



**Comptroller General  
of the United States**

Washington, D.C. 20548

# Decision

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**Matter of:** University of Kansas Medical Center

**File:** B-278400

**Date:** January 26, 1998

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## DIGEST

1. Determination to award to offeror submitting higher-priced, technically superior proposal under a solicitation which stated that proposed price was more important than technical evaluation factors is unobjectionable where the agency reasonably determined that the awardee's substantial technical advantage warranted payment of the price premium associated with its proposal.
  2. Agency conducted meaningful discussions where it led protester into area of its proposal that required amplification and improvement.
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## DECISION

The University of Kansas Medical Center (KUMC) protests the award of a contract to Health MidWest under request for proposals (RFP) No. 589-07-97 issued by the Department of Veterans Affairs (VA) for radiation therapy, consultation, and treatment of veterans. The protester argues that the agency improperly evaluated technical proposals, failed to conduct meaningful discussions, and made an improper award based on a defective cost/technical trade-off.

We deny the protest.

The RFP, issued on February 20, 1997, contemplated the award of a fixed-price contract for a base year, with two 1-year options. The solicitation, which required that contractors be licensed by the state in which they operate and be accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO),<sup>1</sup>

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<sup>1</sup>The JCAHO is an independent organization that monitors and rates the performance of hospital systems.

provided that award would be made to the responsible offeror whose offer conforming to the solicitation was most advantageous to the government, price and other factors considered. The RFP, as amended, advised offerors that technical factors when combined were significantly less important than price. Proposals were to be evaluated under the following factors, listed in descending order of importance: price; quality; availability; and management and experience. Under the quality factor, offerors were required to "[p]rovide results of the latest JCAHO including date and recommendations." Offerors were also required to provide a synopsis of the offeror's overall approach to quality control/quality improvement. Under management and experience, offerors were asked to address accessibility of management and management's responsiveness to problems on the proposed contract.

Proposals were received from KUMC and Health MidWest by the closing date for receipt of initial proposals. KUMC's proposal included a July 31, 1996, letter from JCAHO granting accreditation to the hospital. The third paragraph of this letter stated the following:

The enclosed survey report also includes recommendations intended to assist you in continuing to achieve this goal. If this report and its recommendations are unclear in any way, please contact us for clarification.

KUMC did not include with its proposal the JCAHO report or any material which contained the recommendations referred to in the JCAHO letter.

The technical proposals were evaluated by the technical evaluation team, which issued a consensus report awarding KUMC's proposal a score of [deleted] out of [deleted] possible technical points. Health MidWest's proposal received a score of 36 technical points. The contracting officer scored the price proposals by assigning the total number of available points to KUMC, the lowest-priced offeror, and assigning points to Health MidWest based on the percentage by which its offer was higher than KUMC's.<sup>2</sup> Both offerors' proposals were included in the competitive

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<sup>2</sup>In its protest, KUMC argues that by using this formula the VA afforded KUMC's low price too little weight. We have recognized the propriety of the rather common formula employed here to calculate price points, consisting of a scoring system under which the lowest-priced proposal is assigned the maximum available price points and others are assigned points based on their closeness to the low offeror. Centex Constr. Co., Inc., B-238777, June 14, 1990, 90-1 CPD ¶ 566 at 4. While KUMC suggests alternate point formulas, this does not establish the inaccuracy or unfairness of the formula used by the agency, which has broad latitude to

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range and oral discussions were held with both offerors. The contracting officer states that, during discussions, she informed KUMC that she could not give an offeror specific instructions on how to strengthen its proposal, but that she specifically read KUMC the evaluation factors and subfactors for the areas of KUMC's proposal that were considered weak. With respect to the quality factor and its subfactors, the contracting officer states that she referred KUMC to the requirement to provide results of the latest JCAHO inspection along with recommendations and date, and advised that KUMC's overall approach to quality control/quality improvement and results of pertinent employees competency testing were weak. The contracting officer also states that she advised KUMC of weaknesses under KUMC's response to the availability factor, which included explanation of the offeror's billing process, synopsis of day-to-day business flow, description of physician resources including number/type of patient care areas, offices, parking facilities, and access to public transportation. Lastly, the contracting officer states that she communicated to KUMC its weaknesses in its response to management availability and responsiveness to problems on proposed contracts.

After discussions, best and final offers (BAFO) were requested from both offerors. With respect to the JCAHO requirement, in its BAFO, KUMC included the same July 31, 1996, cover letter granting the hospital accreditation, and stated that the radiation therapy was an integral part of that survey and that there were no deficiencies cited with respect to radiation therapy. Upon completion of the evaluation of BAFOs, the proposals were reevaluated and rescored. KUMC's proposal received [deleted] total points ([deleted] technical plus [deleted] price) and Health MidWest's proposal received [deleted] total points ([deleted] technical plus [deleted] price). KUMC's BAFO price was \$3,722,643; Health MidWest's was \$4,365,000.

In the agency's view, the most significant weakness associated with KUMC's technical approach was its lack of quality management activities. KUMC's quality management activities were assessed as more oriented to providers rather than to patient outcomes. The agency felt that KUMC's lack of attention to evaluation of overall patient satisfaction was at odds with the VA's requirements.

The contracting officer concluded that Health MidWest provided excellent documentation of attention to quality patient care/outcomes, and that its proposal

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<sup>2</sup>(...continued)

determine the particular method of evaluation to be utilized. Brown & Root, Inc. and Perini Corp., a joint venture, B-270505.2, B-270505.3, Sept. 12, 1996, 96-2 CPD ¶ 143 at 9. The only requirement, which the agency satisfied here, is that the agency methodology must provide a rational basis for selection and be consistent with the RFP evaluation criteria. Id.

contained clear and concise commitment to providing care for veterans consistent with the VA's patient care policy. In this regard, the agency considered that Health MidWest's approach utilizing all four of its medical centers would enable veteran patients to choose which site to use for their radiation therapy, which would reduce travel time and expenses. The contracting officer considered the price difference between the offerors and concluded that, based on the superior approach to quality management provided by Health MidWest and the convenience to veteran patients of being able to choose from several sites throughout the metropolitan area versus being forced to travel to the single KUMC facility, Health MidWest's offer represented the best value to the government. Award was made to Health MidWest on August 27, 1997. On September 15, the contracting officer recorded her rationale for the award decision. After a debriefing held on September 17, the protester filed an agency-level protest by letter of September 22, which was denied on October 6. This protest to our Office was filed on October 16.

KUMC first argues that its proposal was improperly downgraded by the application of an unstated technical factor. Specifically, KUMC maintains that the evaluation team concluded that its offer contained a significant weakness in the area of quality because it did not include a copy of the entire JCAHO report for the entire KUMC medical facility in its proposal. KUMC takes the position that the solicitation did not require the submission of the JCAHO report on the entire medical center, especially in view of the fact that the cancer center was a separate facility with its own complete support staff.

The determination of the relative merits of proposals is primarily a matter of agency discretion, which we will not disturb unless it is shown to be unreasonable or inconsistent with the stated evaluation criteria. Systems & Processes Eng'g Corp., B-234142, May 10, 1989, 89-1 CPD ¶ 441 at 5. A protester's mere disagreement with the agency's judgment does not establish that the judgment was unreasonable. Id. Here, the record shows that the most significant weakness the evaluators found associated with KUMC's technical approach was its lack of quality management activities. [deleted]. While the majority of the evaluation team found that KUMC's failure to provide its JCAHO report, including scores and related information, made an assessment of quality management difficult, the record shows that KUMC's technical approach to quality management was lacking in detail and was reasonably evaluated as failing to demonstrate an ability to meet the agency's needs.

Essentially, the protester is contending that it should not have been required to submit the recommendations associated with the JCAHO report. The protester apparently relies on the fact that, while the proposal at issue here was submitted by the KUMC cancer center, the JCAHO performance report is for the entire KUMC medical facility and includes an evaluation of all aspects of services provided by the medical facility, including pathology and clinical laboratory services. The cancer center (as evaluated under the clinical laboratory services) scored well in the report, but the report contains information concerning previous recommendations in

areas that affect the entire medical facility and indicates when they were resolved. [deleted]. The protester's position that it was not required to submit the report or its recommendations is apparently based on the fact that the report covered parts of the medical facility not involved in this procurement.

We conclude that the agency evaluated the protester's proposal reasonably in this area and did not apply an unstated evaluation criterion. While the protester argues that the solicitation did not require that it submit the JCAHO report for the entire medical facility, as explained above, the solicitation did require, under quality (the most important technical evaluation factor), that offerors provide the results of the latest JCAHO review, including recommendations. The JCAHO report cover letter, which was included in KUMC's proposal, indicated that the JCAHO report contained recommendations, without indicating what areas were addressed. In our view, the solicitation requirement justified the agency's marking down the protester's proposal for failure to submit the recommendations associated with the JCAHO report. The protester failed to explain in its proposal that it viewed the recommendations as irrelevant (and the agency may reasonably have seen them as relevant, notwithstanding the protester's position, since they involved relevant matters such as the management of the environment of care).<sup>3</sup>

More importantly, the protester has not rebutted the agency's position about the other weaknesses in its proposal involving quality management activities, which provided the core basis for the evaluation, [deleted]. We therefore conclude that the evaluation in the area of quality was reasonable and consistent with the solicitation's evaluation criteria.

The protester also contends that discussions held with it were inadequate. In this regard, the protester argues that, if its failure to include the entire JCAHO report for the entire KUMC facility was a significant weakness, KUMC should have been specifically so notified during discussions. As noted above, during oral discussions, the contracting officer read to KUMC the requirement to provide results of latest JCAHO, including date and recommendations. In response, the protester included in its BAFO the same JCAHO cover letter contained in its initial proposal, to which KUMC added a statement that the JCAHO survey at KUMC was conducted in July 1996, that radiation therapy was an integral part of that survey, and that there were no deficiencies cited relating to radiation therapy.

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<sup>3</sup>In its comments on the agency report, the protester contends that the evaluators did not understand the JCAHO evaluation process and that there are no JCAHO recommendations on a health care facility that receives a fully acceptable accreditation rating. Again, however, the evaluators reasonably relied on the JCAHO cover letter included by KUMC in its proposal, which explicitly states that the report contained recommendations.

For discussions to be meaningful, an agency must advise an offeror of the deficiencies, weaknesses, or excesses in its proposal that require amplification or clarification in order for the offeror to have a reasonable chance of receiving an award. Gutierrez-Palmenberg, Inc., B-255797.3 et al., Aug. 11, 1994, 94-2 CPD ¶ 158 at 3. Agencies, however, are not required to conduct all-encompassing discussions or discuss every element of a proposal receiving less than the maximum rating. They need only lead an offeror generally into the areas of its proposal that require amplification. Id.

Here, while the agency, during discussions, could have specifically requested the JCAHO scores and results for the entire medical facility, it is clear from the record that the agency did bring to the protester's attention the concerns the agency had in the quality area, including the JCAHO results and recommendations. Although the protester asserts that it did not understand that the JCAHO recommendations for the entire facility were required, the record shows that the JCAHO recommendations report (which the protester provided with its protest submissions) was in the form of an assessment of the entire facility, not just the radiation therapy facility; furthermore, it consisted of only nine pages that easily could have been included with KUMC's proposal. It is incumbent upon the protester to provide sufficient information in its BAFO for the agency to evaluate. See Infotec Dev., Inc., B-258198 et al., Dec. 27, 1994, 95-1 CPD ¶ 52 at 6. In short, the agency reasonably apprised KUMC during discussions that its proposal lacked the JCAHO recommendations, which were called for by the RFP and were referenced, but not provided, by KUMC in its proposal.

KUMC next alleges that the agency did not make a proper determination that the technical superiority of Health MidWest's proposal warranted expenditure of an additional \$[deleted]. In this regard, KUMC asserts that there was never any determination of the monetary value of the differences between the proposals in the nonprice factors and there was no demonstration that the value of the differences in the nonprice factors justify the higher price.

In a negotiated procurement, the government is not required to make award to the firm offering the lowest price unless the RFP in fact specifies that price will be the determinative factor. Centex Constr. Co., Inc., supra. Thus, as here, in the absence of such an express provision the procuring agency retains the discretion to select a higher-priced but also technically highly rated proposal, if doing so is in the government's best interest and is consistent with the solicitation's stated evaluation and source selection scheme. Id. There is no requirement that the value of technical differences be quantified in dollar terms. Suddath Van Lines, Inc.; The Pasha Group, B-274285.2, B-274285.3, May 19, 1997, 97-1 CPD ¶ 204 at 10.

The record reflects that the VA made a reasonable, documented cost/technical trade-off decision in awarding a contract to Health MidWest. The weight actually assigned to price (60 percent) was significantly greater than the weight for technical

(40 percent), consistent with the amended RFP's statement in this regard. KUMC offered the lowest price, for which it received the maximum rating of 60 points. As indicated above, Health MidWest's price proposal was similarly converted to normalized point ratings and, in accordance with the formula, received 51 points. With respect to final technical points, KUMC's proposal received [deleted] and Health MidWest's received the maximum of [deleted]. Consequently, Health MidWest's proposal received the highest combined score. The contracting officer explicitly determined that Health MidWest's proposal represented the best value to the government, because the superior approach to quality management offered by Health MidWest and the convenience to the veterans of being able to choose from several sites throughout the metropolitan area was worth the associated price premium and outweighed the cost savings associated with KUMC's proposal.

The protest is denied.

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