



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Department of Health and Human Services--Reconsideration

File: B-270204.2

Date: May 9, 1996

Michael Colvin, Department of Health and Human Services, for the requestor.
John T. Vanderveen for VSA International Corporation, an intervenor.
John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Prior decision sustaining a protest against the award of a contract and recommending that the contract be terminated and award made to the protester is modified to provide that the agency need not terminate the awardee's contract and make award to the protester, where the protester and agency agree that termination of the contract at this point is not in the parties best interests, and the record supports their position.

DECISION

The Department of Health and Human Services (HHS) requests that the recommendation of our decision VSA Int'l Corp., B-270204, Feb. 16, 1996, 96-1 CPD ¶ 101, be modified. In that case, we sustained VSA International Corporation's (VSA) protest against the award of a contract to North Central Community Based Services, Inc. (NCCBS) under invitation for bids (IFB) No. 95-14/MAG, issued by the Indian Health Service, HHS, and recommended that the agency terminate its contract with NCCBS and make award to VSA. HHS requests that our recommendation be modified to provide for the continued performance of the contract by NCCBS, and payment by HHS of VSA's costs of preparing its bid and pursuing its protest.

Because VSA did not file its protest with our Office within the time period that would have caused an automatic stay of performance under the Competition in Contracting Act, 31 U.S.C. § 3553(d) (1994), NCCBS has been performing this contract since September 1995. The agency asserts that if it is required to terminate NCCBS' contract, "[t]he probability that any useful product would be delivered at the end of the contract period . . . is almost zero." VSA agrees, stating that "the potential for complete disruption of the project exists" if the agency terminates the contract at this point, and adds that under the circumstances, the termination of the

contract "might not well be in the best interests of the [Native American] tribes involved."

Under the circumstances and based on our review of the record, we modify our recommendation. Specifically, we withdraw our recommendation that the agency terminate NCCBS' contract for the convenience of the government and make an award to VSA, and instead recommend that VSA be reimbursed the costs of preparing its bid, as well as its costs of responding to the agency's request for reconsideration. See Science Applications Int'l Corp.; Department of the Navy--Recon., 71 Comp. Gen. 481 (1992), 92-2 CPD ¶ 73. VSA should submit its certified claim for these costs directly to the agency, within 90 working days of its receipt of this decision. Bid Protest Regulations, section 21.8(f), 60 Fed. Reg. 40,737, 40,743 (Aug. 10, 1995) (to be codified at 4 C.F.R. § 21.8(f)). VSA remains entitled to the costs associated with pursuing its initial protest to our Office.

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