Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: CardioMetrix

File: B-257408

Date: August 3, 1994

Robert J. Loring for the protester.
William E. Thomas, Jr., Esq., Department of Veterans Affairs, for the agency.
Behn Miller, Esq., and Christine S. Melody, Esq., Office of the General Counsel, participated in the preparation of the decision.

DIGEST

Protest challenging solicitation specifications for laboratory testing services as unduly restrictive of competition is denied where record demonstrates that specifications are reasonably related to agency's minimum needs.

DECISION

CardioMetrix protests the specifications in invitation for bids (IFB) No. 662-41-94, issued by the Department of Veterans Affairs (VA) for laboratory testing services to support the Veterans Affairs Medical Center (VAMC) located in San Francisco, California. CardioMetrix contends that the solicitation improperly prohibits bidders from utilizing subcontractors to perform the laboratory testing services.

We deny the protest.

The IFB requires bidders to perform up to 147 different blood/tissue laboratory tests--for example, testing for hepatitis antigens, sickle cell screening, uric acid testing--on an as-needed basis for a 1-year base period, and 3 option years. Additionally, the off-site laboratory testing services which the successful contractor is to provide include:

> "pickup and transport of specimens to its laboratory; preanalytic processing; analysis; reporting of analytic results; and consultation regarding selection, collection, transportation and result interpretation."

The San Francisco VAMC medical staff records the laboratory testing results on a specialized computer program; in this regard, the IFB states that the successful contractor "must" have on-staff "pathologists [who are] able to discuss results of tests with the participating lab during Pacific time duty hours."

The IFB also set forth mandatory "Licensing and Accreditation" criteria which require the contractor to be licensed to perform interstate laboratory services in accordance with the Clinical Laboratories Improvement Act, 42 U.S.C. § 263(a) (1988), and which require the contractor to have "all licenses, permits, accreditation and certificates required by State and Federal laws," as well as 2 years of appropriate accreditation in performing these services.[1] The IFB also provides that "[n]o more than 20 [percent] of the tests on the Schedule of Items should be forwarded by the contractor to a third-party laboratory."

CardioMetrix is not a certified or accredited laboratory facility as defined in the solicitation and does not maintain its own facilities for the required testing services. Instead, CardioMetrix seeks to perform the contract requirements by means of subcontracting agreements with various third-party laboratories; that is, CardioMetrix intends to perform this contract by acting as an administrative liaison between the San Francisco VAMC and selected third-party, subcontractor laboratories. Because the certification/accreditation requirements and subcontracting limitation set forth above preclude Cardiometrix from competing in this capacity, the protester maintains that these specifications are unduly restrictive.[2]

In preparing a solicitation for supplies or services, a contracting agency must specify its needs and solicit offers in a manner designed to achieve full and open competition,

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[1]The Clinical Laboratories Improvement Act provides that laboratories conducting testing on human body tissues be certified by the Secretary of Health and Human Services (HHS). See 42 U.S.C. § 263a. The Act also requires that these laboratories adhere to an accreditation system which is set up and overseen by the Secretary of HHS. See 42 U.S.C. § 263a(e).

[2]Cardiometrix also challenged two other solicitation specifications which the agency has agreed to modify by means of an amendment, rendering these protest grounds academic. See East West Research, Inc.--Recon., B-233623.2, Apr. 14, 1989, 89-1 CPD ¶ 379.

41 U.S.C. § 253a(a)(1)(A) (1988), and may include restrictive provisions or conditions only to the extent necessary to satisfy the agency's needs. 41 U.S.C. § 253a(a)(2)(B). The determination of the agency's minimum needs and the best method of accommodating them are primarily within the agency's discretion and, therefore, we will not question such a determination unless the record clearly shows that it was without a reasonable basis. RMS Indus., B-247233; B-247234, May 1, 1992, 92-1 CPD ¶ 412.

The agency explains that the certification/accreditation requirements and subcontracting limitation are necessary to ensure quality medical care and supervision by the VAMC facility. The VA asserts that laboratory test results often require further clarification or analysis and, as a result, VAMC personnel must be able to speak directly to the testing laboratory pathologist. To ensure that this can be done in a timely, efficient manner--and thereby ensure reliable, high quality patient care--the VA concluded that VAMC medical personnel must have one qualified point of contact for laboratory test results.

In addition, according to the agency, variations in methodologies used by different laboratories may complicate ongoing monitoring of test results--negatively affecting patient care--and may require repeat testing to ensure consistency--resulting in higher costs to the VA. The VA also reports that monitoring laboratory test results from different laboratories would result in higher administrative costs because more VAMC staff would be required to track the results, and the current computer monitoring system would have to be significantly modified to allow for input from multiple sources.[3]

The protester has not refuted any portion of the agency's rationale for the accreditation/certification requirements or subcontracting limitation. Instead of responding in any detail to the agency report, CardioMetrix merely requested that the protest be decided on the existing record.

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[3]The VA reports that the solicitation allows the successful contractor to subcontract 20 percent of the required laboratory tests because this figure reflects "esoteric tests" which are not part of a routine laboratory testing regimen and which typically must be referred to a specialty laboratory testing facility.

Under these circumstances, since the agency has provided a reasonable, well-documented explanation for these specifications, we have no basis to object to the challenged requirements. See CardioMetrix, B-248295, Aug. 14, 1992, 92-2 CPD ¶ 107.

The protest is denied.

/s/ Robert H. Hunter
for Robert P. Murphy
Acting General Counsel