



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Culver Emergency Services, Inc.--Request for Reconsideration

File: B-232646.4; B-232646.5

Date: March 8, 1989

DIGEST:

1. Where the solicitation contemplates multiple contracts for services required at many different locations throughout the country, and a protest has been filed against proposed awards at some but not all of those locations, the stay provision of the Competition in Contracting Act of 1984, 31 U.S.C. § 3553(c)(1) (Supp. IV 1986), requires the contracting agency to refrain from making awards only on those proposed contracts that are the subject of the protest.

2. Contention that recommendation in decision sustaining protest which challenged several but not all contract awards under solicitation providing for multiple awards was too narrow and should extend to all awards under the solicitation, whether or not the subject of a protest, is without merit where party challenging recommendation chose not to protest other awards and, as a result, those awards were not the subject of the decision sustaining the protest.

DECISION

Culver Emergency Services, Inc., requests reconsideration of our December 19, 1988, dismissal of its protest under request for proposals (RFP) No. F41689-88-R-A122, issued by the Air Force for general dental services to be provided at various locations throughout the United States. Culver also requests reconsideration of the corrective action recommended in our decision, Med-National, Inc., B-232646, Jan. 12, 1989, 68 Comp. Gen. _____ (1989), 89-1 CPD ¶ _____, sustaining a protest filed by another offeror in connection with the same Air Force procurement for dental services. We affirm the dismissal of Culver's protest and see no basis to disturb the recommendation in our decision sustaining Med-National's protest.

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The RFP sought 1 to 3 full-time equivalent dentists at 69 Air Force bases and contemplated award of separate contracts at each location. Each contract would be for a basic period of 1 year with options for 4 additional years. Med-National, Inc., a competitor under the RFP, protested on September 19, 1988, on the basis that the Air Force had improperly interpreted the RFP's provisions regarding credentials of the dentists that were to be employed by a contractor and, as a result, Med-National would be deprived of contracts to which it was otherwise entitled at nine Air Force bases. Basically, Med-National wanted to substitute new, qualified dentists for those originally listed in its proposal at the nine locations; however, the Air Force believed that such substitution was not allowed under the terms of the RFP, and rejected Med-National's proposal on this ground for those nine contracts. We sustained Med-National's protest, finding that the RFP did not prohibit substituting one qualified dentist for another as Med-National proposed. Accordingly, we recommended in our decision that the Air Force award Med-National contracts for the nine Air Force bases that were the subject of Med-National's protest. See Med-National, Inc., B-232646, supra.

Culver participated as an interested party in Med-National's protest. In addition, on November 8, 1988, Culver filed a protest of its own in connection with this procurement. Culver protested that the contracting officer improperly had awarded contracts at two performance sites to firms other than Culver, when in fact Culver was entitled to award at both sites under the RFP's stated evaluation criteria. This ground of protest was unrelated to the substitution of dentists issue raised in Med-National's protest. Despite the fact that Culver did not raise the substitution issue in its protest, Culver nevertheless challenged the Air Force's decision not to stay the award of contracts at other sites that were not the subject of Med-National's protest. Culver argued that the stay provision of the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3553(c)(1) (Supp. IV 1986), prohibited the Air Force from awarding contracts at all sites covered by the protested RFP, including sites that were not the subject of Med-National's protest.

In response to Culver's protest, the Air Force agreed that contracts at the two sites that were the subject of Culver's protest should have been awarded to Culver and reported that it would take appropriate action to ensure that Culver received the awards to which it was entitled. As Culver would be awarded the two contracts, we dismissed the protest as academic.

Culver argues that we should not have dismissed its protest. Culver contends that its original protest was filed on two distinct bases, only one of which was rendered academic by the Air Force's actions. The first ground for protest was that Culver was entitled to awards at two Air Force bases; it concedes that this basis for protest was rendered academic by the Air Force's statement that it would take appropriate corrective action. However, Culver argues that the second basis for protest--that the Air Force was required to refrain from awarding all contracts under this solicitation after the Air Force was notified that Med-National had filed a protest--was not rendered academic by the Air Force's corrective actions. Culver asserts that its proposal, like Med-National's, was rejected by the contracting officer at 20 bases, because Culver attempted to substitute qualified dentists for the dentists it had listed in its initial proposal, just as Med-National had done. Culver contends that, if the Air Force had refrained from awarding all contracts under the RFP rather than only the contracts that were protested by Med-National, then, in view of our holding in Med-National, Inc., B-232646, supra. Culver would have been in line for and received awards for the 20 Air Force bases where it had attempted to substitute new dentists for those originally proposed.

Culver contends that its protest that the Air Force should have withheld awards at all 69 Air Force bases after notification that Med-National had filed a protest concerning awards at 9 bases should have been sustained. We do not agree.

CICA, 31 U.S.C. § 3553(c)(1), provides that:

"Except as provided in paragraph (2) of this subsection, a contract may not be awarded in any procurement after the Federal agency has received notice of a protest with respect to such procurement from the Comptroller General and while the protest is pending."

Contrary to Culver's argument, in our view the stay provision should not be interpreted to apply to all proposed awards under a challenged solicitation where, as here, the agency has structured a procurement so as to award many contracts at different locations pursuant to one solicitation. Rather, under these circumstances, the only reasonable interpretation of the stay provision is that the contracting agency is required to refrain from making awards only on those proposed contracts that are the subject of a protest. Otherwise, any time a protest is filed against any part of

an RFP contemplating multiple awards, the contracting agency will be prevented from making even those awards that are not the subject of a protest.

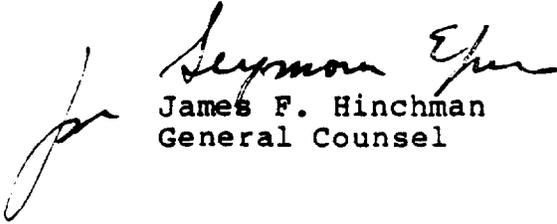
Furthermore, we do not believe that a firm such as Culver necessarily loses the protection afforded by the CICA stay provision under our interpretation of the statute. Culver was aware of and even participated in Med-National's protest; therefore, Culver could have protested in its own right on the same basis as Med-National regarding proposed contract awards at the 20 Air Force bases to which Culver believed it was otherwise entitled. Culver chose not to protest regarding substitution of dentists for those contracts, and, therefore, the Air Force was free to make award at those bases. On the other hand, Med-National protested the Air Force's rejection of its offers at nine Air Force bases because of Med-National's proposed substitution of dentists, and the Air Force was required to hold those awards in abeyance pending our decision.

Culver also contends that our recommendation in Med-National, Inc., B-232646, supra, was not sufficient, because it "failed to account for the legitimate interests of Culver in this matter." While Culver apparently agrees with our finding that the Air Force incorrectly interpreted the RFP provisions concerning credentials and substitution of dentists, Culver believes that our recommendation that the Air Force award Med-National contracts for the nine locations that Med-National had protested and for which Med-National offered to substitute qualified dentists was too narrow. Culver asserts that we should have recommended that the Air Force reexamine the offers for every location covered by the RFP, not just those that were protested by Med-National, and where necessary terminate contracts and make awards in accord with our interpretation of the RFP. Culver states that it would then be awarded 20 additional contracts in cases where the Air Force had previously improperly rejected its offers because Culver proposed to employ substitute dentists.

Culver's argument provides no basis to modify our decision on Med-National's protest. Our recommendation was limited to the nine contracts that had been protested by Med-National. As Culver chose not to protest the other 20 proposed awards to which it believed it was entitled, those contracts were not before us for our decision. Accordingly, since a prerequisite to a recommendation of corrective action is a finding that the award at issue is improper, there was no basis to extend our recommendation to those contracts which had not been protested. See CICA, 31 U.S.C. § 3554(b)(1); 4 C.F.R. § 21.6(a) (1988). In fact, however,

in a cover letter to the Secretary of the Air Force that accompanied our decision, we did recommend that the Air Force examine the proposals received for contracts other than those protested by Med-National to determine whether any of those contracts might have been awarded in a manner that was inconsistent with our decision, and we also recommended that, if that was the case, the Air Force should take appropriate corrective action on those contracts.

As Culver has shown no errors of fact or law in our dismissal of its protest or in the corrective action recommended in our decision on Med-National's protest, we affirm the dismissal and see no basis to disturb the recommendation in the Med-National decision.



James F. Hinchman
General Counsel