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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** CardioMetrix

**File:** B-274585

**Date:** November 18, 1996

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Robert J. Loring for the protester.

Lyman Goon, Esq., Social Security Administration, for the agency.

Katherine I. Riback, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## **DIGEST**

Protest that the solicitation as amended was ambiguous is untimely where filed after the next closing date for receipt of proposals following the amendment; protester may not simply make unsupported assumptions regarding the meaning of the solicitation and then expect relief when the agency does not interpret the solicitation in the manner the protester assumed it would.

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## **DECISION**

CardioMetrix protests the terms of request for proposals (RFP) No. SSA-96-0001, issued by the Social Security Administration (SSA), for health care services. The protester argues that as amended, as evaluation factor in the solicitation was ambiguous, and that had it understood the agency's interpretation of the evaluation factor, it would have proposed a different physician in order to qualify for a more favorable evaluation.

We dismiss the protest.

The RFP, issued on April 17, 1996, requested proposals for a fixed-price contract for a base year with 4 option years to provide physician services for a federal employee's health clinic in Philadelphia, Pennsylvania. Technical factors were equal in importance to price.

The evaluation factors included minimum pass/fail qualification requirements for the proposed primary and substitute physician. Among other things, the proposed physicians were required to be "board certified or board eligible" in either occupational medicine, internal medicine, family practice, or emergency medicine, and to have a minimum of 2 years of "hands on" clinical experience in one of four identified medical fields. In this regard, the RFP instructed offerors to provide, among other things, "evidence of board certification in internal medicine, family

practice or occupational medicine or your certification that the offered physicians are board eligible." The RFP also included technical evaluation factors which only applied to the primary physician. As amended, the RFP contained the following technical evaluation factors and associated points: (1) board certification in occupational medicine (5 points); (2) 5 points for every full year of experience not to exceed the following maximums: occupational medicine (50 points); internal medicine, general family practice, or emergency medicine (25 points); (3) experience in a facility providing occupational medicine to a large organization. Amendment No. 3 of the RFP provided that, with regard to the experience evaluation factor described above, "[a] physician will be given points only for experience in the field(s) in which they are certified or eligible."

The agency received five proposals and after evaluation of initial proposals, established a competitive range consisting of the proposals of CardioMetrix and Dr. Talukdar. Written discussions were conducted with the two competitive range offerors, and both offerors submitted best and final offers (BAFO) by the July 30 closing date. The BAFO's were evaluated, and while Dr. Talukdar's proposal received a slightly lower technical score than CardioMetrix's proposal, the agency decided that Dr. Talukdar's proposal represented the best value to the government based on its significantly lower price. This protest followed.

CardioMetrix argues that the experience evaluation factor, as amended, was ambiguous. While recognizing that this amended evaluation factor provides that "[a] physician will be given points for experience in the field(s) in which they are certified or eligible," CardioMetrix contends that because the solicitation was ambiguous, it was unaware that "certified or eligible" meant board certified or board eligible.<sup>1</sup>

Under our Bid Protest Regulations, alleged improprieties which do not exist in the initial solicitation which are subsequently incorporated into the solicitation must be protested not later than the next closing time for receipt of proposal following the incorporation. Section 21.2 (a) (1), 60 Fed. Reg. 40,737, 40,740 (Aug. 10, 1995) (to be codified at 4 C.F.R. § 21.2(a)(1)); Perkin-Elmer Corp., B-250869, Dec. 10, 1992, 92-2 CPD ¶ 404.

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<sup>1</sup>CardioMetrix initially questioned whether the awardee, Dr. Talukdar, met the mandatory 2-year clinical experience requirement. The agency addressed this allegation in its report on the protest, explaining how Dr. Talukdar did, in fact, satisfy this requirement, and CardioMetrix did not respond in its comments. We therefore consider CardioMetrix to have abandoned this allegation. See D & M General Contracting, Inc., B-259995; B-259995.2, May 8, 1995, 95-1 CPD ¶ 235.

Although CardioMetrix alleges that the amended experience factor created a latent defect in the RFP, i.e., a defect which could not be detected prior to closing, any possible ambiguity in this regard was apparent on the face of the solicitation and thus had to be protested prior to the next closing following the incorporation of amendment No. 3. CardioMetrix could not reasonably rely on its unsupported notion that "certified or eligible" meant anything other than board certified or board eligible, where the phrases "board certified" and "board eligible" were used throughout the RFP and, in context, the questioned reference clearly has the same meaning. Protesters do not have the option of simply making unwarranted assumptions regarding the meaning of a provision in the RFP and then expect relief when the agency does not apply the provision in the manner the protester assumed. See Home Care Medical, Inc., B-245189, Aug. 21, 1991, 91-2 CPD ¶ 186. If CardioMetrix believed that the reference in amendment 3 to the shorthand phrase "certified or eligible" was somehow inconsistent with the longer version of the same phrase otherwise used in the solicitation, CardioMetrix was required to protest this alleged ambiguity prior to the next closing time--which it failed to do.

The protest is dismissed.

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