



Comptroller General
of the United States

1152812

Washington, D.C. 20548

Decision

Matter of: CardioMetrix

File: B-259431

Date: December 8, 1994

DECISION

CardioMetrix protests awards under request for proposals (RFP) No. 6480 issued by the Department of Justice, Federal Bureau of Investigation (FBI), for physical examinations for agency employees and applicants at seven field office locations nationwide.

We dismiss the protest as untimely because it challenges an alleged impropriety in the solicitation incorporated after initial submission of offers which should have been protested before the next closing date after the change was made to the solicitation.

The FBI issued the RFP on November 19, 1993, contemplating multiple awards of fixed-price, requirements contracts at various sites for 1 year with 4 option years. The RFP described a best value evaluation plan with technical factors having significantly more weight than price. The RFP required submission of unit prices for both fitness-for-duty examinations of FBI employees and pre-employment examinations of applicants; however, the RFP indicated that only the price for fitness-for-duty examinations would be evaluated for award.

On October 13, 1994, after receiving and evaluating initial proposals, the FBI sent letters to offerors determined to be in the competitive range, including CardioMetrix. The letters included the following notice:

"You are advised that your [best and final offer] BAFO will be evaluated for the best overall pricing for both Fitness for Duty and Pre-employment physicals and optional tests, the requirement of the contract."

The letter also stated that BAFOs were to be submitted by close of business on October 21. CardioMetrix timely submitted a BAFO.

The FBI awarded contracts to seven different firms for the seven locations solicited; CardioMetrix was awarded a contract for the San Francisco, California, field office. By letter of October 28, the FBI notified CardioMetrix of the other six awards. CardioMetrix received this letter on November 4.

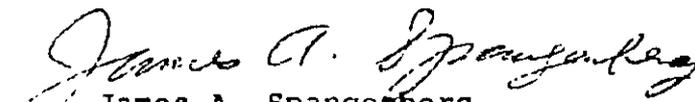
On November 17, CardioMetrix protested the awards for three of the field offices: Los Angeles, California; Quantico, Virginia; and Washington, D.C. CardioMetrix's sole protest issue is that the October 13 request for BAFOs allegedly was not sufficiently detailed to explain to offerors how prices for pre-employment examinations would be factored into the evaluation of offers. The protester asserts that prices for pre-evaluation examinations should therefore not be considered for award and alleges that CardioMetrix should receive awards for these three field offices because it submitted the lowest priced, technically acceptable offer based only on the prices for fitness-for-duty examinations.

Our Bid Protest Regulations contain strict rules requiring timely submission of protests. These rules specifically require that protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of proposals must be filed prior to the time for closing. 4 C.F.R. § 21.2(a)(1) (1994). This rule includes challenges to alleged improprieties which did not exist in the initial solicitation but which are subsequently incorporated into the solicitation. In such cases, the solicitation must be protested not later than the next closing date for receipt of proposals following the incorporation. NASCO Aircraft Brake, Inc., B-237860, Mar. 26, 1990, 90-1 CPD ¶ 330.

Here, the FBI's October 13 letter incorporated into the RFP evaluation plan the evaluation of the price of pre-employment examinations. See Realty Ventures/Idaho, B-226167, May 18, 1987, 87-1 CPD ¶ 523 (agency letter to offerors stating changes to solicitation effectively amended the terms of the solicitation). The next closing date for receipt of proposals after incorporating this change into the RFP was October 21. Thus, for CardioMetrix's protest of this change to the stated evaluation plan to be timely, it

should have filed its protest by October 21. Since it did not protest this change to the RFP until November 17, nearly one month after the closing date, CardioMetrix's protest of this alleged solicitation defect is untimely.

The protest is dismissed.


James A. Spangenberg
Assistant General Counsel