



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: CardioMetrix

File: B-241695

Date: January 16, 1991

Robert J. Loring for the protester.
Richard W. Freethey, Esq., Department of Transportation,
United States Coast Guard, for the agency.
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the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. Protest alleging defects in solicitation is dismissed as academic where the agency agrees to amend the solicitation to correct the alleged deficiencies.
2. Protest that agency should be required to amend solicitation to provide invoicing instructions is denied where the requested information is clearly included in the solicitation.
3. Protest that solicitation contains defective descriptions of services to be provided is denied where the solicitation in fact clearly describes the requested services.

DECISION

CardioMetrix protests that the specifications in request for proposals (RFP) No. DTCG84-90-R-3KB087 are defective. The RFP was issued by the Department of Transportation, United States Coast Guard for medical laboratory and pathology services.

We deny the protest in part and dismiss it in part.

The RFP was issued on July 10, 1990, and was amended on October 4, following a protest challenging the specifications. As amended, the RFP listed 294 contract line items, each of which specified a medical test that the contractor would have to perform on a specimen submitted to the contractor by the Coast Guard. For example, line item 89 required the contractor to test a sample for measles and line item 104 required the contractor to test for blood glucose. Each test

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listing was followed by columns for the estimated annual quantity of the specific test to be performed (which the agency had left blank), the unit price per test and the aggregate cost per test per year. Offerors were required to submit a unit and total cost for each test. The RFP provided that offers would be evaluated on the basis of technical approach, training and staffing plan. The RFP also provided that cost would be evaluated, but not scored, and would be less important than technical considerations in the award decision. The RFP specified that the contract would be awarded to the responsible offeror whose offer conforming to the solicitation was most advantageous to the government, price or cost and other factors considered.

CardioMetrix first contends that while contractors are often required to perform tests that are not listed in the RFP, the RFP does not indicate how contractors will bill the Coast Guard for these tests. CardioMetrix also protests that the RFP does not contain estimated quantities of the tests to be performed, and asserts that this information is needed to prepare an accurate proposal. The protester also questions how price will be evaluated without the estimated quantities.

The Coast Guard responds that it will issue an amendment dealing with these deficiencies. The amendment will provide a separate contract line item to allow for the agency to order tests other than the 294 tests listed in the solicitation.^{1/} Contractors will be requested to submit catalog or list prices of tests which are not listed with their proposals to establish the prices for such tests. Prior to authorizing ordering of any additional tests, the contracting officer will determine whether the price for a particular test is fair and reasonable. The amendment will also have a revised schedule with the estimated quantities of tests to be ordered.

While the Coast Guard has not yet issued an amendment dealing with the cited deficiencies, on November 19, the Coast Guard did issue amendment No. 2 to the solicitation, which extended the due date for the receipt of proposals indefinitely. The Coast Guard explains that it is currently reviewing the solicitation to determine if any other problems exist so that all deficiencies can be addressed at the same time. Since the Coast Guard has agreed to remedy the defects in the solicitation, these protest bases are academic. See Interstate Diesel Serv. Inc., B-229610; B-229816, Feb. 17, 1988, 88-2 CPD ¶ 162.

^{1/} The Coast Guard estimates that the 294 tests in the RFP represent 90 percent of all tests required.

CardioMetrix next protests that the RFP does not state whether the monthly invoice must include the contract line item number for each test performed. CardioMetrix explains that providers of clinical laboratory services typically use an automated invoice generation and billing system which does not provide any means for including the contract line item number. CardioMetrix thus asserts that it is important to know whether the line item number must be included on the invoice because if so, the contractor would be required to manually modify each invoice.

The Coast Guard responds that section G.3 of the solicitation, "Invoicing," clearly indicates that individual schedule numbers must be included for each laboratory test. CardioMetrix agrees that section G.3 addresses the issue, but asserts that this is an easily missed provision which was probably overlooked by the other offerors. CardioMetrix therefore argues that we should require the Coast Guard to issue an amendment dealing specifically with this issue.

Section G.3 of the RFP clearly describes the required information, stating that "[p]roper invoice shall consist of the following: . . . (iii) Contract number, including contract line item number" We see no basis to require the Coast Guard to issue an amendment to provide the same information.

Finally, CardioMetrix protests that a number of line items have inadequate, conflicting or ambiguous descriptions of the services to be provided. CardioMetrix divides the allegedly defective line items into four broad groups. The first group, which involves the majority of the line items, concerns line items where, according to CardioMetrix, no test fits the given description and it is only by including the description from the immediately preceding line item that the description becomes adequate to describe a test. Thus, for example, line item 15 is described as "routine, without microscopy." CardioMetrix alleges that there is no such test and that only by including the description from item 14--"Urinalysis; routine (PH, specific gravity, protein, tests for reducing substances such as glucose), with microscopy"--can an invoice be generated for item 15. CardioMetrix lists 39 line items with this alleged deficiency.

Our review of the solicitation shows that for each line item challenged by CardioMetrix the allegedly deficient description is indented below the preceding line item and is clearly intended to include the description in that preceding

line item. For example for line item 38, which CardioMetrix complains is defective, the solicitation provides:

"037 82335 Calcium, urine; qualitative
038 82340 qualitative, timed specimen."

Thus, offerors were clearly on notice of the agency's requirements and reasonably could prepare bids on all line items. Accordingly, we deny the protest to the extent it alleges that these line items contain defective descriptions.

The second group that CardioMetrix challenges as defective is comprised of line items 68, 148 and 187. In each case CardioMetrix argues that the line item does not indicate the specific substance for which the contractor is to assay the sample. Thus, for example, line item 68 requests a drug screen for amphetamines, barbiturates and alkaloids without specifying the specific substance to test for. In our view, this is not a defect in the solicitation; rather, the solicitation calls for the contractor to submit a price to perform a drug screen for any substance in each of the general categories. In this regard, the Coast Guard explains that for these line items the specific substance to be tested for will be ordered by the doctor when the sample to be tested is submitted to the contractor.

The third group of allegedly defective line items is comprised of item numbers 75, 95 and 138. CardioMetrix complains that in each case the Coast Guard failed to indicate whether it wanted the contractor to perform a quantitative or qualitative analysis. The Coast Guard explains that these tests are further defined by codes contained in a manual published by the American Medical Association entitled Current Procedural Terminology (CPT); the specific code provided for each line item identifies the analysis to be used. Although the specific codes are listed in the solicitation next to the line items, the RFP does not refer to the CPT manual itself. The Coast Guard states that it will correct the omission in amendment No. 3. Consequently, since the Coast Guard plans to correct the defect, this issue is academic. See Interstate Diesel Serv., Inc., B-229610; B-229816, supra.

Finally, CardioMetrix asserts that line item 204 includes four assays and questions whether this is a mistake by the Coast Guard. Line item 204 provides: "Blood count; manual

differential WBC count (includes RBC and platelet estimation)." This description clearly indicates that the contractor is to perform all four assays on a given sample.

The protest is denied in part and dismissed in part.

for Ronald Berger
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General Counsel