

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-222603 **DATE:** July 10, 1986
MATTER OF: HCA Government Services, Inc.

DIGEST:

The right to a suspension of performance under the provisions of the Competition in Contracting Act of 1984 (CICA) apply to any new award decision that is based upon revised offers that gives rise to a viable, timely protest. Therefore, where an agency agrees to hold discussions, continue the suspension of performance, and to reconsider its initial award decision, termination of the existing contract is unnecessary.

HCA Government Services, Inc. (HCA) protests the Department of the Army's award of a contract to John Short and Associates (Short), under request for proposals No. MDA903-86-R-0077, for the establishment and operation of a primary health care facility for military personnel. While we dismiss the protest, we also provide our view of the contract suspension provision of the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3553(d) (Supp. II 1984), in light of the protester's concern that it may lose the protection of that provision in this case.

HCA challenges the propriety of the agency's evaluation of proposals, contending that there is no rational basis upon which the awardee's higher-priced offer could have been evaluated more favorably than its own proposal. HCA also protests that the agency improperly made an award to other than the firm offering the lowest overall cost to the government on the basis of initial proposals contrary to 10 U.S.C.A. § 2305(b)(4) (West Supp. 1985).

In response to the protest, the agency has agreed to hold discussions and to make a new award decision, continuing suspension of performance under the contract until a new award decision has been made.

While this renders the protest academic, the protester is concerned that it may now lose the benefit of the CICA stay provision. CICA provides for a suspension of performance if the contracting agency is notified within 10 days of the award of a contract that a protest has been

filed. The suspension provisions have been invoked here because this protest was filed within the 10-day time frame. The protester fears that upon our dismissal the right to such a suspension will be lost if the Army, after discussions, decides to continue the contract with Short and HCA protests that decision. It requests that the present award be terminated so that its right to a suspension is preserved if Short is again selected for award.

We see no reason why the right to a suspension under CICA should be lost in the circumstances described by the protester. The CICA suspension provisions, clearly would apply to a timely filed protest of any award decision that is based upon revised offers, in this case, receipt of best and final offers. Hence, a termination of the existing contract based on initial proposals is unnecessary.

The protest is dismissed.

for 
Comptroller General
of the United States