



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: CardioMetrix

File: B-270701

Date: March 13, 1996

Robert J. Loring for the protester.

Peter G. Giella, Esq., and Joseph DiGiacomo, Department of the Navy, Military Sealift Command, for the agency.

Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester's argument that it is unreasonable for the agency to specify the number of patients that a contract physician must examine in a workday is denied where the examinations are for a limited purpose (*i.e.*, to determine the fitness of civil service mariners for duty at sea), and the record contains no evidence that the physician will be unable to perform the specified number of examinations in the allotted time.
 2. Prospective offeror bears the risk of not receiving a solicitation amendment where there is no evidence that the agency deliberately failed to send it a copy, and where the protester rebuffed repeated attempts by the agency to contact it to discuss the amendment.
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DECISION

CardioMetrix protests the specifications in request for proposals (RFP) No. N62381-96-R-0001, issued by the Department of the Navy, Military Sealift Command (MSC) for physician services. In particular, CardioMetrix objects to a solicitation provision requiring the contract physician to see up to 20 patients per day. The protester also complains that it failed to receive a copy of amendment No. 0002 to the RFP until immediately prior to closing, and thus effectively was precluded from reviewing its contents and submitting a timely offer.

We deny the protest.

The RFP, which was issued on November 9, 1995, sought the services of a licensed physician(s) to perform physical examinations of civil service mariners to ensure their fitness for duty at sea. As originally issued, the RFP provided that the physician would be expected to see up to 30 patients per day, with complete

physical examinations accounting for up to 25 patients per day and the remainder being evaluations or "sickcall" visits. The RFP also required that the physicians be trained in the standards and procedures set forth in MSC Instruction 6000.1C. Offers were due by December 11.

On December 7, CardioMetrix filed a protest with our Office, complaining that although the solicitation required the contractor to provide physicians trained in the standards and procedures set forth in MSC Instruction 6000.1C, offerors had not been furnished with copies of the instruction. The protester also objected to the requirement that the physician see up to 30 patients per day, arguing that this translated to an average of one patient every 12 minutes, which was an "unethically" short period of time for examination and/or treatment.¹

On December 8, the agency issued amendment No. 0001 to the RFP, which clarified certain aspects of the solicitation not relevant to this protest and extended the closing date to December 19. On December 14, the agency issued amendment No. 0002, which responded to CardioMetrix's protest by furnishing to all of the sources on its mailing list a copy of MSC Instruction 6000.1C and by revising the provision requiring the physician to see up to 30 patients per day as follows:

"The licensed Physician will be expected to see up to 20 patients per day. Complete physical examinations account for up to 12 patients per day, the remainder being evaluations or sickcall visits. Overtime will not be paid."

Elsewhere in the amendment, the agency elaborated on the above language, noting that although the solicitation had been revised to require the physician to see up to 20 patients per day "on an average," "the number [might] increase to a maximum of 30." The agency explained that during the years 1987-1993, it had processed up to 30 patients per day, but that due to current restrictions on hiring, it was now processing only up to 20 patients per day. The amendment again extended the closing date for receipt of offers, this time to January 4, 1996.

On January 4, after attempting unsuccessfully on a dozen separate occasions to contact CardioMetrix's chief operating officer to discuss the possibility of protest withdrawal,² the agency requested that our Office dismiss the protest as academic

¹The protester raised three additional grounds of protest as well, but was satisfied by the agency's response to them in amendment No. 0002; thus, we will not discuss them.

²The agency's records show that the contracting specialist telephoned CardioMetrix (continued...)

on the ground that amendment No. 0002 completely answered the protester's objections to the solicitation.

CardioMetrix responded to the request for dismissal on January 5, contending that it had first become aware of the existence and content of amendment No. 0002 when it received the agency's request for dismissal of its protest at 1:57 p.m. on January 4, and therefore had not had an opportunity to review its contents and prepare an offer prior to the 2:00 p.m. closing time. With regard to the amendment's contents, CardioMetrix objected to the revised requirement regarding patient load, complaining that the new requirement was "no less unethical" than the original requirement. The protester argued that "no contractor physician should be required to medically diagnose, treat, and manage any minimum number of patients per day," since "every patient/physician encounter is a unique experience whose time frame cannot be mandated or regulated by a third party." Since the protester did not agree that amendment No. 0002 addressed its objections, we declined to dismiss the protest as academic.

The agency responds to the protester's complaint regarding patient load by pointing out that the protester appears to have misunderstood the nature of the physician services sought here. The solicitation does not require the physician to diagnose and treat medical problems (except on a sickcall basis); it requires him (or her) to administer physical examinations to determine the fitness of mariners for duty at sea. To this end, the physician performs a routine physical examination and reviews the results of a battery of laboratory tests (e.g., electrocardiogram, pulmonary function test, urinalysis) that generally are conducted by health care professionals other than the physician. In other words, each physician-patient encounter is not for a unique purpose (i.e., the diagnosis and treatment of a unique medical problem); the encounters are for a routine purpose, which can be accomplished within a predictable time frame.

The determination of an agency's minimum needs and the best method of accommodating them are primarily within the agency's discretion, and 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, the agency has determined, based on its experience contracting for such services, that the physician will be able to perform the sort of examinations required on as many

²(...continued)

four times on December 28, and that each time she left a message with the protester's receptionist for its chief operating officer to call her back. The records further show that the contracting specialist called another four times on January 2; three times on January 3; and one last time early on the morning of January 4. None of the calls were returned.

as 30 patients per day. The protester has offered no evidence to the contrary, other than its assertion that no time limits should be imposed on any medical examination due to the nature of the physician/patient relationship. The protester's general objection does not demonstrate that the requirement is unreasonable, particularly given the routine--and thus relatively predictable--nature of the examinations to be performed here. The record thus does not support the protester's argument that the requirement for performance of up to 20--or even 30--physicals per day is unreasonable.

The protester also complains that it failed to receive a copy of amendment No. 0002 until 3 minutes prior to the revised closing time and thus did not have time to review the contents of the amendment and submit an offer prior to closing. A prospective offeror, however, bears the risk of not receiving a solicitation amendment unless it is shown that the contracting agency made a deliberate effort to exclude the firm from competing, or that the agency failed to furnish the amendment inadvertently after the firm availed itself of every reasonable opportunity to obtain the amendment. Sentinel Security & Patrol Servs., B-261018, Aug. 9, 1995, 95-2 CPD ¶ 67. Here, the agency's records show that a copy of amendment No. 0002 was furnished to each of the potential offerors on its mailing list, which included CardioMetrix. Indeed, it is difficult to believe that the agency, after issuing amendment No. 0002 in response to CardioMetrix's protest, would deliberately fail to send that firm a copy of the amendment. It also seems highly unlikely that the agency, if its intent were to exclude the protester from the competition, would have telephoned CardioMetrix on a dozen separate occasions between the date the amendment was issued and the new closing date; as noted above, none of the calls were returned. In sum, the record does not establish that the agency was responsible for the protester's difficulty.

The protest is denied.

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