

Morrow



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: CardioMetrix
File: B-261152
Date: August 9, 1995

Robert J. Loring for the protester.
Mike Colvin, Department of Health and Human Services, for the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting agency reasonably determined not to set aside procurement for small business concerns where, based upon the prior procurement history, the contracting officer concluded that agency was unlikely to receive bids from at least two responsible small businesses at reasonable prices.

DECISION

CardioMetrix protests the terms of request for proposals (RFP) No. 762-04-20-95, issued on an unrestricted basis by the Indian Health Service (IHS), Department of Health and Human Services, for laboratory testing services at four IHS facilities in Nevada.

We deny the protest.

CardioMetrix contends that the solicitation should be set aside for exclusive small business participation pursuant to Federal Acquisition Regulation (FAR) § 19.502-2 because five small business bidders submitted bids at competitive prices under the prior procurement for these services.

FAR § 19.502-2(a) generally requires a total small business set-aside where the contracting officer determines that offers will be obtained from at least two responsible small business concerns and award will be made at fair market prices. The determination whether to set aside a procurement is within the contracting officer's discretion, and will not be disturbed absent a clear showing that the

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contracting officer abused that discretion. See Specialized Contract Servs., Inc., B-257321, Sept. 2, 1994, 94-2 CPD ¶ 90; State Management Servs., Inc., B-252312, June 21, 1993, 93-1 CPD ¶ 474. A contracting officer may reasonably determine not to set aside an acquisition if after undertaking reasonable efforts to determine the availability of small businesses, the contracting officer concludes that a set-aside is not warranted, considering any of a variety of factors, including the prior procurement history for the solicited services. See CardioMetrix, B-256407, May 27, 1994, 94-1 CPD ¶ 334.

Here, IHS reports that the preceding solicitation was issued on an unrestricted basis after the original small business set-aside solicitation was canceled because the only bid received from a small business concern was unreasonably priced, and three lower and reasonably priced bids were submitted by ineligible large businesses. IHS further reports that while five bids were submitted by small businesses on the unrestricted solicitation, one was rejected as nonresponsive and the others, including CardioMetrix's, were unreasonably priced, and that award at a reasonable price was made to a large business.

Rather than filing comments on the IHS agency report defending the unrestricted procurement, CardioMetrix simply requested that we consider its protest on the basis of the existing record. Based on the record--specifically, the recent procurement history--we have no basis to object to the contracting officer's determination not to set aside the procurement.

CardioMetrix also contends that the solicitation requirement to perform 50 percent of the testing "in-house" unduly restricts competition by preventing firms such as CardioMetrix, who subcontract for such services, from competing. HHS reports that CardioMetrix has misunderstood this requirement, which does not preclude a prime contractor who provides management services from subcontracting the actual laboratory work, but is designed to limit the number of laboratories with which IHS must interact. Here, too, CardioMetrix has not responded to the agency's explanation, which appears reasonable on its face. Accordingly, we have no basis to find the requirement unduly restrictive.

The protest is denied.

Mustine S. Melody
for Robert P. Murphy
General Counsel