. 14, 2003), at 351 (“resulting contract will adhere as closely as possible to commercial practices”); Declaration of Humana’s Consultant, Nov. 25, 2003, at 3. It was thus expected that discounts under

a commercial network would be predictive of those that could be obtainable under the TRRx program. Humana has not shown that the network that will be required for the TRRx program is materially different from a commercial network.

In this regard, there is no evidence in the record to confirm Humana's speculation that ESI's comparable commercial network rates reflect rebates or are affected by large "co-pays." Indeed, Humana's argument seems to be belied by the fact that Humana's own comparable network—which Humana's argument would suggest is not affected by large "co-pays" or rebates—shows discount rates [Deleted].³¹ As the agency notes, and Humana does not dispute, if Humana's TEGC were calculated using Humana's commercial network discount rates and dispensing fees, it would be even lower than the TEGC proposed by ESI,³² which further confirms that ESI's TEGC was not unreasonably low.

Humana counters, however, that if the PBMI "industry norm" rates and fees were used in calculating the TEGC, an amount closer to Humana's TEGC than ESI's would result. Humana argues that this shows that ESI's TEGC was more unrealistic than Humana's and thus ESI's proposal should have been considered a higher risk, particularly given that ESI's TEGC is almost \$356 million lower than this PBMI TEGC. However, the agency considered the offerors' variance from the PBMI rates in the evaluation together with other salient considerations, such as comparable network rates, and concluded that this differential was insufficient to render ESI's proposal other than low risk. Agency Report, Book 15, Tab 37, SSEB Evaluation Report, at 56. While Humana portrays ESI's proposed discounts (particularly for brand name drugs) as being significantly greater than under ESI's comparable network, the agency considered these differences in its risk analysis and Humana has not shown the agency's risk analysis was unreasonable.³³

³¹ According to Humana's consultant, rebates are generally available only for brand name drugs. Declaration of Humana's Consultant, Nov. 25, 2003, at 5 n.3.

³² Although Humana argues that its current network discount rates are higher than what could be achieved under the TRRx effort because larger networks (such as TRRx) usually result in smaller discounts, it also states in its proposal that larger discounts can be expected through leveraging negotiations on behalf of the additional 8 million TRRx beneficiaries. Agency Report, Book 9, Tab 21, Humana Technical Proposal, Factor 2, at 15.

³³ Humana also argues that the agency did not consider the financial viability of ESI as a result of potential negative incentives that ESI might incur during performance. By way of example, it explains that if ESI's proposed discount rates are overstated by 1 percent, ESI could incur penalties under the negative incentive provisions of the RFP of as much as \$200 million, which would wipe out nearly all of ESI's administrative fees earned under the contract and could affect its financial viability. However, Humana's argument presumes that ESI cannot obtain or maintain its discount rates and dispensing fees; but, as discussed above, the agency reasonably
(continued...)

Humana also complains that the agency failed to consider whether ESI had entered into long-term contracts with its proposed network of pharmacies, [Deleted], to ensure stability of discount rates and dispensing fees. Although it is true that the agency did not inquire as to the terms of ESI's (or the other offerors') contracts with its proposed network of pharmacies, the RFP did not require the agency to evaluate, or even review, the terms of those contracts, and offerors were instructed that the contracts did not have to be provided with their proposals. Agency Report, Book 2, Tab 2, Pre-Proposal Questions and Answers, at 46. To the extent that Humana objects that the RFP should have provided for the evaluation of the network contract terms, this ground of protest, concerning an apparent solicitation impropriety, is untimely filed. 4 C.F.R. § 21.2(a)(1) (2003). In any event, the record shows that the TET specifically recognized Humana's [Deleted] with its network pharmacies as an "effort to promote stability within its network" in determining that its proposal represented a low risk under this factor. Agency Report, Book 15, Tab 37, SSEB Evaluation Report, at 73.

Humana also contends that ESI did not provide "supporting documentation" evidencing its ability to deliver its proposed discount rates and dispensing fees as required by section L.8.3.3.1 of the RFP, and otherwise failed to explain how it would achieve greater discounts than under its comparable network. However, the record confirms that ESI identified the average discount rates and dispensing fees of its commercial network, and provided a brief statement of the differences between this network and that proposed under the RFP, see Agency Report, Book 3, Tab 8, ESI Technical Proposal, at 75, which was the only supporting documentation that section L.8.3.3.1 suggested be provided. Although Humana may have provided more detail in its proposal concerning its commercial networks, we agree with the agency that ESI's proposal contained sufficient information for the agency to reasonably conclude its TEGC was a low risk.³⁴

(...continued)

found ESI's ability in this regard was low risk. In any event, ESI's financial viability, and that of the other offerors, was considered by the agency. See, e.g., Agency Report, Book 32, Tab 102, Defense Contract Audit Agency Financial Viability Assessment of ESI.

³⁴ Despite its more detailed proposal, Humana itself failed to provide much of the information that Humana asserts ESI should have provided. For example, Humana criticizes ESI's proposal for not providing evidence of long-term network contracts, but other than asserting that it has [Deleted] with its network providers, Humana did not provide evidence [Deleted]. Similarly, Humana criticizes ESI's proposal for not providing information on plan sponsors, beneficiaries, rebates, and co-pays concerning its comparable networks, but Humana did not provide this information in its proposal. See Agency Report, Book 9, Tab 21, Humana Technical Proposal, Factor 2, at 3-18.

Because the agency had no reason to question ESI's proposal representations, and ESI's TEGC (which was not the lowest) was competitive with all other offerors considered in the tradeoff (except for Humana's, which was significantly higher),³⁵ we find the agency reasonably concluded that ESI's proposed discount rates and dispensing fees were reasonably attainable and posed low risk. Based on our review, we find no basis to question the agency's evaluation of factor (2).³⁶

Factor (3) PBM Services

Claims Processing Subfactor

Humana asserts that its proposal deserved a blue rating under the claims processing subfactor because it exceeded the minimum performance standards set forth in the RFP for processing paper claims.³⁷ The record shows that while the evaluators considered this aspect of Humana's proposal favorably, the TET, in its overall consensus, did not consider it to be so beneficial to the government as to warrant a blue rating (although many of the advantageous features of Humana's proposal for processing paper claims were discussed in detail in the SSEB Report). Agency Report, Book 30, Tab 87, Technical Evaluator Working Paper, at 37; Tab 90, Technical Evaluator Working Paper Notes, at 227; Book 15, Tab 37, SSEB Evaluation Report, at 75; Agency's Legal Memorandum at 67. Based on our review, we find no basis to find the agency's evaluation of Humana's proposal under this subfactor was unreasonable. We see nothing in the RFP that required the agency to assign the highest rating under this subfactor for every possible advantage or strength in a

³⁵ Humana's TEGC was approximately \$300 million higher than that of the next lowest offeror considered in the cost/technical tradeoff and approximately \$360 million higher than ESI's. Agency Report, Book 15, Tab 36, Source Selection Decision, at 15.

³⁶ Humana also complains that the agency should have conducted discussions with ESI to understand that firm's proposal under factor (2). However, the record shows that the agency reasonably understood ESI's proposal and that there was no need for discussions.

³⁷ The RFP required that 95 percent of paper claims be processed to completion within 10 working days, and 100 percent processed to completion within 20 days. RFP amend. 4, § C.8.8. Humana proposed to process [Deleted] percent of paper claims to completion within [Deleted] working days, and [Deleted] percent within [Deleted] working days. The agency notes that this means that only [Deleted] out of every 100 claims will be processed [Deleted] days sooner, which was not considered to be so beneficial to the government as to warrant a strength. Agency's Legal Memorandum at 67.

proposal; nor are we aware of any requirement that the final evaluation report discuss all possible advantages or strengths of the proposals.³⁸

Humana and ACS also complain that ESI's proposal should have received lower ratings for the claims processing subfactor because ESI's proposal assertedly did not sufficiently discuss its hardware platform configuration for claims processing. However, as the agency notes, the RFP did not contain minimum requirements for platform configuration and ESI's proposal described its current configuration and plans for configuration under the TRRx effort. The evaluation record reflects that the SSEB noted that ESI's description of its platform configuration was a minor weakness, but determined that it was not significant enough to affect the overall rating for this subfactor, let alone the overall rating for factor (3). Agency Report, Book 15, Tab 37, SSEB Evaluation Report, at 83-84. Based on our review, we find no basis to find ESI's proposal was unreasonably evaluated under this subfactor.

Phase-In Plan Subfactor

Here, Humana complains that its proposal was not assessed a strength for "directly address[ing]" the requirements for a phase-in plan identified in the RFP. Humana Protest (Oct. 14, 2003) at 38. However, our review indicates that the agency reasonably considered Humana's proposal to have satisfied the phase-in plan requirements, but not to have exceeded them in a beneficial manner; accordingly, we fail to see how a blue rating was warranted under this subfactor.

Disaster Recovery Subfactor

ACS complains that the agency unreasonably assessed ACS's proposed disaster recovery plan as yellow with moderate risk, which resulted in it receiving an overall yellow with moderate risk rating for factor (3).

As discussed above, this rating was based upon the agency's determination that the locations proposed by ACS for the beneficiary call and pharmacy help desk call centers were not sufficiently dispersed to minimize the likelihood that a single catastrophic event could render inoperable all of ACS's locations. The agency recognized that ACS proposed [Deleted], but found that the call centers and help desks were both located in [Deleted]. The agency therefore found that this close geographic proximity posed an increased risk that TRRx services would be disrupted for more than 24 consecutive hours in violation of the RFP requirements.³⁹

³⁸ In any event, we do not see how changing the rating under this subfactor to blue could reasonably have altered Humana's overall rating of green/low risk for factor (3), given that Humana's proposal received green/low risk ratings for all other subfactors.

³⁹ The TET noted that ACS had mentioned in its proposal that in the event of a major failure at its TRRx call centers ACS would have available the [Deleted]. The TET did
(continued...)

ACS contends that the agency misread its proposal, arguing that section 4.1.2 of its proposal (which is titled “Platform Configuration” and deals with the firm’s proposed computer hardware and software system), when read in conjunction with its disaster recovery plan, shows that ACS’s proposed help desks would be in a geographic location distinct from its proposed beneficiary call centers.

However, we find from our review of ACS’s proposal, including section 4.1.2, that ACS did not make clear that it was proposing call centers and help desks that were in distinct geographic locations; rather, we agree with the agency that ACS’s disaster recovery plan reasonably led the agency to believe that the call centers and help desks would be operated in [Deleted]. See Agency Report, Book 5, Tab 13, ACS Technical Proposal, at 91-100, 146-58. To the extent ACS believes that it proposed otherwise, we note that it is an offeror’s obligation to submit an adequately written proposal for the agency to evaluate, and an offeror fails to do so at its own risk. United Defense LP, B-286925.3 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 19.

ACS also argues that ESI’s proposal was unequally evaluated, inasmuch as ESI’s proposal did not identify the locations of its call centers, yet the agency evaluated ESI’s proposal as low risk under the disaster recovery plan subfactor. We disagree. In contrast to ACS’s proposal, ESI explained that it had [Deleted] call centers that were geographically located throughout the United States and that call center applications would be supported by [Deleted] in [Deleted] geographically disparate locations. See Agency Report, Book 3, Tab 8, ESI Technical Proposal, at 263. Thus, unlike ACS’s proposal, ESI provided a disaster recovery plan that was supported by geographically dispersed call centers that were linked by redundant computer systems and supported by a cross-trained staff. Although it is true that ESI did not identify the locations of its call centers, we agree with the agency that it could accept ESI’s express representation that the centers were located throughout the United States.⁴⁰ Accordingly, we find that the agency reasonably assessed ESI’s proposed disaster recovery plan as a low risk.

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not find this offer adequate given ACS’s failure to explain how these other resources would be available to ensure that call center operations would be able to resume within 24 hours of a catastrophic event that rendered the [Deleted] proposed call center sites inoperable. Agency Report, Book 15, Tab 37, SSEB Evaluation Report, at 20.

⁴⁰ While not considered by the TET in the evaluation of ESI’s disaster recovery plan ESI identified, in its oral presentation, its geographically dispersed locations for its help desk locations, which it stated would support its disaster recovery plan. See Agency Report, Tape No. 4, ESI’s Oral Presentation, at 3:07-30.

Factor (4) PBM Operations

Prior Authorization and Medical Necessity Determination Subfactors

ACS argues that the agency miscalculated its and ESI's proposal under the prior authorization and medical necessity determination subfactors, for which ACS's proposal was rated as green with moderate risk and ESI's blue with low risk. The SSEB and SSA found that ACS's proposal to limit follow-up for incomplete prior authorization and medical necessity determination requests to [Deleted] could result in unnecessary or premature denials, with implications for compromised medical care and beneficiary dissatisfaction. In contrast, ESI proposed to make [Deleted].

ACS argues that historically there were only a small number of prior authorization and medical necessity determination requests that ACS had not been able to resolve within [Deleted], which indicated that there was little risk in ACS's approach of limiting follow-up attempts. TRICARE responds that this argument ignores the fact that ACS's limitation of follow-ups to [Deleted] "essentially ensured that *some* reviews would remain incomplete." Agency's Legal Memorandum at 84. We find no basis to object to the agency's conclusion that ACS's proposal of limited follow-up could result in unnecessary or premature denials of prior authorization and medical necessity determination requests, and that this justified the agency's assessment of moderate risk, even accepting ACS's argument concerning the historically small number of prior authorization and medical necessity determination requests that were not processed within [Deleted]. Although ACS clearly disagrees with the agency's assessment, its disagreement does not demonstrate that the agency's judgment was unreasonable. See UNICCO Gov't Servs., Inc., *supra*, at 7.

We also find no merit to ACS's complaint that ESI's proposal for completing prior authorization and medical necessity determination requests should not have been found by the agency to reflect lower risk than that proposed by ACS. Not only does this complaint also reflect mere disagreement with the agency's judgment, but we think that ESI's proposed follow-up process, on its face, reflects a greater opportunity to complete these requests than ACS's.⁴¹

PGBA objects to TRICARE's moderate proposal risk assessment under the prior authorization and medical necessity determination subfactors because PGBA's proposal did not demonstrate experience in processing prior authorization and medical necessity determination requests for pharmaceuticals. PGBA contends that it has significant experience processing prior authorization and medical necessity determination requests for health care claims and that section M.5 of the RFP

⁴¹ In any case, as noted above, other strengths in ESI's proposal, *i.e.*, its commitment to process prior authorization and medical necessity determination requests in 2 working days, led to its blue rating under these subfactors.

provided for the evaluation of “PBM related services” in evaluating proposal risk, not solely PBM experience.

The record shows that TRICARE recognized and credited PGBA’s experience processing prior authorization and medical necessity determination requests for health care claims, but found that PGBA demonstrated no experience processing prior authorization and medical necessity determination requests for pharmaceuticals. See Agency Report, Book 15, Tab 37, SSEB Evaluation Report, at 117, 119. PGBA does not assert that it has such experience.

Section M.5 of the RFP provided that “[p]roposal risk may also be impacted by the amount of experience in performing PBM related services demonstrated by the offeror.” RFP amend. 4, § M.5. Contrary to PGBA’s assertion, we think that a fair interpretation of this provision allowed the agency to consider the amount of an offeror’s specific experience, or lack of specific experience, in its evaluation of proposal risk. See Omniplex World Servs. Corp., B-290996.2, Jan. 27, 2003, 2003 CPD ¶ 7 at 6 n.10 (an agency properly may take into consideration specific, albeit not expressly identified, experience in making qualitative distinctions between competing proposals, so long as the specific experience is logically encompassed by, or related to, an RFP’s requirements and stated basis for evaluation).

PGBA also objects to the agency’s assessment that the firm may not have proposed sufficient staff to process prior authorization and medical necessity determination requests. The TET noted as a risk that PGBA’s proposed staffing level for processing these requests seemed insufficient when compared to the number of prior authorization and medical necessity determination requests its current staff processes for medical claims. In this regard, the TET specifically noted that PGBA provided no explanation as to how its proposed staff would process prior authorization and medical necessity determination requests significantly quicker than such requests for medical claims were processed at the firm’s current staff level, which is what it would have to do under its proposed staffing levels here. PGBA argues, however, that the TET erroneously believed that PGBA’s current staff level to process prior authorization and medical necessity determination requests was [Deleted] staff members, but in fact, as shown on its oral presentation slides, PGBA employed a staff of [Deleted] members to perform this work.

Although TRICARE acknowledges in its report that it believed that PGBA processed prior authorization requests with a staff of [Deleted] members and that this may be an error, we agree with TRICARE’s assertion that this error is harmless. The “correct” staff number (as asserted by PGBA) would mean that PGBA would have to process prior authorization and medical necessity determination requests for the TRRx program “*three times faster* than it [currently] processes medical” prior authorization and medical necessity determination requests.⁴² Agency Legal

⁴² The TET originally believed that PGBA’s proposed staff would have to process these requests four times faster than the rate at which its current staff was

(continued...)

Memorandum at 49. PGBA's other weaknesses under these subfactors related to its lack of PBM experience significantly contributed to its moderate risk rating under this subfactor. As also noted by TRICARE, PGBA did not provide any explanation as to how it could perform the pharmaceutical prior authorization and medical necessity determination requests significantly quicker than it currently processes such requests on medical claims.⁴³ Therefore, based on our review, notwithstanding the agency's minor error in evaluating PGBA's staffing level for these functions, we find the agency's assessment of PGBA's proposal as having a moderate risk under this subfactor to be reasonable.

Management Subfactor

ACS argues that TRICARE erroneously downgraded its proposal under the management subfactor because ACS assertedly had not shown experience managing subcontractors. ACS complains that the RFP did not require offerors to demonstrate such experience under this subfactor.

For this subfactor, the RFP informed offerors that the agency would evaluate, among other things, the offerors' management structure and processes and relevant key personnel and organization experience "relating to management of accounts of similar size and complexity." RFP amend. 4, § M.6.4.4. In addition, offerors were instructed to "describe [their] systems of management controls for internal and external business processes." *Id.* § L.8.5.4. Based on our review, we agree with TRICARE that the RFP provisions encompassed the agency's evaluation of risk associated with the managerial burden assumed by ACS in proposing [Deleted]. We also find that TRICARE reasonably determined that this risk was not completely mitigated by ACS's demonstrated management structures and processes, where ACS's proposal failed to show any experience providing PBM services in concert with its subcontractors.

ACS also complains that TRICARE evaluated ESI's proposal unequally under the management subfactor because TRICARE failed to downgrade ESI's proposed use of Electronic Data Systems Corporation (EDS) as a subcontractor to assist in claims processing and implementing the disaster recovery process, because ESI did not explain how it planned to manage EDS and did not demonstrate that it had

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processing these requests for health care claims. See Agency Report, Book 15, Tab 37, SSEB Evaluation Report, at 116, 118.

⁴³ In its comments, PGBA asserts that processing pharmacy claims is simpler and less expensive than processing medical claims and that this supports the reasonableness of PGBA's staffing levels to process prior authorization and medical necessity determination requests under this RFP. We do not view this point as establishing the unreasonableness of the agency's assessment, particularly since this point was not mentioned in PGBA's proposal.

experience in providing PBM services in concert with EDS. The agency responds that ESI did not propose to use EDS to perform the core TRRx functions, but only proposed EDS as a support vendor, so the agency did not have the same concerns as it did with ACS's proposal under this subfactor. The record supports the agency's distinction. As indicated by TRICARE, ESI's proposal clearly shows that EDS was proposed by ESI to perform data center operations management. See Agency Report, Book 3, Tab 8, ESI Technical Proposal, at 92. Thus, unlike ACS's [Deleted], EDS will not be performing core TRRx functions. Given this fundamental difference, we find no basis to conclude that the firms were treated unequally under the management subfactor with respect to evaluating their management of subcontractors to perform the TRRx work.

Protesters' Evaluation Under Pharmacy Help Desk Subfactor

ACS, PGBA, and Humana challenge the agency's evaluation of their proposals under the pharmacy help desk subfactor. The TET identified no strengths and weaknesses in these protesters' proposals under this subfactor; ESI's, ACS's, and PGBA's proposals were rated green with low risk, and Humana's proposal was rated green with moderate risk.

ACS and Humana complain that their proposals did not receive a blue rating under the pharmacy help desk subfactor, even though they offered to provide service [Deleted]. However, the record shows that ESI also proposed this coverage under this subfactor and similarly received a green rating and these offerors' proposed service was reported to the SSA; thus, we consider the issue of whether the protesters' proposals should have received a blue rating for this subfactor to be inconsequential. While ACS points to certain other positive aspects of its proposal under this subfactor that it claims should have led to a blue rating, the record shows that the evaluators considered most of these aspects in the evaluation and discussed them in the SSEB report, and decided they did not merit a formal strength or a blue rating.⁴⁴ Agency Report, Book 17, Tab 58, ACS Technical Evaluation, at 211; Book 15, Tab 37, SSEB Evaluation Report, at 49; Agency's Legal Memorandum at 91. The protesters' arguments here too constitute mere disagreement with the agency's evaluation judgment and do not show the judgment was unreasonable. See UNICCO Gov't Servs., Inc., supra, at 7.

PGBA complains that it proposed a fully dedicated "[Deleted]" and "[Deleted]," but that these were unreasonably not acknowledged by the agency as proposal strengths. TRICARE responds that, because the RFP did not state a minimum

⁴⁴ While we find nothing in the record demonstrating the evaluators specifically discussed two of the alleged strengths under this subfactor--[Deleted]--there is no basis to believe that these two aspects of ACS's proposal, which ACS has not shown to be other than minor, would warrant a strength, much less a blue rating, under this subfactor.

[Deleted] requirement, PGBA's offer (as well as that of a number of other offerors) to provide a dedicated [Deleted] was not evaluated as a strength. PGBA disagrees with TRICARE that the RFP did not state a minimum requirement, inasmuch as the solicitation required a beneficiary service unit staffed with personnel whose "primary" responsibility was to provide beneficiary support, such as the help desk.

We need not address this issue because, even accepting PGBA's argument that its proposal of a dedicated [Deleted] and [Deleted] should be viewed as proposal strengths, this would not have changed its overall rating under factor (4), PBM Operations. In this regard, as noted above, PGBA's proposal received a green/moderate risk rating for four of the five subfactors and a green/low risk rating for the pharmacy help desk subfactor. Given that we have denied PGBA's protest of its moderate risk rating under the prior authorization and medical necessity determination subfactors and PGBA does not challenge its moderate risk ratings under the management and beneficiary services subfactors, we have no basis to conclude that its overall rating for this factor would be higher than green with a moderate risk or that this would consequently have affected the cost/technical tradeoff.

Protesters' Evaluation Under Beneficiary Services Subfactor

ACS complains that TRICARE miscalculated its proposal under the beneficiary services subfactor, for which ACS's proposal received a blue with moderate risk rating. As indicated above, the agency evaluated two weaknesses in ACS's proposal under this subfactor, which caused the moderate risk rating. ACS challenges both of these evaluated weaknesses.

First, the agency noted that ACS had proposed the use of a [Deleted], but that it was not currently using [Deleted] at this location. The agency expressed concern that ACS had failed to explain why it was changing its [Deleted] or how it would transition to the use of [Deleted]. ACS challenges the agency's assessment that transitioning to this new [Deleted] posed risk, arguing that the "fact that staff will require additional training to perform certain beneficiary services functions--when training already will be taking place--cannot reasonably be read to pose an additional risk to overall contract performance." ACS Comments at 34. We disagree. Here, ACS indicated that it would be adopting a new [Deleted], but did not detail how it would transition to this new system. For that matter, ACS does not contend that it explained in its oral presentation how it would train its staff in the use of [Deleted]. We think the agency could reasonably be concerned that this transition (even accepting ACS's contention that it will perform training) entailed risk to the government.⁴⁵

⁴⁵ ACS also contends that ESI was treated unequally under this subfactor because there was no inquiry of ESI during the oral presentation of what [Deleted] system ESI would use. Unlike ACS, however, ESI did not indicate that it would be changing the [Deleted] system it uses at its [Deleted].

The other evaluated weakness under this subfactor was based on the fact that although ACS had proposed answering [Deleted], that performance guarantee exceeded ACS's reported performance for two of its three current customers. This was of concern to the agency, given that ACS planned to staff the TRRx [Deleted] in a manner consistent with its current [Deleted].

ACS contends that TRICARE unreasonably considered only two of its three current customers. Although ACS admits its performance for these two customers is not as good as the [Deleted] performance guarantee it proposed here, ACS complains that the call volume for these two customers is in the aggregate less than the call volume for its third customer, for which it is performing at better than the [Deleted] performance guarantee, and that if the agency had considered its performance for this third customer, ACS's proposal would not have received a moderate risk rating under this subfactor.

From our review, it does not appear that the SSEB or SSA specifically considered ACS's performance for the third, larger-call-volume customer.⁴⁶ However, the record does not show that ACS would have received a lower risk rating under this subfactor, even if this customer had been favorably considered. This is so because this weakness was only one of two weaknesses assessed under this subfactor, and, as stated above, we find reasonable the agency's assessment that ACS's proposed use of [Deleted] was a weakness. Moreover, given that ACS's proposal reasonably received moderate risk ratings under four of the five subfactors of factor (4), even if its risk was lowered under the beneficiary services subfactor, it seems certain that ACS's overall moderate risk rating under this factor, and thus the cost/technical tradeoff, would not have changed. Therefore, we do not find that ACS was prejudiced by any failure of the agency to adequately consider this third customer in evaluating proposal risk under this subfactor.

Humana references a list of advantageous features reported in the SSEB report under this subfactor that were not formally reported as strengths. However, Humana was rated blue with low risk under this subfactor (and blue with low risk overall under factor (4)), and these advantageous features were all reported to the SSA. Thus, whether or not these strengths were formally declared is essentially irrelevant and does not provide a basis to challenge the evaluation.

⁴⁶ It is true, as TRICARE asserts, that the SSEB specifically recognized ACS's performance of this third contract and the call volume associated with it. Nevertheless, the record does not demonstrate any specific consideration of ACS's performance under this contract with respect to the [Deleted] performance guarantee and whether, considering the larger call volume associated with this contract, ACS's performance under this contract indicated an ability to comply with the [Deleted] requirement.

ESI's Evaluation Under Pharmacy Help Desk And Beneficiary Services Subfactors

Humana, ACS and PGBA protest that ESI's proposal should have been rated lower under the pharmacy help desk and beneficiary services subfactors because ESI failed to propose guaranteed standards for handling blocked and abandoned calls.

The RFP did not state minimum requirements for blocked calls and call abandonment rates, but informed offerors that the agency would evaluate the offerors' proposed call access standards (including call abandonment rates) under the pharmacy help desk subfactor and guaranteed standards for handling blocked and abandoned calls under the beneficiary services subfactor. See RFP amend. 4, §§ M.6.4.1, M.6.4.5. In its evaluation, the TET specifically noted that ESI had not proposed guaranteed standards for blocked and abandoned calls under these subfactors.

With respect to the pharmacy help desk subfactor, the TET correctly noted that the solicitation instructions did not require offerors to describe such standards, see id. § L.8.5.1, and therefore none of the offerors, including ESI, were penalized for failing to propose standards under this subfactor (although the TET noted this failure by ESI in the SSEB's report). See Agency Report, Book 15, Tab 37, SSEB Evaluation Report, at 61.

With respect to the beneficiary services subfactor, the TET recognized that offerors were instructed to provide performance standards for blocked and abandoned call rates. Agency Report, Book 15, Tab 37, SSEB Evaluation Report, at 66; see RFP amend. 4, § L.8.5.5. ESI's failure to provide such standards was assessed by the TET to be a minor weakness. Nevertheless, ESI's proposal received a green with low risk rating under this subfactor based upon the TET's finding that ESI's proposal reflected two strengths and this one minor weakness, and upon the TET's judgment that it had

little doubt that ESI can satisfactorily provide beneficiary services as required by the TRRx solicitation. ESI's demonstrated experience and proposed staffing should allow it to satisfactorily meet the requirements of this subfactor. The TET did not assess additional risk to ESI's proposal for failing to propose blocked and abandoned call standards since ESI's current stated performance levels indicates they will be able to provide acceptable service levels in these two categories.⁴⁷

See Agency Report, Book 15, Tab 37, SSEB Evaluation Report, at 66-67.

⁴⁷ In its oral presentation, ESI described its current annual performance standards for blocked and abandoned calls. See Agency Report, Book 3, Tab 8, ESI Technical Proposal, Oral Presentation Slide 37.

The SSA did not agree with the evaluators that ESI's failure to propose blocked and abandoned call standards was even a minor weakness because "[i]n the ESI oral presentation this information is provided on slide 37." Agency Report, Book 15, Tab 36, Source Selection Decision, at 18. Nevertheless, the SSA credited proposals that expressly provided these guaranteed standards; for example, the SSA found that Humana's proposal had a slight edge over ESI's under evaluation factor (4) on the basis of its proposed guaranteed standards. Id.

The protesters argue that the SSA could not reasonable rely upon ESI's slide 37 to determine that the firm's failure to propose blocked and abandoned call standards was not a weakness. Specifically, the protesters contend that this slide does not present guaranteed standards, as required by the RFP. We agree with the protesters that slide 37 does not provide guaranteed standards for blocked and abandoned calls for this procurement; rather, this slide provides ESI's historical blocked and abandoned call rates.

Nevertheless, we find no basis in the record to conclude that ESI's failure to provide these standards required that ESI's proposal be rated lower than it was. As was recognized by both the TET and the SSA, ESI provided its current blocked and abandoned call rates, which the SSA and SSEB found demonstrated that ESI had acceptable blocked and abandoned call rates. Moreover, as indicated above, the SSA specifically credited the protesters' proposals, over ESI's, for proposing guaranteed standards. See Agency Report, Book 15, Tab 36, Source Selection Decision, at 18. The protesters have not shown the SSEB's and SSA's judgment in this regard to be unreasonable. Instead, the protesters merely complain that ESI's failure to provide the guaranteed performance standards should have resulted in a lower risk rating;⁴⁸ we find that this is again nothing more than mere disagreement with the agency's evaluation judgment, which the protesters have not shown was unreasonable.⁴⁹

⁴⁸ To the extent that the protesters complain that the agency effectively waived this requirement for ESI, the protesters have not stated that they would have changed their proposals in any way had they known that the proposal of blocked and abandoned call rates was not required.

⁴⁹ Humana also complains that it was treated unequally under the pharmacy help desk subfactor since it proposed call access standards and received only a moderate risk rating, whereas ESI received a low risk rating, even though it did not propose any standards. We do not agree that this evidences unequal treatment. As the record shows, Humana failed to adequately explain to the agency how it would achieve these proposed standards, given that its current performance levels were far below what was proposed, whereas ESI's current performance levels indicated to the agency that it could effectively provide the service at the required performance levels under this subfactor. Based on our review, we find the agency's assessment of risk to Humana's proposal under this subfactor to be reasonable.

Factor (5) Past Performance

As noted above, ESI's and Humana's past performance were rated high confidence, and ACS's, PGBA's and PharmaCare's past performance were rated satisfactory confidence. ACS, Humana and PGBA each protest that their past performance should have been considered more positively and ESI's more negatively, and that past performance was evaluated in an unequal manner. PharmaCare only challenges its own past performance evaluation.

The evaluation of past performance, including the agency's determination of the relevance and scope of the vendors' performance history to be considered, is a matter of agency discretion, which we will not find improper unless unreasonable, inconsistent with the solicitation criteria, or undocumented. Sonetronics, Inc., B-289459.2, Mar. 18, 2002, 2002 CPD ¶ 48 at 3; IGIT, Inc., B-275299.2, June 23, 1997, 97-2 CPD ¶ 7 at 5. An agency's past performance evaluation may be based on a reasonable perception of inadequate prior performance, regardless of whether the contractor disputes the agency's interpretation of the underlying facts, Ready Transp., Inc., B-285283.3, B-285283.4, May 8, 2001, 2001 CPD ¶ 90 at 5, and the protester's mere disagreement with the agency's judgment is not sufficient to establish that the agency acted unreasonably. Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5.

ESI's Past Performance

ESI's past performance references all involved contracts where ESI processed prescription claims, including its subcontract to provide TRICARE PBM retail pharmacy network services for the managed care support contractor for the TRICARE central region.⁵⁰ The PRAG properly, in our view, considered this referenced work, which includes all functions required under the TRRx RFP, to be so relevant that a high confidence rating was warranted, given ESI's generally positive performance history (discussed below).

ACS argues that in rating ESI's past performance TRICARE gave too much credit to positive comments received from ESI's references and not enough weight to negative comments. In this regard, ACS points to the PRAG's statement that

[t]hree references indicated that, at one time or another, ESI experienced problems satisfactorily providing customer services, identifying customer service representative training as the underlying problem. The three references acknowledged that ESI has made improvements; however, one reference stated the "need for on-going

⁵⁰ ESI has also implemented a TRICARE mail order pharmacy program, which includes dispensing over 100,000 prescriptions per week. Agency Report, Book 3, Tab 7, ESI Technical Proposal, at 60-61.

training of customer service representatives to consistently respond to members.”

Agency Report, Book 15, Tab 37, SSEB Evaluation Report, at 68. ACS contends that this comment should have been identified as a “weakness” but was not. ACS also notes that some negative comments by ESI’s references were not reported in the PRAG’s report; for example, ACS points to one reference’s comments that ESI’s management was “not expert at administering unfunded programs.”⁵¹ See Agency Report, Book 26, Tab 72, Past Performance Interview Summaries for ESI, at 30, 43-44. In ACS’s view, ESI’s past performance should not have received a high confidence assessment, given these negative comments.

We have reviewed the PRAG’s summaries of interviews with ESI’s references and its report to the SSA, and find no basis to object to the agency’s evaluation of ESI’s past performance. The negative comments that were noted in the PRAG’s report, which ACS believes should have been labeled weaknesses but were not, were provided to the SSA for her consideration; although ACS apparently believes that the comments should have been viewed more negatively by the agency, we again view this as simple disagreement with the agency’s judgment, which does not show that the judgment was unreasonable. See Birdwell Bros. Painting & Refinishing, *supra*. Our review also shows that the PRAG’s report fairly captures the summaries of the interviews with ESI’s references, and that the comments in the interview summaries that were not specifically reported in the PRAG’s report do not show that the agency’s past performance evaluation was unreasonable. For example, the reference’s comment that ESI was not knowledgeable of unfunded programs was not seen as relevant by the PRAG because the TRRx contract will only have funded programs. Agency’s Legal Memorandum at 126 n.47. In sum, as reported by the PRAG, the comments of ESI’s five references were all generally positive (as opposed to the more negative comments of ACS’s references (discussed below)) and support a high confidence past performance rating.

ACS and Humana argue that the agency ignored published media accounts of lawsuits filed against ESI, which are currently pending in Massachusetts and New York. ACS asserts that there are allegations in these lawsuits that ESI has been involved in “improper pricing and illegal kickback arrangements.” ACS Comments at 57-58. The protesters contend that the RFP provided that the agency would consider relevant information beyond the information received from references.

The RFP provided that past performance would be evaluated based upon information obtained from the proposals and “information obtained from other sources that may have useful and relevant input.” RFP amend. 4, § M.7.1. Offerors were further informed that the agency “may, at its option, obtain past performance

⁵¹ This reference also noted that ESI was “very responsive.” See Agency Report, Book 26, Tab 72, Past Performance Interview Summaries for ESI, at 30.

data” from other sources. Id. § L.9.1. Thus, we disagree with the protesters that the RFP required TRICARE to consider the lawsuits in its past performance evaluation. In any event there has been no showing that TRICARE was either aware, or should have been aware, of the lawsuits. Moreover, as reported by ESI, similar media reports of highly negative performance by other offerors, specifically Humana and ACS, were also publicly available, but were similarly not considered in the past performance evaluation. ESI Comments at 17.

PGBA and Humana contend that ESI should have been downgraded because it failed to provide past performance information for one of its support vendors, EDS. The RFP provided that the agency would evaluate the past performance of the offeror and its first-tier subcontractors that would be performing PBM functions. RFP amend. 4, § L.9.1. The agency did not consider EDS to be such a first-tier subcontractor because, as discussed above, it will not be performing core PBM functions, but was proposed only as a support vendor that will perform data center operations management functions. See Agency Report, Book 3, Tab 8, ESI Technical Proposal, at 92. Based on our review, we find no basis to disagree with the agency’s judgment in this regard.

Therefore, we find the agency determination that it had high confidence in ESI’s past performance was reasonable and supported by the record.

Humana’s Past Performance

Humana contends that the agency failed to perform a proper comparative assessment of past performance, essentially arguing that it has more relevant and superior past performance than ESI and therefore should have received a higher rating. We disagree.

As the PRAG recognized, Humana was the incumbent TRICARE managed care support contractor for several regions, where it has been providing retail pharmacy benefits to approximately 2.6 million TRICARE beneficiaries. Agency Report, Book 15, Tab 37, SSEB Evaluation Report, at 87. The PRAG also noted that only a small portion of this incumbent contract relates to PBM services. Humana has not been performing the pharmacy-related services itself; rather, those services have been performed by its subcontractor, Argus Health Systems. Nevertheless, the PRAG considered the performance of Argus and Humana to be relevant, and assessed the team a rating of high confidence.⁵² Agency Report, Book 18, Tab 61, Humana Past Performance Evaluation, at 321, 328.

⁵² Contrary to Humana’s assertions, the record does not show that the agency overlooked relevant contractor performance assessment report information relating to Humana’s TRICARE contracts. See Agency Report, Book 18, Tab 61, Humana Past Performance Evaluation, at 323, 330.

The record shows that the agency performed a proper comparative evaluation of past performance, taking into account the relevance of each contract reference as well as the quality of performance. In this regard, each contract was reviewed for relevance by the PRAG, and strengths and weaknesses were assessed based upon the comments received from past performance references. Agency Report, Book 16, Tab 57, ESI Past Performance Evaluation; Book 18, Tab 61, Humana Past Performance Evaluation; Book 27, Tabs 78 and 80, Past Performance Summaries for ESI and Humana. The PRAG's evaluation reports, consisting of hundreds of pages of detailed analysis, were independently reviewed by the SSEB and SSA, in performing the comparative analysis of proposals. The SSEB evaluation report, which was adopted in large part by the SSA, highlights the significant discriminators in past performance among the offerors, and in the case of ESI and Humana, provides an overall rating of high confidence that we find supported by the record. Although Humana contends that ESI's past performance should have been found less relevant than Humana's because ESI is serving fewer beneficiaries (800,000 as opposed to 2.6 million), this constitutes mere disagreement with the agency's reasonable judgment that ESI's contracts were relevant. See Birdwell Bros. Painting & Refinishing, supra. Based on our review, we think that the SSA was reasonable in finding Humana's and ESI's proposals to be relatively equal under this factor in her tradeoff analysis.

ACS's Past Performance

ACS contends that TRICARE did not use consistent standards in assessing past performance and that, in contrast to its evaluation of ESI's past performance, the agency ignored positive comments made by ACS's references and emphasized negative comments made by other references. Furthermore, ACS complains that the agency failed to give adequate consideration to the rebuttal information that ACS provided in response to the agency's identification of adverse past performance information.

The PRAG noted that, although it received some positive comments from ACS's references, it also received some negative comments demonstrating poor performance by ACS in several functional areas required in the TRRx solicitation, and that all the weaknesses identified were attributed to performance by ACS itself, not to its subcontractors. See Agency Report, Book 15, Tab 37, SSEB Evaluation Report, at 30. The interview notes for ACS's references show that ACS received a number of positive comments, which the PRAG identified to be strengths in ACS's past performance. See, e.g., Agency Report, Book 26, Tab 73, Past Performance Interview Summaries for ACS, at 160-61. The PRAG also received a number of negative comments: for example, one reference stated that ACS had problems with electronic claim processing due to "insufficient personnel support," and another stated that "ACS demonstrated poor planning, development, execution, and reporting on agreed upon (contract) requirements" and that one has "to stay on top of ACS operations to get the job done." See id. at 164, 170.

ACS was given an opportunity during the competition to specifically comment upon its adverse past performance information. See Agency Report, Book 28, Tab 83, Clarification of ACS Past Performance, at 5-8. The PRAG found that although ACS offered a number of explanations and reasons for the negative comments of its references, it “did not refute the existence” of the weaknesses identified by the PRAG and that “some of the information provided by ACS actually substantiated circumstances where ACS[’s] past performance was less than acceptable to its clients.” *Id.* at 42. For example, the PRAG noted that it had received negative comments regarding ACS’s performance of disaster recovery requirements, which resulted in the assessment of \$[Deleted] in monetary penalties; in response, ACS stated that it has not yet been officially assessed, nor paid, a monetary penalty, but that the amount of the penalty was currently being negotiated (although ACS stated that the penalty amount would not be more than \$[Deleted]). *Id.* at 24. Likewise, ACS disagreed with the PRAG’s reported negative comment regarding ACS’s “demonstrated poor planning, development, execution, and reporting on agreed upon (contract) requirements,” by stating in its clarification response that it “strongly disagrees that ACS staff has not responded to Division staff regarding problems and difficulties in meeting schedules.” *Id.* at 26. We find, as did the PRAG, that ACS’s clarification responses did not refute the existence of the identified problems and therefore conclude that the agency’s assessment of ACS’s past performance was reasonable.

In sum, there is no basis to object to the agency’s past performance assessment of ACS vis-à-vis ESI.⁵³

PGBA’s Past Performance

PGBA argues that TRICARE failed to credit the years of TRICARE/CHAMPUS experience that PGBA and its first-tier subcontractor have in handling health care claims.

The record shows that the PRAG recognized that the comments from references for PGBA and its subcontractor, [Deleted], were generally positive, and that PGBA had extensive TRICARE and CHAMPUS experience; the PRAG noted, however, that PGBA performed only medical claims processing for its customers, and not pharmacy claims processing, which was handled by another vendor. The SSA similarly noted that PGBA and its subcontractor “generally demonstrated positive

⁵³ ACS complains that, in assessing information received from the interviews, the PRAG did not have defined standards governing what it judged to be a weakness. The crux of this argument is founded upon ACS’s allegation that it and ESI were treated unequally. We find that the firms were not treated unequally. Rather, the record reflects that in assessing the past performance information received in the interviews, the PRAG reasonably considered the significance and relevance of the performance problems identified in the context of the TRRx functional areas.

relevant past performance, [although it] primarily related to provider and hospital services rather than to pharmacy services.” Agency Report, Book 15, Tab 36, Source Selection Decision, at 11. Furthermore, the PRAG expressed concern that none of PGBA’s references provided information regarding the firm’s performance of prior authorization and medical necessity determination requests and pharmacy audits.⁵⁴ The PRAG also stated that it could not completely evaluate [Deleted]’s ability to provide network access and electronic claims processing (which the subcontractor was proposed to perform) because “[a]ccording to the information provided by the [Deleted] references, [Deleted] did not perform [the] network access function for any of the five references,” and [Deleted]’s references had provided limited information regarding the volume of electronic claims processed by [Deleted].⁵⁵ Agency Report, Book 15, Tab 37, SSEB Evaluation Report, at 124.

Based on our review, the agency’s evaluation of PGBA’s past performance as being of satisfactory confidence was reasonable, particularly given the reasonable concerns about the apparent gaps in PGBA’s and [Deleted]’s PBM-related experience. Although PGBA apparently believes that the agency should have given more weight to PGBA’s successful performance of related claims processing than it did, we think that the agency could give more credit to offerors, such as ESI and Humana, with more specific PBM experience. Where, as here, the solicitation provided for the evaluation of the comparative merit of offerors’ past performance, the relative relevance of the past performance is logically encompassed by and

⁵⁴ PGBA states that its past performance proposal indicated that the firm had experience performing prior authorization and medical necessity determination requests, and complains that the PRAG did not credit the firm for this reported experience. See PGBA’s Comments at 13, citing Agency Report, Book 10, Tab 25, PGBA’s Past Performance Proposal, at 375, 379, 396, 419, 442. We have reviewed the cited pages in PGBA’s past performance proposal and find that most of these pages do not reference prior authorization and medical necessity determination requests. It is true that PGBA’s proposal, for one identified reference, identifies the performance of prior authorization and medical necessity determination requests—but by PGBA’s subcontractor, not PGBA—and that another page states that PGBA has such experience in performing other government contracts. However, we do not find that these PGBA statements discredit the PRAG’s finding that none of PGBA’s references, despite being specifically asked during the interviews, identified that these functions were performed.

⁵⁵ PGBA complains that the PRAG ignored information in its past performance proposal concerning [Deleted]’s past performance. PGBA does not dispute that [Deleted]’s references provided limited information and admits that [Deleted] provided no network access functions for these references, but contends that PGBA’s past performance proposal identified claims volume for [Deleted] and stated that [Deleted] had network access experience. Based on our review of the record, we find that the agency could reasonably conclude that its concerns arising from the interviews with [Deleted]’s references were not alleviated by PGBA’s proposal.

related to the past performance factor, whether or not specifically identified in the RFP, and offerors with successful past performance on more relevant contracts can be rated higher than offerors with less relevant experience. See J. A. Jones Mgmt. Servs., Inc., B-284909.5, Oct. 2, 2000, 2001 CPD ¶ 64 at 4.

PharmaCare's Past Performance

PharmaCare also challenges the evaluation of its past performance.⁵⁶ PharmaCare complains that the PRAG unreasonably identified as a concern PharmaCare's "lack of performance history for processing electronic and paper prescription claims volume commensurate with the respective claims volumes that are projected for TRRx." See Agency Report, Book 15, Tab 37, SSEB Evaluation Report, at 141. PharmaCare contends that the RFP did not provide for consideration of claims volume in the evaluation of an offeror's past performance. Also, PharmaCare argues that the PRAG failed to consider the information concerning claims volume provided by PharmaCare in its proposal.⁵⁷

We need not consider these arguments because PharmaCare was not prejudiced, even if the arguments had merit. This is so because they provide no basis to question the SSA's determination that PharmaCare's proposal was not competitive and should not be included in the SSA's cost/technical tradeoff. That is, PharmaCare's proposal would continue to be higher-priced and technically inferior to ESI's, even if the two firms' proposals were considered equivalent under the past performance factor.⁵⁸

⁵⁶ In its comments on the agency's report, PharmaCare withdrew its other protest grounds relating to the evaluation of its proposal.

⁵⁷ PharmaCare does not dispute that the information received from PharmaCare's five largest customers supported the PRAG's concern.

⁵⁸ TRICARE found that PharmaCare's proposal was higher priced than ESI's (\$18.8 million higher), and that its proposal was technically inferior to ESI's proposal under factor (2), Network Reimbursement (PharmaCare's TEGC was \$218.5 million higher than ESI's); factor (3), PBM Services (PharmaCare's proposal received a moderate risk rating under the quality assurance subfactor); factor (4), PBM Operations (PharmaCare's proposal received a moderate risk rating under the beneficiary services subfactor); and factor (5), Past Performance (PharmaCare's past performance was assessed as satisfactory confidence because of its lack of claims volume history and the lack of "any" beneficiary services performance history). Moreover, PharmaCare's protest concerns only one of the two problems identified by the PRAG with respect to PharmaCare's past performance and we therefore do not see a reasonable possibility that the PRAG would view PharmaCare's and ESI's proposal as being equivalent under the past performance factor, even if PharmaCare's protest of one of the problems with its past performance were meritorious.

Cost/Technical Tradeoff

ACS and Humana challenge the reasonableness of the cost/technical tradeoff.⁵⁹ Selection officials have considerable discretion in making cost/technical tradeoff decisions. Their judgments in these tradeoffs are by their nature subjective; nevertheless, the exercise of these judgments must be reasonable and must bear a rational relationship to the announced criteria upon which competing offers are to be selected. Award may be made to a firm that submitted a higher-rated, higher-priced proposal where the decision is consistent with the evaluation criteria and the agency reasonably determines that the technical superiority of the higher-priced offer outweighs the price difference. Northrop Grumman Tech. Servs., Inc.; Raytheon Tech. Servs. Co., B-291506 et al., Jan. 14, 2003, 2003 CPD ¶ 25 at 35-36.

As detailed in this decision, the contemporaneous record evidences a thorough evaluation, which provided the SSA with a substantial basis upon which to weigh the relative merits of the firms' proposals. From our review of the SSA's detailed 25-page source selection decision document, we find that her decision was reasonable and consistent with the evaluation criteria. That is, this written determination reflects the SSA's understanding of the evaluation criteria (and their relative weights) and the evaluated strengths and weaknesses, as well as some of the advantageous and disadvantageous features of each of the competing proposals, and reasonably states the basis for the SSA's decision.

ACS/ESI Tradeoff

ACS contends that the cost/technical tradeoff was unreasonable and not in accordance with the RFP's evaluation scheme. The SSA found that ESI's proposal was technically superior to ACS's, giving due consideration to the fact that ACS proposed a lower TEGC (approximately \$75 million) under factor (2), which the SSA recognized as "one of the two most important non-price factors." In this regard, ACS's proposal was reasonably evaluated as inferior to ESI under factors (3), (4), and (5). The evaluated weaknesses and risks in ACS's proposal under these factors (such as, for example, ACS's moderate risks for its disaster recovery plan and limitations on follow-ups for prior authorization and medical necessity determination requests) were viewed by the SSA as significant distinguishing features between ESI's and ACS's proposals. In addition, the strengths in ACS's proposal (for which ACS argues it should have received higher color ratings) were

⁵⁹ We do not address further ACS's and Humana's challenges to the cost/technical tradeoff premised upon their allegations of evaluation error addressed above. In addition, we do not consider any of PGBA's challenges to the cost/technical tradeoff, inasmuch as they are all premised on the evaluation of its and ESI's proposals, which we have found reasonable or unobjectionable.

specifically noted in the SSEB's evaluation report, which was considered by the SSA in making her decision.

The SSA weighed ESI's evaluated technical superiority against ACS's lower proposed price (approximately \$107 million lower). Contrary to ACS's arguments, the SSA specifically recognized and credited ACS's price advantage, which the SSA viewed as "significant," as well as its TEGC advantage under "one of the two most important non-price factors." Agency Report, Book 15, Tab 36, Source Selection Decision, at 19, 21. Weighing the proposals under all the evaluation factors and noting that the RFP provided that the non-price evaluation factors were in the aggregate significantly more important than price, the SSA determined that ESI's proposal reflected the best value to the government based upon its evaluated technical superiority. *Id.* at 19-25. Although ACS disagrees with the SSA's judgment, its disagreement does not demonstrate that her tradeoff assessment was unreasonable; rather, we find that the decision reflects a reasonable cost/technical tradeoff assessment.

Humana/ESI Tradeoff

Humana asserts that the SSA's cost/technical tradeoff determination was unreasonable and gave undue weight to factor (2), Network Reimbursement. As noted above, the SSA found that ESI and Humana were "essentially equal" for factors (1), (3), and (5), and that ESI had a "significant advantage" over Humana for factor (2) because Humana's TEGC was approximately \$360 million higher than ESI's. The SSA found that, with regard to factor (4), Humana's proposal had a "slight edge" due to proposed performance standards for blocked and abandoned calls and responding to correspondence. The SSA also noted Humana's proposal's nearly \$60 million price advantage. However, in considering the relative weights of the evaluation factors under which strengths and weaknesses were assessed, as well as the nature of those strengths and weaknesses, the SSA concluded that the slight advantages Humana offered in factor (4) and the price factor were offset by the significant advantage ESI offered under factor (2). The record does not support Humana's assertion that factor (2), which is one of the two most important non-price factors, was accorded too much weight in the cost/technical tradeoff. Given the SSA's reasoned and well-documented analysis, we find this tradeoff to be reasonable and consistent with the RFP.

Discussions

ACS complains that TRICARE should have either asked the firm for clarifications or conducted discussions with it regarding a number of its proposal's evaluated weaknesses, such as its disaster recovery plan, subcontractor management experience, and proposal to use its [Deleted], inasmuch as TRICARE assertedly did not understand the firm's proposal in these areas.

As ACS recognizes, the RFP specifically informed offerors that the agency intended to make award without conducting discussions and cautioned offerors that their

initial proposals should contain their best terms from a cost or price and technical standpoint. See RFP amend. 4, § L.6.1.2. In such cases, the burden is on the offeror to submit an initial proposal that adequately demonstrates its merits. Norden Sys., Inc., B-255343.3, Apr. 14, 1994, 94-1 CPD ¶ 257 at 7-8. As discussed above, we find that ACS did not satisfy this burden with respect to the aspects of its proposal which ACS now argues it should have an opportunity to address in discussions. Rather than demonstrating that the agency did not understand ACS's proposal, we find that the record shows that the agency reasonably assessed the proposal that ACS submitted.

An agency has broad discretion to make award on the basis of initial proposals where the solicitation informs offerors that such an award is contemplated, and we will question the exercise of this discretion only where the record establishes that a reasonable cost/technical tradeoff judgment cannot be made without discussions. See International Data Prods., Corp.; I-NET, Inc.; and Dunn Computer Corp., B-274654 et al., Dec. 26, 1996, 97-1 CPD ¶ 34 at 16-17. That is not the case here. Although ACS would prefer to have had the opportunity to address the agency's concerns with its proposal, this does not provide us with a basis to conclude that the agency was required to conduct discussions.

We also do not agree with ACS that the agency should have provided the firm with an opportunity to clarify the firms' proposal with respect to its disaster recovery plan, subcontractor management experience, and use of its [Deleted]. From our review of the record, we think that allowing ACS to address these evaluated weaknesses in its proposal could not have been accomplished through clarifications, but rather would have constituted discussions. In this regard, the acid test for deciding whether an agency has engaged in discussions is whether the agency has provided an opportunity for proposals to be revised or modified. See, e.g., Priority One Servs., Inc., B-288836, B-288836.2, Dec. 17, 2001, 2002 CPD ¶ 79 at 5. Based on our review, we conclude that ACS would have needed to revise its proposal (and not merely clarify it) to address the agency's evaluated concerns.

Veterans Health Care Act of 1992

PharmaCare complains that the record establishes that the Department of Veterans Affairs determined that the TRRx Retail Pharmacy Contract would qualify for federal pricing of retail pharmaceuticals under the Veterans Health Care Act of 1992, 38 U.S.C. § 8126 (2000), but that this determination was not communicated by TRICARE to the offerors.⁶⁰ PharmaCare argues that knowledge of the application of

⁶⁰ The Veterans Health Care Act provides in pertinent part that each manufacturer of covered drugs is required to enter into a master agreement with the Secretary of Veterans Affairs, under which the manufacturer would make available for procurement on the Federal Supply Schedule (FSS) each covered drug and under which, with respect to each covered drug of the manufacturer that is purchased by a federal agency under "depot contracting systems" or listed on the FSS, the

(continued...)

this Act to the TRRx program, which would lower the contractor's risk under the contract's negative incentive provisions, would have resulted in higher proposed guaranteed average discount percentages and lower proposed dispensing fees, such that PharmaCare could have submitted a lower proposed TEGC than ESI.⁶¹ See PharmaCare Comments, exh. A, Statement of PharmaCare's Director of Finance, at 2.

TRICARE states that notwithstanding the Department of Veterans Affairs' determination, TRICARE is not certain of the extent to which, or when, the Act will apply to the procurement,⁶² and argues that, in any event, this protest ground is untimely under our Bid Protest Regulations.

Generally, protests challenging alleged apparent solicitation improprieties must be filed before the time set for receipt of proposals in response to the solicitation. 4 C.F.R. § 21.2(a)(1). Other protest grounds must be filed not later than 10 days after the basis of protest is known or should have been known (whichever is earlier). 4 C.F.R. § 21.2(a)(2).

TRICARE asserts that PharmaCare's protest ground concerns either a solicitation impropriety or a basis of protest that PharmaCare should have known no later than October 22, 2003, when the protester received the agency's written determination overriding the stay on continued performance of ESI's contract notwithstanding the protests, which informed offerors of the determination of the Secretary of Veterans Affairs that the Veterans Health Care Act would apply to the TRRx contract. TRICARE contends that to be timely this ground of PharmaCare's protest was required to be filed either prior to the June 11, 2003 closing date for receipt of initial proposals or in any case no later than November 3 (within 10 days of October 22), and that the protest ground is untimely, since it was first raised in PharmaCare's supplemental protest filed on November 10.

(...continued)

manufacturer has entered into and has in effect a pharmaceutical pricing agreement with the Secretary of Veterans Affairs that essentially limits the price that the manufacturer can charge for the covered drug. 38 U.S.C. § 8126(a).

⁶¹ Ignored by PharmaCare is that none of the offerors, including ESI, was informed of the application of the Veterans Health Care Act. Presumably, all of the offerors could have offered lower TEGCs, if PharmaCare's arguments concerning the Act and its effect upon risk to the contractor were accepted.

⁶² TRICARE states that it has no assurance of the extent or the point in time at which the government will be able to take advantage of the benefits of the Act and anticipates that pharmaceutical manufacturers may mount a legal challenge to the Act's applicability.

PharmaCare states that its complaint is not a challenge to the terms of the solicitation, but concerns the agency's withholding of information that adversely affected PharmaCare's ability to competitively price its proposal. We disagree. PharmaCare's complaint is that the solicitation should have disclosed the application of this Act to the offeror, so that it is an alleged solicitation impropriety.⁶³

However, this is not the type of solicitation impropriety that must be protested prior to the time set for receipt of proposals. This is so because the RFP informed offerors that "[t]he PBM fees will not be related directly or indirectly to DoD's acquisition costs of pharmaceuticals under Section 603 of the Veterans Health Care Act of 1992," see RFP amend. 4, § C.1.1, and the agency's response to pre-proposal questions informed offerors that "[r]ebates from pharmaceutical manufacturers to the Government are not applicable to this solicitation." Agency Report, Book 2, Tab 2, Pre-Proposal Questions and Answers, at 29-30. The result was that no basis of protest was apparent to PharmaCare from the face of the solicitation. Where this is the case but a firm later learns of what it believes is a solicitation defect, a protest, to be timely, must be filed within 10 days of when the protester becomes aware, or should have become aware, of its protest basis. LBM, Inc., B-290682, Sept. 18, 2002, 2002 CPD ¶ 157 at 6-7.

Here, PharmaCare should have learned the basis of its complaint that the agency believed that the Veterans Health Care Act may apply to this procurement when the protester received the agency's written override determination on October 22.⁶⁴ Because PharmaCare did not file its supplemental protest until more than 10 days later, this protest ground is dismissed as untimely.

⁶³ That this is true is highlighted by PharmaCare's requested relief, in which PharmaCare asks that our Office recommend that TRICARE amend the solicitation to inform offerors of the application of the Act and solicit amended proposals. See PharmaCare Comments at 32-33.

⁶⁴ PharmaCare argues that it could not know the basis of its protest allegation until it had received the agency's acquisition plan showing that the agency had previously been aware of the Act's applicability and not advised offerors. (This document was provided to PharmaCare after the date the protester received the agency's override determination). We disagree. TRICARE's override determination clearly informed PharmaCare of the potential application of this Act to this procurement and therefore PharmaCare should have known upon receipt of the override determination of its concern that it had not been informed of this application by the agency prior to the submission of its proposal. That the agency may have known of the Act's applicability earlier does not provide an independent protest basis. We note in this regard that Humana timely raised this same objection after receipt of the override determination; however, Humana withdrew this protest ground after receiving the agency's report.

CONCLUSION

In sum, from our review of the record and considering the protesters' arguments, we find that TRICARE's evaluation and source selection decision was reasonable. Accordingly, we deny the protests.

Anthony H. Gamboa
General Counsel