

Ms. Coles



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: CardioMetrix
File: B-256062
Date: May 2, 1994

Robert J. Loring for the protester.
H. Charles Coburn, Esq., Federal Bureau of Prisons, for the agency.
Barbara C. Coles, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that solicitation unduly restricts competition by limiting award of contracts for medical services for prisoners to hospitals, as opposed to medical services corporations with access to hospitals, is denied where the record shows that contracting directly with hospitals will increase the agency's ability to ensure the safekeeping of prisoners as well as the safety of the general public.

DECISION

CardioMetrix protests the terms of request for proposals (RFP) No. 158-0078, issued by the Federal Bureau of Prisons (BOP) for inpatient medical services at the Metropolitan Correctional Center (MCC) in New York City as well as outpatient medical services at area hospitals. CardioMetrix contends that the specifications are unduly restrictive of competition because they require that the services be performed by hospitals, thereby excluding CardioMetrix from competing because it is a medical services corporation.

We deny the protest.

The RFP, issued on November 11, 1993, called for hospital inpatient room, board, and ancillary services and/or outpatient services. Section B of the amended solicitation provides that the agency intends to make multiple awards to hospitals within a 12-mile radius of the MCC.¹ Section M

¹The protester also argued that the solicitation was defective because it limited the competition to hospitals
(continued...)

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stated that the awards would be made to the offerors whose technically acceptable offers are determined to be in the best interest of the government, considering price and other factors.

CardioMetrix argues that the solicitation requirement that these services be provided only by hospitals as opposed to all qualified health care providers is unduly restrictive of competition. CardioMetrix contends that it can provide the services required by the solicitation even though it is a medical services corporation, not a hospital. To support its position, CardioMetrix claims that it has access to a network of over 7,400 medical service providers throughout the country, including locations in New York City.

In preparing a solicitation for supplies or services, a contracting agency must specify its minimum needs and solicit offers in a manner designed to achieve full and open competition. 41 U.S.C. § 253(a) (1988). A solicitation may include restrictive provisions or conditions only to the extent necessary to satisfy the agency's minimum needs. 41 U.S.C. § 253(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. Sunbelt Indus., Inc., B-246850, Mar. 31, 1992, 92-1 CPD ¶ 325. Here, we conclude that the agency reasonably decided to limit the competition to hospitals.

BOP explains that its decision to require that the medical services be performed only by hospitals was based on its obligation to ensure the well-being of prisoners as well as the safety of the general public. BOP reports that it concluded that a direct contractual relationship with a hospital increases the agency's ability to hold the hospital accountable for the well-being and safekeeping of prisoners, and that limiting the competition to hospitals thus is the best way of meeting these goals. According to BOP, its ability to ensure prisoner safekeeping and public safety may be hampered by contracting with third party medical service "brokers," like CardioMetrix, who only offer access to hospitals.

¹ (...continued)

in the Manhattan area but did not define the area, and because the protester was orally advised that the agency would only consider hospitals within a 5-mile radius of MCC, which apparently excluded the protester. This basis of protest was rendered academic when the agency amended the RFP to permit hospitals within a 12-mile radius of MCC to compete. See Oktel, B-244956; B-244956.2, Dec. 4, 1991, 91-2 CPD ¶ 512.

Other than general disagreement with the agency's conclusion, the protester does not rebut the agency's position that a direct contractual relationship with a hospital will help ensure prisoner safekeeping and public safety. Instead, as evidence that a medical services corporation can meet the agency's needs, the protester states that it was recently awarded a similar contract to perform such services and that its performance under that contract has been exemplary. In further support of its position, the protester points to the fact that only one offer was received under the RFP.

To the extent that the protester argues that the specifications are unduly restrictive of competition because an agency determined in the past that a medical services corporation could adequately meet similar needs, the protest is without merit. Each procurement action is a separate transaction and the action taken under one is not relevant to the propriety of the action taken under another procurement for purposes of a bid protest. Westbrook Indus., B-248854, Sept. 28, 1992, 92-2 CPD ¶ 213.

Likewise, we are not persuaded by the protester's claim that the fact that only one offeror responded to the solicitation shows that the specifications are restrictive. Generally, a competitive procurement that results in only one response is not objectionable if firms other than the firm responding could have met the requirements. TLC Sys.--Recon., B-225871.2, Sept. 14, 1987, 87-2 CPD ¶ 240. Since there are other hospitals located within a 12-mile radius of MCC in New York City--including those the protester claims are members of its network--the fact that only one hospital submitted a bid does not, by itself, establish that the solicitation is restrictive. See id.

The protest is denied.

for 
Robert P. Murphy
Acting General Counsel