



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: ABC HealthCare

File: B-266043

Date: January 23, 1996

Alan M. Grayson, Esq., for the protester.

Philip Kauffman, Esq., and Jeanne Anderson, Esq., Department of Veterans Affairs, for the agency.

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DIGEST

Protest objecting to solicitation requirement for contractor accreditation by the Joint Commission on Accreditation of Healthcare Organizations as unduly restrictive of competition is denied where agency demonstrates reasonable basis for the requirement.

DECISION

ABC HealthCare protests the terms of invitation for bids (IFB) No. 590-05-96, issued by the Department of Veterans Affairs (VA) Medical Center in Hampton, Virginia, for home oxygen equipment. Specifically, ABC protests that the solicitation requirement that the contractor be accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) is not necessary to meet the agency's minimum needs.

We deny the protest.

The IFB, which was issued on July 27, 1995, sought prices for the rental of oxygen equipment, delivery service, and monthly visits to the homes of eligible VA beneficiaries. The solicitation required that the contractor be accredited by the JCAHO and that a copy of the accreditation be submitted to the contracting officer prior to contract award.¹

¹To obtain JCAHO accreditation, a home care organization must demonstrate substantial compliance with a number of standards, governing such matters as personnel qualifications, staff training, and equipment management.

On August 17, ABC, which has applied for an accreditation survey but which is not yet JCAHO-accredited, filed an agency-level protest objecting to the requirement for accreditation. The agency denied the protest, and proceeded with bid opening on the scheduled date of August 31. Five bids were received, three of which were from JCAHO-accredited companies. ABC was the low bidder. On September 8, ABC protested to our Office. By letter dated November 3, the VA notified us that it intended to proceed with award notwithstanding the protest.

The protester complains that the requirement for JCAHO accreditation is unduly restrictive of competition since it excludes from award companies such as itself, which meet JCAHO standards but which have not yet had their applications for accreditation approved. ABC points out that not all VA facilities that contract for home oxygen services require JCAHO accreditation, and further notes that the JCAHO Accreditation Manual itself recognizes that accredited facilities might contract with non-accredited firms.

In preparing a solicitation for supplies or services, a contracting agency must specify its needs and solicit offers in a manner designed to achieve full and open competition, 41 U.S.C. § 253a(a)(1)(A) (1994), and may include restrictive provisions or conditions only to the extent necessary to satisfy the agency's needs. 41 U.S.C. § 253a(a)(2)(B). Where a protester alleges that a requirement is unduly restrictive, we review the record to determine whether the requirement has been justified as necessary to satisfy the agency's minimum needs. Aegis Analytical Labs., Inc., B-252511, July 2, 1993, 93-2 CPD ¶ 4. The determination of the agency's minimum needs and the best method of accommodating them are primarily within the agency's discretion and, therefore, we will not question such a determination unless the record shows that it lacked a reasonable basis. CardioMetrix, B-257408, Aug. 3, 1994, 94-2 CPD ¶ 57.

Here, we find reasonable the VA's determination that its minimum needs require that the home care organization with which it contracts be JCAHO-accredited. The Chief of the VA Medical Center's Prosthetics and Sensory Aids Service explains that unless the facility contracts with an accredited home health care organization, it will be required to expend a substantial amount of time and resources to monitor the contractor's compliance with the safety and quality requirements established for the home health care industry by JCAHO's Accreditation Manual for Home Health Care.² The Medical Center's Quality Manager further explains that the hospital could lose its own accreditation by entering into a contract with a non-accredited provider.

²The protester has not complained that the standards set by the JCAHO exceed the agency's requirements; its complaint is that accreditation is not required to assure compliance with these standards.

The protester takes issue with these arguments, contending that the agency could ensure compliance with the standards by simply incorporating them into the contract and threatening the contractor with termination for default if it fails to comply. ABC also argues that the agency would not place its accreditation at risk by contracting with a non-accredited provider since the JCAHO manual recognizes that accredited facilities may contract with non-accredited firms.

The protester's first point fails to address the crux of the agency argument, *i.e.*, that the agency will be required to bear the expense of monitoring compliance with the JCAHO standards if JCAHO does not perform the monitoring through its accreditation process. In our view, the VA's desire to avoid the expenditure of significant agency resources to pay for inspection services that would be unnecessary if the contractor were accredited provides a reasonable basis for the accreditation requirement. Further, we think it is implicit in the agency's position that the need for compliance is critical given the nature of the services involved, and that the risk of noncompliance will be reduced if the contractor is accredited and thus subject to oversight by JCAHO. In light of the agency's undisputed need for compliance with the JCAHO standards, and the critical nature of the services being procured, we see no basis to question the agency's judgment that compliance can best be ensured through requiring accreditation.

Further, with regard to the protester's second point, while an accredited facility will not automatically lose its accreditation simply because it contracts with a non-accredited provider, it does risk not having its accreditation renewed if the non-accredited provider fails to comply with JCAHO standards. In this regard, the JCAHO manual requires each accredited organization to apply for, and undergo, a full accreditation survey at least once every 3 years, and provides that where a facility applying for accreditation contracts with a non-accredited provider, the non-accredited firm will be included in the scope of the applicant organization's survey.

ABC suggests that JCAHO accreditation cannot be a minimum requirement of the medical center since not all VA medical facilities that contract for home oxygen services require it. We note, however, that the vast majority (*i.e.*, 80 percent) of VA's medical facilities do require the accreditation. Moreover, the fact that some medical centers do not require JCAHO accreditation does not mean that others could not reasonably have concluded that requiring JCAHO accreditation is the best means of assuring contractor compliance with the JCAHO safety and quality standards. See Komatsu Dresser Co., B-251944, May 5, 1993, 93-1 CPD ¶ 369.

The protester argues that our decision in CardioMetrix, B-259736, Apr. 28, 1995, 74 Comp. Gen. ___, 95-1 CPD ¶ 223, should control here. ABC contends that in that case we sustained a protest objecting to a requirement for accreditation by the College of American Pathologists (CAP) on the grounds that the requirement was

unduly restrictive since non-accredited contractors had successfully performed similar requirements for the agency. That is not an accurate summary of our holding, however. We did not determine that the accreditation requirement was unduly restrictive of competition; rather, we found that the requirement that the contractor itself be CAP-accredited was too restrictive since the solicitation permitted the contractor to subcontract for the services with companies that were CAP-accredited. Here, the protester has not suggested that it intends to subcontract with JCAHO-accredited companies for the home oxygen equipment and services; thus, our decision in CardioMetrix is not on point.

Since the record shows that the agency determination to require JCAHO accreditation is reasonable, we have no basis to object to the challenged requirement.

The protest is denied.

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