

westfall



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: CardioMetrix
File: B-234620
Date: May 1, 1989

DIGEST

1. Solicitation for cardiology scanning services requiring that a "full disclosure" report be furnished to the hospital within 24 hours after a heart monitor is removed from a patient is not objectionable merely because it provides a competitive advantage to scanning companies located in the vicinity of the hospital.

2. Protest is denied where agency presents support for its position that "full disclosure" report is required to meet its minimum needs, and protester does not show that requirement is unreasonable. Fact that other similarly situated hospitals do not require submission of full disclosure reports does not, in and of itself, demonstrate that requirement is unreasonable since procuring officials can reasonably differ with regard to their assessment of what is required to meet similar needs.

DECISION

CardioMetrix protests as unduly restrictive of competition a provision in invitation for bids (IFB) No. 505-53-89, issued by the Department of Veterans Affairs (VA) for cardiology scanning services for the VA Medical Center at American Lake, Tacoma, Washington. The services sought involve the analysis of Holter monitor tapes. CardioMetrix contends that the solicitation requirement that a "full disclosure" report be furnished to the medical center within 24 hours after a tape is removed from a patient and provided to the contractor exceeds the agency's minimum needs and precludes competition by the companies not located in the vicinity of American Lake. We deny the protest.

The Holter monitor is a device worn by heart patients which records each heartbeat over a 24- to 48-hour period. During

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the same period, the patient keeps a diary of any symptoms that he or she experiences. The tape is then analyzed, and correlations between electrocardiogram (ECG) changes and the patient's diary entries are noted. According to the agency, this sort of monitoring helps physicians to detect cardiac abnormalities such as clogged arteries and arrhythmias.

The IFB in question requires the contractor to submit two reports for each tape. First, the contractor must provide a comprehensive scan with a printed log, including a summary of findings, samples of quantitative analysis of heart rate and all rhythms, samples of quantitative analysis of arrhythmia trends and variations, waveform variations, and correlation of ECG changes with patient diary entries, activities, symptoms, and pacemaker function. The log is to be returned to the hospital within 24 hours after the contractor picks up the tape.

The IFB also requires that within 24 hours of tape pick-up the contractor furnish the medical center with a "full disclosure" report, which consists of a beat-by-beat graphical record for the entire scan period. According to the agency, the beat-by-beat record enables the cardiologist to estimate the frequency of arrhythmias, which may not be indicated in the scan report, and to check the validity of the scanning report.

CardioMetrix argues that the requirement for a full disclosure report within 24 hours restricts competition for the services to scanning companies located in the vicinity of the medical center. The protester further contends that such detailed reports are medically unnecessary and states that other VA hospitals that contract for Holter monitor scanning services do not require full disclosure reports.

The protester's position is in essence that the requirement for a full disclosure report within 24 hours confers a competitive advantage upon scanning companies located in the Tacoma vicinity since they are the only ones that will not have to incur the expense of transmitting the multipage--nearly 50 pages--full disclosure reports via computer. Use of a less costly mode of transmission, such as an expedited delivery service, is precluded by the 24-hour turn-around requirement.

An agency is not required to cast its procurements in a manner that neutralizes the competitive advantages some firms may have over others by virtue of their own particular circumstances. Canon, U.S.A., Inc., B-232262, Nov. 30, 1988, 88-2 CPD ¶ 538. The purpose of a competitive procurement is not to insure that all bidders face the same odds in

competing for government contracts, but rather to insure that the government obtains its minimum requirements at the most favorable price. Emerson-Sack-Warner Corp., B-206123, Nov. 30, 1982, 82-2 CPD ¶ 488. The VA is therefore under no obligation to equalize the competitive position of companies located outside the Tacoma area vis-a-vis those located within the area by deleting the requirement for a full disclosure report within 24 hours, so long as the 24-hour requirement is truly reflective of its minimum needs.

In preparing a solicitation for supplies or services, a contracting agency must specify its needs and solicit bids or offers in a manner designed to achieve full and open competition, so that all responsible sources are permitted to compete. 41 U.S.C. § 253(a)(1)(A) (Supp. IV 1986); Warren Oliver Co., B-228081.2, Dec. 3, 1987, 87-2 CPD ¶ 543. Consequently, when a protester challenges specifications as exceeding an agency's minimum needs, the procuring agency bears the burden of presenting prima facie support for its position that the restrictions are necessary to meet its actual needs. CAD/CAM On-Line, Inc., B-226103, Mar. 31, 1987, 87-1 CPD ¶ 366. Determinations of the agency's minimum needs and the best method of accommodating those needs are primarily matters within the agency's discretion and, thus, once the agency establishes support for challenged specifications, the protester must show that the specifications are unreasonable. Carey Machinery & Supply Co., Inc., B-233455, Feb. 17, 1989, 89-1 CPD ¶ 171.

Here, the medical center's cardiologist states that the full disclosure report furnishes critical information not available in the scan report, i.e., a means by which to determine the frequency of arrhythmias. The medical center's director of medical services--also a medical doctor--further explains that the full disclosure report provides the attending physician with a record against which to check the validity of the scan report, a capability which is particularly significant for a smaller hospital such as American Lake, which has only one cardiologist and does not have the staff or the facilities to perform the additional diagnostic procedures that would otherwise be required to validate a questionable result. He also states that "for a test that is often used in critically ill patients who can die suddenly, VA cardiologists are unwilling (and unable) to wait longer than 24 hours."

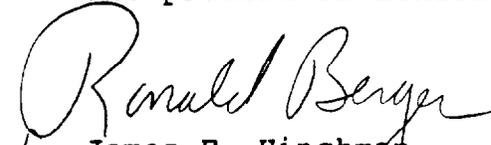
In our view, the medical judgment of these two doctors provides the required support for the agency's position that a full disclosure report received within 24 hours is necessary to meet the center's minimum needs. The protester must therefore show that the requirement is unreasonable.

Cardiometrix argues that the superfluous nature of the full disclosure report requirement is apparent from the fact that other similarly situated hospitals that contract for Holter monitoring services do not require the submission of full disclosure reports.

Assuming that the protester is correct in its assertion that other hospitals do not require the submission of full disclosure reports, such a circumstance does not, in our opinion, necessarily demonstrate that the inclusion of such a requirement here is unreasonable. As we have previously observed, agency officials can reasonably differ with regard to their assessment of what is required to meet similar needs. Security Assistance Forces & Equipment International, B-199757, Nov. 19, 1980, 80-2 CPD ¶ 383. The fact that other hospitals may not require full disclosure reports is immaterial where, as here, the contracting agency has established prima facie support for its position that the report is a minimum need. Canon, U.S.A., Inc., B-232262, supra.

Here, the record contains statements by two medical doctors that in their judgment this requirement is necessary for treatment in this particular hospital, which is a small one with a limited staff and limited access to outside medical resources. The protester's chief operating officer, who is not a medical doctor, states that the requirement is "medically unnecessary" and relies for support on the argument that other hospitals do not have such a requirement. The medical impact of each hospital's differing circumstances is a question best left to the judgment of the physicians entrusted with the care of patients. Therefore, we do not believe that the protester has provided us with sufficient reason to conclude that the requirement for a full disclosure report within 24 hours is not consistent with what the cognizant physicians have determined are the minimum needs of this particular hospital.

The protest is denied.


James F. Hinchman
General Counsel