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Comptroller General  
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United States Government Accountability Office  
Washington, DC 20548

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## Decision

**Matter of:** Philips Healthcare Informatics

**File:** B-400733.8; B-400733.11; B-400733.13

**Date:** December 2, 2009

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Leigh T. Hansson, Esq., Lorraine M. Campos, Esq., and Steven D. Tibbets, Esq., Reed Smith LLP, for the protester.

Albert B. Krachman, Esq., and Andrew W. Dyer, Jr., Esq., Blank Rome LLP, for AGFA HealthCare Corporation, the intervenor.

Timothy Haight, Esq., Patricia J. McDaniel, Esq., Philip S. Kauffman, Esq., and Phillipa L. Anderson, 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.

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### DIGEST

Protester is not an interested party to maintain protest challenging proposal evaluation where it did not offer a firm fixed-price proposal as required by the solicitation; protester would be ineligible for award even if protest of evaluation were sustained.

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### DECISION

Philips Healthcare Informatics (PHI) of Foster City, California, protests the award of a commercial item contract to AGFA HealthCare Corporation (AGFA) of Greenville, South Carolina, by the Department of Veterans Affairs (VA) under request for proposals (RFP) VA-260-08-RP-0167 for picture archiving and communication system (PACS) services for Veterans Integrated Service Network 20 (VISN 20).<sup>1</sup> The protester challenges the agency's evaluation of its own proposal, the awardee's proposal, and the agency's price/technical tradeoff.

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<sup>1</sup> AGFA protested the prior award to PHI. We dismissed that protest as academic when the agency decided to cancel the award and reevaluate the proposals received. See AGFA HealthCare Corp., B-400733.2 et al., Jan. 9, 2009.

We dismiss the protest on the basis that the protester is not an interested party to challenge the award to AGFA.

“PACS” is a term used to describe a set of systems that facilitate the archiving, processing, and reviewing of digital radiological images and their related information. The images are acquired, archived, and retrieved over a network for diagnosis and review by physicians. The images can be interpreted and viewed at workstations, which can also serve as archive stations for image storage.<sup>2</sup> VISN 20 includes nine main locations and other smaller clinics, and the VISN 20 PACS would link those facilities and allow for the efficient sharing of radiological images.

The agency evaluated the proposals received from PHI, AGFA, and FujiFilm Medical Systems USA, Inc., the three offerors whose proposals were deemed eligible for award. Proposals for this firm fixed-price contract were to contain pricing for 58 contract line item numbers (CLIN); the base year of the contract accounted for 26 of those CLINs. Of those 26 CLINs, 11 through 18 requested prices related to data migration. The protester’s proposal priced those CLINs at zero dollars, with the following qualification:

[DELETED]

Agency Report (AR), Tab 4, Protester’s Proposal at 72.

The agency awarded the contract to AGFA, whose proposal was the lower-priced of the two most highly technically rated. This protest followed.

The intervenor asserts that the protester failed to submit a firm fixed-price proposal, and therefore its proposal is ineligible for award.<sup>3</sup> Where an RFP requires fixed prices and a proposal does not offer fixed prices, the proposal as submitted cannot be considered for award. Optical Sys. Tech., Inc., B-292743.2, Nov. 12, 2004, 2004 CPD ¶ 231 at 6.

The protester offers two counter arguments, neither of which challenges the intervenor’s assertion that the protester failed to offer a firm fixed-price proposal.

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<sup>2</sup> See <http://www.biohealthmatics.com/technologies/his/pacs.aspx>.

<sup>3</sup> The issue of whether the protester offered a firm fixed-price proposal was first raised by the intervenor in its comments on the agency report; the agency’s evaluation did not find that the protester had failed to offer a firm fixed-price proposal. In its reply to the intervenor’s comments on the agency report, however, the agency stated that it “agree[d]” that the intervenor’s assertion that the protester had failed to offer a firm fixed-price proposal “ha[d] merit.” Agency’s Response to Intervenor’s Comments on AR, Oct. 30, 2009 at 2.

The protester argues that the solicitation did not contain any statement that data migration was to be performed at the contractor's expense. We find this argument to be without merit. As noted above, nearly one third of the base year CLINs required offerors to supply prices for various aspects of the data migration effort. This is a clear and unequivocal statement on the agency's part that the data migration expenses were to be born by the contractor.

The protester also suggests that the awardee itself fell short of offering a firm fixed-price proposal. Quoting a phrase of the awardee's proposal, the protester notes that AGFA "[DELETED]." AR, Tab 5, AGFA's Proposal at 72. That portion of the awardee's proposal stated, in full:

[DELETED]

Id. (emphasis added). The protester asserts that this portion of the awardee's proposal suggests that the agency "may need to expend additional resources" if AGFA is the awardee. Protester's Comments, Nov. 16, 2009 at 5. We see nothing in the highlighted portion of the awardee's proposal to suggest that it was in any way qualifying the fixed-price nature of its offer. The awardee's proposal stated that it contained all of the necessary costs of migration, something that the protester's proposal failed to do.<sup>4</sup> In sum, on the record here, we conclude that PHI, unlike the awardee, failed to offer a firm fixed-price proposal.

In order for a protest to be considered by our Office, a protester must be an interested party, that is, an actual or prospective offeror whose direct economic interest would be affected by the award or failure to award a contract. 4 C.F.R. §§ 21.0(a)(1), 21.1(a) (2009); Cattlemen's Meat Co., B-296616, Aug. 30, 2005, 2005 CPD ¶ 167 at 2 n.1. A protester is an interested party to challenge the agency's evaluation of proposals where there is a reasonable possibility that the protester's proposal would be in line for award if its protest were sustained. Ridoc Enter., Inc., B-292962.4, July 6, 2004, 2004 CPD ¶ 169 at 9. Because the record shows that PHI is ineligible for award for failing to offer a firm fixed-price proposal, and there was another proposal besides the awardee's eligible for award, PHI is not an interested party to challenge the award. See Advanced Health Sys.-Recon., B-246793.2, Feb. 21, 1992, 92-1 CPD ¶ 214 at 3.

The protest is dismissed.

Lynn H. Gibson  
Acting General Counsel

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<sup>4</sup> [DELETED].