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## Decision

**Matter of:** National Government Services, Inc.

**File:** B-401063.2; B-401063.3; B-401063.4

**Date:** January 30, 2012

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### DIGEST

1. Protest that the agency's evaluation of the protester's technical proposal was unreasonable because the agency reached different evaluation conclusions in a related procurement is denied, where the procurements had different evaluators and source selection officials.

2. Protest challenging the evaluation of the agency's technical and past performance evaluations is denied where the record shows that the evaluations were reasonable and consistent with the solicitation.

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### DECISION

National Government Services, Inc. (NGS), of Indianapolis, Indiana, protests the award of a contract to Wisconsin Physicians Service Insurance Corp. (WPS), of Madison, Wisconsin, under request for proposals (RFP) No. RFP-CMS-2007-0018, issued by the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), for Medicare administrative contractor (MAC) services. The protester argues that the agency's evaluation of its technical, cost, and past performance proposals was flawed.

We deny the protests.

## BACKGROUND

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), Pub. L. No. 108-173, requires CMS to use competitive procedures to replace all current fiscal intermediary, carrier, durable medical equipment regional carrier, and regional home health intermediary contracts with uniform contract services provided by a MAC. CMS divided the country into 15 geographic jurisdictions, each of which will be served by a MAC that will provide services for Medicare Part A and B benefits.<sup>1</sup> The award challenged here by NGS concerns jurisdiction 8 (J8), which covers Michigan and Indiana.

In performing the contracts, the MACs will, among other things, “receive and control Medicare claims from institutional and professional providers, suppliers, and beneficiaries” within their respective jurisdictions, and “will perform standard or required editing on these claims to determine whether the claims are complete and should be paid.” RFP, Statement of Work (SOW), at 14. The MACs will also “calculate Medicare payment amounts and arrange for remittance of these payments to the appropriate party,” “enroll new providers,” operate a “Provider Customer Service Program . . . that educates providers about the Medicare program and responds to provider telephone and written inquiries,” respond “to complex inquiries from Beneficiary Contact Centers,” and “make coverage decisions for new procedures and devices in local areas.” *Id.* at 14-15.

The RFP was initially issued on August 31, 2007, and sought proposals for J8, J9, and J10. As relevant to the J8 procurement, CMS received proposals from three offerors, including NGS and WPS, by the closing date of November 20, 2007. On January 6, 2009, CMS selected NGS’s proposal for award, based on the agency’s conclusion that the offerors’ technical proposals were equal, and that NGS offered the lowest evaluated cost.

Following a debriefing, WPS filed a protest with our Office challenging the award to NGS. On May 4, 2009, our Office sustained the protest, concluding that CMS’s evaluation of the offerors’ proposed costs, technical proposals, and past performance was flawed, and that the agency had not provided meaningful

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<sup>1</sup> Medicare part A provides hospital care coverage; Medicare part B provides medical care insurance coverage. See Medicare Benefits website, available at: <http://www.medicare.gov/navigation/medicare-basics/medicare-benefits/medicare-benefits-overview.aspx>.

discussions to WPS. Wisconsin Physicians Serv. Ins. Corp., B-401063, May 4, 2009, 2012 CPD ¶ \_\_.<sup>2</sup>

On June 10, 2010, as part of its corrective action in response to our decision sustaining WPS's protest, CMS issued a revised solicitation, which applied only to the J8 procurement.<sup>3</sup> The revised RFP contained new evaluation criteria and sought new proposals from the offerors. As discussed below, a separate RFP for MAC services was issued for J6, which includes Illinois, Wisconsin, and Minnesota.

The solicitation anticipated award of a cost-reimbursement contract with a 1-year base performance period with four 1-year options. The RFP advised offerors that proposals would be evaluated based on cost and offeror capability, which was comprised of two equally-weighted subfactors--past performance, and technical understanding. RFP § M.4 at 127-28. The RFP stated that offerors' proposals would be assigned a capability rating of high, reasonable, or low expectation of successful performance, and that these ratings would result in adjectival ratings of green, yellow, or red for the capability factor and its subfactors.<sup>4</sup> Id. For purposes of award, the RFP stated that the non-cost factors were "significantly more important" than cost. Id. at 124.

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<sup>2</sup> This decision was issued under a protective order issued by our Office in connection with WPS's protest; at the request of the parties, and in light of the agency's corrective action, we have not yet published this decision. We expect to issue a redacted version of the Wisconsin Physicians decision in conjunction with a redacted version of this decision.

<sup>3</sup> CMS issued two additional RFP amendments, which are not relevant to this protest. All references to the RFP below are to amendment No. 7.

<sup>4</sup> For the offeror capability factor and the technical understanding subfactor, the agency's descriptions of the adjectival ratings were as follows: a green rating meant that the proposal has "little potential to cause disruption of schedule, increased cost, or degradation of performance," a yellow rating shows "moderate potential" for disruption, and a red rating shows "high potential." Agency Report (AR), Tab 14, Source Selection Decision (SSD), at 2-3. For the past performance subfactor, a green rating meant that an offeror's past performance "collectively demonstrates that the contractor consistently provides quality service and delivers benefits to the Government," a yellow rating meant that an offeror's past performance "demonstrates the contractor's ability to perform its work at an acceptable level against contractual expectations," and a red rating meant that an offeror's past performance "collectively demonstrates a contractor that habitually performs at an unacceptable level." Id. at 3.

CMS received new proposals by the closing date of July 15, 2010, from three offerors, including NGS and WPS. As discussed below, the agency convened a technical evaluation panel (TEP) and a business evaluation panel (BEP) to evaluate the offerors' proposals. Following discussions with the offerors, the TEP and the BEP prepared consensus reports for the contracting officer (CO), who also served as the source selection authority (SSA) for the procurement.

The final technical and cost evaluation ratings for the offerors were as follows:

	<b>NGS</b>	<b>WPS</b>	<b>OFFEROR 3</b>
<b>OFFEROR CAPABILITY</b>	YELLOW	GREEN	YELLOW
Past Performance	Yellow	Yellow	Red
Technical Understanding	Green	Green	Yellow
PROPOSED COST	\$227.3M	\$218.2M	\$250.7M
EVALUATED COST	\$246.6 M	\$222.3M	\$252.7M

AR, Tab 14, SSD, at 4.

The CO found that WPS's proposal was the most highly-rated under the non-cost evaluation factors, and that WPS's proposal had the lowest evaluated cost. The CO identified five bases for selecting WPS's proposal for award: (1) WPS will rely on existing staff to perform the contract; (2) WPS's proposed implementation and transition, including its experienced staff, poses a low performance risk; (3) WPS's existing infrastructure poses a "low risk of disruption in service to CMS"; (4) WPS's "superior technical solution" and innovations are expected to improve performance and increase efficiencies; and (5) WPS proposed the lowest overall evaluated cost. Id. at 26.

CMS advised NGS on September 30 of the award to WPS. The agency provided a debriefing to NGS on October 19, and this protest followed.

## DISCUSSION

### Evaluation of NGS's Technical Proposal

NGS first argues that CMS's evaluation of its technical proposal was flawed because of the following alleged errors: (1) the agency's evaluation of NGS's technical proposal was inconsistent with the evaluation of its technical proposal for the related J6 procurement; (2) the agency unreasonably failed to recognize strengths for NGS's proposal; (3) the agency treated NGS and WPS unequally in the technical evaluation; (4) the agency's evaluation departed from the RFP's stated scheme for evaluating the risks of awarding multiple MAC contracts to a single

offeror; and (5) the selection decision departed from the stated evaluation criteria. We find no merit to these arguments.<sup>5</sup>

The evaluation of an offeror's proposal is a matter within the agency's discretion. IPlus, Inc., B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7, 13. A protester's mere disagreement with the agency's judgment in its determination of the relative merit of competing proposals does not establish that the evaluation was unreasonable. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4. In reviewing a protest against an agency's evaluation of proposals, our Office will not reevaluate proposals but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. See Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3.

#### Inconsistent Evaluations in the J8 and J6 Procurements

First, NGS argues that CMS's evaluation of its technical proposal was unreasonable because the agency's evaluation of its proposal in the J6 competition identified different strengths and weaknesses than found in the J8 competition. The protester contends the circumstances here are similar to those in CIGNA Gov't Servs., LLC, B-401062.2, B-401062.3, May 6, 2009, 2010 CPD ¶ 283, where our Office sustained a protest based on CMS's failure to reconcile differences in the evaluations and award decisions for MAC services for different jurisdictions. For the reasons discussed below, we conclude that the facts here are significantly different than those in CIGNA, and that there is no basis to find that evaluation here was unreasonable.

As discussed above, during the procurement for the J8 MAC contract challenged here, CMS also conducted a separate procurement for the J6 MAC contract. Both awards were announced on or near the same date--J8 was awarded to WPS and J6 was awarded to NGS. NGS was provided a debriefing for both procurements on October 19. NGS notes that its proposal for the J8 procurement was rated as green under the technical capability factor, based on three strengths and one weakness. AR, Tab 21, TEP Consensus Report, at 21-22. In contrast, NGS's successful and nearly identical proposal for J6 was also rated green under the technical capability factor, but was identified as having 20 strengths and 4 weaknesses. Protester's Comments (Dec. 5, 2011) at 6.

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<sup>5</sup> NGS has raised numerous other collateral arguments concerning the evaluation of its technical proposal. We have reviewed all issues raised in the protests and find that none provides a basis to sustain the protest.

In CIGNA, our Office addressed a protest concerning the award of a MAC contract for J15. As discussed in CIGNA, CMS had issued a single solicitation for the J6, J11, J14, and J15 contracts. CIGNA argued that the agency's evaluation of its proposal in connection with the J15 award was unreasonable because the protester had received different, and materially higher ratings in the evaluation for the J11 award, despite submitting nearly identical proposals for both competitions.

In discussing CIGNA's arguments, we noted that, as a general matter, it is not unusual for individual evaluators to reach different conclusions and assign different scores or ratings when evaluating proposals, since both objective and subjective judgments are involved. CIGNA Gov't Servs., LLC, supra, at 13, citing Novel Pharm., Inc., B-255374, Feb. 24, 1994, 94-1 CPD ¶ 149 at 6. Moreover, evaluation ratings under another solicitation are not probative of the alleged unreasonableness of the evaluation ratings under the solicitation at issue, given that each procurement stands on its own. Id., citing Parmatic Filter Corp., B-285288, B-285288.2, Aug. 14, 2000, 2000 CPD ¶ 185 at 7.

Notwithstanding these general principles, we agreed with CIGNA that CMS's evaluation was not reasonable because of the "unique circumstances" involved in the J11 and J15 evaluations and awards. Id. We noted that although CIGNA's proposals under that solicitation were essentially the same for both jurisdictions, the evaluators' consensus reports reached materially different ratings. While the agency used separate evaluation teams to prepare consensus reports for each jurisdiction, these consensus reports were subsequently reviewed by a common source selection board (SSB) and SSA, and all of the award decisions were documented in a single selection memorandum. Id. at 5, 13-14.

We found that although the evaluators could reasonably reach different evaluation conclusions and ratings, it was incumbent on the common SSB and SSA to recognize the materially different conclusions reached with regard to what were, essentially, identical proposals. Id. at 14. We especially noted that the SSA had not met her obligation to exercise independent judgment. Id., citing Federal Acquisition Regulation (FAR) § 15.308; University Research Corp. LLC, B-294358 et al., Oct. 28, 2004, 2004 CPD ¶ 217 at 8. We summarized the holding in CIGNA as follows: "[T]he general proposition that each acquisition stands on its own is simply inapplicable to this situation, which involves the same solicitation, proposals that were materially the same, and the same SSB and SSA." Id. at 13-14.

Here, while it is true that the RFPs for J6 and J8 were essentially the same (with the primary exception that J6 involved additional work for Medicare home health and hospice care), and that NGS submitted largely identical proposals for J6 and J8, there are three crucial differences from CIGNA: (1) the J6 and J8 procurements were conducted under different solicitations; (2) the evaluations did not involve a common SSB that reviewed the consensus ratings prepared by the evaluators; and

(3) a different SSA was responsible for each award, each of whom prepared a separate award decision.

NGS argues that our ruling in CIGNA applies nonetheless because there were, in the protester's view, substantial "overlaps" between the J6 and J8 evaluations. In this regard, the protester notes that the separate TEPs for the J6 and J8 competitions relied on common subject-matter experts (SMEs) and technical cost advisors (TCAs).<sup>6</sup> We do not think the fact that the TEPs were advised by some common advisors made the procurement here similar to that in CIGNA.

Although the TEPs received input from the SMEs and TCAs, nothing in the record suggests that these advisors were responsible for the TEP evaluations, or were otherwise responsible for ensuring consistency between the evaluations.<sup>7</sup> In this regard, the TEP members made the decisions as to which aspects of an offeror's proposal merited a strength or weakness. Decl. of TEP Chair (Nov. 22, 2011) at 2. More importantly, the protester does not allege, and the record does not otherwise indicate, that the CO for J8 reviewed the evaluations for J6, or vice-versa.

As discussed above, CIGNA addressed the limited circumstances of a common SSB and SSA reviewing inconsistent evaluations concerning identical proposals submitted under a single solicitation. We do not view CIGNA as standing for the

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<sup>6</sup> NGS also alleged that the TEP panels relied on a common compliance officer, and that CMS's General Counsel participated in the review of the consensus evaluations for the J6 and J8 procurements. Protester's Comments (Dec. 5, 2011) at 4-5. The protester does not identify any evidence which shows that the compliance officer, who was responsible for review of organizational conflicts of interest, was involved with the evaluation of the offerors' technical proposals, or the selection decision. Additionally, the CO explains that the General Counsel did not participate in the evaluation of proposals; instead, separate teams of attorneys from CMS's Office of General Counsel (OGC) assisted each TEP: "[E]ach procurement had its own set of two lawyers who advised the panels and COs throughout the procurement." Supp. CO Statement (Dec. 12, 2011) at 2; see also AR, Tab 21, TEP Consensus Report, at 6 ("Representatives from the [OGC] were also present at the consensus sessions to provide legal guidance.")

<sup>7</sup> NGS cites several emails which, the protester contends, suggest that the J6 and J8 TEPs engaged in some coordination of their evaluations, and that there was a "friendly working relationship between the TEP Chairpersons." Protester's Comments (Dec. 5, 2011) at 5. None of the emails identified by the protester indicate that there was any coordination in the TEP evaluations; rather, the emails reflect that, as CMS acknowledges, there were common SMEs and TCAs upon whom both TEPs relied for information.

proposition that advisors to evaluation panels are responsible for ensuring that the judgments made by different evaluators and selection officials are consistent. On this record we find no basis to conclude that the differences between NGS's evaluation in the J6 and J8 procurements evidences that the evaluations were unreasonable.

#### Failure to Recognize Strengths in NGS's Proposal

Next, NGS argues that CMS improperly failed to credit its technical proposal with numerous strengths.

In response to this protest, the TEP chair provided charts which discussed each of the strengths identified by NGS in its protest. Decl. of TEP Chair (Nov. 22, 2011), attachs. 1 & 2. As the charts indicate, many of the strengths that NGS contends should have been recognized were, in fact, identified by the agency and discussed by the TEP in the context of possible strengths or weaknesses, but were not ultimately identified in the TEP consensus report as strengths. Id. With regard to the strengths not discussed in the evaluations, the TEP chair explains why the TEP did not find the protester's proposal to merit a strength or any mention in the evaluation. Id. As illustrated by the following examples, we conclude that these explanations are credible and reasonable, consistent with the contemporaneous record, and demonstrate that the protester's arguments consist of nothing more than disagreement with the agency's judgment.<sup>8</sup>

For example, NGS argues that its proposal should have received a strength regarding its chain of authority, which was described in its proposal as follows:

Our organizational structure defines clear lines of reporting and accountability. We used our unique Medicare experience to align

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<sup>8</sup> In reviewing an agency's evaluation, we do not limit our consideration to contemporaneously-documented evidence, but instead consider all the information provided, including the parties' arguments, explanations, and any hearing testimony. The S.M. Stoller Corp., B-400937 et al., Mar. 25, 2009, 2009 CPD ¶ 193 at 13. While we generally give little or no weight to reevaluations and judgments prepared in the heat of the adversarial process, Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15, post-protest explanations that provide a detailed rationale for contemporaneous conclusions, and simply fill in previously unrecorded details, will generally be considered in our review of the rationality of selection decisions--so long as those explanations are credible and consistent with the contemporaneous record. Remington Arms Co., Inc., B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 12.

functions that facilitate cross-utilization of staff and achieve day-to-day synergies. The outcome will be a successful workload implementation --one that causes no disruption of claims processing and Medicare operations, minimal disruption of payment, customer service, and other services--and ongoing MAC operations that achieve the CMS objectives of customer service, operational excellence, innovation and technology, and financial management.

AR, Tab 18B, NGS Final Revised Proposal (FPR), vol. I, § C.1.A, at 7.

The TEP chair stated that while clear lines of authority represented “normal good business practices,” this was not a feature that the TEP viewed as specifically meriting a strength. Decl. of TEP Chair (Nov. 22, 2011), attach. 1, at 3. Additionally, the TEP chair stated that the protester’s proposal did not provide specific examples or explanations as to how its organizational structure would provide increased quality or effectiveness in contract performance. Id.

Moreover, the TEP considered this aspect of NGS’s proposal to raise an area of concern because the proposal did not provide clear lines of authority, and the TEP raised this matter during discussions with NGS. Id.; AR, Tab 6A-1, NGS Discussion Questions (Nov. 23, 2010), at 9-10 (requesting that NGS address conflicting roles and responsibilities within its organizational structure). Based on the protester’s response to discussions, the TEP concluded that this aspect of NGS’s proposal was a weakness because NGS’s proposal “did not clearly explain the reporting relationship of the [deleted] and the [deleted], nor did NGS explain the redundancy of the duties of these positions.” AR, Tab 21, TEP Consensus Report, at 22. In this regard, the TEP explained as follows:

Based on the lack of clarity on the organizational chart and the list of duties provided by NGS in their responses to [discussions], it remains unclear how the [deleted] and [deleted] positions interact and perform their duties to meet the contractual requirements of the SOW. In addition, it appears that the reporting hierarchy on the org[anization] chart conflicts with both SOW requirements and NGS’s response.

Id. at 43. The TEP concluded that NGS’s “lack of clarity regarding personnel and their duties may increase the risk of miscommunication with CMS, may result in improper contract administration, and may lead to inefficient and ineffective performance.” Id. On this record, we think that the agency’s evaluation of this aspect of NGS’s proposal was reasonable.

Another example cited by NGS, which the protester contends should have been recognized as a strength, concerns the following aspect of its proposal describing NGS’s corporate resources:

*We have broad breadth and depth of experience and resources through strong corporate backing.* NGS is a wholly-owned subsidiary of the nation's largest health benefits company, WellPoint, Inc. As such we have access to the nation's largest health insurance provider for industry-related best practices and expertise in national healthcare projects. We currently consult with corporate resources on Lean/Six Sigma continuous improvement methodologies as well as the pending ICD9 to ICD-10 transition. CMS will benefit from our insight into commercial best practices as we partner to address new initiatives and changing requirements in the Medicare program.

AR, Tab 18B, NGS Proposal, § C, at 2.

The TEP chair states that the agency did not identify a strength for NGS's proposal based on this aspect of NGS's proposal because NGS did not provide examples of how its corporate resources would translate into benefits for the MAC contract. Decl. of TEP Chair (Nov. 22, 2011), attach. 2, at 11. The TEP chair further states that the TEP did not view a generic citation of management tools, such as Lean/Six Sigma, as demonstrating strength, in the absence of an explanation of how the offeror utilized those tools to improve performance. *Id.* at 12. Based on our review, we think that the agency's basis for not assessing a strength for this aspect of NGS's proposal was reasonable.

#### Unequal Treatment

Next, NGS argues that two of the strengths found by CMS in WPS's technical proposal were not assigned for similar aspects of NGS's technical proposal. We find no merit to these arguments.

First, NGS argues that while CMS identified a strength for WPS's "Audit Advisement Team," the agency unreasonably failed to identify a strength for the protester's training program. The selection decision identified the following feature of WPS's proposal as a strength:

The TEP identified Strengths of particular note that demonstrate initiatives that allow WPS to continually identify, develop, and refine business processes. WPS has [deleted] their Audit and Reimbursement function with a [deleted] that enables the Audit and Reimbursement area to manage workload more effectively. This improvement includes the use of [deleted]. Also, WPS is using [deleted]. WPS also has an Audit Advisement Team and comprehensive training program that reduces the likelihood of performance risks in their Medicare operations.

AR, Tab 14, SSD, at 10; see also AR, Tab 21, TEP Consensus Report, at 47.

NGS argues that it proposed a “unique” training program that provides similar benefits to the strength identified for WPS. Supp. Protest (Dec. 2, 2011) at 10. Specifically, the protester states that its proposal describes training for new employees, as well as ongoing education requirements for existing employees. See AR, Tab 18B, NGS FPR, vol. I, § C.2.1.f, at 11-14. The protester contends that this training will also result in reduced performance risks, and should have been found by the TEP and CO to be a strength.

As an initial matter, the agency notes that training was a requirement of the RFP, and thus not a unique feature of NGS’s proposal that, on its own, merited a strength. Supp. Decl. of TEP Chair (Dec. 11, 2011) at 6; see RFP § L.14 at 105 (“The offer shall describe a training approach for staff . . . [including] a training program and timeline for new hires, and ongoing training and education for staff during the performance of the contract.”) The TEP chair explains that while NGS provided a description of its training program, it did not provide details concerning the effectiveness of the training or the process for updating the training. Supp. Decl. of TEP Chair (Dec. 11, 2011) at 6. While the protester contends that the certification of NGS’s training program by national organizations demonstrates the effectiveness of the training and implies that the training will be current, this does not show that the agency’s determination that NGS’s proposal did not warrant a strength here was unreasonable. See Protester’s Comments (Dec. 19, 2011) at 7.

Moreover, the TEP chair explains that this WPS strength went beyond training. Supp. Decl. of TEP Chair (Dec. 11, 2011) at 8. As discussed above, the selection decision and TEP consensus report identified a strength for WPS’s proposal based on “initiatives that allow WPS to continually identify, develop, and refine business processes,” and an “Audit Advisement Team” that, along with its training program, “reduces the likelihood of performance risks in [WPS’s] Medicare operations.” AR, Tab 14, SSD, at 10; see also AR, Tab 21, TEP Consensus Report, at 47. The TEP chair notes that WPS’s proposal described the Audit Advisement Team as an ongoing training and mentoring approach to support its audit staff. Supp. Decl. of TEP Chair (Dec. 11, 2011) at 7, citing AR, Tab 29B, WPS FPR, vol. I, § C.2, at 21-23. Thus, to the extent that the protester argues that it offered a training program with similar benefits to the training offered by WPS, this does not demonstrate that the agency’s identification of a strength for WPS’s broader approach to “identify, develop, and refine business processes,” see AR, Tab 14, SSD, at 10, was unreasonable.

The second area where NGS contends the agency treated the offerors unequally concerns a strength assessed for WPS for Collaborative Process Improvement Work Teams. The protester contends that its proposal offered a similar feature and it should also have received a strength.

The CO cited the following strength for WPS's proposal in the selection decision concerning its approach to collaborative process improvement:

Also, of particular note, are areas where WPS has implemented innovations for which they provided detailed documentation, allowing the TEP to recognize the benefits of these activities. The TEP views the WPS Collaborative Process Improvement Work Teams (SWAT Teams) as a Strength. With these teams, WPS [deleted] for process improvement and cost reduction. WPS has proposed a [deleted].

AR, Tab 14, SSD, at 10. The TEP report noted that WPS's approach to process improvement was presented with numerous examples "that have yielded value-added innovations with a demonstrated return on investment." AR, Tab 21, TEP Consensus Report, at 60. In this regard, WPS's proposal concerning process improvement involving the SWAT team approach explained that the SWAT Team is a [deleted]. AR, Tab 29B, WPS FPR, vol. I, § C.3, at 42. WPS's proposal cited numerous examples of how its collaborative processes work, and the benefits they provide. See id. at 41-47.

NGS contends that its proposal also described a collaborative approach to process improvement, called the Associates Have Answers (a-HA!) Whiteboard, which it contends should also have merited a strength. The primary description of NGS's feature is as follows:

The Associates Have Answers (a-HA!) Whiteboard is designed to give our associates a quick and easy way to share innovative and cost-saving ideas with one another. The purpose of this tool is to [deleted]. Because we believe that [deleted].

This process instills a sense of teamwork and collaboration. Since implementing the a-HA! Whiteboard [deleted].

AR, Tab 18B, NGS FPR, vol. I, § C.2.1.b, at 5.

The TEP chair explains that the protester's a-HA! Whiteboard was not found to merit a strength because it provided only a general description of an employee feedback process. Supp. Decl. of TEP Chair (Dec. 11, 2011) at 10-11. The agency states that while WPS's proposal explained its employee feedback process in the context of a broader continuous process improvement approach and provided specific examples of how the collaborative approach is implemented, NGS did not identify specific examples of how its a-HA! Whiteboard had contributed to process improvements. Id.

In sum, we think the agency reasonably distinguished between the offerors' proposals, and NGS's disagreement concerning the evaluations provides no basis to sustain the protest.

### Multi-Jurisdictional Risk Analysis

Next, NGS argues that the agency failed to follow the RFP's evaluation criteria because it considered the risk to the agency posed by awarding NGS more than one MAC contract, in a manner inconsistent with the solicitation. The RFP advised that if an offeror had submitted a proposal for another MAC jurisdiction, or had been previously awarded another MAC contract, CMS "may assess the associated risks with awarding one offeror multiple jurisdictions." RFP § M.2.b at 124. The RFP advised, however, that each proposal would be "evaluated individually on each jurisdiction," and that multi-jurisdictional performance risk would be evaluated only if the offeror is an existing MAC contractor or potential awardee for another jurisdiction. Id.

During discussions, CMS asked the offerors to address "the risk associated with multiple MAC Jurisdiction contract awards" AR, Tab 9A-1, NGS Multi-Jurisdiction Risk Discussion Questions, at 2. As relevant here, the agency asked offerors to address how "an award in multiple jurisdictions would affect your staffing, hiring and training of staff, facilities, Key Personnel, simultaneous Implementations and risk mitigation on these areas and any impacted area." Id.

NGS argues that the agency used its responses to the multi-jurisdictional risk question to evaluate its technical proposal in a manner inconsistent with the RFP. In this regard, the protester contends that information provided in its response to the multi-jurisdictional risk question, particularly with regard to staffing, was improperly considered in the evaluation of the technical proposals. Specifically, the protester notes that concerns regarding NGS's staffing were cited in the selection decision, and that the agency credited WPS's proposed staffing as a strength in favor of award. See AR, Tab 14, SSD, at 25-26.

CMS states that it asked offerors to address the issue of multi-jurisdictional risk prior to the award selection because it was more efficient to obtain the information before the selection decision than to seek it after the evaluations were complete. Supp. AR at 3; Supp. CO Statement at 1-2. In this regard, the CO states that the agency was concerned that asking for information from the awardee pertaining to multi-jurisdictional risk might constitute discussions that could require a reopening discussions for all offerors. Supp. CO Statement at 2.

With regard to the evaluations, the agency acknowledges that the TEP members and TCA reviewed the offerors' responses to the multi-jurisdictional risk questions to ensure that they were complete and accurate. Supp. AR at 3. Nonetheless, the agency states, and that record reflects, that neither the TEP consensus report nor

the SSD considered multi-jurisdictional risk in the offerors' ratings or the award decision. Supp. CO Statement (Dec. 12, 2011) at 2; Supp. Decl. of TEP Chair (Dec. 11, 2011) at 3.

Moreover, CMS states that its concerns regarding NGS's proposed staffing were related to NGS's proposal for the technical understanding subfactor, under which an offeror's ability to "effectively establish and manage its employees and infrastructure" was to be considered. RFP § M.4.b.3 at 129. NGS's initial proposal stated that it would rely entirely on existing staff, and did not require any new hires; for this reason, the protester did not submit a plan addressing its recruiting, hiring, and staffing practices, as required by the RFP. Supp. Decl. of TEP Chair (Dec. 11, 2011) at 2; AR, Tab 12, BEP Consensus Report, at 27. During discussions, however, the protester provided a staffing matrix which showed that NGS intended to make new hires for approximately [deleted] percent of its proposed staff for J8. AR, Tab 12, BEP Consensus Report, at 27. Based on concerns arising from this change, CMS asked NGS on February 10, 2011, to address its approach to recruitment, hiring, and training. AR, Tab 7A, NGS Discussion Questions (Feb. 10, 2011), at 1-2. This question pre-dated the agency's questions to NGS regarding the multi-jurisdictional risk issue, which were issued on March 11 and 23, 2011. See AR, Tab 9A-1, NGS Multi-Jurisdiction Risk Discussion Questions (Mar. 11, 2011), at 2; Tab 9A-2, Multi-Jurisdiction Risk Discussion Questions (Mar. 23, 2011), at 1.

As discussed in the BEP report, NGS revised its estimates of the number of new hires that would be required for J8, which the agency viewed as a concern because NGS did not provide sufficient information concerning these revisions to permit an evaluation of the impact of the staffing changes. AR, Tab 12, BEP Consensus Report, at 27-28. The selection decision also noted this as an area of concern:

NGS's proposed staffing continually fluctuated throughout the course of discussions and again at FPR. The percentage of new hiring went from [deleted]% to [deleted]% to [deleted]% and at FPR to [deleted]%. This coupled with a substantial reduction in staff at FPR of [deleted] FTEs poses a risk to performance since CMS is unable to truly assess the impact of staffing/hiring on specific functional areas.

AR, Tab 14, SSD, at 25.

On this record, we find that the multi-jurisdictional risk analysis was consistent with the solicitation and that the agency reasonably evaluated NGS's proposed staffing under the technical understanding subfactor.

#### Improper Weighting of Evaluation Factors

NGS argues that the award decision placed more emphasis on the issues of staffing than was anticipated by the evaluation factors set forth in the RFP. NGS notes that

the RFP stated that offerors' proposals for the technical understanding subfactor were to address the following five areas: (1) program management; (2) personnel; (3) innovations; (4) medical review strategy; and (5) technical scenarios. RFP § L.14.c at 104-109. The RFP also stated that the technical understanding subfactor would be evaluated based on the following four "aspects" of that subfactor: (1) customer service, (2) financial management, (3) operational excellence, and (4) innovations and technology. RFP § M.4.b at 129-30.

The protester contends that although staffing was related to only some of the required proposal sections and certain aspects of the technical understanding subfactor, the selection decision placed an unreasonable emphasis on staffing. In this regard, as indicated above, the selection decision noted several concerns regarding NGS's proposed staffing and strengths based on WPS's proposed staffing. The protester particularly references the CO's summary of the award rationale, which stated:

WPS's proposal represents the best overall value to CMS for the following reasons:

- No new hiring for the J8 Contract, and current staff have some level of Medicare experience
- WPS has the lowest risk associated with implementation and transition by performing work from existing site and having an experienced staff that is available to perform the work, requiring no learning curve
- WPS has the infrastructure already in place that is fully operational and will significantly reduce the risk to the Government and provides a seamless transition to the new contract with a low risk of disruption in service to CMS
- WPS's superior technical solution, including innovations that should continue to improve performance and increase efficiencies within functional areas
- WPS has lowest proposed cost and lowest probable total CPAF after cost realism adjustments.

AR, Tab 14, SSD, at 26.

Although the reasons stated above show that the SSA clearly relied on WPS's proposed staffing as a discriminator in favor of its award, we do not think that this focus was improper. In this regard, solicitations must identify all significant evaluation factors and any significant subfactors that will be considered in awarding

the contract, and the evaluation of proposals must be based on the factors set forth in the solicitation. FAR §§ 15.304(d), 15.305(a); Nova Techs., B-403461.3, B-403461.4, Feb. 28, 2011, 2011 CPD ¶ 51 at 3. An agency may not announce in a solicitation that it will use one source selection scheme, and then follow another. Hillstrom's Aircraft Servs., B-403970.2, Dec. 28, 2010, 2010 CPD ¶ 303 at 4. SSAs however, are accorded broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results, and their judgments are governed only by the tests of rationality and consistency with the stated evaluation criteria. American Constr. Co., B-401493.2, Oct. 16, 2009, 2009 CPD ¶ 214 at 7. Further, an SSA is not prohibited from finding that the distinctions that separate offerors' proposals for purposes for award are concentrated in particular areas, nor is an SSA required to identify discriminators from only the most heavily-weighted factors. See Smiths Detection, Inc.; American Science and Eng'g, Inc., B-402168.4 et al., Feb. 9, 2011, 2011 CPD ¶ 39 at 16; DPK Consulting, B-404042, B-404042.2, Dec. 29, 2010, 2011 CPD ¶ 12 at 13.

The CO here identified five discriminators in favor of award to WPS, two of which related to staffing; the other three discriminators did not relate to staffing. AR, Tab 14, SSD, at 26. On this record, we do not think that the CO's identification of discriminators in favor of award to WPS improperly departed from the evaluation scheme set forth in the RFP.

#### Evaluation of NGS's Past Performance

Next, NGS argues that CMS failed to reasonably evaluate past performance information that was provided to the CO after the TEP had completed its evaluation. The protester argues that the information should have led the CO to accord more favorable consideration to its past performance, and less favorable consideration to WPS's past performance. For the reasons discussed below we find no merit to these arguments.

The evaluation of past performance is a matter of agency discretion, and we will review the evaluation only to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and applicable statutes and regulations. Guam Shipyard, B-311321, B-311321.2, June 9, 2008, 2008 CPD ¶ 124 at 3. A protester's mere disagreement with the agency's judgment in its determination of the relative merit of competing proposals does not establish that the evaluation was unreasonable. The McConnell Group, Inc., B-405377, Oct. 21, 2011, 2011 CPD ¶ 225 at 4.

The TEP's evaluation of the offerors scored both NGS's and WPS's past performance as yellow. AR, Tab 21, TEP Consensus Report, at 18. The selection decision not only adopted the TEP's evaluations, but also incorporated additional information. Specifically, the CO noted that CMS had received updated information concerning the offerors' past performance, after the TEP had completed its

evaluations. AR, Tab 14, SSD, at 18. The CO explained that she did not reconvene the TEP to consider this information, but instead made her own determination, and concluded that the new information did not warrant any change to the offerors' ratings. Id. at 18, 22-23.

NGS argues that the CO did not accord sufficient weight to recent, positive information concerning its past performance. As relevant here, the CO reviewed additional information provided to CMS concerning the 2010 report of contractor performance (RCP) for NGS's performance of legacy contracts. Id. at 22. The CO noted that although there was "adverse information" concerning recent NGS performance, id., the 2010 RCP also included positive information:<sup>9</sup>

NGS's performance also contained positive attributes including: costs being substantially below its [notice of budget approval] amounts, constructive activities related to Recovery Audit Contractor (RAC) and the transition of all bank accounts [from] JP Morgan Chase to US Bank, and meeting with and developing formal[ly] a process to keep [regional offices] informed of organizational changes, contractor performance, and operational/provider issues. In NGS's response to this RCP, NGS noted its progress in addressing these findings.

Id. at 23. The CO concluded that the information did not merit a change to NGS's past performance rating of yellow, but noted that "I am considering this generally positive information in this 2010 RCP in my best value decision." Id. While NGS argues that the CO should have placed greater weight on the positive trends represented by the 2010 data, the record here shows that the CO considered the relevant information, but did not believe it warranted a change to the protester's overall past performance rating. The protester's disagreement with the CO's judgment provides no basis to sustain the protest.

Next, NGS argues that CMS should have lowered WPS's past performance rating based on recent information concerning its performance of information system security requirements. The CO received additional information concerning WPS's performance with regard to information system security findings pursuant to section 912 of the MMA. Id. at 18. The CO's review of this information noted as follows:

WPS has a Decisively Adverse Rating for previous performance on its System Security Findings (Section 912) in 2007, 2008 and 2009. In

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<sup>9</sup> The agency assigned to offerors' past performance references ratings of beneficial, adverse, and decisively adverse. AR, Tab 21, TEP Consensus Report, at 7.

[fiscal year] 2010, WPS continues to have findings related to System Security Findings (Section 912). WPS has six (6) High Risk findings and five (5) Medium Risk Findings and the national average among MAC Contractors for High Risk is five (5) and Medium Risk is four (4).

Id. at 19.

Notwithstanding these concerns, the CO stated that “[t]he negative findings in this area are not found to detract significantly from WPS’s benefits in the past performance subfactor, such as continual cost savings and successful implementation of J5, and WPS’s overall ability to perform the J8 contract requirements.” Id. As a result, the CO concluded that “WPS’s past performance rating and the overall award decision is not impacted by this additional information.” Id. Here too, while the protester disagrees with the CO’s judgment, this provides no basis to sustain the protest.

#### Evaluation of NGS’s Proposed Costs

Finally, NGS argues that CMS unreasonably upwardly adjusted its proposed costs by \$19.3 million in the cost realism evaluation. AR, Tab 14, SSD, at 4. The protester contends that the agency’s evaluation was flawed and that the adjustment should have been only \$[deleted]. Protester’s Comments (Dec. 5, 2011) at 20 n.87.

As discussed above, the CO concluded that WPS had the highest-rated proposal, based on both its adjectival ratings and specific strengths. AR, Tab 14, SSD, at 26. Because we conclude that NGS’s arguments concerning CMS’s evaluation of its proposal under the technical capability factor lack merit, we need not address its cost realism arguments. In this regard, even if we agreed with the protester’s arguments concerning the cost evaluation, NGS’s evaluated costs would remain higher than WPS. In fact, NGS’s proposed cost of \$227.3 million is higher than either WPS’s proposed cost of \$218.2 million or its evaluated cost of \$222.3 million. Id. at 4. On this record, we find no possibility of prejudice arising from the agency’s evaluation of NGS’s proposed costs and we do not consider these arguments further. See Hanford Env’tl. Health Found., B-292858.2, B-292858.5, April 7, 2004, 2004 CPD ¶ 164 at 12.

The protest is denied.

Lynn H. Gibson  
General Counsel