



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

DOCUMENT FOR PUBLIC RELEASE

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Matter of: Foundation Health Federal Services, Inc.; Humana Military Healthcare Services, Inc.

File: B-278189.3; B-278189.4

Date: February 4, 1998

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DIGEST

Protest of award is sustained where agency failed to disclose the relative importance of the significant evaluation considerations as applied in the evaluation, and based the source selection decision partly on unwarranted [deleted] ratings in functional experience and performance areas, where the solicitation required a neutral rating because the offeror lacked relevant experience as defined by the solicitation.

DECISION

Foundation Health Federal Services, Inc. and Humana Military Healthcare Services, Inc. protest the TRICARE Support Office's (TSO) award of a contract to Anthem Alliance for Health, Inc., under request for proposals (RFP) No. MDA906-95-R-0005. The RFP sought proposals to provide health care and associated administrative services in the states of North Carolina, Wisconsin, Michigan, Illinois, Indiana, Ohio, and Kentucky, and in portions of Virginia, West Virginia, Tennessee, and Missouri

(Managed Care Support Regions 2 and 5) for Military Health Services System (MHSS) beneficiaries, who include military service retirees, their dependents, and dependents of active duty members. Humana and Foundation challenge the evaluation of cost and technical proposals and the acceptability of Anthem's proposal.

We sustain the protests.

BACKGROUND

Under the RFP, issued on January 16, 1994, offerors were required to propose three health care options--the TRICARE options--for MHSS beneficiaries. Specifically, the RFP required offerors to propose a health care system under which MHSS beneficiaries could opt to obtain services: (1) from providers of their own choosing on a fee-for-service basis (the TRICARE Standard program); (2) from members of the contractor's preferred provider organization (the TRICARE Extra program); or (3) from a contractor-established health maintenance organization (the TRICARE Prime program). Under the latter, TRICARE Prime program, enrollees agree to seek all primary, non-emergency, non-mental health care from a designated primary care manager or gatekeeper.

The RFP stated that the government intended to award a fixed-price contract (with the price subject to specified adjustments during performance) for a base period with five 1-year options. The fixed-price nature of the contract, however, was modified by a risk-sharing arrangement under which, in the event of health care cost overruns, the government and the contractor will share responsibility for absorbing the overrun in excess of the contractor's profit and 1 percent of the adjusted health care price. Responsibility would continue to be shared under a formula set out in the RFP until the contractor absorbed overruns equal to its cumulative net gains under the contract and the amount of contractor equity that it put at risk in its proposal. At that point, the contract would begin to function on a cost reimbursement basis, with the government assuming total responsibility and paying for all additional health care costs. The RFP required that offerors place a minimum of \$75 million at risk.¹

¹The fixed-price nature of the contract was also modified by adoption of a revised financing approach to the provision of medical care by Military Treatment Facilities (MTF). Under this approach, MTFs will receive funding for those beneficiaries who enroll in TRICARE Prime with an MTF primary care manager, and the MTF, not the contractor, will have sole financial responsibility for the provision of care to those enrollees. In contrast, the contractor will be responsible for the provision of care to those enrollees in TRICARE Prime with a civilian primary care manager ("at-risk" beneficiaries), as well as for other beneficiaries who select either TRICARE Extra or Standard.

The RFP stated that the agency intended to award a contract "to the offeror whose proposal is most advantageous to the Government, price and other factors considered," and further stated that in this determination, technical content would be more important than cost. Specifically, the weighting ratio was set out as 60 percent for technical and 40 percent for cost. The solicitation set forth seven "major technical factors for the evaluation," and the evaluated technical score was the result of the evaluation of 11 tasks that are to be performed, plus experience and performance, all of which were listed as subfactors.

TSO received proposals from Anthem, Humana, and Foundation by closing time on August 2, 1996. All proposals were included in the competitive range. At the conclusion of discussions, the agency requested submission of best and final offers (BAFO).

Based upon the evaluation of BAFOs, the source selection advisory council (SSAC) recommended to the source selection authority (SSA) that award be made to Anthem, whose proposal was evaluated as offering the lowest total expected government cost and received the highest technical score and highest overall "best buy" score. According to the SSAC, neither Foundation's nor Humana's higher cost proposals offered significant advantages to the government which outweighed Anthem's cost advantage. The specific results of the evaluation as of the time of award, and as subsequently corrected in response to the bid protests, are as follows:

	Anthem (original/ corrected)	Humana (original/ corrected)	Foundation (original/ corrected)
Evaluated Cost	\$3,631,409,997/ \$3,659,380,726	\$3,855,809,818/ \$3,870,444,156	\$3,886,720,190/ \$3,917,232,685
Cost Score ²	1,000/1,000	942/945	934/934
Technical Points	[deleted]	[deleted]	[deleted]
Technical Score ³	1,000/1,000	977/984	980/988
Overall Best Buy Score	1,000/1,000	963/968	962/966

²Cost Score=1,000 times low price divided by offeror's price.

³Technical Score=1,000 times offeror's score divided by high score.

Based upon his review of the strengths and weaknesses of each proposal, the SSA concurred in the recommendation of the SSAC, concluding that, "given the relative equality of the technical proposals," the substantially lower expected cost of Anthem's proposal justified award to that firm. Upon learning of the award to Anthem, Humana filed its protest with our Office. Foundation, after first filing a protest with the agency, then filed its protest with our Office.

EVALUATION CRITERIA

Humana and Foundation assert that the solicitation did not advise offerors of the evaluation criteria TSO actually used and the relative weights it assigned the criteria. In this regard, the solicitation advised offerors as follows:

The eleven (11) Tasks of Section C plus the Experience and Performance Factor have been grouped into the following major technical factors for the evaluation:

- (1) Health Care Providers--Organization, Operations and Maintenance (Task # I) and Health Care Services--Utilization and Quality Management (Task # III);
- (2) Management (Task # VIII), and Start-up and Transition (Task # XI);
- (3) Claims Processing (Task # V), Reimbursement (Task # IX), and Program Integrity (Task # VI);
- (4) Contractor Responsibilities for Coordination and Interface with the Lead Agents and MTFs (Task # II);
- (5) Experience and Performance;
- (6) Enrollment Marketing and Support Services (Task # IV);
[and]
- (7) Fiscal Management and Controls (Task # VII), and Automated Data Processing (Task # X).

The seven major technical factors are listed in their descending order of importance. Within the seven technical factors, the Health Care Providers--Organization, Operations and Maintenance (Task # I) and Health Care Services--Utilization and Quality Management (Task # III) will have a higher technical weighting than the other Tasks. The subfactors provided under each of the major factors are not listed in

any specific order of importance and are only included for purposes of amplification. The offeror must respond satisfactorily to all requirements.

The actual evaluation weights of the tasks and experience/performance factor, which were not disclosed in the solicitation, were as follows:

MAJOR TECHNICAL FACTOR	TASK	WEIGHT
First	Task I/Health Care Providers	20 percent
	Task III/Utilization and Quality Management	10.1 percent
Second	Task VIII/Management	10 percent
	Task XI/Start-up and Transition	7.9 percent
Third	Task V/Claims Processing	10.8 percent
	Task IX/Reimbursement	2.9 percent
	Task VI/Program Integrity	1.8 percent
Fourth	Task II/Lead Agents and MTF Coordination and Interface	12.5 percent
Fifth	Experience/Performance	12 percent
Sixth	Task IV/Enrollment, Marketing and Support Services	10 percent
Seventh	Task VII/Fiscal Management	1 percent
	Task X/Automated Data Processing	1 percent

Humana and Foundation officials responsible for preparing their proposals testified during a hearing in this matter that they interpreted the solicitation as providing that the tasks within any major factor were of equal importance. Hearing Transcript (Tr.) at 21-22, 62, 67-68, 100, 113-114, 141-146.

Section 2305 of Title 10 of the United States Code requires that solicitations "at a minimum" include "a statement of--(i) all significant factors and significant subfactors which the head of the agency reasonably expects to consider . . . ; [and] (ii) the relative importance assigned to each of those factors and subfactors. . . ." 10 USC § 2305(a)(2)(A) (1994). Where an agency fails to advise offerors of the evaluation factors and the relative importance of those factors, there is no

assurance that in selecting an offer for award it is obtaining what is most advantageous to the government, all factors considered. Richard S. Cohen, B-256017.4, B-256017.5, June 27, 1994, 94-1 CPD ¶ 382 at 6; see generally Fiber Materials, Inc., 57 Comp. Gen. 527, 530 (1978), 78-1 CPD ¶ 422 at 5.

The RFP did not disclose the relative importance of the significant evaluation considerations. Although the solicitation stated that the seven major technical factors were listed in descending order of importance, an offeror could not ascertain from the solicitation the relative weight of each task/subfactor. Thus, for example, one could not tell that Task I/Health Care Providers was nearly twice as important as Task III/Utilization and Quality Management; that Task IV/Enrollment, Marketing and Support Services, a subfactor under the sixth most important major factor, was more important than Task XI/Start-up and Transition, a subfactor under the second most important major factor; or that Task V/Claims Processing was six times more important than Task VI/Program Integrity, another subfactor under the same major factor. The agency maintains that offerors were on notice that the tasks/subfactors were not of equal weight by virtue of the RFP statement that "[t]he subfactors provided under each of the major factors are not listed in any specific order of importance and are only included for purposes of amplification." Where the solicitation is silent as to the relative importance of the subfactors, as was the case here, Serv-Air, Inc., B-194717, Sept. 4, 1979, 79-2 CPD ¶ 176 at 5, 8, offerors can assume that the subfactors are approximately equal. Stone & Webster Eng'g Corp., B-255286.2, Apr. 12, 1994, 94-1 CPD ¶ 306 at 5; Informatics, Inc., B-194734, Aug. 22, 1979, 79-2 CPD ¶ 144 at 6.

We conclude that TSO improperly failed to adequately disclose the weights of the significant evaluation factors and subfactors applied in the evaluation.

EXPERIENCE AND PERFORMANCE

Humana and Foundation argue that the evaluation of Anthem's experience and performance was inconsistent with a solicitation provision requiring a neutral rating for offerors lacking relevant experience.

Section M of the solicitation, "Evaluation Factors for Award," provided for the agency to evaluate an offeror's experience and performance in eight functional areas: health care delivery, provider networks, providing resources, enrollment and marketing, beneficiary education and services, quality management monitoring and utilization management, claims processing, and management information systems. Offerors were required to describe relevant experience in each of these functional areas, including experience with other than military health care contracts. Section M of the solicitation, however, was amended to state that "[o]fferors who do not have any CHAMPUS [Civilian Health and Medical Program of the Uniformed Services]/MCS [Managed Care Support]/CRI [CHAMPUS Reform Initiative]/MHSS

[that is, military health care] experience in the following eight (8) functional areas will receive a neutral rating."

TSO reports that its evaluation of experience and performance was comprised of three components: (1) the evaluation of experience and performance in the eight functional areas using offeror-provided documentation, reports and references for interviewing; (2) the evaluation of CHAMPUS/MHSS experience and performance (if any) in the eight functional areas using government-developed references and CHAMPUS/TRICARE reports; and (3) the evaluation of the experience and performance with respect to the five largest accounts of the prime contractor and the subcontractors. For the first component, offeror-provided information, offerors received an adjectival rating--unsatisfactory, less than satisfactory, satisfactory, more than satisfactory, or exceptional--which was then translated into a numerical score. For the second component, government-developed information, TSO applied a multiplier based on the quality of the performance (e.g., 1.10 for satisfactory experience, 1.15 for more than satisfactory, and 1.25 for exceptional) to the numerical score from the first component. For example, according to the agency, if an offeror with satisfactory CHAMPUS/MHSS experience for health care delivery, for which it would have received 90 unweighted points, received a more than satisfactory rating with respect to government-developed information in that area, the offeror would have received an additional 14 point (rounded up) bonus for a total unweighted score in that area of 104 points. For the third component, experience with the five largest accounts, offerors received a separate adjectival rating which translated into a numerical score that was added to the score derived from the first two components to arrive at the total unweighted experience and performance score. This specific evaluation methodology was not disclosed in the solicitation.

Anthem was incorporated solely to bid on this procurement. It had no prior military health care experience. Anthem was evaluated with [deleted] ratings for three functional areas--[deleted]--based on the experience of subcontractors which did not have military health care experience in those areas. (Anthem did not receive a bonus in those areas under the second, government-developed information component because it lacked such experience.)

Humana and Foundation argue that it was inconsistent with the neutral rating provision of the solicitation to evaluate Anthem as [deleted] with respect to functional areas in which neither Anthem nor its subcontractors possessed military health care experience. We agree.

Although during the protest it became clear that the agency did not believe that offerors without military health care experience should be limited to only a neutral rating, the RFP provided otherwise. It stated that offerors without CHAMPUS/MCS/CRI/MHSS experience in the eight functional areas would receive a neutral rating. Consequently, proposals submitted by offerors lacking relevant past

performance history could neither be penalized nor credited with regard to the past performance factor. C.W. Over and Sons, Inc., B-274365, Dec. 6, 1996, 96-2 CPD ¶ 223 at 6-7; see generally Excalibur Sys., Inc., B-272017, July 12, 1996, 96-2 CPD ¶ 13 at 3-4. It was inconsistent with the concept of a neutral rating for Anthem to be able to earn [deleted], which translated into a [deleted] increase in score over a satisfactory rating, for functional areas in which neither it nor its subcontractors possessed relevant experience as defined by the solicitation.

TSO argues that denial of the bonus available to offerors with successful military health care experience where an offeror lacked any military health care experience in one of the functional areas was the equivalent of awarding a neutral rating in that area. Further, TSO points out that the solicitation contemplated that offerors would furnish information concerning other than military health care experience, in addition to information concerning their military health care experience. The agency argues that this request for information concerning other experience indicates that such other experience was considered relevant, and since such other experience was relevant, it was not reasonable for offerors to assume that an offeror with only such other experience, that is, without military health care experience, could not receive other than a neutral rating. TSO's arguments, however, ignore clear language of the solicitation which required that "[o]fferors who do not have any CHAMPUS/MCS/CRI/MHSS experience in the following eight (8) functional areas will receive a neutral rating." The award of [deleted] even when accompanied by the denial of a military health care experience bonus, was not the equivalent of the required neutral rating.⁴

As a result of receiving the three unwarranted [deleted] ratings in the experience and performance area, Anthem's weighted technical score was increased by [deleted]. In addition, the SSA, in his source selection decision, placed considerable emphasis on Anthem's [deleted] scores in concluding that there was a "relative equality of the technical proposals," such that the lower evaluated cost of Anthem's proposal justified award to that firm. Specifically, the SSA noted that in evaluating the relative technical merit of proposals, "special focus was paid to . . . [deleted]. With respect to the latter element, he noted that "Anthem scored [deleted] in the Experience and Performance areas of [deleted] and [deleted]. This favorable emphasis on Anthem's unwarranted [deleted] ratings was inconsistent with the solicitation's neutral rating requirement.

⁴Further, TSO's argument with respect to the request for information concerning other, non-military health care experience ignores at least one possible use for such information. Specifically, we note that the solicitation did not preclude the use of other than military health care experience as a factor in assigning a positive or negative rating for functional areas in which an offeror possessed the prerequisite military health care experience.

COST EVALUATION

Humana and Foundation assert that TSO's cost evaluation was unreasonable because it was based on a flawed, methodology which did not reasonably determine the most probable cost to the government of an offeror's approach, and which in fact resulted in a number of arbitrary evaluated cost elements.

Actual health care costs will be a function of a large number of variables, such as the number of MHSS beneficiaries (and, in particular, the participation of beneficiaries in the Prime and Extra options), inflation, and the contractor's ability to manage health care utilization. The RFP explained that offerors were to propose "trend factors," with appropriate justification, for many of these variables. (There were more than 3,000 evaluated trend factors among the three proposals.) Each trend factor was to represent the offeror's prediction as to what it would achieve for a given variable in relation to performance in the data collection period (DCP), that is, the projection of health care costs for the 12 months immediately preceding the start of health care under the awarded contract (the DCP data was set forth in the solicitation). A trend factor of .95 indicated that the offeror was estimating that it would achieve savings of 5 percent for that variable relative to the DCP, while a trend factor of 1.05 indicated that not only was the offeror estimating no savings, but indeed it was estimating that costs would be 5 percent higher than the DCP for that variable. The RFP advised offerors that the agency would substitute its independent government cost estimate (IGCE) factors for those proposed by offerors in the case of trend factors over which the contractor was unlikely to have control (such as inflation). With respect to the trend factors under the contractor's control (including utilization management, the percentage of beneficiaries participating in the Prime and Extra options (penetration rates), discounts offered by health care providers, coordination of benefits with other insurance, claims management, and health care cost savings resulting from resource sharing expenditures that facilitate utilization of excess MTF capacity), the RFP provided for the agency to evaluate the realism of each proposed factor based on the agency's judgment about "the likely trends under the offeror's approach" and make appropriate adjustments.

TSO's Region 2/5 Price Evaluation Methodology memorandum provided for evaluation by the business proposal evaluation team (BPET) of [deleted]. In cases where an offeror proposed a trend factor that assumed [deleted], the memo provided for assignment of [deleted].

Although a significant number of evaluated ratings of the trend factors in the initial proposals were [deleted], nearly all of the evaluated ratings of the trend factors in

the BAFOs were [deleted]. For example, with respect to [deleted],⁵ the BPET evaluated [deleted]; and it evaluated [deleted].

The protesters generally argue that in focusing the evaluation on [deleted] the proposed trend factors and [deleted] would achieve the proposed factors, the agency's cost realism evaluation failed to reasonably calculate the most probable cost to the government. Further, pointing out that nearly all of the evaluated BAFO trend factors were [deleted] that lacked the flexibility to arrive at a reasonable estimate of the most probable cost and, indeed, [deleted].

TSO argues that its evaluation methodology essentially was the same as that which was the subject of our decision in QualMed, Inc., B-257184.2, Jan. 27, 1995, 95-1 CPD ¶ 94 at 6-10, in which we denied a protest against the agency's cost evaluation. In addition, TSO defends the reasonableness of the challenged evaluation judgments as to specific trend factors.

When agencies evaluate proposals for award of contracts with cost reimbursement aspects, the agency must perform a cost realism analysis to determine the extent to which an offeror's proposed costs represent the likely true cost to the government. CACI, Inc.--Fed., 64 Comp. Gen. 71, 75 (1984), 84-2 CPD ¶ 542 at 5-6; Blue Cross Blue Shield of Texas, Inc., B-261316.4, Nov. 9, 1995, 95-2 CPD ¶ 248 at 10-11. Because the contracting agency is in the best position to make this cost realism determination, our review of an agency's exercise of judgment in this area is limited to determining whether the determination was reasonable. General Research Corp., 70 Comp. Gen. 279, 282 (1991), 91-1 CPD ¶ 183 at 5, aff'd, American Management Sys., Inc.; Department of the Army--Recon., 70 Comp. Gen. 510 (1991), 91-1 CPD ¶ 492; Grey Advertising, Inc., 55 Comp. Gen. 1111, 1126 (1976), 76-1 CPD ¶ 325 at 18.

Our Office held in QualMed that in view of the very large number of health care cost trend factors to be evaluated, TSO was not required to evaluate proposed trend factors using a continuous scale approach in which the agency calculated a precise figure to replace each of the trend factors found to be inadequately supported. QualMed, Inc., supra, 95-1 CPD ¶ 94 at 7-8. As we explained in our decision:

In our view, the agency's approach was similar to a rating system in which a feature in a proposal must be assigned a score of 1, 2, 3, 4, or 5, with no possibility of fractional scores in between. While such a

⁵"Pure" in the context of utilization management is intended to distinguish utilization management trend factors in which the effects on utilization of the Point-of-Service option available to Prime enrollees have not been taken into account. Thus, the overall utilization management trend factor is developed as the product of two factors: (1) a pure utilization management factor and (2) a Point-of-Service factor.

system is not perfectly precise, it is not unreasonable. Developing precise numbers here would have been an immense undertaking of questionable value. There were hundreds of specific trend factors to be evaluated in each proposal: for each controllable trend factor, such as utilization management, there were permutations for a substantial number of variables (for example, option year 1 vs. other years, active duty dependent vs. non-active duty dependent, inpatient vs. outpatient, medical/surgical vs. mental health). Moreover, since the figures selected here were predictions of future events that are by their nature uncertain (for example, the number of active duty dependents who would be admitted to hospitals for surgical procedures in the fifth year of the contract), there would be no reasoned basis to impose further precision.

Id.

We found no basis in QualMed to object to the use in these circumstances of an evaluation methodology that was not perfectly precise. The record here, however, indicates that the evaluation methodology as applied by TSO can be so imprecise as to fail to ensure a reasonable cost realism analysis in some circumstances.

In this case, some evaluated trend factors appear to have been the result of an arbitrary application of the evaluation methodology. For example, [deleted], even though [deleted]. Testimony by the agency's lead cost evaluator suggested that there should not be a significant difference between the two, and [deleted] (rather than vice versa, as the agency concluded). The resulting discrepancy appears to be the result of the application of [deleted]. For example, for [deleted]⁶ Anthem proposed [deleted] was evaluated at [deleted]. In contrast, [deleted] Anthem proposed [deleted] and was evaluated at [deleted]. According to the leading cost evaluator, the "potential anomaly" in this regard:

is completely caused by the fact that [deleted]. They assumed [deleted] agree in general . . . that [deleted].

Tr. at 250.

⁶Region 2, active duty dependents, category of care 1 (inpatient medical/surgical), option year 5.

Likewise, Anthem was evaluated as [deleted] testimony by the agency's lead cost evaluator suggested that any difference should not be significant, [deleted].⁷ The resulting discrepancy again appears to be primarily the result of the application of [deleted]. Although the agency's leading cost evaluator testified that [deleted] he agreed that the differences "typically are fairly small." Tr. at 254. Moreover, [deleted].⁸

The record indicates that the possible prejudice to the protesters from the discrepancies with respect to the evaluation of Anthem's [deleted] trend factors amounted at most to an approximately \$15 million difference in the evaluated cost. That is, if one assumes that Anthem's evaluated trend factor should have been the trend factor that assumes the lowest evaluated savings when comparing comparable categories, then Anthem's evaluated cost would have been approximately \$15 million higher.⁹

Although the impact here of these discrepancies therefore was limited, similar discrepancies resulting from the relative inflexibility of TSO's evaluation approach may be more material in future procurements in the TRICARE program. In this regard, testimony from agency witnesses at the hearing indicated that additional flexibility which might avoid or mitigate discrepancies could be incorporated into

⁷For example, for [deleted], Anthem proposed a [deleted] was evaluated at the [deleted]. In contrast, for the corresponding [deleted] where the IGCE also was [deleted], Anthem proposed a [deleted].

⁸As another example, for [deleted] where the IGCE was [deleted], Anthem proposed [deleted], but was evaluated [deleted]. In contrast, [deleted] where the IGCE was [deleted], Anthem proposed a trend factor of [deleted]. Although in this instance, Anthem assumed [deleted] and was evaluated as likely to achieve [deleted] Anthem had [deleted] would be similar, which was consistent with the general expectation in this regard--yet TSO's [deleted] created a significant difference in result. We note that the [deleted] discrepancy arose [deleted] the agency, after having accepted [deleted], determined that the proposed [deleted] for [deleted] was excessive and instead evaluated [deleted]. The resulting unsupported and illogical increase in the evaluated trend factor from [deleted] in [deleted] to [deleted] in [deleted] appears to be the result of a mechanical application of the evaluation methodology.

⁹The agency has calculated that, if one assumes that Anthem's evaluated trend factor should have been the trend factor that assumes the lowest evaluated savings when comparing comparable categories, then Anthem's evaluated cost would have been approximately \$14.88 million higher. Humana has challenged this calculation, arguing that it ignores several categories of health care, but the protester has not submitted its own calculation as to the effect on the evaluated cost of the identified discrepancies.

the methodology without undue burden. For example, as noted above, TSO's Region 2/5 Price Evaluation Methodology memorandum provided that the evaluated trend factor would be determined [deleted] where the evaluators were [deleted] and where the evaluators [deleted]. Although the leading cost evaluator stated that [deleted] "is rarely used," Tr. at 204, the record indicates that [deleted] was potentially available for use in a broad range of circumstances. As noted by agency cost evaluators in their testimony at the hearing, [deleted] where [deleted] and "we don't think that the application of the [deleted] is rational," then there is "the option of using judgment to go outside of that framework."¹⁰ Tr. at 202, 352, 401-402, 504, 899. According to the leading cost evaluator, when used, [deleted] "can have a significant effect." Tr. at 204.

In addition, testimony from agency witnesses indicates the existence of alternate cost evaluation methodologies that would produce more accurate estimates for individual trend factors, without imposing an undue burden on the agency, than is possible with the agency's current methodology using [deleted]. The agency's leading cost evaluator testified that "there is probably more uncertainty in the use of [deleted]. Tr. at 416. He stated that in response to instances in prior procurements where there were [deleted] the agency considered using a methodology [deleted] but did not adopt that method because "I think we felt that it was not sufficiently a common occurrence." Tr. at 425-426. However, he agreed that there were examples of [deleted] this procurement [deleted]. Tr. at 432. Further, as the following question and answer indicates, he agreed that [deleted] would produce a more accurate estimate in such circumstances of a [deleted]:

Question: [deleted].

Answer: [deleted].

The answer to your question is yes

Tr. at 431-432.

Likewise, an agency cost evaluator for [deleted] testified that [deleted] "would capture the additional flexibility that might be desirable in the methodology with that level of detail" and "probably would" result in a more accurate evaluated trend factor. Tr. at 794-798. [deleted] (Tr. at 794-795.) Although [deleted] testified that he was not convinced that the accuracy of the overall, bottom-line evaluated cost would be significantly increased [deleted], he conceded that "there might be" an increase in accuracy. Tr. At 797-798. Further, when asked [deleted] "I don't think that would take significantly more time to do." Tr. at 433.

¹⁰[deleted]

In summary, our review of the record indicates that the cost evaluation methodology as applied by TSO contained weaknesses, and the resulting cost evaluation contained elements that lacked a reasonable basis, such that Anthem's evaluated costs may have been understated.

PREJUDICE

Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F. 3d 1577, 1581 (Fed. Cir. 1996).

Although TSO and Anthem argue that there was no reasonable possibility of prejudice here, our review of the record convinces us that when considered in the totality, there was a reasonable possibility of prejudice to the protesters as a result of the identified deficiencies in the procurement. Again, TSO failed to disclose the relative importance of the significant evaluation considerations.¹¹ It also based the source selection decision partly on unwarranted [deleted] ratings in functional experience and performance areas where the solicitation required a neutral rating because Anthem and its relevant subcontractors lacked military health care experience as defined by the solicitation. In addition, TSO applied a cost evaluation methodology which caused some cost evaluation judgments to be unreasonable.

The protesters assert, and offered testimony to the effect, that they would have allocated their proposal preparation resources differently and would have restructured their proposals, if they had been aware of the actual relative importance of the significant evaluation considerations. Tr. at 12-19, 23-39, 92-114, 123-125, 152-161. We obviously have no basis for determining the magnitude of any proposal changes, but given that the evaluation scheme is the starting point for the

¹¹Anthem has calculated the change in the technical evaluation scores if the tasks within a major technical factor had been given equal weights. (Anthem's calculation, when combined with the reduction in Anthem's technical score to account for the unwarranted [deleted] ratings in functional experience and performance areas and the potential increase in its evaluated cost to account for the cost discrepancies discussed above, results in the following approximate best buy scores: Anthem--[deleted]; Humana--[deleted]; and Foundation--[deleted].) This approach, however, does not address the fundamental consideration here with respect to prejudice, that is, what the protesters would have done if they had been aware of the actual relative importance of the significant evaluation considerations and what impact any consequent changes in the protesters' approaches would have had on the protesters' relative competitive positions.

development of proposals, we think it is reasonable to accept that offerors would in fact have formulated their proposals differently in response to reordered evaluation criteria. Further, we previously have recognized that where an agency fails to advise offerors of the evaluation factors and the relative importance of those factors, there is no assurance that in selecting an offer for award it is obtaining what is most advantageous to the government, all factors considered. Richard S. Cohen, *supra*, at 6.

We recognize that TSO, in responding to a related protest by Foundation against the award of a contract to provide health care in Managed Care Support Region 1, and in particular against the agency's alleged failure to disclose the relative importance of the significant evaluation considerations in that procurement, has questioned whether some of the enhancements Foundation has indicated it would have offered in Region 1 would in fact have resulted in a significant improvement in its competitive position. Because those objections are relevant here as well, we have considered them in reaching our decision in this case.¹² We conclude that, while the agency has raised legitimate questions about some of the possible changes in Foundation's proposal, the record indicates a reasonable possibility that Foundation could have achieved an overall material improvement in its competitive position had it been aware of the actual relative importance of the significant evaluation considerations. For example, Foundation asserts that had it been aware that Task I/Health Care Providers was nearly twice as important as Task III/Utilization and Quality Management and, indeed, that it was worth 20 percent of the entire technical evaluation, it would have [deleted]. Although the record indicates that this enhancement would carry a "very substantial price tag," Tr. at 112, since technical considerations were more important than cost considerations in the evaluation scheme (60 versus 40 percent), and since Task I/Health Care Providers was significantly more important than any other technical consideration, an increased emphasis on this area could have resulted in an improvement in Foundation's competitive position. Likewise, there appears to be a reasonable possibility that, as claimed by Foundation, it could have improved its rating under Task IV/Enrollment, Marketing and Support Services had it been aware of the actual relative importance of that task and consequently offered [deleted]. We conclude that Foundation could have reshaped its proposal to take advantage of the weighting scheme actually used by the agency.

As for Anthem's unwarranted [deleted] experience/performance ratings, they were cited by the SSA as a significant factor in the source selection decision. In addition, the protesters assert, and offered testimony to the effect, that had they been aware of the agency's actual interpretation of the requirement for a neutral rating for offerors without military health care experience, they would have altered their

¹²We will discuss the agency's arguments at greater length in our subsequent decision with respect to Foundation's Region 1 protest.

proposals to take into account the loss of a perceived advantage (on account of their military health care experience), including reducing profit level or price. Tr. at 26-29, 36-39, 122-123, 137-141. Further, as noted above, it appears that Anthem's evaluated cost advantage was based in part on cost evaluation judgments which were unreasonable. In these circumstances, where there were significant deficiencies in a number of areas, we conclude that the record indicates that but for these significant deficiencies, the protesters would have had a substantial chance of receiving the award.

We recommend that if, as represented during the protest, the agency believes that a requirement for a neutral rating for offerors without military health care experience does not reflect its actual needs, it should amend the solicitation to reflect any changes in this regard. In addition, it should amend the solicitation to advise offerors of the significant evaluation factors and subfactors and their relative importance, reopen negotiations with offerors, and request a new round of BAFOs. If, upon reevaluation, the agency determines that Anthem's proposal does not represent the best value, we recommend that the agency terminate Anthem's contract for convenience. We also recommend that Humana and Foundation be reimbursed the costs of filing and pursuing their protests, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (1997). Humana's and Foundation's certified claim for such costs, detailing the time and costs incurred, should be submitted within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protests are sustained.

Comptroller General
of the United States