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## Decision

**Matter of:** Cortland Memorial Hospital

**File:** B-286890

**Date:** March 5, 2001

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GAO, participated in the preparation of the decision.

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### DIGEST

Protest of agency's source selection is sustained where contemporaneous documentation does not establish that the selection was consistent with the solicitation's evaluation criteria.

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### DECISION

Cortland Memorial Hospital protests the award of a contract to Cayuga Medical Center under request for proposals (RFP) No. 670-05-00, issued by the Department of Veterans Affairs (VA) for a community-based outpatient clinic (CBOC) to serve VA beneficiaries. Cortland essentially contends that the agency's award decision was based on an unreasonable evaluation of proposals.

We sustain the protest.

The RFP, issued as a commercial-item procurement, contemplated the award of a fixed-price indefinite-delivery/indefinite-quantity contract for a base year with two 1-year options. RFP at 2. The contractor is required to provide primary healthcare services in a hospital or clinic environment to eligible VA beneficiaries. RFP at 12. Under the heading, "Specific Requirements For the Contractor's Facility," the RFP stated:

The Contractor's facility to provide services shall be physically located in the Counties of Cortland or Tompkins in New York State. [The VA] will require final approval of any site proposed by the Contractor.

**Preference will be given to facilities that provide services to patients in a "self-contained" environment (one that devotes**

**space and services exclusively for [VA] patients). Preference will be given to facilities that provide services to [VA] patients in one location under this contract.**

RFP at 12 (emphasis added).

The solicitation provided for award to the offeror whose proposal, conforming to the solicitation, would be most advantageous to the government, price and other factors considered, and advised that all evaluation factors other than price, when combined, were slightly more important than price. RFP at 34. The RFP listed six evaluation factors in order of importance, which the agency quantified on an internal [DELETED] scoring scale consistent with the RFP, as follows: (1) price [DELETED], (2) management and experience [DELETED], (3) quality [DELETED], (4) past performance [DELETED], (5) geographic location [DELETED], and (6) small disadvantaged business (SDB) participation program [DELETED]. Id.; Agency Report (AR) exh. Z, Proposal Evaluation Plan.

As is relevant here, under the geographic location factor, the RFP provided a number of “suggestions” for offerors to consider when preparing their technical proposals. For instance, offerors could discuss the proposed physical resources, including number/type of patient care areas; whether the intended facilities/resources would be devoted exclusively for VA patients; the location of the proposed facility, and its access to public transportation. Offerors could also provide a narrative to address how the facility’s geographic location can best serve the patients anticipated to use the program. RFP at 32. The VA states that the above-quoted RFP preferences were evaluated under this evaluation factor.

The VA received timely proposals from three offerors, including Cortland and Cayuga, by the August 15, 2000 closing date. Cortland proposed to perform the contract requirements in a single facility located in Tompkins County, for the exclusive use of VA patients, at a proposed total price of [DELETED]. Cayuga proposed to perform the contract services at two facilities—one located in Tompkins County, the other in Cortland County, at a proposed total price of [DELETED]. Neither facility offered by Cayuga was “self-contained,” that is, for the exclusive use of VA patients. The agency’s six-member technical evaluation panel (TEP) individually evaluated each proposal under three of the non-price evaluation factors (management and experience, quality, and geographic location) and prepared narratives of the proposal strengths and weaknesses, which supported the numerical scores. The evaluators then met as a group, discussed the proposals, assigned consensus scores, and prepared a report documenting that evaluation. In that report, the evaluators noted:

We discussed the management overview finding [that Offeror A] and [Cayuga] are not offering a dedicated staff clinic model for the veterans clinic. . . . **We discussed [Cortland] [c]liting the strengths of a**

**dedicated area for the veterans along with dedicated medical staff, offering optimal medical care.** We discussed [Cayuga] offering two points of care and no dedicated staff for the veterans, and [c]ited this could be problematic.

AR exh. G, Evaluation Panel Chairperson's Report, at 1 (emphasis added).

Under these three factors, the TEP assigned overall technical scores of [DELETED] to Cortland's proposal, and [DELETED] to Cayuga's.<sup>1</sup> The contracting officer, who also served as an evaluator and as the source selection authority, assigned a neutral rating under the past performance and SDB participation factors to the protester's and awardee's proposals. AR exh. K, Recommendation for Award & Negotiation Memorandum, Oct. 11, 2000, at 1. Based upon the evaluation of initial proposals, the contracting officer established a competitive range consisting of two proposals, those of Cortland and Cayuga.

Thereafter, on September 18, the agency conducted site visits of Cortland's and Cayuga's proposed facilities. The TEP report, which summarized the findings of the site visits, indicates that at the Cortland facility, VA officials met with Cortland's management staff and discussed various aspects of its proposed clinic. Specifically, the size of the proposed clinic space was addressed, including the possibility of using additional space across the hall from the proposed clinic, as well other potential locations in Tompkins County. The evaluators concluded that these potential locations in Tompkins County were not as favorable as the Cortland site because of the distance from the prime geographic centers of Tompkins County. The evaluators further noted that Cortland "did not communicate or demonstrate quality issues or the delivery of primary care." AR exh. G, Evaluation Panel Chairperson's Report, at 2. These concerns were not discussed with Cortland during the September 18 site visit or in subsequent discussions with the firm; Cortland's overall technical score of [DELETED] remained the same after the visit to its proposed facility. Id.

While conducting the site visit to Cayuga's facilities, the evaluators noted that Cayuga "fully demonstrated how they managed both sites and offered continuity of care due to the cross training of [personnel] in common areas allowing them to appear as one." The evaluators also noted that there was discussion and agreement with Cayuga "on providing a dedicated space for the Veterans at both sites once full operations is in place," and although "both sites may have common patient traffic

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<sup>1</sup> As noted previously, the total available technical points for these non-price factors (management and experience, quality, and geographic location) were [DELETED]. For reasons not explained in the record, the evaluators' technical point scores were not converted to the pre-determined numeric scale. Rather, the six evaluators' scores were totaled, so that the maximum possible point total for these three factors was [DELETED].

with other operations, this was not felt to be a detriment.” Based on the site visits, the TEP increased Cayuga’s overall technical score from [DELETED] in the areas of management and experience, quality, and geographic location. The rationale for the increased consensus score was not explained in the TEP’s report nor did the evaluators indicate how these additional points were distributed among the evaluation factors. AR exh. G, Evaluation Panel Chairperson’s Report, at 3. During an on-the-record telephone conference that our Office conducted with the parties, the contracting officer stated that he believed the TEP raised Cayuga’s total technical score after the site visit because Cayuga had demonstrated that the firm could provide quality patient care although the proposed clinics were not “self contained” facilities.

The agency conducted written and oral discussions with both offerors which focused on technical and price concerns. In conducting written discussions with Cortland, the only aspect of its technical proposal about which the agency identified any concerns was that its “proposed space seems to be smaller than would be optimum and we would like you to consider including the space available across the hallway that is presently unoccupied.” AR exh. H, Letter from Contracting Officer to Cortland (Sept. 20, 2000).

In the discussion letter to Cayuga, the VA noted:

We would like to consider your proposal for dual sites with a staggered implementation schedule. We would propose the Cortland site to begin seeing veterans in January 2001 and the [Tompkins] site to begin seeing veterans in July 2001. **Our preference for dedicated space would not need to be implemented initially**, and, we think, can be addressed during the first year by proper scheduling of the integrated activities between the VA Clinic and your other existing operations. If we are both as successful with marketing efforts as we hope to be, **it would certainly be the expectation that in the second or third year of the contract that one or both sites would warrant full-time use for VA Clinics** which would necessitate the shifting of your current operations to space separate from the VA Clinic.

AR exh. H, Letter from Contracting Officer to Cayuga (Sept. 20, 2000) (emphasis added).

Following discussions, the agency requested and received final revised proposals from both firms by September 29. In response to the agency’s concern, Cortland offered 1,000 square feet of additional space at no additional cost, so that its total price remained the same at [DELETED]. AR exh. J, Cortland’s Final Revised Proposal, Sept. 29, 2000. Cayuga reduced its total price from [DELETED] to \$687,852 in its final revised proposal. The TEP made no adjustments to the technical scores of any of the offerors and, from the record before us, it appears that the final scores

for Cortland and Cayuga after discussions and submission of responses remained the same as in the TEP report that was prepared after the September 18 site visits. Although the agency produced no documentation reflecting the TEP's evaluation or review of the offerors' final revised proposals, in post-protest submissions, the agency asserts that, while the TEP did not formally re-score final revised proposal submissions, the contracting officer did consider the changes made in the final proposal revisions.<sup>2</sup>

In a memorandum documenting the negotiations and award decision, the contracting officer based his award determination almost entirely on the findings of the agency evaluators after site visits were conducted. According to the contracting officer:

[I]t was the unanimous recommendation that award be made to [Cayuga] and to open two sites with a six month interval between the Cortland and [Tompkins] locations. The demonstration of quality and ability to effectively manage both sites impressed the Technical Panel members. . . . It is my determination that [Cayuga's] proposal is the highest technically ranked proposal at the lowest cost and provides the best value to the Government. Service will be provided to veterans in both Counties central to the major population concentrations of each.

AR exh. K, Recommendation for Award & Negotiation Memorandum, Oct. 11, 2000, at 2. The contracting officer stated during the telephone conference that his basis for concluding that Cayuga's proposal was the highest technically ranked was the point scores. The contract was awarded to Cayuga on October 11. After receiving notice of the award, Cortland initially filed an agency-level protest on October 26 objecting to the selection of Cayuga as the most advantageous offeror. By letter dated November 13, the VA dismissed the agency-level protest and Cortland filed this protest with our Office on November 24.<sup>3</sup>

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<sup>2</sup> The impact of the change in the amount of Cortland's proposed space is unclear. During the telephone conference that our Office conducted, the contracting officer conceded that, while the additional space offered in Cortland's BAFO was responsive to the agency's discussions with the firm, no additional technical points were assigned under the geographic location factor. While it is not clear whether points had been deducted earlier for this concern, the matter was viewed as important enough to be raised in discussions. The record does not establish whether Cortland might have been able to reduce its final price, had it not felt called upon to increase the amount of offered space.

<sup>3</sup> The agency initially contends that Cortland's protest to our Office is untimely since the protest was filed on November 28, more than 10 days after Cortland received the VA's response to the agency-level protest. We find the protest timely. Notwithstanding the time/date stamp of November 28 which appears on the protest letter, our records show that Cortland's protest was received by our Office on

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Cortland essentially contends that its proposal should have been rated technically superior because its proposed CBOC satisfies the “self-contained” and single location preferences set forth in the RFP, and Cayuga’s does not. Protest at 2-5. In reviewing an agency’s selection decision, we will examine the supporting record to determine whether the decision was reasonable, consistent with the stated evaluation criteria, and adequately documented. Matrix Int’l Logistics, Inc., B-272388.2, Dec. 9, 1996, 97-2 CPD ¶ 89 at 5-6. An agency which fails to adequately document its selection decision bears the risk that our Office may be unable to determine whether the decision was proper. Biospherics Inc., B-278508.4 et al., Oct. 6, 1998, 98-2 CPD ¶ 96 at 4; DynCorp, B-245289, B-245289.2, Dec. 23, 1991, 91-2 CPD ¶ 575 at 7 n.13. Further, it is fundamental that the contracting agency must treat all offerors fairly; it must even-handedly evaluate offers against common requirements and evaluation criteria. Sci-Tec Gauging, Inc.; Sarasota Measurements & Controls, Inc., B-252406, B-252406.2, June 25, 1993, 93-1 CPD ¶ 494 at 7-8.

Based on our review of the protest record, including the telephone conference and post-protest explanations, it does not appear that the VA meaningfully considered the preferences set forth in the RFP. More broadly, we conclude that there is inadequate support in the record for the scoring that the contracting officer relied on in awarding to Cayuga. We therefore sustain the protest.

The first preference established in the RFP refers to a “self-contained” environment which the solicitation defines as one that devotes space and services exclusively for VA patients. It is undisputed that the facility proposed by Cortland satisfies this “self-contained” preference since the firm offered dedicated clinic space and services exclusively for VA patients, while Cayuga’s offered facilities were not “self-contained,” that is, they are not devoted exclusively to this contract. The second preference was for one clinic in either Cortland or Tompkins County. Again, it is undisputed that the protester met this preference by offering a single site facility (in Cortland County), while the awardee did not: it proposed two locations.

The agency maintains that the evaluators considered these preferences under the geographic location evaluation factor. Our review of the record raises some doubt about where, how, and (ultimately) whether the preferences were evaluated. While we recognize that the initial evaluation rating sheets show points being deducted from Cayuga’s scores for failure to satisfy the preferences, there is no evidence that points were credited to Cortland’s proposal for satisfying them. The evaluation record simply does not indicate how the technical points were distributed under this

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November 24, within 10 days after Cortland’s receipt of the agency’s dismissal of its agency-level protest.

evaluation factor.<sup>4</sup> In fact, contrary to the agency's position, the individual evaluation rating sheets show that at least two evaluators noted under the management and experience factor that Cortland met both preferences, but did not identify how these preferences were credited or scored. We also note that two other members of the TEP assigned the same number of technical points to both proposals under the geographic location factor. AR exh. Y, Individual Evaluation Score Sheets. This suggests that no credit may have been given to Cortland for meeting these preferences. In sum, the record does not evidence that any credit for meeting these preferences was given to Cortland under the geographic location factor.

Moreover, the changes to the scores in the final evaluation suggest that the agency decided not to give any evaluation weight to the preferences. This is especially significant, because the changes in scores increased Cayuga's initially lower score to a point where it was higher than Cortland's. As noted above, the evaluators eventually increased Cayuga's technical score on the three factors discussed here from [DELETED], while leaving Cortland's at [DELETED]. Although it is clear that, at the site visit, Cayuga addressed a number of concerns relating to quality, its two-site approach, and management, other than providing our Office with the overall increased scoring for Cayuga, the agency does not indicate how these points were distributed among the three evaluation factors. If a significant increase in points was given to Cayuga under the geographic location factor, this may have negated any credit given to Cortland initially, based on the preference language.

Our review of the record leads us to conclude that the contracting officer ultimately decided that the preferences were not as important as the solicitation indicated. While the agency's goal apparently remained to obtain a clinic dedicated to the exclusive use of VA patients, in making his award determination the contracting officer was apparently satisfied with the fact that Cayuga "was receptive" to later making both clinics fully "self-contained" during contract performance. In our view, this indicates that the preference was not considered important; otherwise, the evaluators could not reasonably have considered this non-binding language as equivalent to Cortland's unequivocal proposal to satisfy the "self-contained" preference.

With regard to the one-site preference, it appears that the agency simply changed its mind. Far from preferring one site, the agency apparently ultimately decided that it preferred two sites. Again it appears, as the contracting officer stated during the telephone conference, that Cayuga's proposed dual locations were considered a significant advantage. It was clearly improper for the agency to treat two sites as preferable, where the RFP stated a preference for a single site.

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<sup>4</sup> We note that the contracting officer acknowledged, during the telephone conference, that the evaluators were not given any instructions concerning the scoring of these preferences.

The agency argues that any error in this area was immaterial, since the preferences represented only a fraction of the [DELETED], when the six evaluators' scores were totaled) available for the geographic location points. The agency points out that the geographic location factor included a number of evaluation areas, so that the preferences would account for only part of the [DELETED].

It is true that 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). We believe that Cortland has met this standard. We recognize that Cayuga proposed a significantly lower price than Cortland, and that the agency could legitimately have decided that Cortland's proposal (which met the preferences) was not worth its higher price. Nonetheless, if the agency had advised both offerors that it was waiving the preferences (particularly the requirement for a "self-contained" location), Cortland might have been able to propose a lower-priced solution. Accordingly, we conclude that the agency's failure to apply the solicitation's preferences prejudiced the protester.

The protest is sustained.

We recommend that the agency determine whether the stated preferences reflect the agency's actual needs; if the preferences do not, the agency should amend the RFP, obtain and evaluate new proposals, and make award in accordance with its actual needs. Alternatively, if the stated preferences do reflect the agency's needs, we recommend that the agency reevaluate the proposals giving appropriate consideration to the preferences, reopen discussions if necessary, request and evaluate final revised proposals, document its evaluation, and make a new award decision. If Cayuga is not the successful offeror, its contract should be terminated and a new award made.

We further recommend that the agency reimburse Cortland the reasonable costs of filing and pursuing its protest, including reasonable attorney's fees. 4 C.F.R. § 21.8(d)(1) (2000). Cortland's certified claim for costs, detailing the time spent and the costs incurred, must be submitted to the agency within 60 days of receiving this decision 4 C.F.R. § 21.8(f)(1).<sup>5</sup>

Anthony H. Gamboa  
Acting General Counsel

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<sup>5</sup> Because we recommend that the agency reevaluate proposals, we need not address the other issues raised by Cortland.