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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

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Decision

Matter of: United Payors & United Providers Health Services, Inc.

File: B-282075.4

Date: June 26, 2002

Kenneth B. Weckstein, Esq., and Raymond Fioravanti, Esq., Epstein Becker & Green, for the protester.

Devon E. Hewitt, Esq., Shaw Pittman, for CRAssociates, Inc., an intervenor.

Mike Colvin, Department of Health & Human Services, for the agency.

Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly rated proposals under a tiebreaker evaluation factor--business management competence--on a pass/fail, rather than a comparative, basis is denied; solicitation did not provide that the factor would be evaluated in a particular way, and there was nothing inherently unreasonable in the agency's assessing only whether offerors' business management competence was at an acceptable level.

DECISION

United Payors & United Providers Health Services, Inc. (UP/UP) protests the award of a contract to CRAssociates, Inc. under request for proposals (RFP) No. 282-99-0001, issued by the Department of Health and Human Services for health care services for alien detainees. UP/UP protests that the agency did not award the contract in accordance with the solicitation provisions.

We deny the protest.

The RFP, which contemplated the award of a cost-plus-fixed-fee contract for a period of 5 years, required the contractor, among other things, to review and pay claims for medical services rendered to alien detainees. The RFP provided for a "best value" award, with paramount consideration to be given to technical merit, rather than to cost. The technical evaluation factors were as follows: Technical Approach, Understanding the Problem, Key Personnel, Organizational Experience, and Adequacy of Program Management. Proposals initially evaluated as technically acceptable under these factors would be evaluated for business management and cost, and proposals that were included in the competitive range would also be

evaluated for past performance. Where two or more proposals were technically equal, business management competence and total cost would become the determinative award considerations. RFP § M.2. With respect to business management competence, contract performance required the awardee to have significant cash reserves to accomplish task four, the review and payment of medical claims. RFP § M.4. Offerors thus were required to indicate if they had the necessary financial capacity, working capital and other resources to perform the contract, without assistance from any outside source. RFP § L.9.

UP/UP's and CRA's proposals were included in the competitive range.¹ After two rounds of discussions and the submission and evaluation of final proposal revisions, UP/UP's and CRA's proposals were considered technically equal, with 97 and 97.5 points, respectively, and both offerors were rated good for past performance. Since the proposals were technically equal, the agency considered business management competence and cost, the tiebreaking factors. The agency initially looked at cost, and determined that CRA would be in line for award based on its lower cost— [DELETED] compared to UP/UP's [DELETED] (both offerors' proposed costs were determined to be realistic). With respect to business management competence, the contracting officer found that both offerors had sufficient financial capacity and management competence to perform. Contracting Officer's Statement (COS) at 7; Supplemental Contracting Officer's Statement (SCOS). Accordingly, the agency made award to CRA based on its lower cost.

UP/UP protests the award decision, arguing that it is inconsistent with the evaluation criteria established in the solicitation.² Specifically, UP/UP maintains that the agency improperly rated proposals on a pass/fail, rather than a comparative, basis under the business management competence factor. It is UP/UP's view that, in doing so, the agency rendered the factor meaningless as a tiebreaker. According to UP/UP, since it had sufficient financial capacity to perform the contract and was in excellent financial condition, it should have received a higher business management competence rating than CRA, which the Defense Contract Audit Agency (DCAA)

¹ This procurement was the subject of three earlier protests. Initially, CRA filed a protest against its exclusion from the competitive range. The agency took corrective action as a result of that protest (B-282075, March 16, 1999) and included CRA in the competitive range. After the competition was completed, UP/UP was awarded the contract. CRA protested that award, and our Office sustained it (CRAssociates, Inc., B-282075.2, B-282075.3, Mar. 15, 2000 CPD ¶ 63), recommending that HHS reopen discussions, obtain best and final offers and make a new award decision. HHS followed our recommendation and CRA was awarded the contract. This protest followed that award.

² UP/UP has filed a supplemental protest (B-282075.5) that is pending, and which we intend to address in a separate decision.

found was in an unfavorable financial condition. UP/UP concludes that it would have received the award had proposals been evaluated properly under this factor.³

We find nothing improper in the agency's rating of the proposals under the business management competence factor on a pass/fail basis. The solicitation did not provide that the factor would be scored in any particular way, and we find nothing inherent in the factor that suggests that it could not meaningfully be applied on a pass/fail basis. In this regard, as a general proposition, an agency properly may convert a responsibility consideration (such as financial capacity and condition) into an evaluation factor and, provided that a small business is not involved, may evaluate that factor on a pass/fail basis. See McLaughlin Research Corp., B-247118, May 5, 1992, 92-1 CPD ¶ 422 at 4. The protester has cited no authority for its contrary view. We conclude that HHS reasonably evaluated the proposals on a pass/fail basis under the business management competence factor.

We also see nothing unreasonable in the agency's finding that CRA's proposal was acceptable under the business management competence factor. In this regard, HHS evaluated CRA for business management competence after concluding that CRA was otherwise in line for award after applying the other tiebreaker, price. The HHS Contract Support and Review Branch (CSRBR) requested the Defense Contract Audit Agency (DCAA) to perform a preaward audit of CRA and to comment on CRA's financial condition. Initially, on February 13, DCAA reported that CRA was in an unfavorable financial condition and, more specifically, that CRA might have difficulty meeting its near-term financial obligations and be unable to perform on government contracts without extraordinary management actions, such as an expanded line of credit. DCAA Audit Report at 1. On February 14, CRA provided HHS with a letter from its bank stating that the bank would pursue approval to increase CRA's letter of credit by \$6 million, and that such approval was primarily contingent on CRA's receiving the HHS contract award.⁴ The CSRBR then requested DCAA to clarify its opinion of CRA given this information regarding an expanded line of credit. DCAA responded on February 14 that, with the additional line of credit, CRA may not have trouble meeting its near term obligations, and therefore should be able to perform current and additional government contracts. The CSRBR reviewed this updated opinion and obtained additional information from CRA, including its

³ In its protest, UP/UP raised a number of additional issues to which the agency responded in its report, which responses UP/UP failed to address in its comments on the report. These issues included, for example, UP/UP's assertion that HHS unreasonably assigned CRA's technical proposal a score of 97.5 points. We consider these issues abandoned and have not addressed them in this decision. Westinghouse Gov't and Envtl. Servs. Co., Inc., B-280928 et al., Dec. 4, 1998, 99-1 CPD ¶ 3 at 7 n.6.

⁴To the extent the facts suggest that the agency may have reopened discussions only with CRA to resolve this issue, UP/UP does not protest on this basis.

expected profit for 2002, the fact that CRA's assets exceeded liabilities, and the fact that CRA was in compliance with their current letter of credit. CSRB Memorandum at 1, 2. The information provided by CRA clearly addressed DCAA's concerns and, therefore, provided a reasonable basis for HHS's finding CRA acceptable under the business management competence factor.

The protest is denied.

Anthony H. Gamboa
General Counsel