



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

DOCUMENT FOR PUBLIC RELEASE

A protected decision was issued on the date below and was subject to a GAO Protective Order. This version has been redacted or approved by the parties involved for public release.

Matter of: Physician Corporation of America

File: B-270698; B-270698.4; B-270698.5; B-270698.7

Date: April 10, 1996

David R. Hazelton, Esq., Roger S. Goldman, Esq., C. Chad Johnson, Esq., and Robert Braumuller, Esq., Latham & Watkins, for the protester.
Peter L. Wellington, Esq., Daniel C. Sauls, Esq., and Mark J. Hulkower, Esq., Steptoe & Johnson, for Humana Military Healthcare Services, Inc., an intervenor.
Ellen C. Callaway, Esq., and Laurel C. Gillespie, Esq., Office of the Civilian Health and Medical Program of the Uniformed Services, for the agency.
David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. In determining whether any action of a former government employee may have resulted in prejudice in favor of the awardee, the General Accounting Office will consider all relevant evidence, including whether the former government employee had access to competitively useful inside information generated prior to the protested procurement.
2. Protest that awardee obtained an unfair competitive advantage by virtue of its employment of former government employees is denied where either the government employees did not possess inside information that would provide an unfair competitive advantage or the record provides no basis for concluding that the awardee benefited from the inside information.
3. Protest that awardee obtained an unfair competitive advantage from its alleged receipt of source selection sensitive information from a government employee is denied where the contracting officer furnished the information to all offerors.
4. Protest that offeror's proposal should have been credited with more technical strengths and fewer weaknesses because its allegedly similar proposal in a prior procurement for the same type of services was credited with more strengths and fewer weaknesses is denied; each procurement action is a separate transaction and,

thus, the evaluation conducted under one is not relevant to the propriety of the evaluation under another for purposes of a bid protest.

DECISION

Physician Corporation of America (PCA) protests the award of a contract by the Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS) to Humana Military Healthcare Services, Inc. under request for proposals (RFP) No. MDA906-94-R-0002. The RFP sought proposals to provide health care and associated administrative services in the states of Alabama, Florida, Georgia, Mississippi, South Carolina, and Tennessee, and in portions of Louisiana and Arkansas (Managed Care Support Regions 3 and 4) for Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) beneficiaries, who include military service retirees, their dependents, and dependents of active duty members. PCA primarily argues that Humana obtained an unfair competitive advantage in the procurement by virtue of its employment of former government employees and its alleged receipt of source selection sensitive information from another government employee. In addition, PCA challenges the evaluation of technical proposals and asserts that Humana's proposal failed to comply with mandatory solicitation requirements.

We deny the protests.

BACKGROUND

Under the RFP, issued on August 1, 1994, offerors were required to propose three health care options--the TRICARE options--for CHAMPUS beneficiaries. Specifically, the RFP required offerors to propose a health care system under which CHAMPUS beneficiaries could opt to obtain services: (1) from providers of their own choosing on a fee-for-service basis, (2) from members of the contractor's preferred provider organization (PPO), or (3) from a contractor-established health maintenance organization (HMO).

The RFP stated that the government intended to award a fixed-price contract (with the price subject to specified adjustments during performance) for a base period with five 1-year options. The fixed-price nature of the contract, however, was modified by a risk-sharing arrangement under which, in the event of health care cost overruns, the government and the contractor will share responsibility for absorbing the excess cost above a set percentage of the contract price.

Responsibility will continue to be shared under a formula set out in the RFP until the contractor has absorbed overruns equal to its cumulative net gains under the contract and the amount of contractor equity that it put at risk in its proposal. At that point, the contract will begin to function on a cost reimbursement basis, with the government assuming total responsibility and paying for all additional health care costs. An offeror's putting more equity at risk postpones the point of total

government responsibility and is thus favorable to the government. The RFP required that offerors place a minimum of \$100 million at risk, but permitted them to exceed that minimum.

Actual health care costs will be a function of a large number of variables, such as the number of CHAMPUS beneficiaries (and, in particular, the participation of beneficiaries in the HMO and PPO options), inflation, and the contractor's ability to manage health care utilization. The RFP explained that offerors were to propose "trend factors," with appropriate justification, for many of these variables. The RFP advised offerors that the agency would substitute its independent government cost estimate (IGCE) factors for those proposed by offerors in the case of trend factors over which the contractor was unlikely to have control (such as inflation). With respect to the trend factors under the contractor's control (such as utilization management, the percentage of beneficiaries participating in the HMO and PPO options, and discounts offered by health care providers), the RFP provided for the agency to evaluate the realism of each proposed factor based on the agency's judgment about "the likely trends under the offeror's approach" and make appropriate adjustments. The total probable health care cost for a proposal would be the offeror's proposed health care cost, as modified above, plus a fixed administrative price and the offeror's health care profit.

The RFP stated that, in the selection of an awardee, technical content would be more important than cost. Specifically, the weighting ratio was set out as 60 percent for technical and 40 percent for cost. The technical score was the result of the evaluation of 14 tasks that are to be performed, plus experience and performance.

OCHAMPUS received five proposals from four offerors, including Humana, PCA and two other firms, by closing time on March 3, 1995. All proposals were included in the competitive range. At the conclusion of discussions, OCHAMPUS requested submission of best and final offers (BAFO) by August 2. Humana's BAFO received the highest weighted technical score (604.16 points), with 3 exceptional, 13 more than satisfactory and 0 unsatisfactory ratings; in contrast, PCA's BAFO received the second highest technical score (594.35), with 0 exceptional, 8 more than satisfactory and 2 unsatisfactory ratings. In addition, Humana's BAFO was evaluated as offering the lowest cost to the government (\$3,775,591,099), approximately 10 percent less than the evaluated cost (\$4,197,243,479) of PCA's BAFO. After calculation of cost scores and normalization of both technical and cost scores, Humana's BAFO received the highest overall "best buy" score (1,000 points), while PCA's BAFO received the second highest (950.1). Given the higher technical score and lower cost of Humana's BAFO, the source selection advisory council (SSAC) recommended award to Humana. When the source selection official accepted this recommendation and selected Humana for award, PCA filed these protests with our Office.

UNFAIR COMPETITIVE ADVANTAGE

PCA primarily argues that Humana obtained an unfair competitive advantage in this procurement by virtue of its employment of former government employees and its alleged receipt of source selection sensitive information from another government employee. Based upon our review of the record, and after conducting a hearing at which we took testimony concerning the alleged actions of the government employees, we conclude that OCHAMPUS reasonably determined not to exclude Humana from the competition on the basis of the alleged unfair competitive advantage.

Standard of Review

A contracting officer may protect the integrity of the procurement system by disqualifying an offeror from the competition where the firm may have obtained an unfair competitive advantage, even if no actual impropriety can be shown, so long as the determination is based on facts and not mere suspicion. NKF Eng'g, Inc., 65 Comp. Gen. 104 (1985), 85-2 CPD ¶ 638; Holmes and Narver Servs., Inc./Morrison-Knudson Servs., Inc., a joint venture; Pan Am World Servs., Inc., B-235906; B-235906.2, Oct. 26, 1989, 89-2 CPD ¶ 379; Laser Power Technologies, Inc., B-233369; B-233369.2, Mar. 13, 1989, 89-1 CPD ¶ 267. Where a protester alleges that the awardee has obtained an unfair competitive advantage by virtue of its employment of a former government employee, our role is to determine whether any action of the former government employee may have resulted in prejudice in favor of the awardee. General Elec. Gov't Servs., Inc., B-245797.3, Sept. 23, 1992, 92-2 CPD ¶ 196; FHC Options, Inc., B-246793.3, Apr. 14, 1992, 92-1 CPD ¶ 366; Technology Concepts and Design, Inc., B-241727, Feb. 6, 1991, 91-1 CPD ¶ 132. In so doing, we typically consider whether the former government employee had access to competitively useful inside information, whether generated during the procurement in question or previously, see Central Texas College, 71 Comp. Gen. 164 (1992), 92-1 CPD ¶ 121, as well as whether the employee's activities with

the firm were likely to have resulted in a disclosure of such information.¹ See Textron Marine Sys., supra. These are the same questions to be considered in reviewing an allegation that source selection information has been disclosed to a competing contractor. Guardian Technologies Int'l, B-270213 et al., Feb. 20, 1996, 96-1 CPD ¶ ____.

Employment of Former Government Employees

Humana Chief Executive Officer

PCA contends that Humana's hiring in (May 1994) of a retired Air Force colonel as its Chief Executive Officer (CEO) gave Humana an unfair competitive advantage in this procurement. Prior to his retirement in 1994, the CEO served as the Chief of the Managed Care Division, Office of the Air Force Surgeon General. In that position, the CEO formulated policies, program procedures and positions on managed care initiatives, including TRICARE, for the Air Force Surgeon General and participated in Department of Defense working groups concerned with those issues. Of particular relevance here, in the September/October 1993 time period, the colonel contributed to the preparation of the draft statement of work (SOW) for the Managed Care Support Region 6 solicitation, which was issued in November 1993. Hearing Transcript (Tr.) at 265-274.

¹We reject the position of OCHAMPUS and Humana that since the source selection information allegedly involved here was obtained by the former government employees during a different procurement, it cannot have provided an improper competitive advantage. OCHAMPUS' and Humana's position is based primarily on their interpretation of the procurement integrity provisions of the Office of Federal Procurement Policy (OFPP) Act, as amended, 41 U.S.C. § 423 (1994), as prohibiting the disclosure of only source selection information generated during the current procurement in question. See generally Federal Acquisition Regulation § 3.104-4(c)(2). However, our review of these matters is not aimed at enforcement of the OFPP Act; the interpretation and enforcement of the Act are primarily matters for the procuring agency and the Department of Justice. ITT Fed. Servs. Corp., B-253740.2, May 27, 1994, 94-2 CPD ¶ 30. Our role in resolving such allegations is solely to determine whether any action of the former government employee may have resulted in prejudice in favor of the awardee. General Elec. Gov't Servs., Inc., supra. In making this determination, we will consider all relevant evidence, including whether the former government employee had access to competitively useful inside information generated prior to the protested procurement. See, e.g., Central Texas College, supra; Stanford Telecommunications, Inc., Feb. 7, 1995, 95-1 CPD ¶ 50; ITT Fed. Servs. Corp., supra; Textron Marine Sys., B-255580.3, Aug. 2, 1994, 94-2 CPD ¶ 63; General Elec. Gov't Servs., Inc., supra.

PCA bases its claim of an unfair competitive advantage on the possibility that Humana's CEO may have had, indeed "presumably had," access to the undisclosed internal evaluation criteria developed for the Region 6 procurement. In this regard, PCA notes that an individual who briefly served as the contracting officer for Region 6 between November 1994 and January 1995 has executed a declaration stating that she "knew that [the CEO] had participated in the development of technical evaluation criteria for the Region 6 procurement." In addition, PCA more generally argues that Humana possessed an unfair competitive advantage simply as a result of the service of its CEO as a TRICARE procurement official.

We find that OCHAMPUS reasonably determined--on the basis of an extensive investigation into the relevant facts and circumstances--that Humana's employment of the CEO did not confer an unfair competitive advantage on Humana. Humana's CEO testified at the hearing in this matter that he in fact had never seen or discussed the Region 6 evaluation criteria. Tr. at 270-271. This testimony was consistent with prior statements he gave to the Office of the Air Force Surgeon General in May 1994, and to OCHAMPUS during its pre-award investigation in September 1995. In addition, declarations executed by officials familiar with the Region 6 procurement and responsible for development of the undisclosed Region 6 evaluation criteria, including the chairman of the Region 6 source selection evaluation board (SSEB), corroborated the CEO's statements. These statements also are supported by the fact that the criteria were only completed in August 1994, that is, 3 months after the CEO commenced work with Humana. We find this evidence more persuasive than the statement of the individual who served briefly as the contracting officer for Region 6, particularly given that (1) she did not assume her position until November 1994, which was approximately 6 months after the CEO commenced work with Humana, and (2) the cited source for her knowledge in this regard, the government's Lead Agent for Region 6, has contradicted her account. In these circumstances, we accord her statement little weight. We conclude that OCHAMPUS reasonably determined that Humana's CEO did not have access to the undisclosed internal evaluation criteria developed for Region 6.

Further, the CEO's general familiarity with the TRICARE program and his specific contribution to the preparation of the draft SOW for the Region 6 solicitation also do not establish any improper advantage. The relevant SOW was disclosed in the Region 6 solicitation and thus cannot be considered inside information. Further, the mere employment of an individual who is familiar with the type of work required and helped prepare the specifications or SOW does not establish an unfair competitive advantage, where the individual was not privy to the contents of

proposals or other inside information. See Guardian Technologies Int'l, supra; Textron Marine Sys., supra; ITT Fed. Servs. Corp., supra; General Elec. Gov't Servs., Inc., supra; FHC Options, Inc., supra. We conclude that the record does not support PCA's contention that Humana's CEO possessed inside information that provided the firm an unfair competitive advantage.

Humana Utilization Management Director

Humana's parent company in December 1994, prior to submission of Humana's initial proposal for Regions 3/4 in March 1995, hired a retired colonel in the United States Air Force as its Director of Utilization Management (UM). Prior to her retirement in 1994, the UM Director served as the Chief of Utilization Management in the Managed Care Division, Office of the Air Force Surgeon General. In that position, the UM Director participated (August 1994) in the evaluation of the UM portion of the BAFO submitted by a third firm (neither Humana nor PCA) under the Managed Care Support Regions 9/10/12 solicitation. After being hired by Humana, she participated in preparing the UM and quality management (QM) portions of Humana's BAFO submitted on August 2. PCA maintains that her employment gave Humana an unfair competitive advantage because of her knowledge of the undisclosed internal UM/QM evaluation criteria for Regions 9/10/12, which PCA asserts are similar to the internal UM/QM evaluation criteria for Regions 3/4.

We conclude that OCHAMPUS reasonably determined that Humana's employment of the UM Director did not confer an unfair competitive advantage on Humana. In this regard, OCHAMPUS has reviewed each of the increases in Humana's BAFO score under the evaluation subcriteria in the UM/QM area, which totaled 160 "raw" points or approximately 48.8 weighted technical points, and concluded that these increases were attributable to factors that were unrelated to the undisclosed internal UM/QM evaluation criteria for Regions 9/10/12. For example, OCHAMPUS found that 20 of the 160-point increase in the BAFO raw score resulted from Humana's response to requirements--not included in the Regions 9/10/12 procurement--concerning the military's lead agent in each region.

OCHAMPUS further found that 80 of the 160 points were attributable to corrections and clarifications prompted by specific discussion questions and another 17 points were attributable otherwise to providing specific information requested by the agency. For example, noting that Humana had submitted identical charts with respect to utilization rates experienced by Humana for differing time periods, OCHAMPUS advised Humana during discussions that

"[t]he proposal has provided . . . access data from two time periods that match the utilization reduction data. However, many of the charts in the second time period appear to be copied from the first time period."

Humana's BAFO score increased by 45 points when it submitted the correct charts (which demonstrated a [DELETED]). Further, with respect to review staff qualifications, OCHAMPUS asked Humana four clarifying questions, three of which directed Humana either to resolve an inconsistency between charts or to explain the source of work load and productivity numbers, while the fourth requested Humana to explain its staffing rationale. Humana's raw score increased 16 points when it deleted the confusing staffing charts and provided its staffing logic. Humana's raw score increased by seven additional points when it responded to OCHAMPUS' direction during discussions to resolve an inconsistency in its initial proposal as to when it would require pre-authorization for psychoanalysis-- [DELETED]--and also incorporated into its proposal the approach taken in its commercial business of [DELETED].

OCHAMPUS found that 43 of the 160-point increase in Humana's BAFO raw score was attributable to Humana's including in its BAFO UM/QM plan information already found elsewhere in its initial proposal. For example, the SOW required the contractor to

"use review criteria published by InterQual, Inc . . . in their most current version as the criteria for screening medical and inpatient surgical care for first level review. The contractor may use additional criteria . . . only when they are not addressed by InterQual."

In addition, the solicitation referred offerors to review criteria published by Health Management Strategies, International, Inc. (HMSI) for reviews of mental health care. Agency evaluators noted that Humana's initial UM plan did not discuss using [DELETED], but considered the impact of this to be minimal since these were discussed elsewhere in its proposal. Humana's BAFO technical score increased by 5 points when it responded as directed to OCHAMPUS' direction during discussions to [DELETED]. Likewise, Humana's BAFO score increased by 5 points when it responded as specifically directed by OCHAMPUS and included in its BAFO clinical quality management program plan a discussion of [DELETED]--which had been included elsewhere in its initial proposal--and [DELETED].

We find that the record shows that the answers to the questions in the UM/QM area which led to the increases in Humana's score (1) were reasonably suggested by the questions themselves, (2) resulted from preexisting information (such as charts initially not furnished or information initially included elsewhere in its proposal), (3) reflected the incorporation of Humana commercial practice, or (4) concerned areas and approaches not addressed by the Regions 9/10/12 criteria. We thus conclude that OCHAMPUS reasonably determined that the increases in Humana's BAFO score under the UM/QM evaluation subcriteria generally did not appear to be

attributable to any knowledge of the undisclosed internal UM/QM evaluation criteria for Regions 9/10/12.

Furthermore, not only is there no evidence in Humana's BAFO changes that they resulted from any knowledge of the Regions 9/10/12 internal UM/QM evaluation criteria, the evidence in the record indicates that it was unlikely such knowledge would even have been available to Humana. Specifically, the record shows that the Regions 9/10/12 BAFO evaluators were prohibited from making or retaining copies of the internal evaluation criteria and, because the copier was in an open area outside the office of the chairman of the SSEB, it is unlikely that they were able to do so. Tr. at 171, 237-238, 252-253. As a result, Humana's UM Director was unlikely to have had a copy of the Regions 9/10/12 criteria available to her when assisting in preparing Humana's Regions 3/4 BAFO. Further, since the Regions 9/10/12 criteria were quite detailed, the passage of time between the service of the UM Director as a Regions 9/10/12 BAFO evaluator in August 1994 and the commencement of the Regions 3/4 negotiations on May 16, 1995 made it unlikely that the UM Director could have remembered significant portions of the Regions 9/10/12 internal UM/QM evaluation criteria in sufficient detail and with sufficient reliability so as to base Humana's Regions 3/4 BAFO on it. See Textron Marine Sys., supra; General Elec. Gov't Servs., Inc., supra.^{2 3}

²Our conclusions above are also consistent with the results of Humana's investigation (conducted with the assistance of outside counsel) into the activities of the UM Director, and the testimony of Humana's CEO and an outside UM/QM consultant who participated with Humana's UM Director in preparing the UM/QM portions of Humana's BAFO. Both the reported results of Humana's investigation and the testimony of Humana's witnesses support Humana's contention that its UM Director gave no outward indication of relying on any knowledge of the Regions 9/10/12 internal UM/QM evaluation criteria, or other inside information, when assisting in the preparation of Humana's Regions 3/4 BAFO in these areas. Tr. at 317, 320-326, 467-483.

³PCA also argues that Humana's use of its UM Director to assist in preparing its BAFO resulted in an unfair competitive advantage with respect to the evaluation of its cost proposal; according to the protester, Humana's higher technical score in the UM/QM area translated into a more favorable evaluation of its proposed trend factors, and thus a lower evaluated cost. However, in view of our conclusion that the increases in Humana's BAFO technical score in the UM/QM area did not appear to be attributable to any knowledge of the undisclosed internal UM/QM evaluation criteria for Regions 9/10/12, there is no basis for concluding that Humana acquired an unfair competitive advantage with respect to its cost proposal as a result of its improved technical score.

Likewise, we find no merit to PCA's argument that other aspects of the government service of Humana's UM Director required a finding that Humana had gained an unfair competitive advantage in the Regions 3/4 procurement from hiring her to assist in the preparation of its BAFO. Thus, while PCA asserts that an unfair competitive advantage resulted merely from the UM Director's familiarity with the TRICARE concept and community and having served on an OCHAMPUS SSEB, the mere employment of an individual who is familiar with the type of work required, but who is not privy to the contents of proposals or other inside information, does not itself confer an unfair competitive advantage. Textron Marine Sys., supra. Likewise, while PCA speculates that the UM Director may have played a significant role in the Region 6 procurement which amounted to participation in the restructuring of the Region 6 TRICARE RFP, even if Humana's UM Director was involved in rewriting the Region 6 solicitation (which OCHAMPUS denies), participating in preparing specifications or a SOW which is subsequently released to the public does not itself confer an unfair competitive advantage. Id.⁴ Finally, PCA claims that given her position and alleged role in restructuring the Region 6 RFP, the UM Director "may well have been involved in the review of [the Region 6 internal] evaluation criteria." This amounts to no more than unsupported speculation and, moreover, is contradicted by the statements of the Region 6 procurement officials most likely to be aware of the facts, including two Region 6 contracting officers and the chairman of the Region 6 SSEB.⁵

The record thus provides no basis for concluding that Humana acquired an unfair competitive advantage in the Regions 3/4 procurement from using its UM Director to assist in the preparation of its BAFO.

Disclosure of Source Selection Sensitive Information

PCA contends that Humana was the recipient of source selection sensitive information during the procurement which gave it an unfair competitive advantage.

The record indicates that in May 1995, after submission and evaluation of initial proposals but before submission of BAFOs, one of the five co-chairpersons of the Regions 3/4 SSEB contacted several of the offerors regarding possible future employment after his forthcoming retirement. After being contacted by telephone by the co-chairman, Humana's CEO advised OCHAMPUS of the contact.

⁴The record indicates that the UM Director was involved in policy discussions during the period of the Region 6 procurement concerning the extent to which TRICARE contractors should perform UM in military hospitals and clinics in the direct care system, not the CHAMPUS system. Tr. at 110-114.

⁵[DELETED].

OCHAMPUS immediately relieved the co-chairman of his evaluation duties and undertook an investigation. This investigation established that the co-chairman was distributing a resume in which he described his most recent experience as director of managed care for Regions 3/4 as: "Director of \$4.5 billion managed care contract for 6 states in the southeast region of the United States. This contract will establish a triple option managed care delivery system for 1.7 million beneficiaries." (Although the co-chairman advised OCHAMPUS that with the permission of Humana's CEO he had sent a copy of his resume to the CEO (and so testified at the hearing), he had no knowledge as to whether Humana's CEO had received the resume, and the latter individual denied receiving it (and so testified at the hearing). Tr. at 24-26, 49-51, 330.) While the contracting officer determined that release of the aggregate IGCE without disclosure of its components would afford no competitively useful information (since an offeror could not determine where to reduce its costs), he nevertheless advised all offerors in writing that:

"It has been brought to my attention that certain information has inadvertently been provided to one or more offerors.

"We are continuing this acquisition by ensuring impartiality and preferential treatment for none. Therefore, this information is to be provided to all offerors.

"The following is extracted from the document containing the aforementioned information

' . . . \$4.5 billion managed care contract for 6 states in the southeast region of the United States. This contract will establish a triple option managed care delivery system for 1.7 million beneficiaries.'"

According to PCA, only Humana could benefit from the contracting officer's letter, and it would have benefited whether or not its CEO in fact received a copy of the resume, since the CEO would have realized the significance of the contracting officer's letter coming as it did shortly after he reported to OCHAMPUS the co-chairman's contact. Tr. at 329. PCA notes that it unsuccessfully asked OCHAMPUS for more information concerning the source of the excerpt; the protester argues that this information was of no value without an indication of its source.

We think, however, that a reasonable offeror receiving the contracting officer's letter, advising of the need to disclose to all offerors certain "inadvertently" disclosed information concerning the size of the contract and expected beneficiary population in order to assure that no offeror received an advantage from its prior release, would assume that the information in question was source selection

sensitive information. In our view, offerors receiving the contracting officer's letter, which in effect validated the significance of the information with respect to projected contract size and beneficiary population, were not significantly worse off than an offeror also receiving the resume from the co-chairman (without explanation of this information) in evaluating the significance of the information. In any case, we note that the record indicates that the figure of 1.7 million beneficiaries--which referred to the total number of beneficiaries of the military health care system, rather than just CHAMPUS beneficiaries--set forth in the co-chairman's resume was derived from publicly available information which also was included on the data tapes furnished all offerors. Tr. at 34, 63-65. As such, this information was not inside information the possession of which would give rise to an unfair competitive advantage. See Textron Marine Sys., supra; Person-Sys. Integration, Ltd., B-243927.4, June 30, 1992, 92-1 CPD ¶ 546; General Elec. Gov't Servs., Inc., supra.

The record thus provides no basis for concluding that Humana acquired an unfair competitive advantage in the Regions 3/4 procurement from the actions of the SSEB co-chairman.

OTHER ISSUES

PCA asserts that award to Humana was improper because its proposal was noncompliant with mandatory solicitation requirements. The protester points out that the agency's final evaluation summary identified four "weaknesses" in Humana's proposal (which, we note, were in low risk areas) which "can be resolved post award." (The prior report of the SSAC apparently characterized them as "issues that must be addressed by the Contracting Officer on a post-award basis.") PCA argues that these matters precluded award to Humana.

A contracting agency properly may determine that a proposal is technically acceptable where it is in substantial, although not total, compliance with a solicitation requirement. Intermagnetics Gen. Corp., B-255741; B-255741.3, May 10, 1994, 94-1 CPD ¶ 302; Sabreliner Corp., B-248640; B-248640.4, Sept. 14, 1992, 92-2 CPD ¶ 222. The propriety of such a determination turns on whether it prejudices any other offeror and whether the proposal meets the agency's needs. Id. OCHAMPUS determined that Humana's BAFO satisfied all material solicitation requirements and that the weaknesses referred to above were minor, easily correctable weaknesses which did not preclude award. PCA has not shown this determination to have been unreasonable. In any case, our review indicates that PCA could not have been prejudiced by OCHAMPUS' treatment of Humana since PCA itself benefited from similar flexibility--PCA's proposal was found to be acceptable notwithstanding the fact that it received unsatisfactory evaluation ratings in two areas and included five weaknesses, one which was considered to be of medium risk, which would have to have been resolved after award.

In addition, PCA questions Humana's compliance with the solicitation requirement that offerors place a minimum of \$100 million of equity at risk. The protester generally argues that it was improper for Humana to rely on the financial resources of its parent corporation to comply with this requirement, and specifically asserts that the fact that the indemnity and guarantee agreement from its parent which Humana included in its business proposal appeared to be missing pages and did not specify the specific amount of funding to be provided required rejection of Humana's proposal.

This argument is without merit. No provision in the solicitation precluded offerors from relying on the resources of their corporate parent in performing the contract. (Indeed, we note that three of the four offerors proposed to rely on the resources of their corporate parent.) In the absence of such a prohibition, we have recognized that where an offeror represents in its proposal that resources of its parent company will be committed to the contract, the agency properly may consider such resources in evaluating its proposal. Military Newspapers of Virginia, B-249381.2, Jan. 5, 1993, 93-1 CPD ¶ 5; see Unison Transformer Servs., Inc., 68 Comp. Gen. 74 (1988), 88-2 CPD ¶ 471. Further, no provision in the solicitation established a required form to be used to document a parent's commitment of resources to the contract. Humana generally represented in its technical proposal that its corporate parent [DELETED], and specifically stated that its corporate parent [DELETED]. We find nothing improper in OCHAMPUS taking this commitment into account.

PCA also challenges the evaluation of its technical proposal, arguing that its proposal should have been credited with more technical strengths and fewer weaknesses. PCA's proposal was credited with more strengths and fewer weaknesses under its Region 6 approach; PCA generally maintains that since its Region 6 approach was the same as its Region 3/4 approach, the strengths and weaknesses should have been the same.

Each procurement action is a separate transaction; thus, the evaluation conducted under one is not relevant to the propriety of the evaluation under another for purposes of a bid protest. Shirley Constr. Corp., 70 Comp. Gen. 62 (1990), 90-2 CPD ¶ 380; Transact Int'l, Inc., B-241589, Feb. 21, 1991, 91-1 CPD ¶ 196. PCA's evaluation under a prior procurement does not demonstrate that the current evaluation was unreasonable. Since PCA has not shown that OCHAMPUS' overall technical evaluation conclusions for the Regions 3/4 procurement, as explained by

the agency in its report responding to PCA's protest, were unreasonable, its protests in this regard provide no basis to question the award to Humana.

The protests are denied.

Comptroller General
of the United States