

Answer



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: Astrophysics Research Corporation

File: B-228718.3

Date: February 18, 1988

## DIGEST

1. General Accounting Office finds unobjectionable comparative technical scoring in a competitively negotiated brand name or equal solicitation in which non-brand name equipment receives higher technical score than brand name; where its performance was technically superior to brand name; it is unreasonable to assume that a proposal offering the brand name would be scored equal to an offer possessing merit beyond the minimum requirements specified when the solicitation clearly put offerors on notice that offers would be comparatively evaluated on a point-scored basis and provided technical evaluation factors.

2. Protest disputing evaluation of the relative performance merits of X-ray screening systems on the basis of descriptive literature specifications is without merit, where operational testing also was conducted, and disclosed deficiencies in protester's system not challenged by protester.

3. General Accounting Office finds no merit to protester's contention that improper use of undisclosed evaluation criteria resulted in awardee's evaluation scoring advantage in comparatively scored brand name or equal procurement, where record indicates that awardee's higher rating was merely based on awardee's system's capabilities beyond the minimum solicitation requirements, which properly were scored above the protester's offered system meeting the minimum requirements.

## DECISION

Astrophysics Research Corporation protests award of a contract to Philips Electronic Instruments Inc., for 48 digital X-ray screening systems, with an option for an

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additional 58, under request for proposals (RFP) No. 87-7070, issued by the United States Marshals Service Department of Justice. Astrophysics challenges the evaluation on several grounds.

We deny the protest.

#### BACKGROUND

The RFP, as amended, solicited offers for delivery and maintenance of the machines to be installed at federal court facilities within the United States. It requested offers on a "brand name or equal" basis and designated the Linescan System Four, listing a number of salient characteristics and non-salient electrical requirements.

Award was to be made to the offeror whose proposal, conforming to the solicitation, was determined to be in the best interest of the government, price and other factors considered. The RFP included two equally weighted technical evaluation factors, Equipment (50 points) and Maintenance/Performance Capability (50 points), upon which proposals would be comparatively evaluated. The Equipment factor encompassed the extent to which the offered units met the RFP operational and electrical requirements, and offerors were instructed to submit information to establish this. The point scoring plan for the Equipment factor, not disclosed in the RFP, allocated points for performance exceeding satisfactory compliance with the salient characteristics. For example, under the "performance" subcriterion, which encompassed the ability to meet resolution, conveyor speed, penetration, and X-ray voltage requirements, there were a possible 20 points for an outstanding rating, 15 points for superior, 10 for adequate, 5 for weak and 0 for unsatisfactory.

The Maintenance/Performance Capability factor encompassed corporate capability for nationwide security project management, as evidenced by the offerors' established installation and maintenance support capabilities, as well as overall equipment downtime. This factor also covered a requirement for offerors to have had approximately 20 of the "precise units as being offered" in operation in, preferably, 5 different commercial or governmental locations within the United States, for approximately 1 year. The RFP also provided for operational testing of offered equipment, at the option of the government.

Total prices were to be compared under a formula, with the lowest-priced, technically acceptable offer receiving the maximum score.

On the closing date for receipt of proposals, the Marshals Service received four proposals, which it submitted to the Department of Transportation, Transportation Systems Center, for technical evaluation and operational testing. All four initial proposals were found acceptable and thus were placed within the zone of consideration. After submission of best and final offers, there was a total technical score difference of 7.5 points between the Philips and Astrophysics offers, ranked first and second, respectively. This scoring difference consisted of a 6 point difference under the Equipment factor and a 1.5 point difference under the Maintenance/Performance Capability factor.

The 6 point difference between the Equipment scores of the awardee and the protester resulted primarily from the outstanding rating of the Philips unit (20 points out of 20) under the "performance" subcriterion, because it was determined to exceed the requirements in this area. Specifically, the Philips unit was determined to provide greater image enhancement than other offered units, including Astrophysics' offered Linescan System Four brand name unit. The agency reports that the greater image enhancement is of benefit because it would better identify types of materials (*i.e.*, plastic or metal), and thus would aid in screening out new threats such as plastic machine guns in disassembled form. In comparison, Astrophysics' Linescan System Four brand name unit received a superior score (15 points out of 20) in this area because it had generally met the RFP requirements. The evaluation further reflected the finding that the conveyor belt speed of the Astrophysics unit, as tested, was 46.8 feet per minute, not meeting the requirement for 48 feet per minute. Philips' unit also was scored above Astrophysics under the Equipment factor subcriterion, "associated" (concerning the ability to meet film safety, dosage rate, and other ancillary operational requirements), based on a finding that the Philips unit had extensive self-diagnostic capabilities that would expedite servicing and fault identification.

The 1.5 point difference between offerors under the Maintenance factor was comprised of a 1 point difference under corporate capability, and an 0.5 difference under the maintenance capability subcriterion.

Astrophysics' low offered price of \$2,226,682 received the maximum 100 points under the price evaluation formula, while Philips received a price score of 99.5 for its \$2,238,696 offered price, \$12,014 more than Astrophysics'. Adding the

price scores to the technical scores resulted in an 8 point (after translating based on 200 point scale) total advantage for Philips over Astrophysics. The agency awarded a contract to Philips on September 30, 1987.

Astrophysics contends that the agency improperly evaluated both its and the awardee's offer by (1) giving its offer of brand name equipment less than the maximum available technical points; (2) evaluating performance abilities of its and the awardee's units in a manner inconsistent with the units' descriptive literature specifications; (3) evaluating the awardee's units in operation and service history improperly; and (4) evaluating the proposals on the basis of undisclosed technical criteria.

#### EVALUATION SCORING METHOD

Astrophysics argues that the evaluation approach utilized improperly deviated from that set forth in the RFP. Specifically, the protester maintains that it read the solicitation as predicating the award of 50 Equipment factor points on meeting the RFP's salient characteristics, and that since its brand name unit meets the salient characteristics, its offer should have received the maximum 50 points. Instead, the protester continues, the evaluation scheme actually used improperly was based on awarding the full 50 points only if the offered equipment exceeded the minimum RFP requirements. We reject this argument.

In a competitively negotiated brand name or equal solicitation, we consider unobjectionable comparative technical scoring where non-brand name equipment may receive a higher technical score than the brand name, if its performance is technically superior to the brand name. The solicitation here clearly put offerors on notice that offers would be comparatively evaluated on a point-scored basis, provided technical evaluation factors, and instructed offerors to indicate the extent to which the offered unit "meets or exceeds" the requirements. Consequently, we think it was unreasonable for the protester to assume that a proposal of the brand name would be scored equal to an offer possessing merit beyond the minimum requirements specified in the RFP. See generally Computer Sciences Corp., B-189223, Mar. 27, 1978, 78-1 CPD ¶ 234. Thus, the fact that the protester may have been misled, while unfortunate, does not render the evaluation improper.

#### EVALUATION BASED ON TESTING

Astrophysics also disputes some of the specifics of the agency's determination of the relative performance merits of the Astrophysics and Philips units. For example,

Astrophysics maintains its offered unit operates at one conveyor speed, 48 feet per minute, the speed required by the RFP; this is the speed indicated in the firm's descriptive literature. Further, Astrophysics disputes the image penetration capability of the Philips unit, as reported by the agency. The protester contends that, instead of the required penetration of 10 millimeters of steel, the descriptive literature of the Philips Dynavision 505 discloses penetration of only 6.5 millimeters of steel. The agency explains that the performance differences in the units were the results of live operational test demonstrations conducted by each offeror, witnessed by a member of the evaluation panel, and included open recording of readings and results. According to the agency, the performance of the Philips unit, as tested, was found to exceed the specifications listed in its descriptive literature, while the Astrophysics unit, as tested, did not meet the conveyor belt speed required in the RFP or listed in the firm's descriptive literature.

We find nothing improper in the agency relying on testing results rather than descriptive literature in evaluating operational capabilities; indeed, current test results would seem to be preferable in most instances, at least where, as here, the solicitation advised offerors that such testing may be conducted. While the protester maintains that its descriptive literature contradicts the test results on conveyor speed, it does not dispute that its unit, as tested before its own representative, did not meet the RFP conveyor speed requirement. Similarly, the protester does not dispute the results of the operational tests conducted on the Philips unit and has not submitted other conflicting test results showing that the units do not perform as tested during the evaluation. This aspect of the protest therefore is without merit.

#### PHILIPS EVALUATION

Astrophysics protests two aspects of the evaluation of Philips' proposal: (1) since the Dynavision 505 unit offered by Philips is new to the market and could not have met the 1 year units in service requirement, this was a deficiency that should have precluded award to Philips; and (2) Philips had a record of poor service history with the Marshals Service, and thus should not have been scored as highly as Astrophysics for service. We find the evaluation under the Maintenance factor reasonable.

First, concerning the units in service requirement, Philips states that, contrary to the protester's understanding, the Dynavision 505 it offered is not new to the market, and has been manufactured since April 1985. The Philips offer

included a list of over 20 units in operation for 1 year at over 5 locations, and Philips certified in its best and final offer that all of the units cited in its proposal were Dynavision 505 units. In connection with the protest, Philips has further submitted shipping documents verifying delivery of 22 Dynavision 505 units to 19 locations within the United States in a period preceding the RFP closing date by 1 year or more. Based on these considerations, there is no reason to question the agency's finding that Philips was not deficient in this area.

Similarly, evaluation of the firms' service history does not appear to be improper. For both offerors, the lack of documentation in this area was cited as a weakness. For Astrophysics, it was noted that the only evidence of maintenance ability was provided by verbal reference checks. While these reference checks were generally positive, the evaluation did note that some references in the eastern United States indicated problems with 48-hour service. The evaluation also found that the Astrophysics maintenance system had the potential to become overtaxed if several units in one region failed at the same time due to Astrophysics' extensive support of airline and other customers from only eight sites. The evaluation further noted that the location of facilities would require long distance travel in the west and northern Rocky Mountain areas. For Philips, reference checks indicated general satisfaction with service, including 48-hour service. The evaluation noted that the agency had some problems with Philips' past service, but recognized that changes had been made to correct those problems, and took into account Philips' explanation that since it had not had a recent service contract with the Marshals Service it had not been the primary provider, and consequently was not responsible for the poor service during the problem period.

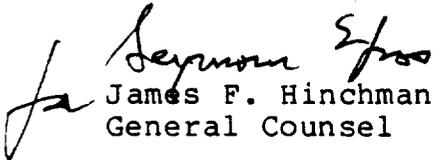
As it is clear that the agency thoroughly considered both offerors' capabilities in this area, we find no basis for objecting to the scoring. In any case, Astrophysics' score in this area was higher than Philips (by one point), as Astrophysics alleges it should have been.

#### DISCLOSURE OF SALIENT CHARACTERISTICS

Finally, Astrophysics alleges that the evaluation was flawed by the agency's failure to disclose all salient characteristics it considered in the evaluation. According to the protester, the emphasis placed on self-diagnostic and plastic detection capabilities in the evaluation rendered these features undisclosed salient characteristics since, as the evaluation turned out, an offeror had to offer them to receive the maximum score.

The self-diagnostics capability of the Philips unit was scored under the evaluation of the "associated" subcriterion, where both Philips and Astrophysics were scored highly (5 and 4.5 points, respectively, out of a maximum of 5 points), so it does not appear that Philips gained any significant advantage from consideration of its self-diagnostics. Consideration of Philips' image enhancement (i.e., plastics detection) capability was scored under the "performance" subcriterion which included as a salient feature "resolution," which addresses the ability of a unit to show images of items with detail visible. The image enhancement capability of Philips' unit was merely its ability to show images with greater clarity than required. We think the RFP's reference to "resolution" was sufficient to put offerors on notice that this would be considered. See Tracor Marine, Inc., B-226995, July 27, 1987, 87-2 CPD ¶ 92.

The protest is denied.

  
James F. Hinchman  
General Counsel