



Decision

Matter of: Shertech Pharmacy

File: B-419069

Date: October 29, 2020

Karen S. Sheriff, for the protester.

Tyler W. Brown, Esq., Department of Veterans Affairs, for the agency.

Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging solicitation's requirement that contractor have a facility within a 50-mile radius of the agency's facility is denied where agency demonstrates that its requirement is reasonably necessary to meet its needs.

DECISION

Shertech Pharmacy, of Kernersville, North Carolina, protests the terms of request for quotations (RFQ) No. 36C24620Q0897, issued by the Department of Veterans Affairs (VA) for the provision of radiopharmaceutical products to the VA Medical Center in Durham, North Carolina. Shertech argues that the RFQ's requirement that the successful contractor be located within a 50-mile radius of the VA's facility is unduly restrictive of competition.¹

We deny the protest.

The RFQ calls for the provision of radiopharmaceutical products, which are nuclear medicine products used principally in certain diagnostic procedures. The RFQ specifies that certain products be delivered on a routine basis, while requiring the delivery of other products on an as-needed basis. Shertech's protest concerns the delivery of the as-needed products. The RFQ requires these products to be delivered within 1-2 hours

¹ In its initial protest, Shertech also objected to a requirement in the RFQ to provide certain name-brand products. In response to that allegation, the agency agreed to delete the requirement to provide the identified brand-name products from the RFQ. Shertech agreed that this aspect of its protest had been adequately addressed.

of when an order is placed and, because of this requirement, also stipulates that the contractor be located within a 50-mile radius of the VA's Durham facility in order to ensure timely deliveries. RFQ at 5-6.

Shertech maintains that the 50-mile radius requirement is unduly restrictive of competition because, according to the protester, even though it is located outside of this radius, it nonetheless can make timely deliveries within the 1-2 hour period of time specified in the solicitation. Shertech therefore alleges that the 50-mile radius requirement is arbitrary and unnecessary to meet the agency's requirements.²

We find no merit to Shertech's protest. Where a protester challenges a specification or requirement as unduly restrictive, the procuring agency has the responsibility of establishing that the specification or requirement is reasonably necessary to meet the agency's needs. *OMNIPLEX World Services Corporation*, B-415988.2, Dec. 12, 2018, 2018 CPD ¶ 424 at 3. We examine the adequacy of the agency's justification to ensure it is rational and can withstand logical scrutiny. *Id.* Where matters of human life and safety are involved, our Office affords considerable deference to the judgments of the agency's technical experts. *Id.*

The agency explains that its overarching consideration is the fact that the radiopharmaceuticals have a limited lifespan due to radioactive decay that begins once the medications are activated. The agency explains that three considerations led it to establish the 50-mile radius requirement: the amount of time it takes to prepare, or activate, the required radiopharmaceutical; the drive time from the contractor's pharmacy to the Durham VA medical center; and the time it takes to process the radiopharmaceuticals before administering them to the patient.

As to the time for preparation or activation of the radiopharmaceuticals, the agency explains that the average time is 20 minutes, but that some medications take longer to prepare. Contracting Officer's Statement of Facts (COSF) at 1-2. Once the medication is prepared, it must then be measured, labeled, inventoried and shipped. *Id.*

² Shertech's initial protest was confined to challenging the 50-mile geographic limitation. In its comments responding to the agency report, Shertech, for the first time, also suggested that the 1-2 hour delivery time was unduly restrictive of competition. To the extent Shertech's comments can be interpreted as raising a challenge to the 1-2 hour delivery time requirement, that argument is untimely. Under our Bid Protest Regulations, 4 C.F.R. §21.2(a)(1), protests based upon alleged improprieties that are apparent on the face of the solicitation must be filed no later than the deadline for the submission of bids or proposals (or in this instance, quotations). Although Shertech's original protest was filed before the deadline for submitting quotations (which was scheduled for September 1, 2020), its comments were filed well after the deadline for submitting quotations. Accordingly, we decline to consider any challenge to the 1-2 hour delivery time requirement.

As to the travel time, the agency explains that it varies depending on the time of day, and traffic can be considerable in the Durham, North Carolina, area. COSF at 2.

As to processing the medication once it has arrived at the Durham VA medical center, the agency explains that, while most doses can be administered within 10 minutes of receipt of the medication, the agency nonetheless has Department of Transportation imposed processing protocols that must be followed in order to ensure that there has been no radiation spilled to the packaging in which the medication has been shipped before the medication can be uploaded to the facility's system. COSF at 2. In other instances, certain of the medications administered have a particularly short viable lifespan once they have been activated at the pharmacy. The agency gives one example of a medication (TC-99m) that has a lifespan of just one hour once it has been activated or "calibrated" at the contractor's facility prior to shipment. *Id.*

Finally, the agency explains that certain medications require that a blood sample be taken from the patient and processed at the VA medical center; sent to the pharmacy; processed further at the pharmacy; inoculated with the medication; and then returned to the VA medical center where the blood containing the medication is injected into the patient. The agency explains that the entire process must be completed within 5 hours of when the initial blood has been drawn from the patient, and sending it to and from a pharmacy outside of the 50-mile radius could result in a risk of the dosage not being administered in a timely fashion. COSF at 2-3.

In sum, the record shows that the 50-mile radius requirement was introduced by the agency in order to ensure that all of the solicited radiopharmaceuticals can be administered in a timely and effective manner to patients that require critical care. As noted, inasmuch as the agency's requirements--and by extension its judgment about how to meet those requirements--relate to critical safety and human life considerations, our Office affords considerable deference to the views of the agency's technical experts. *OMNIPLEX World Services Corporation, supra.*

The protester has not meaningfully rebutted the agency's position, providing instead, only information relating to how other VA medical facilities handle similar requirements. These facilities are not located in the Durham, North Carolina, area, and the protester has not shown that these facilities solicited all of the same radiopharmaceuticals being solicited here. Thus, any comparison between the current solicitation and those solicitations is not necessarily meaningful. In any event, each procurement stands on its own, and an agency's actions during one acquisition have no bearing on its actions in another acquisition. *See e.g. Ronald L. Glass, B-417855, Nov. 21, 2019, 2019 CPD ¶ 392 at 4 n.4.*

The protest is denied.

Thomas H. Armstrong
General Counsel