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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Med Optical

File: B-296231.2; B-296231.3

Date: September 7, 2005

Joseph M. Goldstein, Esq., Shutts & Bowen LLP, for the protester.

William J. Cea, Esq., Becker & Poliakoff, PA, for Vision MarketPlace, Inc., an intervenor.

Merilee Rosenberg, Esq., and Dennis Foley, Esq., Department of Veterans Affairs, for the agency.

Kenneth Kilgour, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the agency's evaluation of the awardee's past performance was improper is denied where the record supports the agency's evaluation.

2. Protest challenging agency's evaluation of protester's proposal is denied where the alleged evaluation errors did not result in competitive prejudice to protester.

DECISION

Med Optical protests the award of a contract to Vision MarketPlace, Inc. (VMP) by the Department of Veterans Affairs (VA) under request for proposals (RFP) No. 546-18-05 to supply prescription eyeglasses and eye exams to veterans in Broward County, Florida. Med Optical primarily asserts in its original protest that the awardee failed to offer a facility that dispenses eyeglasses and eye exams and is located within 5 miles of the nearest VA medical facility, as required by the RFP, and that the agency improperly evaluated VMP's past performance. In a supplemental protest, Med Optical asserts that its ranking was improperly reduced from second to fourth place during the reevaluation of proposals.¹

¹ We dismissed another protest ground, that the agency had improperly evaluated Med Optical's proposal, for failing to set forth detailed legal and factual grounds for a protest.

We deny the protest.

On January 18, 2005, the VA issued the solicitation, set aside for small businesses, for a 1-year indefinite-quantity, fixed-price contract with 2 option years, to furnish prescription eyeglasses and eye exams to veteran beneficiaries in five Florida counties, including Broward County. Offerors could submit offers for any or all of the five locations. The solicitation requires that a contractor have a facility that furnishes prescription eyeglasses and eye exams that is within 5 miles of the nearest VA medical facility and is located within the respective county.

Award was to be made to the firm determined to have submitted the proposal deemed most advantageous to the government. In addition to price, the RFP contained the following technical evaluation factors: demonstrated capability, quality assurance, personnel qualifications, and past performance. The RFP also identified subfactors for each of these criteria. Each of these four factors was of equal importance; when considered together, they were significantly more important than price. The solicitation stated that offerors were to submit past performance information directly related to the “[d]epth and relevancy of work experience in providing similar services for similar customers,” and to “[p]rovide at least three (3) references, letters or recommendations.” RFP at 55-56.

On February 18, six proposals were opened for the Broward County location, including those from Med Optical and VMP. One offer lacked a technical proposal and was not considered. With regard to the facility location requirement, VMP’s proposal listed four locations in Broward County: Coral Springs, Tamarac, Deerfield Beach, and Aventura. To address the past performance factor, VMP listed four references in its proposal: the VA office in Birmingham, Alabama; the Florida Department of Education; the Virginia Department for the Visually Handicapped; and the Massachusetts Eye and Ear Infirmary. In addition, VMP supplied several letters of recommendation, including one each from its first two references.

After the technical evaluation team analyzed the proposals, award was made to VMP. Med Optical protested that award on April 13, challenging the acceptability of VMP’s proposal under the facility location requirement and the agency’s evaluation of VMP’s past performance. On May 12, the VA notified our Office that, while it rejected the allegations contained in Med Optical’s protest, it would nevertheless take corrective action due to problems the agency found with the evaluations. We dismissed the protest on May 13.

After the proposals were reevaluated, the average point scores for both VMP and Med Optical declined. VMP remained the offeror with the highest rating on the technical factors, while Med Optical dropped from second to fourth place, having been downgraded for weaknesses under two evaluation factors—quality assurance plan and personnel qualifications. VMP also offered the lowest price of all the offerors; Med Optical’s price was substantially higher than VMP’s. By letter dated

May 23, the protester was notified that VMP was once again the awardee for Broward County, and this protest followed.

Med Optical alleges that VMP's proposal should have been found unacceptable for failing to offer a facility located within 5 miles of the nearest VA medical facility; that the agency improperly evaluated VMP's past performance; and that the agency's reevaluation improperly lowered the score of Med Optical's proposal in the reevaluation, specifically, that the agency improperly scored Med Optical's proposal under the personnel qualifications and demonstrated capability factors.

As a preliminary matter, Med Optical argues that, with respect to Broward County, the agency historically has construed the RFP's 5-mile proximity requirement to mean that the offeror's facility must be located within 5 miles of the VA's Oakland Park Outpatient Clinic, and that VMP has offered no facility that satisfies that requirement. The protester's position is unpersuasive. The language of the RFP requires that the contractor have a facility inside of Broward County and within 5 miles of any VA medical facility; it in no way limits offerors to proposing facilities within 5 miles of the VA facility in Oakland Park.

As noted above, VMP's proposal listed four locations for Broward County. The first location, Coral Springs, is VMP's corporate office, which does not routinely administer eye exams or dispense prescription eyeglasses. The second facility, Aventura, is located outside of Broward County. Both of the other locations, Deerfield Beach and Tamarac, are inside Broward County and within 5 miles of the nearest VA medical facility. Since the record thus shows that two of the locations VMP proposed satisfy the 5-mile requirement in the RFP, Med Optical's challenge to the award to VMP on this ground is without merit.

Med Optical also challenges the agency's evaluation of VMP's past performance. Where a solicitation requires the evaluation of an offeror's past performance, we will examine the agency's evaluation to ensure that it was both reasonable and consistent with the solicitation's evaluation criteria, and with procurement statutes and regulations. Hanley Indus., Inc., B-295318, Feb. 2, 2005, 2005 CPD ¶ 20 at 4. We see no basis to question the agency's evaluation here.

The solicitation requested that offerors supply information related to the depth and relevance of work experience in providing similar work to similar customers, and at least three references, letters, or recommendations. VMP satisfied the solicitation requirements by listing as references the four offices noted above, and included several letters of recommendation in its proposal. Based on its review of this information, the agency gave VMP the highest score available for past performance.

Med Optical challenges the agency's favorable rating of VMP's past performance, and offers the names of several current and former VA officials who Med Optical alleges could offer testimony concerning problems with VMP's past performance. The

contracting officer here states that “there were no complaints made or filed against [VMP]” under previous contracts. Contracting Officer’s Statement at 1. Although Med Optical alleges that the agency has knowledge of VMP’s allegedly poor past performance and names VA officials who it asserts could substantiate the allegation, Med Optical offered no evidence that the contracting officials for this procurement had any reason to know of any poor past performance on the part of VMR. Thus, because VMP’s proposal satisfied the requirements of the RFP, and because the contracting officials had no knowledge of alleged poor performance by VMP, our review of the record leads us to conclude that the agency’s evaluation of VMP’s past performance was both reasonable and consistent with the RFP’s evaluation terms.

Med Optical also asserts that the agency’s evaluation of its proposal, in the areas of personnel qualifications and demonstrated capability, was unreasonable.² We need not address these issues since the record shows that the protester was not prejudiced by any alleged errors in these areas. 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-290126, Feb. 8, 1996, 96-1 CPD 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996). Here, even if Med Optical had received perfect scores in both areas where it challenges the agency’s evaluation, its proposal would still be lower rated technically and substantially higher priced than the awardee’s. Accordingly, Med Optical would not be in line for award even if it prevailed in its challenge to the evaluation of its proposal. Marwais Steel Co., B-254242.2; B-254242.3, May 3, 1994, 94-1 CPD 291 at 7.

The protest is denied.

Anthony H. Gamboa
General Counsel

² In connection with this protest ground, Med Optical argues that the agency reduced its score, and lowered its ranking in the reevaluation, in retaliation for Med Optical having filed its first protest. Contracting officers are presumed to act in good faith; we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Pride Mobility Prods. Corp., B-292822.5, Dec. 6, 2004, 2005 CPD ¶ 72 at 5. Here, there is no evidence that the reduction in the protester’s scores during the reevaluation was in any way the result of bad faith on the part of the agency.