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**Comptroller General  
of the United States**

**Washington, D.C. 20548**

# Decision

**DOCUMENT FOR PUBLIC RELEASE**

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**Matter of:** Marquette Medical Systems, Inc.

**File:** B-277827.5; B-277827.7

**Date:** April 29, 1999

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William M. Weisberg, Esq., and Monica C. Parchment, Esq., Tucker Flyer, for Hewlett-Packard Company, an intervenor.  
Col. Nicholas P. Retson, and Maj. Jonathan C. Guden, Department of the Army, for the agency.  
Peter A. Iannicelli, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Where solicitation for a fixed-price contract stated that offerors could propose either to provide new items or to upgrade the existing ones and that proposed prices would be calculated by adding the total proposed price for the basic requirement to the prices proposed for all option periods, agency improperly deviated from solicitation's evaluation criteria when it adjusted proposed prices to take into account the agency's expectations of savings associated with the offer of new items and additional costs associated with upgraded ones.
  2. Agency's "normalization" of offerors' prices was not reasonable where it double counted the cost difference associated with the use of new rather than upgraded existing items by both deducting the price of new items from the total price of the offeror proposing them and adding the price of replacement items to the price of the offeror proposing to upgrade existing ones.
  3. Protest ground alleging that technical evaluation of awardee's proposal was improper is denied where there is ample support in the record for the evaluators' determination that the awardee had extensive prior experience and for the evaluators' high rating of the awardee's proposal on quality of technical approach.
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## **DECISION**

Marquette Medical Systems, Inc. protests the award of a contract to Hewlett-Packard Company by the Department of the Army pursuant to request for proposals (RFP) No. DAMD17-94-R-0052, for a Cardiology Medical Information System (CMIS system) to replace the Department of Defense's (DoD) existing computerized medical information system. The protester contends that the agency's evaluation of proposals and award decision were unreasonable and inconsistent with the RFP's evaluation scheme. Protest at 6-10; Supplemental Protest at 2-4.

We sustain the protest.

## **BACKGROUND**

Issued on April 5, 1996, the RFP requested proposals for providing hardware, software, documentation, training, support and maintenance services relating to storage, retrieval and interpretation of electrocardiograms (ECG). RFP § B. The CMIS system would be deployed at 15 major medical centers and approximately 200 hospitals and medical clinics throughout the United States. RFP § J, apps. E, G; Contracting Officer's Statement at 1. The RFP stated that there were 950 ECG carts in the existing system and specifically invited offers based upon either replacing or upgrading the existing ECG cart inventory. RFP §§ C.2.4; J, app. G, at J-15. The RFP anticipated award of a fixed-price contract for a base period of 1 year with options for 7 additional years. RFP § F-2(a). Essentially, the Army was buying all hardware and software required to operate the CMIS system, as well as documentation, training, and support services, during the base period of the contract, and extended maintenance and support services in the option years. Contracting Officer's Statement at 1. Marquette has been the incumbent contractor since the present medical information system was put into operation in 1980. Id.

The RFP stated that the contract would be awarded to the responsible offeror whose offer, conforming to the solicitation, was determined to be the best overall value, after consideration of price and other factors. RFP § M.2. The technical evaluation criteria, in descending order of importance (factors (3) and (4) were comparatively equal), were (1) quality of technical approach; (2) contract management; (3) understanding of overall contract requirements; (4) past performance and relevant experience; and (5) key personnel qualifications. RFP § M.1.b. The RFP defined the best overall response as the response that was evaluated as most superior technically with a realistic estimated cost. RFP § L.d, at L-9. The RFP stated that price was considered less important than technical considerations and that the agency would evaluate price by adding the total price for all option periods to the total price for the basic requirement. RFP §§ M.3, M.4.

The agency received initial proposals from and conducted negotiations with three offerors.<sup>1</sup> Agency Report, Tab 20, Post Business Clearance Memorandum at 1. After first BAFOs were received and evaluated, Marquette's proposal received a technical score of [deleted] (out of 100 possible points) while Hewlett-Packard's received a technical score of [deleted] points. *Id.* at 7. Marquette's total price was \$[deleted] and Hewlett-Packard's total price was \$[deleted]--a price differential \$[deleted] in Marquette's favor.<sup>2</sup> *Id.* The agency determined that Marquette's and Hewlett-Packard's proposals were [deleted] and that the technical differences between them did not justify paying Hewlett-Packard's higher price. *Id.* at 8. Accordingly, on August 4, 1997, the Army initially awarded the contract to Marquette. Agency Report, Tab 31, Addendum to Post Business Clearance Memorandum, May 8, 1998, at 1. Hewlett-Packard filed a protest in our Office alleging that the award was improper because the Army had relaxed certain RFP requirements for Marquette, whose proposed equipment did not meet the RFP's minimum mandatory requirements.<sup>3</sup> After the Army announced that it was going to issue an amendment changing the pertinent RFP equipment requirements, Hewlett-Packard withdrew its protest and we closed our file without action.

Two additional rounds of discussions were held, and second and third BAFOs were received and evaluated. Agency Report, Tab 31, Addendum to Post Business Clearance Memorandum, May 8, 1998, at 1. Marquette's third BAFO received a technical score of [deleted] points, while Hewlett-Packard's again received a score of [deleted] points; Marquette's total price was \$[deleted] while Hewlett-Packard's was \$[deleted]--a price differential of just \$[deleted] in Hewlett-Packard's favor.<sup>4</sup> *Id.* at 2, 5. The agency again determined that Marquette's and Hewlett-Packard's proposals were [deleted], but that Hewlett-Packard's offer was the best overall value because it was rated [deleted]. *Id.* at 5, 6. On this basis, on June 24, 1998, the Army reversed its initial selection decision and awarded the contract to Hewlett-Packard. Marquette filed a protest in our Office alleging that the award was improper because, among other things, the price and technical evaluations were unreasonable, and because Hewlett-Packard's proposal was noncompliant with several of the RFP's requirements.<sup>5</sup> The Army again decided to take corrective action, including reopening discussions and, since Hewlett-Packard's prices had been revealed, revealing all

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<sup>1</sup> Only the evaluations of the protester and the awardee are relevant to the protest grounds.

<sup>2</sup> Prices have been rounded to the nearest dollar.

<sup>3</sup> Hewlett-Packard's protest (reference No. B-277827) was filed on August 19, 1997.

<sup>4</sup> In its third BAFO, Marquette submitted two proposals; the second proposal was [deleted] with a total price of \$[deleted]. Protest at 4.

<sup>5</sup> Marquette's protest (reference No. B-277827.2) was filed on July 9, 1998.

offerors' prices before soliciting new BAFOs. Contracting Officer's Statement at 4. Based on this corrective action, we dismissed the protest as academic.

Hewlett-Packard then filed suit in the United States Court of Federal Claims protesting the Army's proposed corrective action. Contracting Officer's Statement at 4. The Court allowed the Army to proceed with a fourth round of discussions, BAFOs, and evaluations. *Id.* This time, Marquette's proposal received a technical score of [deleted] points, while Hewlett-Packard's proposal again received a score of [deleted] points; Marquette's total price was \$[deleted], while Hewlett-Packard's total price was \$[deleted] a price differential of \$[deleted] in Marquette's favor. Agency Report, Tab 50, Addendum to Post Business Clearance Memorandum, Dec. 4, 1998, at 3, 4. In spite of Hewlett-Packard's higher price, and based on the "best value" analysis set out in detail below, the contracting officer determined that Hewlett-Packard's proposal represented the best overall value. *Id.* at 6. Consequently, on December 22, 1998, the contract was awarded to Hewlett-Packard. After a debriefing, Marquette filed this protest on January 19, 1999. After receiving protest-related documents, including evaluation materials, from the Army, Marquette filed a supplemental protest on February 16. Performance under the contract has been stayed pending our resolution of the protest.<sup>6</sup> Contracting Officer's Statement at 1.

#### THE AGENCY'S "BEST VALUE" ANALYSIS

The protester contends that the present award decision was inconsistent with the two previous award decisions. Protest at 7. Marquette points out that Hewlett-Packard's first BAFO received a total of [deleted] technical points while Marquette's received [deleted] technical points (a difference of [deleted] points) and Hewlett-Packard's third BAFO received a total of [deleted] technical points while Marquette's received [deleted] technical points (a difference of [deleted] points). Yet, in both instances, the agency determined that Marquette's and Hewlett-Packard's BAFOs were [deleted] and selected the lower-priced offer for award. *Id.* at 3, 4. Now, in making the third award, Marquette contends, the agency has done "an inexplicable about face" and selected Hewlett-Packard's fourth BAFO over Marquette's, even though Hewlett-Packard's margin of technical superiority has narrowed to just over [deleted], while Marquette's price is approximately \$[deleted] lower than Hewlett-Packard's. *Id.* at 7.

While providing no explanation for any apparent inconsistencies between the first two and the present award decisions, the agency argues that the two previous award decisions are irrelevant to the validity of the present award decision, so long as the

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<sup>6</sup> The parties have raised a number of arguments, both procedural and on the merits, in support of their respective positions. While we have carefully considered every argument and examined the entire record in light of them, we will address only the most significant issues here.

present award decision is rational and consistent with the RFP's stated evaluation criteria. Agency Report at 3. We need not examine the alleged inconsistencies because, as discussed below, we find that the contracting officer's best value analysis, upon which the award decision was based, was neither reasonable nor consistent with the stated evaluation scheme.

In December 1998, as part of the evaluation of the fourth round of BAFOs, the agency performed what is labeled in the record a "best value determination." In that analysis, the contracting officer considered the cost of purchasing new ECG carts over the potential 8-year life of the contract. Agency Report at 6-8; Contracting Officer's Statement at 10-11. The contracting officer reports that, since Hewlett-Packard offered to replace, while Marquette offered to upgrade, the ECG carts in the government inventory, he "normalized" the two offers' prices for comparison purposes. Contracting Officer's Statement at 11; Agency Report, Tab 49, Best Value Determination, Dec. 3, 1998, ¶¶ 3, 7.

The contracting officer explains that his "normalizing" process consisted of deducting from Hewlett-Packard's price, for evaluation purposes, the price of the [deleted] new ECG carts that the firm proposed to supply, thus reducing its total price of \$[deleted] by \$[deleted], to \$[deleted]. Contracting Officer's Statement at 11; Agency Report, Tab 49, Best Value Determination, Dec. 3, 1998, ¶ 3. The contracting officer found that, because Hewlett-Packard would be supplying new carts, it "can be predicted that there will be minimal need to acquire new carts" during the contract cycle. Best Value Determination, Dec. 3, 1998, ¶ 6. With respect to Marquette's proposal to upgrade the existing carts, the contracting officer's analysis stated that 665 carts would have to be replaced, which the contracting officer concluded would represent an additional cost of approximately \$[deleted] over the contract period, if Marquette's proposal were accepted. *Id.* ¶ 7. The contracting officer also found that Hewlett-Packard's approach of replacing [deleted] carts [deleted] *Id.* ¶ 8. Based on this analysis, the contracting officer determined that Hewlett-Packard's BAFO represented the best value and selected Hewlett-Packard for award. Agency Report, Tab 50, Addendum to Post Business Clearance Memorandum, Dec. 4, 1998, at 5-6.

Marquette also asserts that the contracting officer improperly evaluated offers using a life-cycle cost analysis even though the RFP did not inform offerors that such an analysis would be conducted. Supplemental Protest at 2-4. Marquette also disputes the specific elements of the agency's best value analysis and asserts that there is no reasonable justification for the selection of Hewlett-Packard's proposal as the best value when, in fact, having Hewlett-Packard perform this fixed-price contract will cost the Army approximately [deleted] percent more than having Marquette perform. Protest at 9-10.

Procuring agencies have broad discretion to determine the evaluation scheme they will use, but they do not have the discretion to announce in the solicitation that one scheme will be used, and then follow another in the actual evaluation. 10 U.S.C.

§ 2305(b)(1) (1994); Technical Support Servs., Inc., B-279665, B-279665.2, July 8, 1998, 98-2 CPD ¶ 26 at 3; Trijicon, Inc., B-244546, Oct. 25, 1991, 91-2 CPD ¶ 375 at 5. Once offerors are informed of the criteria against which their proposals will be evaluated, the agency must adhere to those criteria or inform all offerors of any significant changes made in the evaluation scheme. Trijicon, Inc., *supra*, at 5.

Here, the RFP specifically invited offers based upon either of two very different technical approaches to fulfilling DoD's requirement for a CMIS system. Offers could properly be based upon upgrading the existing ECG carts or upon supplying new ECG carts. RFP § C.2.4. Regardless of the approach offered, the RFP anticipated award of a fixed-price contract and stated that offers would be evaluated for award purposes by adding the total price for all options to the total price for the basic requirement. RFP § M.4. In fact, upon award and exercise of the options, the government will be obligated to pay the contractor the fixed prices scheduled in its proposal for the basic and option periods of the contract. While the RFP indicated that the contracting officer would conduct a price analysis, the RFP gave no indication that the price analysis would involve deducting the price for performing any part of the work (and especially not the price for a major component like the ECG carts) from an offeror's total price in an attempt to "normalize" the competition.<sup>7</sup> RFP §§ L.e, M.3. In fact, where the contract is fixed price, an agency is not permitted to make adjustments for cost elements, since the fixed price is the price the awardee is obligated to perform at and the price the government is bound to pay. See PHP Healthcare Corp.; Sisters of Charity of the Incarnate Word, B-251799 *et al.*, May 4, 1993, 93-1 CPD ¶ 366 at 6. Further, while a source selection official may in its price/technical tradeoff quantify the effects of a concern on the technical side, such as the risk of schedule slippage, see, e.g., Allied-Signal Aerospace Co., B-250822, B-250822.2, Feb. 19, 1993, 93-1 CPD ¶ 201 at 14-15, the quantification must be rationally based and consistent with the RFP. Here, the price evaluation and best value analysis technique was not in accord with the scheme announced in the RFP and was not reasonably based in any event.

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<sup>7</sup> The contracting officer's use of the term "normalization" is inapposite. Normalization is a technique sometimes used within the cost adjustment process in an attempt to arrive at a greater degree of cost realism. It involves the measurement of offers against the same cost standard or baseline where there is no logical basis for the differences in approach or where there is insufficient information provided with the proposals, leading to the establishment of common "should have bid" estimates by the agency. See The Research Found. of the State of New York, B-274269, Dec. 2, 1996, 96-2 CPD ¶ 207 at 5. Normalization is not proper where, as here, varying costs between competing proposals result from different technical approaches that are permitted by the RFP. See Dynalectron Corp.; Lockheed Elecs. Co., Inc., B-181738, Jan. 15, 1975, 75-1 CPD ¶ 17, at 18-21, *aff'd*, June 5, 1975, 75-1 CPD ¶ 341.

The agency asserts that the contracting officer did not conduct a life-cycle cost analysis but, other than suggesting that the contracting officer's analysis does not fall squarely within the FAR's definition of the term "life-cycle cost," the agency provides no support for its position. The FAR defines "life-cycle cost" as "the total cost to the Government of acquiring, operating, supporting, and (if applicable) disposing of the items being acquired." FAR § 7.101.

From our review of the record, it is clear that, even though the contracting officer may not have considered or quantified all of the costs of operating the CMIS system over the 8-year life contract, he certainly considered some costs that rightfully may be considered as part of a life-cycle cost analysis. Most notably, the contracting officer considered and attempted to quantify the cost of acquiring new replacement ECG carts under both Hewlett-Packard's and Marquette's approaches. Contracting Officer's Statement at 11, 12; Agency Report, Tab 49, Best Value Determination, Dec. 3, 1998, ¶¶ 3, 7. He also considered, but did not attempt to quantify, certain support costs (i.e., technician training after the initial deployment phase, maintenance, administration, cart surveys, and software upgrades) that might be associated with each approach. Agency Report, Tab 49, Best Value Determination, Dec. 3, 1998, ¶ 8.

Regardless of the label given the contracting officer's evaluation, and regardless of whether the contracting officer's analysis of costs that might be associated with each approach over the life of the contract was complete and thorough, the above cost elements were not listed in proposals but were considered in the best value determination. These cost elements are pertinent life-cycle costs that should have been identified in the RFP if they were to be evaluated. See Eastman Kodak Co., B-194584, Aug. 9, 1979, 79-2 CPD ¶ 105 at 7 (if life-cycle costs are to be evaluated, the solicitation must indicate that fact); see also Lanier Bus. Prods., Inc., B-200695, B-200696, Mar. 10, 1981, 81-1 CPD ¶ 188 at 2-3 (the particular elements of the life-cycle cost evaluation should be disclosed to offerors in the RFP).

The solicitation gave no indication that the agency would adjust proposed prices for evaluation purposes, based on the cost savings believed to be available from acquiring new carts and the additional costs believed to be associated with upgrading the existing carts. Adjustments of the order made here clearly could have affected offerors' judgment about whether to propose new carts rather than upgrades to the existing inventory. Effectively, the agency added a significant evaluation factor to those announced in the solicitation, by disfavoring proposals based on the upgrading of the existing carts. Since the RFP failed to advise offerors of this unannounced criterion and this failure prejudiced the protester, who proposed the "disfavored" option, we sustain the protest on this ground.

Moreover, our review of the source selection record shows that the calculations used in the contracting officer's best value analysis were themselves unreasonable. That analysis improperly double-counted the costs associated with the way the carts were

proposed: for evaluation purposes, it both deducted the entire price of the new carts from Hewlett-Packard's price and added the cost of purchasing new carts during the contract period to Marquette's price.

Both aspects of the double counting were problematic. The analysis deducted the entire price of Hewlett-Packard's new carts, even though, because this is a fixed-price contract, the agency is certain to pay those costs. As to Marquette's costs, however, the contracting officer's assumption that the majority of its upgraded carts will need to be replaced is disputed by the protester and unsupported in the record, which includes no evidence to suggest that Marquette's upgraded carts would need to be replaced sooner than Hewlett-Packard's. The contracting officer concedes that he has no idea how many of the carts have recently been replaced nor how many will actually require replacement over the term of the contract; in calculating the \$[deleted] figure effectively added to Marquette's price, the contracting officer concedes that he did not have a price from Marquette for replacing the full inventory of ECG carts, so his figure was merely based on his calculation of what it would cost to have Marquette replace ECG carts using a Federal Supply Schedule price. Agency Report, Tab 49, Best Value Determination, Dec. 3, 1998, ¶¶ 2, 3; Contracting Officer's Supplemental Statement at 2. Again, at a minimum, we think that the contracting officer should have obtained accurate information concerning how many carts would likely need to be replaced over the life of the contract and Marquette's actual price for replacing all 950 carts to treat the offers equally in making his best value determination.<sup>8</sup> In addition, while Marquette proposed to [deleted], the contracting officer's analysis apparently did not take that into account.

There is another reason suggesting the impropriety of deducting Hewlett-Packard's [deleted] price for replacing [deleted] ECG carts from the firm's price for evaluation purposes. To the extent that Hewlett-Packard's technical approach, which was premised on [deleted], was responsible for its receiving the highest technical score, it was inappropriate to ignore the price associated with that approach.

In sum, it was improper for the agency, without advising offerors, to give a substantial preference during the evaluation to proposals to provide new, rather than upgraded, carts; and, in any event, the way that the preference was calculated here was unreasonable. We therefore sustain the protest on this ground.

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<sup>8</sup> Because the evaluation panel reported as a weakness of the Hewlett-Packard proposal the inadequacy of the proposed training, we also find questionable the contracting officer's citing as an advantage of Hewlett-Packard's proposal the fact that Hewlett-Packard's "[deleted]." Agency Report, Tab 42, SSEB Evaluation Report, Nov. 5, 1998, at 3<sup>rd</sup> unnumbered page; Agency Report, Tab 49, Best Value Determination, Dec. 3, 1998, ¶ 8.

## BUY AMERICAN PREFERENCE

The protester contends that, since the procurement is subject to the Buy American Act, 41 U.S.C. §§ 10a-d (1994), and Hewlett-Packard has proposed to supply end products (i.e., ECG carts) that are manufactured in the Peoples Republic of China, the Army should have added a price differential to Hewlett-Packard's offer, but improperly did not do so. Protest at 10-11.

The RFP included Defense Federal Acquisition Regulation Supplement (DFARS) clause 252.225-7006 which, among other things, stated that offers would be evaluated by giving preference to end products made in the United States and certain other designated countries and required offerors to identify and certify all end products that were not domestic end products. RFP § K.26. To qualify as domestic, an end product must meet a two-pronged test: (1) it must be manufactured in the United States; and (2) the cost of its components which are mined, produced, or manufactured in the United States must exceed 50 percent of the cost of all its components. FAR § 52.225-3(a); RFP § I.34; Computer Hut Int'l, Inc., B-249421 et al., Nov. 23, 1992, 92-2 CPD ¶ 364 at 4. While domestic certifications may sometimes be accepted at face value, a contracting agency should go beyond a firm's self-certification for Buy American Act purposes, rather than relying on the validity of that certification, when it has reason to question whether a domestic product will in fact be furnished. Hewlett-Packard Co., B-228271, Dec. 3, 1987, 87-2 CPD ¶ 545 at 4; Computer Hut Int'l, Inc., supra, at 5.

Hewlett-Packard's proposal's Buy American Act certificate did not identify any end products as not domestic, but included a note referring the reader to its Certifications Introduction, which listed four manufacturing plants that would be used to perform the contract, as well as their locations, including a location in the People's Republic of China, and the percent of the total effort that would be performed at each. Agency Report, Tab 6, Hewlett-Packard's Proposal, § K.26, at K-25, and vol. II, § 3, at 3 (Place of Performance Certification). In that certification, Hewlett-Packard represented that its ECG carts (designated as the M1700A PageWriter Xli), which were to be manufactured in China, would amount to 30.6 percent of its total effort.

The contracting officer states that, after reviewing Hewlett-Packard's certifications, he was satisfied that no Buy American Act preference needed to be applied and did not seek additional information from Hewlett-Packard. Contracting Officer's Statement at 5. The agency contends that the contracting officer reasonably relied on Hewlett-Packard's certifications and properly did not apply a Buy American Act preference. Agency Report at 8-9.

Because we are recommending, in light of our sustaining the protest on the grounds discussed above, a re-evaluation of proposals, we need not determine whether, prior to the award decision, the contracting officer had a duty to inquire further regarding the applicability of the Buy American Act preference to Hewlett-Packard's proposal. As a result of the protest pleadings, even if not earlier, enough information has been

brought to the contracting officer's attention to warrant further inquiries concerning Hewlett-Packard's proposal, so that, at this point, reliance on the offeror's self-certification in a re-evaluation would not be reasonable. Hewlett-Packard's certification that the ECG carts would amount to only 30.6 percent of its total effort could not eliminate the need for further inquiry, since it was provided without explanation, and no adequate support for it was provided during the protest. In this regard, we note that review of Hewlett-Packard's fourth BAFO could have alerted the contracting officer to possible Buy American Act concerns. See Agency Report, Tab 47, Hewlett-Packard's Fourth BAFO, amended Nov. 24, 1998, at 2<sup>nd</sup>-6<sup>th</sup> unnumbered pages. Of the total price for the CMIS system's hardware and software components, the price of the ECG carts alone is \$[deleted], while the total price for all other hardware and software is just \$[deleted].<sup>9</sup> Thus, Hewlett-Packard's Chinese-made ECG carts represent approximately [deleted] percent of the total price for the CMIS system.

#### TECHNICAL/PAST PERFORMANCE EVALUATION OF HEWLETT-PACKARD

Marquette contends that the technical and past performance evaluations of Hewlett-Packard's proposal were unreasonable and inconsistent with the RFP's evaluation scheme. Marquette asserts that the past performance evaluation was flawed because Hewlett-Packard does not have experience in converting legacy data from the existing medical information system to the new CMIS system as required by section L.d.1 of the RFP.<sup>10</sup> Protest at 12. Marquette also asserts that the past performance evaluation was flawed because Hewlett-Packard has no experience in designing, installing and maintaining CMIS systems of similar magnitude and complexity. *Id.* In addition, the protester contends that the overall technical evaluation was unreasonable because the evaluation panel rated Hewlett-Packard's proposal slightly higher than Marquette's even though Hewlett-Packard proposed inadequate training time. Supplemental Protest at 6-7.

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<sup>9</sup> Hewlett-Packard's total price in that fourth BAFO was \$[deleted] of which \$[deleted].

<sup>10</sup> Initially, Marquette alleged that the Army unreasonably did not consider the fact that the replacement ECG carts proposed by Hewlett-Packard would have fewer features and less capabilities than the carts presently in use, resulting in degraded performance. Protest at 14. Marquette also protested that the composition of the evaluation panel that evaluated the fourth BAFOs was improper because it differed from that described in the agency source selection plan and because not all of the evaluators that had evaluated earlier proposals were available to evaluate the fourth BAFOs. Supplemental Protest at 4-5. The Army's protest report responded to these allegations, but Marquette did not reply to the agency's response. Agency Report at 10-12. We therefore consider the allegations abandoned. *Trijicon, Inc.*, *supra*, at 4 n.3.

Our Office will question an agency's evaluation of proposals only if it lacks a reasonable basis or is inconsistent with the RFP's stated evaluation criteria. DAE Corp., Ltd., B-257185, Sept. 6, 1994, 94-2 CPD ¶ 95 at 4. A protester's mere disagreement with the agency over its evaluation does not establish that the evaluation was unreasonable. *Id.*; Cubic Applications, Inc., B-274768 et al., Jan. 2, 1997, 97-1 CPD ¶ 98 at 3. After reviewing the record in light of the protester's arguments, we have no basis to question the agency's evaluation.

Contrary to Marquette's assertion, the RFP contained no requirement that an offeror demonstrate prior experience in converting legacy data. The RFP provision cited by the protester as requiring previous experience in converting legacy data to the new system merely states: "The solution shall include conversion, migration, or incorporation of existing ECG data records to the new system." RFP § C.2.5. Thus, the RFP required that proposals provide for converting, migrating, or otherwise incorporating the legacy-type data stored in the existing medical information system for use in the offeror's proposed CMIS system, but did not require that an offeror demonstrate prior experience converting the legacy-type data presently being used by the DoD. Hewlett-Packard's proposal fulfilled the requirement, stating that [deleted] and describing how it would proceed to do that work. Agency Report, Tab 6, Hewlett-Packard's Proposal, vol. 1, § 3, at 62-65. The record shows that the evaluation panel was aware of the fact that Hewlett-Packard's proposal had no demonstrated experience in converting legacy-type data, but believed that this represented minimal risk, which was mitigated by the firm's strength in software solutions, and the evaluators noted that the proposal was technically outstanding. Agency Report, Tab 10, SSEB Report, July 25, 1996, at 4th unnumbered page. Accordingly, we find no impropriety in this case.

Regarding past performance and relevant experience, the RFP stated that the adequacy of the offeror's response would be determined by the strength of the firm's background, including past performance and relevant experience in similar contracts/projects, and the level of customer satisfaction, as demonstrated in existing information systems supported and maintained by the firm. RFP § L.d.1, Factor 4, at L-10. Offers were to demonstrate prior experience with the configuration design, installation and maintenance of a system of similar magnitude of complexity, and were to include three references. *Id.* Based upon our review of Hewlett-Packard's proposal and the evaluation record, we find that there is ample support, discussed below, for the evaluators' determination that Hewlett-Packard's proposal demonstrated the firm's extensive experience and for the evaluators' high rating of Hewlett-Packard on past performance and relevant experience.<sup>11</sup> Agency Report,

<sup>11</sup> Ultimately, the evaluation panel gave Hewlett-Packard's proposal a rating of [deleted] points (out of 10 possible points) on this factor, while Marquette's proposal received [deleted] points. Agency Report, Tab 42, SSEB Report, Nov. 5, 1998, at E-4, E-6.

Tab 10, SSEB Report, July 25, 1966, at 4<sup>th</sup> unnumbered page. See Cobra Techs., Inc., B-280475 et al., Oct. 6, 1998, 98-2 CPD ¶ 98 at 4-5, and cases cited.

Hewlett-Packard's proposal stated that the firm had extensive experience in the medical products field and that Hewlett-Packard was one of the world's largest manufacturers of electromedical devices and systems, with more than \$1.3 billion in sales of medical products, systems, and services in 1995 (the last full year before initial proposals were submitted). Agency Report, Tab 6, Hewlett-Packard's Proposal, vol. 1, § 1, at 23-25. As required, Hewlett-Packard's proposal included brief descriptions of three previous projects that the firm had performed and gave the names of references for each. Id. The type and size of the listed contracts varied greatly: (1) the dollar value of the prior projects ranged from \$1.5 million to \$71.0 million; (2) the work was performed for government agencies and commercial firms; and (3) the work included providing hardware, software, and technical support, as well as installation of a patient monitoring and clinical information system and an ECG management system located at 16 different hospitals. Id. The references that responded to the Army's inquiries gave very positive appraisals. Army Report, Tab 8, Past Performance Questionnaires, at 5<sup>th</sup>-13<sup>th</sup> unnumbered pages. The references stated, among other things, that the quality of Hewlett-Packard's work ranged from very good to excellent; that Hewlett-Packard was cooperative; that Hewlett-Packard was committed to customer satisfaction; that Hewlett-Packard resolved problems quickly; and that they would do business with Hewlett-Packard again.

In addition, the record shows that the evaluators considered the exceptional qualifications and experience of the key personnel proposed by Hewlett-Packard in making their determination that Hewlett-Packard had the requisite experience with prior projects of a similar magnitude. See, e.g., Agency Report, Tab 10, SSEB Report, July 25, 1966, at 21st and 25th unnumbered pages. While Marquette tried in its comments on the agency report to distinguish the projects previously performed by Hewlett-Packard from the work that will be required under the present contract, in view of the fact that the RFP merely required previous experience on similar but not identical projects, and in view of the above-described past performance information that was included in Hewlett-Packard's proposal, we have no basis to find unreasonable the evaluation panel's determination that Hewlett-Packard had extensive relevant experience. Protester's Comments at 13-15; Contracting Officer's Statement at 5-6; Agency Report, Tab 10, SSEB Report, July 25, 1966, at 4<sup>th</sup> unnumbered page. See Cobra Techs., Inc., supra, at 4-5.

Regarding the contention that Hewlett-Packard's proposal should not have received a slightly higher rating than Marquette's because Hewlett-Packard proposed inadequate training time, the evaluation record shows that at virtually every stage of the evaluation, the evaluators noted their concern with Hewlett-Packard's proposal for only 1 day of training and even stated that they considered it inadequate. Nevertheless, in spite of the perceived training weakness, after every evaluation, the evaluation panel consistently gave Hewlett-Packard's proposal a high rating (roughly

[deleted] out of a possible [deleted] points) on the quality of technical approach evaluation factor based upon their finding that the proposal was otherwise superior. Agency Report, Tab 10, SSEB Report, July 25, 1996, at 4th unnumbered page; Agency Report, Tab 14, SSEB Group Worksheet, Mar. 11, 1997, at 3<sup>rd</sup> unnumbered page; Agency Report, Tab 18, SSEB Group Summary Score, June 5, 1997, at 3<sup>rd</sup> unnumbered page; Agency Report, Tab 24, SSEB Group Worksheet, Dec. 18, 1997, at E-6; Agency Report, Tab 42, SSEB Report, Nov. 5, 1998, at 3<sup>rd</sup> unnumbered page, E-6. The contracting officer explains that he was aware of the training weakness identified by the evaluators, but that he did not consider it significant, and that it was already reflected in the scores accorded the proposal by the evaluators. Contracting Officer's Statement at 6-7. In this regard, the Chairman of the SSEB confirms that Hewlett-Packard's short training schedule was taken into account by the evaluation panel along with the other superior aspects of the proposal when they gave the proposal high ratings in the quality of technical approach factor. Agency Report, Tab 2, att. 3, Declaration of the Chairman of the SSEB, ¶ 6. Since the evaluators were obviously aware of this one weakness in Hewlett-Packard's proposal, yet nonetheless determined that the proposal merited a very high rating based upon other attributes, we see no reason for finding the evaluation unreasonable. We therefore deny the protest on this ground.

#### RECOMMENDATION

In light of the discussion above, we believe that the agency should reconsider whether the RFP's current evaluation scheme, with no preference for the supply of new, rather than upgraded, carts, represents its needs. If it does, we recommend that the agency reevaluate offers in accordance with that evaluation scheme. If the agency determines that the evaluation factors need to be amended to meet its needs, we recommend that the agency amend the RFP accordingly (for example, by advising offerors of a preference for new carts or disclosing life-cycle cost elements that will be evaluated), make other necessary revisions to the RFP (such as including an estimate of the number of ECG carts that will need to be replaced during the life of the contract if the upgrade approach is offered), hold an additional round of discussions, allow offerors to submit revised BAFOs, and then evaluate those BAFOs in accord with the RFP's revised scheme and the discussion above. We also recommend that, if Hewlett-Packard continues to propose carts that are manufactured in China, the agency obtain the cost information necessary to make an informed determination whether Hewlett-Packard's proposed system can be considered a domestic end item or whether a Buy American Act differential must be applied to Hewlett-Packard's price for evaluation purposes.

If Hewlett-Packard is not the successful offeror following corrective action, we recommend that the agency terminate Hewlett-Packard's contract for the convenience of the government and make award as appropriate. We also recommend that Marquette be reimbursed the reasonable costs of filing and pursuing the protest, including attorneys' fees. 4 C.F.R. § 21.8(d)(1) (1998). The protester should submit its certified claim for costs, detailing the time expended and the costs incurred, directly to the contracting agency within 60 days after receipt of this decision.

The protest is sustained.

Comptroller General  
of the United States