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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

**Date:** September 16, 2009

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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 at multiple locations is sustained where the record shows that: (1) the evaluation of the protester's proposal under the most important technical factor was internally inconsistent and unreasonable; (2) the agency relied on a single overall adjectival rating and on prices in making its selection decision, and the overall rating failed to capture the differences between the relative ratings of the offerors' proposals, or to reflect a reasonable conclusion that proposals with the same overall rating were technically equal; and (3) the agency tradeoff decision included only the two awardees and did not consider the protester for award, even at locations where the protester's proposal was rated higher than the awardee's proposal.

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## **DECISION**

T-C Transcription, Inc. (T-C), of Longwood, Florida, a small business, protests the award of contracts to K&R Consulting, of Woodstock, Georgia, and 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. T-C argues that the VA misevaluated its proposal and made an unreasonable source selection decision.

We sustain 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.

The RFP identified three non-price evaluation factors, in descending order of importance: technical, past performance, and management. These factors, when combined, were more important than price. RFP at 61. The technical factor was divided into four subfactors, while the management factor was divided into three subfactors. The RFP identifies these seven subfactors only in a narrative form and by a number. For example, “subfactor 1” of the technical factor was described as follows:

Contractor shall indicate their ability to provide personnel that meet the requirements of paragraph 10 of the PWS [performance work statement]. Provide a copy of certification and the company name, address, phone number, point of contact and period of employment for each employee, and management staff member, that will work on this requirement.

RFP at 61.

In turn, paragraph 10 of the PWS provided thus:

PERSONNEL REQUIREMENTS: The contractor must employ experienced medical transcription personnel, preferably AHDI (Association Healthcare Documentation Integrity) certified, or must have at least 3 years of experience as a medical transcriptionist in an acute care/teaching facility with extensive knowledge of medical terminology, anatomy and physiology, disease processes [etc.]. . . . Curriculum vitae of employees will be provided to each of the facilities to which they are assigned to work. . . .

RFP at 15-16.

Offerors were asked to provide a per-line price for transcription at each of the eight locations, for each contract year, and the RFP identified estimated line quantities for evaluating prices. RFP at 19-25.

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

The VA received proposals from 14 offerors, including T-C and both of the awardees. Agency Report (AR), Tab 13, Evaluation Summary Table, at 1. The evaluators prepared narrative evaluations and used five adjectival ratings--excellent, good, satisfactory, marginal, and unsatisfactory--to characterize the relative merits of the proposals under each factor and subfactor. Agency Report (AR), Tab 2, Post/Price Negotiation Memorandum (PNM), at 1-2. The evaluators also assigned a single overall adjectival rating for each proposal. Of the 14 proposals, 1 was rated excellent overall, 4 were rated good, 1 was rated satisfactory, 3 were rated marginal, and 5 were rated unsatisfactory. AR, Tab 2, PNM, at 3.

As discussed in greater detail below, where relevant to our decision, the evaluators prepared a narrative explanation of the consensus evaluation of each proposal under each subfactor, which addressed strengths, weaknesses, deficiencies, and uncertainties.<sup>2</sup> The evaluators also prepared summary charts, showing the adjectival rating of each proposal under each factor and subfactor. As shown on those charts, the adjectival ratings assigned to T-C's proposal, and those of the two firms later selected for award, were as follows:

	<b>K&amp;R</b>	<b>T-C</b>	<b>eTrans</b>
<b>Technical</b>	<b>Excellent</b>	<b>Good</b>	<b>Satisfactory</b>
Subfactor 1	Excellent	Satisfactory	Marginal
Subfactor 2	Excellent	Good	Good
Subfactor 3	Excellent	Excellent	Satisfactory
Subfactor 4	Good	Satisfactory	Good
<b>Past Performance</b>	<b>Excellent</b>	<b>Excellent</b>	<b>Excellent</b>
<b>Management</b>	<b>Excellent</b>	<b>Satisfactory</b>	<b>Satisfactory</b>
Subfactor 1	Excellent	Good	Satisfactory
Subfactor 2	Excellent	Marginal	Satisfactory
Subfactor 3	Excellent	Good	Satisfactory
<b>OVERALL</b>	<b>EXCELLENT</b>	<b>GOOD</b>	<b>GOOD</b>

AR, Tabs 14-16, Rating Tables, at 1.

The PNM includes eight tables--one for each location--listing the price and the overall adjectival rating for each proposal. For example, with respect to the Atlanta location, the table shows the following:

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<sup>2</sup> The VA defined a deficiency 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, Tab 8, Source Selection Plan, at 6.

	<b>TOTAL</b>	<b>RATING</b>
Offeror A	0	Marginal
Offeror B	\$1,055,396.16	Marginal
Offeror C	\$1,282,599.50	Good
Offeror D	\$1,026,079.60	Unsatisfactory
<b>eTrans</b>	\$1,095,706.45	Good
Offeror E	\$1,452,035.54	Marginal
<b>K&amp;R</b>	\$1,349,294.67	Excellent
Offeror F	\$1,026,079.60	Unsatisfactory
Offeror G	\$1,203,444.78	Unsatisfactory
Offeror H	\$ 879,495.00	Unsatisfactory
Offeror I	\$1,516,284.44	Good
Offeror J	\$1,813,229.25	Satisfactory
<b>T-C</b>	\$1,278,934.00	Good

AR, Tab 2, PNM, at 2.<sup>3</sup>

The contracting officer's (CO) award rationale was set forth in a brief narrative in the PNM. This narrative compares only two firms--K&R and eTrans. For each location, the PNM restates the overall adjectival ratings for the awardees, the difference in their total prices for that location, and asserts that paying K&R's higher price either was (or was not) justified by its higher rating.<sup>4</sup> AR, Tab 2, PNM, at 5. The narratives explaining the eight award decisions do not discuss any proposals, other than those of K&R and eTrans.

Although not explicitly stated in the contemporaneous record, counsel for the VA explains in the agency report that the CO limited his tradeoff decision to K&R and eTrans because K&R was the only offeror whose proposal was rated excellent, and because eTrans offered the lowest price of the five firms with overall ratings of good. AR at 2.

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<sup>3</sup> The fourteenth offeror (Offeror K) is not shown on the table for the Atlanta location, apparently because its proposal did not include that location.

<sup>4</sup> For CAVHCS, K&R proposed a lower price than eTrans, so the CO's narrative for that location simply stated that K&R was the highest-rated and "best overall" for price. Despite this conclusion, we note that the proposal from one of the other offerors had a marginal rating (and thus may have been acceptable) and a lower evaluated price than K&R for CAVHCS. Nevertheless, since that offeror is not a party to this protest, we need not address the matter further.

The conclusion of the PNM states:

K&R was rated excellent however the price they offered was higher than the prices offered by [eT]rans who was rated good. **When compared to [eT]rans, the K&R proposal offers significant strengths and benefits in the area of personnel and transition capability that justify paying a higher price of no more than \$12,000 annually per facility.** As a trade off the best value to the Government is to award Augusta, CAVHCS, Dublin and Tuscaloosa to K&R at a price which is \$22,288.92 higher than the annual estimated price proposed by [eT]rans (\$111,444.61 over five years).

AR, Tab 2, PNM, at 7 (emphasis in original).

After selecting K&R for award of the Augusta, CAVHCS, Dublin and Tuscaloosa locations, the CO selected eTrans for award of the Atlanta, Birmingham, Charleston, and Columbia locations.

After receiving notice of the awards, T-C requested a debriefing. Following the debriefing, T-C filed this protest.

## DISCUSSION

In its protest, T-C challenges the evaluation of its proposal, and the determination to award contracts to K&R and eTrans. The VA submitted its agency report, which included a copy of the proposals from T-C and the awardees, the consensus evaluations for each, and the PNM. The VA's report did not respond in detail to the protest allegations, but argued generally that the record demonstrated a reasonable evaluation, and that the protest should be denied. AR at 3-4. Since T-C is not represented by counsel, it was provided only a redacted copy of the agency report, which did not include its competitors' proposals or evaluations.

In its comments, T-C argued that the record showed that the evaluators reached contradictory conclusions, and imposed requirements not stated in the RFP; T-C also noted missing pages in the agency record, among other things. Although we did not convene a hearing, our Office held a conference call with the parties, in which we discussed, and then provided in writing, 18 specific questions about discrepancies in the record. In answer, the VA filed a supplemental agency report, addressing the questions raised by our Office, and supplying missing materials. The VA also argued that T-C was not competitively prejudiced by the alleged errors in the evaluation.

As explained below, we think that the VA evaluation, at least with regard to the awards for two locations, is not supported by the record, and the errors in the evaluation and source selection decision were prejudicial to T-C.

## Evaluation

With respect to its evaluation, T-C challenges each of the deficiencies assessed against its proposal under the technical evaluation factor—the most heavily-weighted factor. We agree with the protester that the evaluation of the technical factor was not based on the criteria stated in the RFP, and that the criteria in the RFP were not applied fairly to the information in the protester’s proposal. We will discuss the evaluation of the protester’s proposal under technical subfactor 1 to provide an example of the flaws found throughout the evaluation of the technical factor.

First, T-C argues that it was unreasonable for the VA to assess both a strength and a deficiency for T-C’s proposal on the same issue—*i.e.*, whether its transcriptionists would have experience transcribing for physicians who were not native English speakers. One of the strengths identified for T-C’s proposal explained that “[a]ll transcriptionists must have experience with ESL (English as second language) physicians.” AR, Tab 14, Evaluation of T-C, at 1. At the same time, one of the deficiencies identified for T-C’s proposal under this same subfactor was that the proposal “[d]oes not mention skill with ESL (English as second language) physicians.” There is nothing in the contemporaneous record reconciling the apparent contradiction in these assessments. When asked by our Office to address the issue directly, the VA acknowledged that the evaluation was erroneous on this point.<sup>5</sup> We agree.

Second, T-C argues that it was unreasonably assigned a deficiency under technical subfactor 1 for failing to provide a resume for each transcriptionist, because the RFP did not require proposals to include that information. Protester’s Comments at 3, 5. Our Office asked the VA to identify where the RFP required this information. Fax from GAO to Parties, Aug 3, 2009, at 2 (Question 5). In its supplemental report, the VA responded that “[t]he factor referenced paragraph 10 of the PWS which indicates that resumes will be provided.” Thus, the VA argued that it was proper for the VA to evaluate T-C’s proposal as “satisfactory,” and eTrans’s proposal as “marginal” because those firms failed to provide resumes, and to evaluate K&R’s proposal as “excellent” because it did provide resumes. Supp. AR at 2 (Answer 5). The RFP, as quoted above, does not support the VA’s argument on this point.

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<sup>5</sup> In response to a question from this Office, counsel for the VA acknowledged that “the evaluation team erred,” but argued that the error was not prejudicial to T-C. The record before our Office never explains whether assessing a strength or a deficiency was the error. Supp. AR at 3. We note, however, that T-C’s proposal stated as follows: “All medical transcriptionist[s] assigned to the VA account are seasoned medical language specialist[s] with ESL . . . experience.” AR, Tab 10, T-C Proposal, at 4.

The RFP instructed offerors to include in their proposals information to “indicate their ability to provide personnel that meet the requirements of paragraph 10 of the PWS.” RFP at 61. In turn, paragraph 10 of the PWS described the certification and experience required. It does not require that proposals include resumes. The only reference to resumes is in the statement in the PWS that “Curriculum vitae of employees will be provided to each of the facilities.” RFP at 16. The language in this sentence, however, plainly describes an event that will occur in the future (“will be”), and specifically after award of particular locations (“to each of the facilities”). Therefore, we think that this sentence described a performance requirement, and not information that an offeror needed to provide in its proposal. Since the RFP did not require offerors to submit a resume for each employee, the downgrading of the protester’s proposal on this basis was improper.<sup>6</sup>

In conclusion, although the examples above are taken from subfactor 1, they demonstrate the flawed evaluation approach taken by the VA evaluators with respect to the technical factor generally. From our review of the record, we conclude that the flawed evaluation also affected the other three subfactors.<sup>7</sup>

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<sup>6</sup> In our view, T-C has not meaningfully disputed the evaluators’ other criticism under technical subfactor 1, that the firm failed to provide a thorough plan for recruiting and hiring transcriptionists. See Protester’s Comments at 5. Nevertheless, we conclude that the flaws in the evaluation discussed above are sufficiently serious that a reevaluation of the technical factor is necessary. Also, although T-C disputes its evaluation under the management factor, we have reviewed the evaluation and find it reasonable. We note that in submissions to our Office during the protest, T-C has provided additional information about its management approach. However, T-C has not shown that this information was included in its proposal. Accordingly we find no basis to question the VA’s evaluation of T-C’s management proposal. Nor has T-C shown support for its allegation that VA procurement personnel are biased against it, or that the awardees are not capable of performing at the prices that they proposed.

<sup>7</sup> For example, technical subfactor 4 related to the offeror’s proposed approach to security. The evaluation assessed two deficiencies to T-C’s proposal. Both were for failing to ensure the use of up-to-date computer virus protection (the lack of which would prevent T-C’s transcriptionists from connecting to the VA computer systems). T-C argues that these criticisms fail to understand the firm’s proposed technical approach, which provides for appropriate computer virus protection, and also provides for connection to VA systems only by specialized “uploaders,” rather than by transcriptionists. Based on our review of the evaluation record, while the VA may have a valid basis for these concerns, there is insufficient documentation in the record for our Office to determine whether the evaluators based their criticisms on the approach proposed by T-C.

## Award Rationale and Tradeoff Decision

T-C also argues that the award decision was improperly based only on the overall ratings, and did not take into account the greater significance of the technical factor assigned by the RFP. Protester's Comments at 52-53. Our Office also asked the VA to respond to this argument. Fax from GAO to Parties, Aug. 3, 2009, at 1-3 (Questions 4 & 16). In answer, the VA argued that it was not required to consider T-C's proposal for award because the firm "was not the lowest priced or the highest technically rated proposal at any of the locations," and that the weighting of the factors set forth in the RFP was adequately addressed when T-C's proposal was assigned an overall rating of "good." Supp. AR at 2, 5 (Answers 4 & 16).

The PNM shows that the CO based his decision on the overall adjectival rating for the two awardees, and their total prices. The record thus shows that the CO did not consider--and may not have known--that T-C's proposal was rated higher than eTrans's proposal under the most significant technical factor, and several of the subfactors. Consistent with our view of the contemporaneous record, during the course of this protest, the VA has emphasized that the proposals of both T-C and eTrans were assigned overall ratings of "good," as evidence that T-C's proposal had no advantage over eTrans's proposal that could justify its higher price. AR at 6; Supp. AR at 6. To the contrary, the RFP placed higher significance on the technical factor, indicating that the agency would consider paying more for an offeror's superior technical approach. The elimination of T-C's proposal from further consideration in some of these tradeoffs, without a reasonable supporting explanation in the contemporaneous record--or a finding that the proposals rated "good" overall were technically equal, despite the underlying differences in their ratings--is inconsistent with the weighting of the non-price factors stated in the RFP.

Finally, the VA argues that, notwithstanding errors in the evaluation, T-C was not competitively prejudiced because it would not have received an award. Supp. AR at 6. 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).

The contemporaneous record shows that for the four locations awarded to K&R, T-C proposed prices higher than K&R, which had excellent ratings in all factors. T-C has not meaningfully challenged the evaluation of K&R. Even after correcting the errors identified above (which relate to the technical factor, but not the management factor), T-C's proposal would still be higher priced--and lower rated--than K&R's proposal. As such, T-C has not shown that it had a substantial chance for award at the four locations awarded to K&R.



Similarly, with respect to the award of the Birmingham and Columbia locations to eTrans, T-C's proposal was higher-priced than those of K&R and eTrans. Moreover, the record shows that the VA already performed a tradeoff and decided against awarding those locations to K&R based on its higher-rated but higher-priced proposal. Since T-C's proposal (even after correction of the errors in its technical evaluation) will remain higher-priced, but lower-rated, than K&R's proposal for those locations, there appears to be no reasonable possibility that T-C, rather than K&R, would be selected if the agency made a new tradeoff decision for these locations.

However, for two locations (Atlanta and Charleston), the record appears to support a conclusion that T-C was competitively prejudiced by the VA's failure to consider the protester's proposal in the tradeoff analysis. At these locations, T-C's proposal offered lower prices than K&R's proposal, and as explained above, the record provides no evidence that the CO was aware that T-C's proposal had higher evaluation ratings than eTrans's proposal (even before correcting the errors in the technical evaluation). Therefore, in our view, T-C can make the required showing of competitive prejudice with respect to the award of the Atlanta and Charleston locations to eTrans. Accordingly, we sustain the protest.

The protest is sustained.

#### RECOMMENDATION

Since the errors in the evaluation described above are examples of an evaluation that did not adhere to the ground rules of the RFP and accurately capture the content of T-C's proposal, we first recommend that the VA reevaluate T-C's proposal<sup>8</sup> under the technical factor.<sup>9</sup> If the VA concludes that additional information not specified in the RFP should be evaluated, it should amend the RFP to request that information, conduct discussions if appropriate, and request final proposal revisions from all offerors in the competitive range.

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<sup>8</sup> After the protester complained that the copy of its proposal in the agency report was faulty, the VA located several missing pages, and submitted them with the supplemental agency report. However the VA maintains that it has been unable to locate one potentially significant page. Given the concerns raised during this protest about the adequacy of the evaluation record, we recommend that the VA consider using the page at issue from the copy of T-C's proposal submitted by the protester with its initial protest when it undertakes its reevaluation.

<sup>9</sup> Since T-C did not have access to the details of the evaluation of any other offerors, its protest addressed only the errors in its own evaluation. Therefore our recommendation here addresses only the evaluation of T-C's proposal. Even so, the VA has the discretion, when implementing our recommendation, to conduct a broader reevaluation.

Second, we recommend that the VA prepare a new source selection decision for, at a minimum, the Atlanta and Charleston locations. In doing so, the VA should consider the results of its reevaluation. In addition, the VA should consider the advantages and disadvantages of each proposal that is in line for award, based on the evaluation factors and their relative weights, as set forth in the RFP.

If the new source selection decision results in selection of a different awardee for any location, we recommend that the VA terminate the affected contract for that location, and make an award consistent with the new source selection decision.

Finally, we recommend that the protester be reimbursed the costs of filing and pursuing its protest. 4 C.F.R. § 21.8(d)(1) (2009). T-C should submit its certified claim for costs, detailing the time expended and cost incurred, directly to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

Daniel I. Gordon  
Acting General Counsel