



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** JSA Healthcare Corporation

**File:** B-252724

**Date:** July 26, 1993

Robert E. Gregg, Esq., Hazel & Thomas, for the protester. Joel R. Feidelman, Esq., Anne B. Perry, Esq., and Anne E. Higdon, Esq., Fried, Frank, Harris, Shriver & Jacobson, for PHP Healthcare Corporation; and Karen Hastie Williams, Esq., and John A. Burkholder, Esq., Crowell & Moring, for ASG Management Company, Inc., interested parties. Demetria T. Carter, Esq., and John R. Osing, Jr., Department of the Navy, for the agency. Richard P. Burkard, Esq., and C. Douglas McArthur, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Agency properly selected awardees on the basis of their overall technical superiority, notwithstanding slightly higher prices, where solicitation provided that technical considerations were more important than price and the agency reasonably concluded that the technical superiority of the proposals was worth the extra cost.

### DECISION

JSA Healthcare Corporation protests the award of three contracts to PHP Healthcare Corporation (PHP) and one contract to ASG Management Company (ASGM) under request for proposals (RFP) No. N62645-91-R-0057, issued by the Naval Medical Logistics Command for the establishment and operation of NAVCARE medical clinics at six separate locations. The protester argues principally that it should have received the awards based upon the lower price of its proposals for each of the four locations.

We deny the protest.

The RFP, issued June 17, 1991, contemplated the award of fixed price plus award fee contracts for clinics at various locations, including the following four: (1) Norfolk, Virginia; (2) Oceanside (Camp Pendleton), California; (3) Oakland, California; and (4) San Diego, California. The RFP, as amended, required that the contractor provide medical services including episodic and continuing family

practice services, physical examinations, radiology services including mammography, pharmacy services, and routine birth control counseling and prescription services. Each clinic was to be established in close proximity to a Naval Hospital in order to augment the delivery of routine ambulatory health care services.

The RFP provided that each award would be made on the basis of the proposal determined to be most advantageous considering both technical merit and price. It stated further that the technical proposal would be considered to be of greater importance than the price proposal.<sup>1</sup> The RFP set forth the following technical evaluation factors in descending order of importance: (1) technical approach; (2) personnel; (3) experience; and (4) management. Under the technical approach factor, the RFP listed the most important subfactor as follows:

"A description, in detail, of how offeror proposes to provide comprehensive NAVCARE services consistent with [the scope of work]. Include your corporate philosophy of continuity of care, the management [of] stable chronic care and wellness."

Initial proposals were submitted by November 1, 1991. Following discussions with each of the offerors determined to be in the competitive range and an amendment to the RFP requirements, the Navy requested that those offerors submit revised proposals on or before July 31, 1992.

The evaluators noted that JSA had not offered to provide diaphragms but instead proposed to refer diaphragm fitting to a military treatment facility. After discussing the issue with JSA, the agency amended the RFP on November 4 to require "[r]outine birth control counseling and prescriptions (such as birth control pills and diaphragms). The Contractor's primary care program shall expressly include these services." The Navy received best and final offers (BAFOs) by January 25, 1993; neither JSA's revised proposal nor its BAFO acknowledged the requirement to provide diaphragms, although the protester had acknowledged this change by separate correspondence and provided a "corrected" page for its proposal prior to BAFOs.

The agency technical evaluators rated the technical proposals using adjectival ratings of "excellent," "good," "average," and "marginal." JSA, PHP, and ASGM received

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<sup>1</sup>Offerors were to submit their technical proposals in two sections--a core proposal and a site-specific proposal. JSA's protest against the Navy's technical evaluation concerns only the evaluation of its core proposal.

ratings of "good" for each of the four sites at issue here. Within the rating category of "good," the proposals were ranked, with ASGM ranking first for all four locations, while JSA and PHP ranked last and next-to-last, respectively, of the "good" proposals.<sup>2</sup> Despite the fact that technical proposals submitted by each of the three offerors received the same overall adjectival rating of "good," the agency did not consider JSA's proposal to be technically equal to those submitted by the other two firms. The prices offered for each site by the three firms were as follows:

Norfolk

JSA	\$28,300,650
PHP	\$28,535,035
ASGM	\$29,668,908

Oceanside (Camp Pendleton)

JSA	\$20,946,309
PHP	\$21,513,334
ASGM	\$22,036,698

Oakland

JSA	\$18,430,239
PHP	\$18,629,198
ASGM	\$21,635,977

San Diego

JSA	\$29,560,754
ASGM	\$30,523,967
PHP	\$30,951,890

Given the relative strengths and weaknesses and the small price difference between PHP and JSA, the agency awarded the contracts for the Norfolk, Oceanside (Camp Pendleton), and Oakland sites to PHP. The agency noted that the price difference between the two firms at the Norfolk and Oakland sites was approximately 1 percent, while PHP's price for the Oceanside (Camp Pendleton) clinic was approximately 3 percent higher than JSA's. Similarly, with respect to the San Diego site, the agency determined that the ASGM's technically superior proposal represented significantly more value to the government in light of the relatively small price difference between the two offers.

JSA challenges the award of these four contracts, arguing that the proposals submitted by the awardees did not

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<sup>2</sup>For San Diego and Camp Pendleton, there were five "good" offers, with PHP fourth and JSA fifth; for Oakland, four offers, with PHP third and JSA fourth; for Norfolk, three offers, with PHP second and JSA third.

represent a better value to the government than its lower-priced proposals. The protester contends that the agency unreasonably identified certain "weaknesses" in its proposal, specifically the lack of a positive approach to family planning and the use of a "time consuming and cumbersome" form for each pharmacy visit. The protester makes no attempt to deny that the proposals submitted by the awardees contained significant strengths not present in its own proposal, as reflected in the evaluation results, but essentially argues that apart from the so-called weaknesses, its proposal was equal in technical merit with those of the awardees. The protester concludes that there was no basis for selecting a higher-priced offer.

First, the protester is simply incorrect in its contention that apart from the weaknesses noted in its proposal, its proposal was technically equal to those of the awardees. Rather, the record reveals undisputed strengths in those proposals sufficient to justify the selection decision, considering the insignificance of the price differences between the proposals. As noted, the Navy concluded that ASGM submitted the strongest technical proposal overall. Specifically, the evaluators were impressed with ASGM's proposed computer system, which would allow a multitude of tasks to be performed automatically and facilitate the processing of clinic and patient information. It found that customized patient trend reports could be produced using the system, enhancing the tracking of a patient's medical history. Additionally, the agency found that ASGM offered an extremely comprehensive recruiting plan. These strengths in themselves support the decision to select the ASGM proposal for operation of the San Diego facility.

The Navy also noted several strengths associated with the PHP proposal. In particular, the evaluators noted that PHP emphasized that it would become primary care managers for those patients who chose to receive their healthcare at the clinic. Additionally, the agency was impressed with PHP's computer system which would support both administrative activities such as patient registration and report generation and clinical activities including physician inputs and the ordering of tests and prescriptions. Finally, the Navy determined that PHP offered a superior appointment system, whereby its telephone appointment lines would be open 30 minutes prior to the time set for clinic operations. These strengths are also significant, and considering PHP's essentially equal price, justify the choice of PHP over JSA to operate the other three facilities.

With respect to the protester's technical proposal, the Navy found that it conformed to all RFP requirements and noted as strengths the team management approach to chronic care and

the emphasis on wellness and preventive medicine. On the other hand, the agency concluded that the "lack of a positive approach to family planning" and the use of the pharmacy entry form made it less desirable than the other proposals sharing the "good" rating.

It is not the function of our Office to evaluate proposals de novo. Rather, we will examine an agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria, since the relative merit of competing proposals is primarily a matter of administrative discretion. General Servs. Enq'g, Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44. The mere disagreement with the agency's judgment does not establish that an evaluation was unreasonable. Logistics Servs. Int'l, Inc., B-218570, Aug. 15, 1985, 85-2 CPD ¶ 173. Although the record contains no indication that the agency's concerns about the protester's proposal were a significant factor in the selection decision, it does not demonstrate that the agency's concerns in these regards were either unreasonable or unfounded.

The record shows that JSA's proposal referred to oral contraceptives as "unnatural;" its initial proposal went beyond California law in requiring written consent for minors less than 18 years old to receive oral contraceptives. The proposal's frank discussion of the risks of oral contraceptives resulted in a concern that the population to be served might be dissuaded from obtaining oral contraceptive tablets. The protester never fully dispelled this concern, even when it ultimately committed itself to meet the requirements.

As stated, the RFP explicitly required that offerors' primary care programs include birth control counseling and prescriptions. In addition, the agency expressly amended the RFP to include birth control pills and diaphragms in the required services. Despite the clear RFP language and the discussions held with the protester pointing out the protester's failure to adequately address the requirement to provide those two birth control methods, JSA's BAFO only minimally addressed the requirement. The proposal discussed oral contraceptives and diaphragms only in the context of "a number of contraceptive methods which can potentially meet the contraception needs of NAVCARE clients. . . ." Moreover, JSA's final proposal emphasized optional methods of birth control such as the rhythm method and the use of condoms rather than the birth control methods set forth in the RFP. The proposal states as follows:

"Those Family Planning services which fall within the scope of this contract include discussing options for birth control, such as the rhythm

method and the use of condoms (not provided for by NAVCARE), and evaluating prescribing, and dispensing Oral Contraceptive tablets (OCs) and diaphragms."

While we disagree with the protester's contention that JSA's approach to family planning was of decisive significance in the selection decision, there is evidence in the record to support the agency's concerns.

The protester also contends that the agency failed to conduct meaningful discussions with it concerning this weakness. The record shows that the agency discussed on several occasions the protester's compliance with the birth control requirement and, as a result, the firm submitted a technically acceptable proposal in this regard. Agencies are not obligated to afford offerors all-encompassing discussions, or to discuss every element of a technically acceptable, competitive range proposal that has received less than the maximum possible score. See General Servs. Engr'g, Inc., supra. Here, the Navy was not required to continue discussions on the remaining weakness.

Nor does the record show the use of the pharmacy entry form to be of particular significance in the selection decision, although the use of the form contrasts sharply with the awardees' strengths in the management information area. JSA contends that contrary to its written proposal, it does not require filling out the form after initial visits, as the agency could have discovered by contacting other facilities, such as Chula Vista, where the protester provides pharmacy services. An agency may however consider information outside of the proposal only where doing so is consistent with longstanding procurement practice, and we do not find it unreasonable for the agency to have evaluated JSA based upon the use of the form as described in the proposal. See The Montgomery Cos., B-242858, June 10, 1991, 91-1 CPD ¶ 554.

JSA next contends that the Navy conducted an improper cost/technical tradeoff, alleging that there was no significant technical difference between its proposals and the higher-priced proposals which formed the basis for the awards. Where, as here, the RFP provides that award will be made on the basis of the most advantageous offer, there is no requirement that award be made on the basis of low price. A procuring agency has the discretion to select a more highly rated technical proposal if doing so is reasonable and consistent with the evaluation methodology set forth in the RFP. Coastal Gov't Servs., Inc., B-251393, Mar. 10, 1993, 93-1 CPD ¶ 222.

Here, the RFP specifically provided that the technical proposal would be considered more important than price, as stated the agency found, and the protester does not dispute, that the awardees for each site offered strengths not present in JSA's proposal. In addition, as discussed above, the agency reasonably found that JSA's proposal contained weaknesses despite its overall rating of "good." In light of the technical superiority of the awardees' proposals and the relatively small price difference, the Navy, in our view, reasonably determined that the technical superiority offered by PHP and ASGM for these medical services outweighed the price differences.

The protest is denied.



*for* James F. Hinchman  
General Counsel