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**Comptroller General
of the United States**

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

Decision

Matter of: Galen Medical Associates, Inc.

File: B-288661.4; B-288661.5

Date: February 25, 2002

Perry Wallace, M.D., for the protester.

Marilee D. Rosenberg, Esq., Philip Kaufman, Esq., and Phillipa L. Anderson, Esq.,
Department of Veterans Affairs, for the agency.

Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest that agency misevaluated proposals and made an improper award decision is denied where record shows that protester's proposal failed to meet a material requirement of the solicitation, and therefore was ineligible for award.

DECISION

Galen Medical Associates, Inc. protests the award of a contract to Dr. Deborah Downing, MD PLLC under request for proposals (RFP) No. 586-44-01, issued by the Department of Veterans Affairs (VA) to acquire primary and preventive medical care and continuity of care services at a clinic in Meridian, Mississippi, affiliated with the G.V. (Sonny) Montgomery VA Medical Center in Jackson, Mississippi. Galen asserts that the agency misevaluated proposals and was biased against Galen.

We deny the protest.

This is Galen's second protest in connection with this acquisition. In response to Galen's first protest (also alleging various evaluation improprieties), the VA took corrective action by amending the RFP's evaluation scheme, soliciting and evaluating revised proposals and making a new source selection determination. (After being advised of the corrective action, we dismissed Galen's protest as academic.)

In response to the original solicitation, the VA received three proposals, including Galen's and Dr. Downing's. In implementing its corrective action, the agency permitted all three firms to submit proposal revisions. After receiving and evaluating

the revised proposals, the agency made award to Dr. Downing without further discussions (the agency had conducted discussions under the original RFP), finding that Dr. Downing's proposal represented the best overall value. Galen challenges the new evaluation and award on numerous grounds, including what it describes as integrity violations and bias on the part of the agency's contracting officials.

In reviewing protests against a procuring agency's proposal evaluation, we will consider whether the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. National Toxicology Labs, Inc., B-281074.2, Jan. 11, 1999, 99-1 CPD ¶ 5 at 3. Based on our review of the record, we conclude that the agency reasonably determined that Galen's proposal failed to meet a material RFP requirement; Galen therefore was ineligible for award. In this regard, where a proposal fails to meet a material solicitation requirement, it cannot properly form the basis for the award of a contract. Rel-Tek Sys. & Design, Inc., B-280463.3, Nov. 25, 1998, 99-1 CPD ¶ 2 at 3.

The RFP required offerors to provide detailed information regarding the facility that would be used in performing the contract; specifically, they were to provide the location of the facility, RFP at 4, and information sufficient to show that there would be clinical space sufficient to accommodate the estimated number of patients to be seen, and to meet the other performance requirements. RFP at 24.

Galen offered two alternative locations for performance of the contract. Galen's primary location was the current site of the VA medical center clinic in Meridian, Mississippi (operated by Dr. Downing, the incumbent contractor). Galen Technical Proposal at 15. Galen's alternate location was a building that is the present location of Galen's private clinic. Id. at 21. The evaluators determined that neither of Galen's proposed facilities was adequate to perform the contract. In this regard, the record shows that Dr. Downing, the incumbent contractor, holds the lease for Galen's primary location--the facility where the VA medical center clinic in Meridian currently is located.¹ Downing Technical Proposal at 6. The evaluators noted that the VA clinic location would not be available unless Dr. Downing would be willing to surrender the lease to Galen. Agency Technical Evaluation Memorandum, Dec. 3, 2001, at 1. There was no indication in Galen's proposal that the firm had arrived at such an arrangement with Dr. Downing.

¹ Galen proposed the current VA clinic facility, as stated in its proposal, with the "understanding that the leasing of the building is controlled exclusively by the VA contract." Galen Technical Proposal at 15. The record does not support Galen's understanding. The owner of the facility is a private concern, Meridian HMA/Riley Hospital, and the current lease was entered into between Meridian and Dr. Downing, with no involvement by the VA. Downing Technical Proposal at 6.

The evaluators also concluded that Galen's alternate location would be inadequate to accommodate the additional patient load that would result from the contract (approximately 2,800 to 3,000 patients). In this connection, Galen's proposal stated as follows:

Galen Medical Associates, Inc. d/b/a/ Patient First Urgent Care Clinic is a Mississippi for profit corporation (formerly Perry Wallace, MD and Associates) operating as a primary care clinic in Lauderdale County since 1987. It was the single largest solo practice in Meridian, MS with over 8,000 active patients and up to 12,000 patient-visits per year. We have always had an excellent reputation and have serviced veterans from the community as well as the Naval Air [S]tation Meridian's active personnel.

We are now associated with Riley-HMA hospital here in Meridian where we will continue to serve our patients for years to come.

Galen Technical Proposal at 1. Noting that the facility had only 6,500 square feet of space, with only seven exam rooms, and that Galen's private clinic already was handling approximately 8,000 active patients (with 12,000 patient visits annually) in this facility, the evaluators concluded that the facility lacked sufficient space to perform as required. Agency Technical Evaluation Memorandum, Dec. 3, 2001, at 1. On the basis that Galen did not have an adequate facility (as well as a concern relating to the availability of proposed personnel), the VA concluded that "the proposal does not document that [Galen] has the physical facilities or the staff that would be necessary to provide services under the contract." *Id.* We interpret the evaluators' comments to mean that the agency found Galen's proposal technically unacceptable.

Galen does not dispute that the facility where the VA clinic is currently located is not available, but asserts that the evaluators misinterpreted its proposal with respect to the patient workload at its alternate facility. According to the protester, its proposal provides information relating to the patient workload of a predecessor entity, Perry Wallace MD and Associates. Galen maintains that this information was provided only to demonstrate that Dr. Wallace (the primary physician proposed by the protester) had experience in managing large patient populations in the past, and not to represent the firm's current patient workload. Galen concludes that the agency unreasonably found that its alternate facility was inadequate.

We find that the agency reasonably interpreted Galen's proposal. Offerors are responsible for submitting an adequately written proposal. Carlson Wagonlit Travel, B-287016, Mar. 6, 2001, 2001 CPD ¶ 49 at 3. As quoted above, the proposal specifically referred to a patient population of 8,000 at the facility, with 12,000 patient visits, and went on to state that "[w]e are now associated with Riley-HMA hospital here in Meridian where we will continue to serve our patients for years to come." Notwithstanding Galen's protest position, it was entirely reasonable for the

agency to conclude from this language that Galen's facility was currently handling a large number of private patients and, since the proposal did not state otherwise, that it would continue to do so even if Galen were awarded the contract here. While in its protest Galen suggests that the agency misinterpreted its proposal on the question of the patient population being served, it neither denies that it currently is serving a large patient population at its facility, nor provides patient numbers that it claims are more accurate; more fundamentally, Galen does not dispute the agency's conclusion that the facility would be inadequate to handle the patients that would be added under the VA contract in question. Consequently, we conclude that agency reasonably determined that Galen failed to propose an acceptable facility—a material RFP requirement—and thus its proposal was technically unacceptable.

Galen asserts that the agency improperly failed to bring the inadequacy of its proposed facilities to its attention through discussions. However, we need not address this allegation, since there is no evidence of prejudice. In this regard, as noted, the record shows that Galen's primary facility is unavailable because the awardee holds the lease for that location; discussions would not have changed this. As for the second location, as discussed above, Galen has submitted no argument or evidence to show that the agency's conclusions relating to the adequacy of that facility were erroneous or unreasonable, and has not asserted or demonstrated that it would have offered another alternate location had it been advised of the agency's conclusions during discussions. Thus, there is no basis for finding that discussions would have resulted in any change in Galen's alternate location. We conclude that Galen was not prejudiced by the agency's alleged failure to engage in discussions. See Statistica, Inc. v. Christopher, 103 F.3d 1577, 1581 (Fed. Cir. 1996); Metropolitan Interpreters & Translators, B-285394.2 et al., Dec. 1, 2000, 2001 CPD ¶ 97 at 9 (protest will not be sustained where record shows that alleged failure to engage in meaningful discussions was not prejudicial to protester).

As noted, Galen alleges integrity violations on the part of the agency, including conflicts of interest and bias in favor of the awardee and against Galen. We dismiss these assertions as academic since, even if Galen were correct, the firm would be ineligible for award for reasons independent of the agency's actions. In this regard, Galen's proposal was ineligible for award because it failed to offer a facility adequate to meet the requirements of the RFP; it was Galen's actions in preparing its proposal, and not any action on the part of the agency, that led to its proposal being ineligible for award.²

² Galen also challenges the agency's amending the RFP (in implementing its corrective action) to change the relative weights of the evaluation criteria. However, since its proposal was ineligible for award based on its failure to meet a material solicitation requirement, Galen was not prejudiced; its proposal would have been unacceptable under either the prior or current scheme.

Galen also challenges the acceptability of Dr. Downing's proposal on several grounds. Galen is not an interested party to raise these arguments. Under our Bid Protest Regulations, 4 C.F.R. § 21.0(a) (2001), a firm must have a direct economic interest in the award or failure to award a contract in order to have standing to maintain a protest argument. Here, there was a third offeror whose proposal the agency determined was at least technically acceptable, and Galen does not challenge that determination. Accordingly, even if we found Dr. Downing ineligible for award for one of the reasons advanced by Galen, the third offeror, not Galen, would move into line for award. Under these circumstances, Galen lacks a direct economic interest in this aspect of its protest, and thus is not an interested party for purposes of challenging the acceptability of Dr. Downing's proposal. OMV Med., Inc.; Saratoga Med. Ctr., Inc., B-281387, et al., Feb. 3, 1999, 99-1 CPD ¶ 52 at 9-10.

As a final matter, Galen asserts that the agency improperly failed to execute a determination and finding to continue performance of the contract notwithstanding Galen's protest, and that it therefore should be reimbursed both its bid protest and proposal preparation costs. However, since we have concluded that Galen's offer was not eligible for award, Galen suffered no prejudice as a consequence of the agency's failure, and this failure therefore would not provide a basis for sustaining Galen's protest. Balantine's S. Bay Caterers, Inc., B-250223, Jan. 13, 1993, 93-1 CPD ¶ 39 at 7-8. It follows that there is no basis for us to recommend payment of protest or proposal preparation costs. 4 C.F.R. § 21.8(d).

The protest is denied.

Anthony H. Gamboa
General Counsel