



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: CardioMetrix, Inc.
File: R-259906
Date: May 8, 1995

Robert J. Loring for the protester.
William E. Thomas, Jr., Esq., Department of Veterans Affairs, for the agency.
Christina Sklarew, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where solicitation requests information regarding price discounts and commercial fee schedules for infrequently needed services, and includes these terms under a list of technical evaluation factors but excludes them from the price evaluation, protest allegation that the solicitation is ambiguous because it does not explain how this information will affect the price evaluation is denied.

DECISION

CardioMetrix, Inc. protests that request for proposals (RFP) No. 680-4-95 is defective because it contains terms that are confusing and ambiguous.

We deny the protest.

The RFP was issued by the Department of Veterans Affairs (VA), and contemplated the award of a requirements contract for clinical laboratory testing services. The RFP included a list of 57 specific tests and the estimated quantities that the contractor could be required to perform, and required offerors to insert a unit price for each of the tests. The RFP advised offerors that the agency "anticipated that any/all of the tests listed below, and/or tests not listed, may be required during the contract period" It also stated that "[t]he tests that are not listed have a low probability of being required. If the tests (that are not listed) are required, the laboratory agrees to an across-the-board discount of _____ percent for these tests." Offerors were to complete the blank to

indicate the discount that was being offered for tests not included in the list. In addition, offerors were to provide with their proposals their published commercial fee schedule for test services.

The RFP stated that the contract award would be based "on a scoring system recognizing service and quality offered for the core group of tests included in this proposal," and that the four technical evaluation factors established in the RFP would be given twice the weight of price. The four evaluation factors were resources required; quality assurance systems; services available, (including six subfactors); and results of VA inspection and various verification procedures. Among the six subfactors that were included under the services available factor was "Published commercial fee schedule, with discounts offered, which can expand the VA's options to obtain a wider variety of test services, if necessary." It is this evaluation criterion to which CardioMetrix objects, arguing that it is unclear how the VA will factor such a percentage discount into the price evaluation.

It is a basic principle of federal procurement law that specifications must be sufficiently definite and free from ambiguity so as to permit competition on a common basis. McCotter Motors, Inc., B-214081.2, Nov. 19, 1984, 84-2 CPD ¶ 539. A term in a solicitation is ambiguous if it is susceptible to more than one reasonable interpretation when read in the context of the solicitation as a whole. TUMI Int'l, Inc., B-235348, Aug. 24, 1989, 89-2 CPD ¶ 174.

Here, the protester has not presented any alternative interpretation for the evaluation criterion at issue, or otherwise explained how it is ambiguous. Rather, the essence of CardioMetrix's objection to the "ambiguity" is the protester's anticipation that the discount will not be accurately evaluated--a protest basis that would be prematurely raised--or that offerors do not have sufficient information to enable them to prepare their offers intelligently, since the RFP allegedly fails to disclose how the price discount information will be weighed in the price evaluation. However, the protester's fundamental premise--that the discount will be considered in the price evaluation--is incorrect. The requirement for the fee schedule is listed as a subfactor under the services available technical factor. We think it is clear from this that the percentage discount (and the fee schedule) were not to be considered under the price evaluation at all, but would be considered under the technical evaluation. The agency asserts that the fee schedules were requested solely for the purpose of verifying that offerors were in fact offering a discount on unlisted tests and to show the variety of test services being offered, and that the

information concerning discounts was to be considered only in the technical evaluation. Moreover, the price evaluation factor listed in the RFP did not mention the discount percentage, providing only that "[t]he lowest evaluated price in Section B [the schedule listing tests which may be required] will be given the maximum points available for cost evaluation purposes," and showing the formula for determining how points would be assigned. In our view, the terms identified by CardioMetrix, when read in the context of the RFP as a whole, are subject to only one reasonable interpretation: that the commercial fee schedules and offered discount for the unlisted tests were to be considered only as part of the technical evaluation, and would not affect the price evaluation at all.

CardioMetrix also challenges a requirement in the RFP for information concerning discounts or additional charges in section L of the solicitation, which provided detailed information regarding the required format for proposals. Again, the protester argues that it is "unclear and ambiguous exactly how the [agency] will evaluate and factor the offerors' responses to these categories into the overall price evaluation."

While section L includes instructions to provide information regarding discounts that would apply in a number of situations, such as when more than one test is performed on a single specimen, or any additional charges that would apply (e.g., for emergency services or for additional pick-ups), the RFP did not state that this information would be considered in the price evaluation. The agency asserts that this information is relevant to the evaluation of services available. Thus, a proposal that included certain services with no extra charge (or offered discounts for other services) could be considered technically superior to a proposal that did not include these advantages. These matters were to be evaluated under the technical evaluation and would be scored separately from the actual price evaluation. Thus, here again, since the RFP stated that the price evaluation would be based on the prices listed in section B, and included no mention of the discounts required by section L, when read as a whole, we think the RFP was reasonably clear that such discount information would be considered only in the technical evaluation and not as part of the price evaluation.

The protest is denied.

Robert P. Murphy
 for Robert P. Murphy
 General Counsel