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**Comptroller General  
of the United States**

**United States Government Accountability Office  
Washington, DC 20548**

# Decision

**Matter of:** T-C Transcription, Inc.

**File:** B-401470.2

**Date:** February 16, 2010

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Susan L. Kopec for the protester.

Harold W. Askins, III, Esq., Department of Veterans Affairs, for the agency.

Paul N. Wengert, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## **DIGEST**

Protest challenging the award of contracts for transcription services is denied where the record shows that, after GAO sustained an earlier protest, the agency reevaluated the protester's proposal and made a new source selection decision, and where the record shows that the reevaluation was reasonable and consistent with the solicitation.

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## **DECISION**

T-C Transcription, Inc. (T-C), of Longwood, Florida, a small business, protests the award of a contract to eTrans Plus, of Nashville, Tennessee, by the Department of Veterans Affairs (VA) under request for proposals (RFP) No. VA-247-09-RP-0103 for medical transcription services at multiple VA medical facilities. Our Office sustained T-C's earlier protest challenging this procurement after concluding that T-C's proposal had been misevaluated. As a result, we recommended that the VA prepare a new source selection decision for the two locations where the misevaluation prejudiced T-C's chances for award. After the reevaluation was complete, the VA again made award to eTrans for those two locations. T-C now argues that the VA failed to conduct a reevaluation consistent with the recommendation in our earlier decision, and failed to make a reasonable source selection decision.

We deny the protest.

## **BACKGROUND**

The VA issued the RFP as a solicitation for commercial services on February 10, 2009, seeking proposals for medical transcription services for VA facilities at eight locations in Georgia, Alabama, and South Carolina: Atlanta,

Augusta, Birmingham, Charleston, Columbia, Dublin, Tuscaloosa, and the Central Alabama Veterans Healthcare System (CAVHCS).<sup>1</sup> RFP at 1, 9, 19. T-C is the incumbent transcription contractor at four of the eight locations.

The RFP was set aside for small businesses. While the RFP contemplated the award of several indefinite-delivery/indefinite-quantity (ID/IQ) contracts, it explained that the VA would make only one award per location, to the firm offering the best value for that location. RFP at 1, 59.<sup>2</sup>

In T-C's previous protest, the record showed that the VA had misevaluated T-C's proposal in several respects under the technical factor, and that the misevaluation prejudiced T-C's chances for award at two of the locations. Our Office therefore sustained the protest and recommended that the VA conduct a new technical evaluation and then prepare a new source selection decision for those two locations.

In implementing our Office's recommendation, the VA conducted a new technical evaluation of T-C's proposal. On September 29, the evaluators prepared detailed evaluation notes, which were used to prepare a consensus evaluation. The evaluators identified several strengths, but also several weaknesses and areas of uncertainty in T-C's proposal. AR, Tab 11, Evaluation Worksheets.

The evaluators used five adjectival ratings—excellent, good, satisfactory, marginal, and unsatisfactory—to reevaluate T-C under the technical factor and its four subfactors. Protest, exh. A, Reevaluation Debriefing Letter from VA to T-C, at 2. At the conclusion of the reevaluation, T-C received the same adjectival ratings as before, which are shown below alongside the ratings for eTrans (which was not reevaluated):

|                         | <b>T-C</b>       | <b>eTrans</b>       |
|-------------------------|------------------|---------------------|
| <b>Technical</b>        | <b>Good</b>      | <b>Satisfactory</b> |
| Subfactor 1             | Satisfactory     | Marginal            |
| Subfactor 2             | Good             | Good                |
| Subfactor 3             | Excellent        | Satisfactory        |
| Subfactor 4             | Satisfactory     | Good                |
| <b>Past Performance</b> | <b>Excellent</b> | <b>Excellent</b>    |

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<sup>1</sup> CAVHCS includes facilities situated in two nearby communities. RFP at 19.

<sup>2</sup> A more detailed description of the procurement is provided in the earlier decision. T-C Transcription, Inc., B-401470, Sept. 16, 2009, 2009 CPD ¶ 172. Although the earlier protest also dealt with awards to a third firm, that decision did not sustain T-C's protest of the locations awarded to that firm. Since that awardee is not implicated in this protest, this decision discusses only eTrans and T-C.

|                   |                     |                     |
|-------------------|---------------------|---------------------|
| <b>Management</b> | <b>Satisfactory</b> | <b>Satisfactory</b> |
| Subfactor 1       | Good                | Satisfactory        |
| Subfactor 2       | Marginal            | Satisfactory        |
| Subfactor 3       | Good                | Satisfactory        |
| <b>OVERALL</b>    | <b>GOOD</b>         | <b>GOOD</b>         |

AR, Tab 11, Reevaluation Worksheets, at 29 (Consensus Rating Table); Initial Protest AR, Tabs 14-16, Rating Tables, at 1.

The contracting officer (CO) then prepared a new source selection decision, which considered both eTrans (the original awardee) and T-C. The CO acknowledged that T-C was reevaluated and rated good under the technical factor, while eTrans was rated satisfactory. The CO also noted that the technical factor was the most important under the evaluation scheme in the RFP. The CO then observed that eTrans's costs for the Atlanta location were lower by \$183,227.55, and for the Charleston location were lower by \$111,638.75. The CO then made a cost-technical tradeoff and stated his judgment that T-C's technical advantages were not worth incurring T-C's higher prices for either location; he therefore selected eTrans for award at both locations. AR, Tab 11, Post/Price Negotiation Memorandum, Nov. 3, 2009, at 3.

After the VA informed T-C of this result, T-C filed this protest.

## DISCUSSION

In this protest, T-C argues that the VA failed to properly evaluate it under the technical factor. T-C argues that the evaluation was unreasonable because none of the adjectival ratings changed, that the overall rating of good was unreasonable, and that the VA made an unreasonable tradeoff decision.

In its agency report, the VA argues that the record supports each of the technical ratings assigned with specific consideration of both the strengths and weaknesses of T-C's technical proposal. The agency argues that unlike the initial evaluation record, the reevaluation shows that the CO clearly acknowledged that T-C was rated higher than eTrans under some of the technical subfactors, and made an informed decision to select eTrans over T-C at the Atlanta and Charleston locations based on the CO's judgment about the value of the technical and evaluated price differences between these two offerors.

In its comments T-C argues that its "performance success" as the incumbent, should have outweighed any faults in its proposal. Comments at 3, 6, 10.<sup>3</sup> To the extent that

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<sup>3</sup> To the extent that T-C also appears to argue that the RFP required offerors to explain how they would handle "view alerts" (error messages that occur when transcript information cannot be matched to VA files), even though that service is  
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the T-C's security systems were evaluated as inadequate, T-C argues that the VA should have informed T-C of those shortcomings during performance of its incumbent contract. Comments at 8-9.

In reviewing protests of alleged evaluations and source selections, our Office examines the record to determine whether the agency judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws. It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information that clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. In this regard, an offeror must affirmatively demonstrate the merits of its proposal, which is at risk of rejection if the offeror fails to do so. Mike Kesler Enters., B-401633, Oct. 23, 2009, 2009 CPD ¶ 205 at 2-3.

In our view, the VA's reevaluation is reasonable. Rather than demonstrating that its proposal provided the information that the VA found lacking, T-C argues that the VA's knowledge of T-C's performance should have been considered as a substitute for a well-written proposal. We disagree. The reevaluation shows that the VA evaluators had a reasonable basis for downgrading T-C, based on flaws in its proposal. Even assuming the VA would agree with T-C's description of its performance as an incumbent, an agency is not required to accept claimed experience as a substitute for providing information about the technical approach in the proposal. International Roofing & Bldg. Constr., Inc., B-292833, Nov. 17, 2003, 2003 CPD ¶ 212 at 3. Additionally, to the extent that T-C argues that it should have been warned of problems with systems security during performance of the incumbent contract, we will not consider contract administration issues. 4 C.F.R. § 21.5(a) (2009).

Next, T-C argues in its protest that the VA improperly treated the Atlanta and Charleston locations as a unit in making the new award decision, contrary to the terms of the RFP and our Office's recommendation. Protest at 3. In the agency report, the VA pointed out that the contemporaneous record showed that the CO had considered T-C for award at each location, including specifying the price difference for each. AR at 4-5. In its comments, T-C failed to meaningfully challenge the VA's response. Accordingly, we deny this ground of protest.

Finally, with respect to the reasonableness of the source selection decision, it is well-settled that an agency properly may select a lower-rated, lower-priced proposal, even where price is a less important evaluation factor than technical merit, where it reasonably concludes that the price premium involved in selecting the higher-rated

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not required at all VA locations, see Comments at 4-5, the objection is not timely. A timely protest of the terms of an RFP must be filed before the closing time for submission of proposals. 4 C.F.R. § 21.1(a)(1).

proposal is not justified in light of the acceptable level of technical competence available at a lower price. The extent of such tradeoffs is governed only by the test of rationality and consistency with the evaluation criteria. Thus a protester's disagreement with the agency's determinations as to the relative merits of competing proposals, or disagreement with its judgment as to which proposal offers the best value to the agency, do not establish that the evaluation or source selection was unreasonable. General Dynamics--Ordnance & Tactical Sys., B-401658, B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 8.

In our view, the source selection decision prepared after the reevaluation adequately demonstrates that the CO understood the reasons for T-C's higher technical evaluation rating, and that he determined that those advantages did not justify paying the higher evaluated price of T-C's proposal. The record supports the reasonableness of the CO's judgment.

The protest is denied.

Lynn H. Gibson  
Acting General Counsel