



**The Comptroller General  
of the United States**

Washington, D.C. 20548

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## **Decision**

**Matter of:** Picker International, Inc.

**File:** B-233251

**Date:** February 22, 1989

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### **DIGEST**

1. Mandatory requirement that computed tomography scanner possess an operator console capable of displaying images is not met by proposed scanner which can only meet requirement when operated in conjunction with equipment already possessed by the government, and proposal was therefore properly deemed technically unacceptable.

2. Where offeror responds to notice of proposal deficiency by taking explicit exception to mandatory requirement with alternate approach in its best and final offer, the agency need not again raise the deficiency and request a second round of best and final offers to allow offeror another opportunity to respond.

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### **DECISION**

Picker International, Inc., protests the rejection of its proposal as technically unacceptable, and the award of a contract to Siemens Medical Systems, Inc., under request for proposals (RFP) No. DADA15-88-R-0050, issued by the Walter Reed Army Medical Center, Department of the Army, for upgrading or replacing an existing computed tomography (CT) scanner (a diagnostic X-ray instrument that converts data by computer into a picture of the interior of a patient's body).

We deny the protest.

Six proposals were received in response to the solicitation; the radiology department at Walter Reed evaluated the proposals and found those submitted by Picker, Siemens, and a third offeror, General Electric Company (GE), for replacement of the existing scanner to be within the competitive range in that they either met the specifications or were judged capable of being made acceptable through negotiations. On September 1, 1988, letters were sent to each offeror, pointing out deficiencies and requesting

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clarifications of the proposals. Responses to the letters were received from all three offerors by September 15 and were sent to the evaluators in radiology for final evaluation. Because questions remained as to the responses of GE and Picker, the Army decided to hold another round of negotiations. Based on the best and final offers (BAFOs) received on September 26, the Army determined that Picker's proposal was technically unacceptable because it did not conform to paragraph C.3.12.5 of the specifications.

The solicitation required the CT scanner system to include both (1) an operator console, that provides the operator with the "capability to control the acquisition [by scanning], processing, display and manipulation of all data" from the X-ray beam, and (2) a diagnostic or viewer's console, that provides the "capacity to independently access, manipulate and perform all functions . . . except scanning, separate from the operator's console." RFP paragraph C.3.12.5 provided that "both the operator's and diagnostic consoles shall be capable of viewing a displayed image and perform[ing] . . . function[s] without interruption to, or by, any system function including X-ray data acquisition."

The radiology department at Walter Reed found, and Picker has subsequently conceded, that the system Picker proposed to supply cannot meet the paragraph C.3.12.5 requirement unassisted because its operator console cannot display images independently. In its September 1 letter to Picker, after asking whether Picker's proposed diagnostic console could be independently operated, the Army pointed out that, "C.3.12.5 requires [the] operator console also to be capable of displaying images." Picker responded that it was offering a "split Operator Console System," consisting of "an Operator's Console for scanning and a Viewer's Console for viewing;" it proposed to comply with specification C.3.12.5 by instead using a stand-alone viewing system (SAVS) currently installed at, and already owned by, Walter Reed. Although it considered Picker's response unsatisfactory, the Army did not again raise the issue when requesting BAFOs.

Upon learning of the subsequent award to Siemens, Picker filed this protest with our Office. Picker contends that its proposed use of the SAVS was fully responsive to the RFP requirements, and hence that its proposal was improperly found technically unacceptable. Further, to the extent its proposal may have contained deficiencies, Picker claims that meaningful discussions were not held to advise the firm of any alleged deficiency and to afford the firm a chance to remedy it. Picker also asserts that there were numerous

deficiencies in Siemens' proposal that improperly were not reflected in the evaluation.

We find that the Army properly rejected Picker's proposal as technically unacceptable. In a negotiated procurement, a proposal that fails to conform to material terms and conditions of the solicitation is unacceptable and therefore may not form the basis for award. Coopervision, Inc., B-231745, July 1, 1988, 88-2 CPD ¶ 3. The Army reports that the inability of Picker's operator console to display and manipulate images is a material serious deficiency because it would in many instances prevent the independent use of the operator console, thereby resulting in decreased patient throughput, a significant consideration in a large, busy hospital.

We reject as unreasonable Picker's argument that the operator console need not be capable of operating independently, and its alternative suggestion that a hook-up with Walter Reed's SAVS system would serve this purpose. Again, the specification expressly required that "both the operator's and diagnostic consoles shall be capable of viewing a displayed image," and nowhere indicated that government equipment could be proposed as a means of enabling the offered scanner to meet this explicit requirement. In this regard, we note that the Army reports Picker's suggestion would necessitate time-sharing with the existing SAVS system, which obviously would interfere with Walter Reed's other needs, and thus was never an intended alternative.

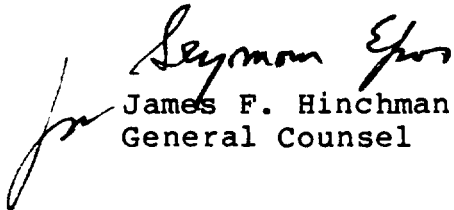
Moreover, if Picker believed the SAVS alternative was a viable one that should have been provided for in the RFP, it should have challenged the RFP on this ground prior to the initial closing date for receipt of proposals. See Bid Protest Regulations, 4 C.F.R. § 21.2 (a)(1) (1988).

Nor do we find merit in Picker's argument that the Army failed to conduct meaningful discussions with the firm. Notwithstanding the clear solicitation requirement that the operator console be capable of viewing displayed images, Picker offered a console without this capability. Where an offeror takes exception (here, in the form of proposing a noncompliant item) in its proposal to a clear solicitation requirement, this does not represent a deficiency that must be addressed through discussions. Rather, it is our view that an offeror should know, without confirmation from the agency, that its action in taking exception to the requirement likely may have a decided negative impact upon the acceptability of its proposal. Computervision Corp., B-224198, Nov. 28, 1986, 86-2 CPD ¶ 617.

While the failure to propose a system with a console having the required viewing capacity therefore was not a deficiency the Army was required to bring to Picker's attention, the Army's letter of September 1 nevertheless should have been sufficient to lead Picker into the area of this deficiency based on its reference to the requirement that the operator console be capable of displaying images. Indeed, Picker's response proposing to use the SAVS system to meet this requirement clearly demonstrated that the firm was aware of the perceived deficiency. Again, the Army was not required to advise Picker in another round of discussions that this proposed alternative, which was not consistent with the RFP requirements, constituted a deficiency. Computervision Corp., B-224198, supra.

In view of the technical unacceptability of Picker's proposal and the fact that one other proposal (GE's) besides that of Siemens was found technically acceptable, Picker would not be in line for award if its protest of the evaluation of Siemens' proposal were sustained. Picker therefore is not an interested party to protest the award to Siemens. 4 C.F.R. § 21.0; see Armament Engineering Co., B-230204, May 27, 1988, 88-1 CPD ¶ 505.

The protest is denied.

  
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General Counsel