



**Comptroller General  
of the United States**

Washington, D.C. 20548

## Decision

**Matter of:** Phoenix Medical Electronics Services, Inc.

**File:** B-237739

**Date:** March 21, 1990

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C. Thomas Brown, Esq., and Dawn C. Stewart, Esq., Rust, Rust & Silver, for the protester.  
E.L. Harper, Department of Veterans Affairs, for the agency.  
James Vickers, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest that procurement was not negotiated because no discussions were held is denied where, following initial technical evaluation, offerors were sent letters requesting clarification or additional information regarding their proposals and requesting best and final offers.
2. Objection to award formula under which price is weighted only 20 percent is without merit because, in a negotiated procurement, the government is not required to make award to the firm offering the lowest price unless the solicitation specifies price will be the determinative factor.
3. Disparity in scores among evaluators does not alone signify that the evaluation of proposals was unreasonable or biased where there is no evidence in the record to suggest that the technical scoring by individual evaluators reflected anything other than their reasonable judgments as to the relative merits of the proposals.
4. Award of a contract based on the highest total score is not improper because price scores were not calculated in a manner describe in the solicitation, where even if scores were computed in accordance with the solicitation formula the protester's relative position would not change.

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### DECISION

Phoenix Medical Electronics Services, Inc., protests the award of a contract to Picker International by the

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Department of Veterans Affairs (VA) under request for proposals (RFP) No. 512-22-90 for the maintenance of a Picker 1200 SX CT Scanner.

We deny the protest.

The RFP, issued on August 23, 1989, solicited proposals for weekly preventative maintenance and emergency service calls for the scanner for 1 year on a firm, fixed-price basis. The proposals were to be evaluated, according to Section M of the RFP, on the bases of six technical criteria with a combined weight of 80 points and price which was accorded a weight of 20 points. The RFP further provided that award would be made to the offeror obtaining the most points and stated that "award will not necessarily be made to the lowest price offeror."

On the September 20 closing date, proposals were received from Phoenix and Picker. Letters containing questions were sent to each offeror. The proposals which were amended in response to the letters and were evaluated with the following results:

	<u>Phoenix</u>	<u>Picker</u>
Technical	53.50	63.25
Price	<u>20.00</u> (\$112,200)	<u>14.60</u> (\$154,700)
Total	73.50	77.85

Award was made to Picker based on its higher total score on October 30, 1989.

Phoenix raises a number of objections to the selection of Picker. It first challenges the method used by VA to conduct the procurement. The protester complains that while VA alleges that it conducted a negotiated procurement it did not do so because discussions were never held with the offerors. Phoenix also argues that the RFP scoring scheme was arbitrary as it permitted the selection of other than the low priced offeror. Next, the protester asserts that the actual evaluation of the proposals was flawed as its proposal was improperly downgraded, the awardee's was improperly upgraded and no price reasonableness analysis was conducted. Finally, the protester states that the technical scoring was skewed because of an unrepresentative score assigned by one of the evaluators and maintains that the awardee's price score was erroneously calculated. For the reasons detailed below, we believe that the selection of Picker was legally proper.

## PROCUREMENT METHOD

Phoenix argues that this procurement was not negotiated because no discussions were held with offerors and thus it was not given an opportunity to address the VA's concerns regarding its proposal. The protester also objects to the RFP's evaluation scheme which allotted 80 points for technical factors and 20 points for price, because the scheme will not insure award to the lowest priced competitor which Phoenix contends must be the case in a procurement such as this which was not negotiated.

First, we disagree with the protester's general contention that this was not a negotiated procurement--it is clear that discussions were held here. Discussions occur when an offeror is given the opportunity to revise or modify its proposal, or when information requested from and provided by an offeror is essential for determining the acceptability of its proposal. FAR § 15.601; Louis Berger & Assocs., Inc., B-233694, Mar. 28, 1989, 89-1 CPD ¶ 347. The record shows that following the evaluation of the initial technical proposals, the contracting officer sent both offerors letters dated October 6, requesting clarification of or more information regarding each offeror's proposal and asking for responses by October 17. Both offerors responded to the questions asked and confirmed their original prices. In view of the letters sent to the offerors and the responses received, we conclude that discussions were held and that the procurement was a negotiated one.<sup>1/</sup>

Since we disagree with Phoenix's position that this was not a negotiated procurement, its further objection to the use of an award formula grounded on other than low price which was based on the protester's view as to the nature of the procurement is likewise without merit. To the extent the protester argues that even in a negotiated procurement the evaluation scheme should insure award to the low-priced acceptable offeror, its position is not correct. The government is not required to make award to the firm offering the lowest price in a negotiated procurement unless

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<sup>1/</sup> To the extent that Phoenix argues that the discussions held with it were not meaningful as far as a particular aspect of its technical proposal is concerned, we will consider that argument later in the discussion when we deal with contentions concerning the evaluation of proposals. The issue of whether discussions held are meaningful is different from the question of whether the procurement was conducted by negotiation.

the RFP specifies that price will be the determinative factor. Unidynamics/St. Louis, Inc., B-232295, Dec. 21, 1988, 88-2 CPD ¶ 609.

#### EVALUATION OF PROPOSALS

The protester's attack on the VA evaluation of proposals is two-fold. Phoenix first objects to the substance of the evaluation, stating that it was conducted unfairly and that the evaluators' conclusions are unsupported. Second, the protester objects to the point calculation process, arguing that an unreasonably low score from a single evaluator skewed the result of the technical evaluation and stating that the VA improperly calculated the price score. For the reasons stated below, we disagree with both of these arguments.

Phoenix argues that its proposal was unfairly downgraded because it proposed to use Eimac x-ray tubes rather than those supplied by Picker, the manufacturer of the Scanner. The protester states that Picker improperly communicated with the evaluators and influenced them to conclude that the Eimac tubes were inferior. Further, the protester maintains that there was no basis upon which to penalize it for the use of Eimac tubes. It also argues that if the VA evaluators were concerned about this matter it should have been raised during discussions. Finally, the protester states, without further explanation, that it was not credited with its prior experience as the incumbent<sup>2/</sup> and that it was improperly penalized because it is a small company.

In reviewing protests against the propriety of an agency evaluation of proposals, it is not the function of our Office to independently evaluate those proposals. Ira T. Finley Investments, B-222432, July 25, 1986, 86-2 CPD ¶ 112. Rather, the determination of the relative desirability and technical adequacy of the proposals is primarily a function of the procuring agency which enjoys a reasonable range of discretion. AT&T Technology Sys., B-220052, Jan. 17, 1986, 86-1 CPD ¶ 57. We will question an agency's technical evaluation where the record clearly shows that the evaluation does not have a reasonable basis or is inconsistent

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<sup>2/</sup> The VA responded to this allegation in its report with an accompanying memorandum stating that the evaluators did consider the protester's experience. Phoenix does not dispute this in its comments and therefore, we consider the issue abandoned. OptiMetrics, Inc.; NU-TEK Precision Optical Corp., B-235646; 235646.2, Sept. 22, 1989, 89-2 CPD ¶ 266.

with the evaluation criteria listed in the RFP. See American Educ. Complex Sys., B-228584, Jan. 13, 1988, 88-1 CPD ¶ 30. The fact that the protester disagrees with the agency does not itself render the evaluation unreasonable. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450.

With respect to the x-ray tubes proposed by Phoenix, the record shows that the evaluators concluded that the tubes were a significant area of concern because the evaluators were not able to "verify equivalent performance during high speed dynamic studies." As a result, the protester received six out of eleven possible points under the evaluation factor for repair parts.

In response to the protest, the agency states that it has had no contact with Picker concerning the x-ray tubes and denies that it has any documents regarding such contacts. Since the protester has submitted nothing in support of its contention that the communication occurred and there is nothing in the record to support it, we have no basis upon which to question the agency's position in this regard. Further, while the protester insists that the VA had no reason to downgrade its proposal because of its proposed x-ray tubes, the evaluators cited their inability to verify the tubes' high speed performance and the protester has submitted no information which contradicts the agency's view. Since mere disagreement with an agency's evaluation conclusion does not render it unreasonable, we have no basis upon which to question the agency's judgment.

Also we find no support for the protester's argument that it was not informed during discussions of the agency's concerns regarding the x-ray tubes. In its October 6 letter to Phoenix the VA posed the following question:

"Please provide references of Picker's scanners using the Eimac model GS-1596 x-ray tube. We are particularly interested in those sites performing high speed dynamic studies."

We believe that this inquiry was adequate to inform Phoenix that the performance of its proposed x-ray tubes was of concern to the VA. This fulfilled the agency's obligation to conduct meaningful discussions. Fairchild Weston Sys., Inc., B-229568.2, Apr. 22, 1988, 88-1 CPD ¶ 394.

Phoenix also complains that Picker received more points in the technical evaluation than Phoenix because Picker is a larger firm and Picker's proposal exceeded the minimum requirements in certain areas.

Picker received an average rating of 8.75 points in the evaluation category "Qualifications of Organization" compared to the 5.5 points given Phoenix. While Phoenix argues it was unfairly penalized because of its smaller size, we find the evaluation had a rational basis. The evaluators found Picker had three times as many accounts in the local area than Phoenix and more experience servicing the model scanner involved here. Similarly, Picker received a higher point score in the category "Qualification of Service Personnel" because it had more technicians in the area trained in the repair of the model scanner to be serviced. While Picker's size contributed to its higher score in these two areas because of larger corporate resources, the additional experience and number of technicians are directly relevant to the performance of the contract which called for rapid repair of the scanner.

Regarding the allegation that Picker received additional points for exceeding RFP requirements, Phoenix has pointed to no specific area where this occurred but makes only a general statement that it was penalized for offering an acceptable proposal. In any event, where as here, the solicitation advises offerors that proposals will be point-scored based on technical evaluation factors and instructed to list unique arrangements or equipment which will be advantageous in carrying out the contract, it is in our view, not reasonable for an offeror to assume a minimally acceptable proposal will receive the same score as one that goes beyond the minimum requirements. See Astrophysics Research Corp., B-228718.3, Feb. 18, 1988, 88-1 CPD ¶ 167.

Phoenix also claims that Picker's price of \$154,700 is unreasonable since it can perform the contract for \$112,200. The contracting officer found that Picker's price was fair and reasonable as it was below the government's estimate of \$170,000. A contracting officer's determination of price reasonableness is an exercise of business judgment which we will not disturb unless it is clearly unreasonable or there is a showing of bad faith or fraud. Imperial Schrade Corp., 66 Comp. Gen. 307 (1987), 87-1 CPD ¶ 254. The protester's argument that it offered a lower price does not establish that the price reasonableness determination was improper. Id. We think that the agency properly determined that Picker's price was reasonable based on comparison with the government's estimate, which the protester does not challenge.

Next, Phoenix complains that the point scores for both technical and price evaluations are incorrect and that when computed properly, Phoenix would receive the higher total score and the award.

The technical proposals were reviewed by four evaluators and, as noted earlier, Phoenix received a total of 53.5 points and Picker received 63.25 out of a possible 80 points. Based on their prices, Phoenix received 20 points and Picker received 14.6 points.

As far as the technical evaluation is concerned, Phoenix points out that one of the four evaluators scored it much lower in relation to Picker than did the others. The protester contends that the one evaluator's score deviated so significantly from the scores of the other three that it deserves no credence.

The evaluator in question assigned Phoenix a score of 46 points in the technical evaluation as compared to the other three evaluators who assigned the protester technical scores of 49, 63, and 60.3/ The same evaluator assigned a score of 66 to Picker whereas the others rated Picker at 67, 63, and 57.

A disparity in scores among evaluators does not necessarily signify that the evaluation of proposals was unreasonable or that a particular evaluator was biased. See Digital Radio Corp., B-216441, May 10, 1985, 85-1 CPD ¶ 526. Since evaluating proposals involves subjective as well as objective judgments, it is not unusual for individual evaluators to reach disparate conclusions when judging competing proposals. See Mounts Engineering, 65 Comp. Gen. 476 (1986), 86-1 CPD ¶ 358. While the scores assigned by the evaluator resulted in the largest differential--20 points--between the scores assigned the two proposals, the scores assigned to each, 46 and 66, were in line with the scores assigned by the other evaluators. In any event, there is no evidence in the record to suggest that the scoring by any of the members of the technical evaluation committee, including the evaluator cited by the protester, reflected other than their reasonable judgments as to the merits of the proposals. There is no legal support for the protester's position that an evaluator's score should be dismissed simply because it may not be in line with that of the other evaluators.

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3/ The agency improperly calculated one evaluator's scores as totalling 63 points when the proper total is 60 points. Based on our calculation of Phoenix's technical score using the individual scoring sheets, Phoenix's overall average technical score should have been 54.5 points rather than 53.5 points shown on the evaluation record. This mistake made no difference in the outcome.

Phoenix argues that the points assigned for the prices were not computed in accordance with the RFP, which stated:

"Total points will be decided on the basis of competitive range with the lowest price offer within the competitive range receiving 20 points. Each other offeror in the competitive range will receive a percentage of the 20 points based upon the ratio of their cost to the lowest cost."

Phoenix contends that the points awarded were based on a ratio of the lowest price to the highest price rather than the highest price to the lowest price as required by the RFP. The protester states that if the ratio had been computed in accordance with the RFP, Picker should have received 12.4 points rather than the 14.6 points it was awarded by the VA. Phoenix provides two pages of algebraic calculations which it argues supports its conclusion.

We agree that the point scores for price were not calculated in accordance with the award statement quoted above. The literal application of the award formula for price based on the RFP would have been 20 points for Phoenix and 12.4 points for Picker.

However, even if the price points are calculated as the protester suggests and a corrected technical score total is used, Phoenix does not receive the highest point score:

	<u>Phoenix</u>	<u>Picker</u>
Technical	54.5	63.25
Picker	<u>20.0</u>	<u>12.40</u>
Total	74.5	75.65

Thus, we find the award to Picker was not inconsistent with the RFP evaluation statement.

We deny the protest.

*for Robert P. Murphy*  
James F. Hinchman  
General Counsel