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United States Government Accountability Office  
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## Decision

**Matter of:** Melling, LLC, dba MellingMedical

**File:** B-413085.2

**Date:** October 25, 2016

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Wayne A. Keup, Esq., Wayne A. Keup, PLLC, for the protester.  
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### DIGEST

Protest that the agency unreasonably assigned a deficiency and unacceptable rating to the protester's proposal is denied where the record shows the evaluation was reasonable and in accordance with the stated evaluation criteria.

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### DECISION

Melling, LLC, dba MellingMedical, a service-disabled veteran-owned small business of Alexandria, Virginia, protests the rejection of its proposal under request for proposals (RFP) No. VA791-15-R-0020, issued by the Department of Veterans Affairs (VA), for a home telehealth (HT) system. Melling challenges the agency's evaluation of its proposal.

We deny the protest.

### BACKGROUND

The RFP was issued on November 4, 2015, under the commercial item acquisition provisions of Federal Acquisition Regulation part 12, for HT equipment in support of the Veterans Health Administration's (VHA) HT program. The solicitation sought proposals for systems that are placed in patients' homes to maintain independent living capability. RFP at 18. The statement of work explained

Veterans use the home technologies to upload vital signs, clinical question responses, and other measurements that can help them self-manage their condition and alert to the need for active care/case management, including referral for clinic and/or hospital care. This

data includes, but is not limited to the following: blood glucose, blood pressure, pulse, temperature, weight, pain, and pulse oximetry. All these measurements are obtained from peripheral devices (except pain which is subjective and manually entered . . .). Peripheral devices are provided with the HT platform and transmit this data by wire or wireless connection, or self-reported via manual entry. The data that is collected on the HT platform is sent to a Clinician Web Viewer on the contractor website. The monitoring information is then available for the purposes of managing the health conditions of the Veterans.

Id. In addition to collecting this data, the statement of work explained that the system was to “present patients with a series of questions each day in the form of Disease Management Protocols (DMPs).” Id. The purpose of these DMPs was to help the Veterans “understand their medical condition, communicate symptoms, and modify behaviors to prevent the need for emergency room visits and hospital admissions.” Id. The veteran’s responses from the DMPs, along with the vital sign data, would be used by the VHA to “prioritize patients according to their risk and level of condition. . . .” Id.

The RFP anticipated the award of up to four fixed-price indefinite-delivery, indefinite-quantity contracts on a best-value basis for a base year and four 1-year option periods. Id. at 20. The evaluation factors and subfactors were as follows:

- Factor I – Technical
  - Subfactor 1. Information Technology
  - Subfactor 2. Clinical Specifications
    - Part A. Clinical Specifications Review
    - Part B. Vendor Demonstration
- Factor II – Past Performance
- Factor III – Socioeconomic
- Factor IV – Price

Id. at 103. The RFP advised that technical was more important than past performance, and past performance was more important than socioeconomic. Id. Technical subfactor 1, information technology, had the same importance as technical subfactor 2, clinical specifications. Id. Also, subfactor 2, part A, clinical specifications review, had the same importance as subfactor 2, part B, vendor demonstration. Id. The non-price evaluation factors (technical, past performance, and socioeconomic), when combined, were significantly more important than price. Id.

The RFP provided that proposals would be evaluated in several steps. Id. at 104. First, the agency would evaluate each offeror’s technical proposal under the information technology subfactor. Only those offerors that received a marginal

rating or higher under this subfactor would continue in the competition.<sup>1</sup> Id. Second, the agency would evaluate the remaining technical proposals under subfactor 2, clinical specifications, part A, clinical specifications review. Id. Only those offerors that received a marginal rating or higher under part A would continue in the competition. Id. Third, the remaining offerors would then be permitted to provide product demonstrations and be evaluated under subfactor 2, clinical specifications, part B, vendor demonstration. Offerors that did not successfully demonstrate their products would not continue in the competition. Id. Finally, the remaining offerors would then be evaluated under the past performance, socioeconomic, and price evaluation factors. Id.

With respect to the clinical specifications review, the RFP instructed offerors to “demonstrate compliance” with various solicitation requirements. Id. at 97. The RFP specifically identified 24 areas that firms were to address in their proposals.<sup>2</sup> Id. at 97-101. For example, offerors were to “provide a copy of user manuals and materials that will be used by care coordinators.” Id. at 101. Another area stated that “[p]atients should be required to respond to each DMP item (i.e. vital signs, questions, education items) each day as assigned by the Care Coordinator.” Id. at 98. Of relevance to this protest, another area stated that firms were to provide their own DMPs in two areas: (1) “the content for a co-morbid DMP of heart failure/hypertension,” and (2) “a single DMP for diabetes.” Id. at 101.

With respect to the DMPs, the statement of work explained that DMPs have numerous elements, including questions that elicit information about patient vital signs and symptoms, health-related behaviors, and the patient’s knowledge of their condition; questions that assess health promotion factors; information that is provided to patients to support self-management; standardized survey tools; and “flags and/or alerts to be presented for risk stratification on the contractor web interface.” Id. at 51. The SOW further explained that VA has developed its own DMPs derived from clinical experience using an expert panel in the appropriate field. Id. While the DMPs used by VA are within the public domain, and the DMPs would be provided to the contractor as government furnished information under the

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<sup>1</sup> The agency assigned adjectival ratings of outstanding, good, acceptable, marginal, and unacceptable. Agency Report (AR), exh. 19, Clinical Specifications Summary, at 1. As relevant to this protest, a marginal rating indicated a proposal that did not clearly meet the requirements, has not demonstrated an adequate approach and understanding, has one or more weaknesses that are not offset by strengths, and has a high risk of unsuccessful performance. Id. An unacceptable rating indicated a proposal that does not meet the requirements and contains one or more deficiencies; the proposal is un-awardable. Id.

<sup>2</sup> Several of these areas were listed as “optional line items.” RFP at 100.

contract, the RFP nevertheless required offerors provide their own DMPs for heart failure/hypertension and diabetes. Id. at 51, 101.

The RFP provided that the DMPs would be evaluated under the clinical specifications review. RFP at 105. Specifically, the RFP stated “the evaluation will review the DMPs provided and their adherence to clinical practice guidelines for heart failure/hypertension and the single DMP diabetes.”<sup>3</sup> Id.

Melling submitted its proposal by the December 28, 2015 closing date. In accordance with the RFP, the agency evaluated Melling’s proposal under the information technology subfactor, and determined that the proposal was marginal. AR, exh. 12, Information Technology Evaluation at 1-10. The agency then evaluated Melling’s proposal under part A, clinical specifications review. The agency found that Melling’s proposal was unacceptable under this evaluation subfactor.<sup>4</sup> AR, exh. 19, Clinical Specifications Summary, at 1-15.

In rating Melling’s proposal as unacceptable, the agency found numerous deficiencies, significant weaknesses, and weaknesses.<sup>5</sup> Id. Specifically, the agency found that Melling’s proposal had three deficiencies, two significant weaknesses, and seven weaknesses. Id. The three deficiencies were: (1) seven significant weaknesses such that, when combined, equated to a deficiency<sup>6</sup>, (2) a

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<sup>3</sup> The agency also provided four other elements that would be evaluated under subfactor 2, part A, Clinical Specifications Review. One of those elements stated “the evaluation will determine the usability, thoroughness, and the clarity of the materials presented for use by the care coordinators.” RFP at 105.

<sup>4</sup> On April 4, 2016, Melling was notified that its proposal was found unacceptable under part A, clinical specifications review. Melling subsequently filed a protest with our Office, which our Office docketed as protest B-413085. In response, VA took corrective action by conducting a new evaluation and making a new source selection decision. Our Office subsequently dismissed Melling’s protest on May 31. The agency’s re-evaluation found that Melling’s proposal was again unacceptable under this evaluation subfactor. We address herein only the agency re-evaluation results.

<sup>5</sup> A deficiency was defined as a “material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.” AR, exh. 19, Clinical Specifications Summary, at 1

<sup>6</sup> The seven significant weaknesses consisted of: (1) a failure to specifically address the VA requirement for alpha-numeric characters; (2) a failure to adequately address the requirement that the offeror’s platforms require patients to respond to each DMP item each day; (3) a failure to respond to the requirement that the “care coordinator web viewer shall not be accessible through the internet;” (4) a  
(continued...)

failure to provide user manuals for Melling's proposed care coordinators, and (3) a failure to provide adequate DMPs. Id. at 7, 8, 10. With regard to the DMP deficiency, the agency found that the

DMP content provided by the offeror does not meet clinical practice guidelines, and has limited educational and symptom management content, resulting in a medical determination by the clinical review team that the offeror's DMPs are not appropriate for HT veterans.

Id. at 14. The agency found that each deficiency raised the risk of unsuccessful performance "to an unacceptable level." Id. at 13, 14, 15.

On July 12, the agency informed Melling that its proposal had been eliminated from the competition. This protest followed.

## DISCUSSION

Melling challenges the agency's evaluation of its proposal. Specifically, Melling challenges its unacceptable rating under the part A, clinical specifications review subfactor. Melling primarily challenges each of the three deficiencies (including the seven significant weaknesses that equated to a deficiency), essentially asserting that its proposal either provided an adequate response, such that the agency's finding was unreasonable, or that the identified deficiencies were improper because the RFP did not require offerors to provide such information.<sup>7</sup> For example, with regard to the DMPs, Melling asserts that the agency's finding was improper because the agency's evaluation failed to determine whether its DMPs would be

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failure to address the requirement that the "contractor shall have a method to resolve correlation issues and errors and a team to address patient correlation problems (such as duplicate patients or incorrectly identified patients);" (5) a failure to address the requirement that the offeror's "software shall display the number of days since the patient last responded to a DMP session;" (6) a failure to address the requirement that "for clinical continuity of operations, there shall be a mechanism to provide for assignment for review and management of patient data by designated Care Coordinator(s) (assigned at time of need) at another facility in the event of emergency/disaster;" and (7) a failure to address how the offeror's platform handles certain date/time stamp requirements. Id. at 4-7.

<sup>7</sup> Melling also challenges its evaluation under the information technology subfactor. As we conclude that the agency reasonably assessed a deficiency to Melling's proposal under the part A, clinical specifications review subfactor, which rendered Melling's proposal unacceptable, we need not address Melling's challenges under this evaluation subfactor.

sufficient to allow the protester to conduct a vendor demonstration. Protester's Comments at 4-5.

An agency's method for evaluating the relative merits of competing proposals is a matter within the agency's discretion, since the agency is responsible for defining its needs and the best method for accommodating them. The COGAR Group, Ltd., B-413004 et al., July 22, 2016, 2016 CPD ¶ 189 at 4. Where an evaluation is challenged, our Office will not reevaluate proposals but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. Lear Siegler Servs., Inc., Inc., B-280834, B-280834.2, Nov. 25, 1998, 98-2 CPD ¶ 136 at 7. The fact that the protester disagrees with the agency's judgment does not render the evaluation unreasonable. Crofton Diving Corp., B-289271, Jan. 30, 2002, 2002 CPD ¶ 32 at 10. For the reasons explained below, we find the record establishes that the agency evaluated Melling's proposal reasonably and in accordance with the RFP's announced methodology for evaluating proposals.

As explained above, and as relevant here, offerors were required to provide two DMPs: one for heart failure/hypertension, and one for diabetes. Melling, however, did not provide a DMP for heart failure/hypertension, but instead provided [DELETED]. AR, exh. 19, Clinical Specifications Summary, at 7. The agency found that this DMP was shorter than it should be, as the DMP failed to include information required by the National Clinical Guidelines, "such as substantial education on low salt diet and fluid intake, as well as activity levels appropriate for specific heart failure classifications." Id.

Melling also provided a second DMP for diabetes alone, which the agency found failed to include information required by the National Clinical Guidelines relating to diet, activity, and education regarding care, among other things. Id. at 8. The agency also found that this DMP included incorrect medical information--as determined by the National Clinical Guidelines--relating to normal blood glucose readings. Id. The agency concluded that neither DMP was appropriate for use by veterans, and that "the offeror's demonstration of what is considered appropriate DMP content also raises concerns regarding the expertise needed to successfully support the HT program." Id. Based on this record, we find nothing unreasonable about the agency's conclusion that the proposal was unacceptable because Melling failed to meet the RFP's requirement to provide two DMPs that met the clinical guidelines.

While the protester does not meaningfully challenge the agency's contention that these DMPs failed to meet clinical guidelines, Melling argues that it was improper for the agency to find its proposal unacceptable here because the RFP did not state that DMPs were items being procured under the contract. According to Melling, the RFP explained that DMPs would be furnished by the government, and, in its view, offerors were to provide DMPs for the sole purpose of facilitating vendor

demonstrations. Protester's Comments at 3. In support of this, Melling points to the questions and answers, which states

145. . . . Since it appears that a DMP will be required in order to perform the vendor demonstration, when will the VA be providing the DMP to the offeror and which DMP will be provided to the offeror? Will offerors be permitted to utilize their own DMPs for the vendor demonstration?

a. The VA will not be providing DMPs for use during the Vendor Demonstration; offerors are expected to use their own DMPs for vendor demonstration.

RFP, amend. 4, at 4. Melling maintains that the DMP information it provided was sufficient for vendor demonstration purposes.<sup>8</sup>

The RFP specifically stated that the agency would evaluate the two DMPs, including evaluating the degree to which the DMPs met clinical guidelines. RFP at 105. While Melling may have believed that the DMPs were merely for vendor demonstration purposes (since the actual DMPs would be provided by the government), the RFP clearly informed offerors that the agency would conduct an evaluation of the two DMPs and their adherence to clinical practice guidelines.<sup>9</sup> Given that the RFP explicitly put offerors on notice that the agency would evaluate the DMPs and their adherence to clinical practice guidelines, we find nothing improper about the agency's evaluation, which found that the DMPs submitted by Melling were deficient.

Because we find reasonable the agency's evaluation of Melling's proposal with respect to the DMPs, which resulted in a finding that the risk of unsuccessful performance was unacceptable, we need not address the other deficiencies

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<sup>8</sup> To the extent Melling is alleging that the solicitation should have stated that the DMPs would be evaluated only to determine whether they were sufficient to allow for a vendor demonstration, such a challenge to the terms of the solicitation had to be protested prior to the closing time for receipt of proposals. 4 C.F.R. § 21.2(a)(1).

<sup>9</sup> While Melling correctly asserts that the DMPs were not a line item to be delivered under the contract, we note that the statement of work provided that, under certain circumstances, contractors could use their own DMPs in performance of the contract, task orders could be issued for the implementation of new DMPs, any additional language in the DMPs provided by the contractor had to be consistent with VA clinical practice guidelines and had to be pre-approved by VA before implementation, and all DMPs offered by the contractor had to be available for VA review. RFP at 52-53.

assigned to the proposal.<sup>10</sup> In this regard, a single deficiency was sufficient to render Melling's proposal unacceptable. AR, exh. 19, Clinical Specifications Summary, at 1 (an unacceptable proposal is a proposal that does not meet the requirements and contains one or more deficiencies).

The protest is denied.

Susan A. Poling  
General Counsel

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<sup>10</sup> Even if the agency had improperly assigned the other deficiencies to Melling's proposal, Melling would not have been prejudiced by the agency's evaluation. Competitive prejudice is an essential element of a viable protest; where, as here, the record establishes no reasonable possibility of prejudice, we will not sustain a protest even if a defect in the procurement is found. Health Innovation & Tech. Venture, B-411608.2, Sept. 14, 2015, 2015 CPD ¶ 298 at 7-8.